LAWS AND RESOLUTIONS

OF THE

STATE OF MONTANA

Enacted by the

FIFTY-FOURTH LEGISLATURE
IN REGULAR SESSION

and the

FIFTY-THIRD LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
January 2, 1995, through April 13, 1995
November 29, 1993, through December 18, 1993

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OFFICERS AND MEMBERS OF THE MONTANA SENATE 1995

50 Members

31 Democrats 19 Republicans

OFFICERS

President . . . . . Bob Brown
President Pro Tempore . . . . . Gary Aklestad
Majority Floor Leader . . . . . John Harp
Majority Wbip . . . . . Tom Beck
Minority Floor Leader . . . . . Mike Halligan
Minority Whip . . . . . Steve Doherty
Secretary of the Senate . . . . . Rosana Skelton

MEMBERS

Name	Residence or Mailing Address	Dist No	Party
Aklestad, Gary C.	PO Box 32 Galata MT 59444-0032	44	Republican
Baer, Larry L.	6093 Montana Hwy 35 Bigfork MT 59911-6062	38	Republican
Bartlett, Sue	416 N Beattie St Helena MT 59601-3701	27	Democratic
Beck, Thomas A. "Tom"	651 Greenhouse Rd Deer Lodge MT 59722-9717	28	Republican
Benedict, Steve	PO Box 68 Hamilton MT 59840-0668	30	Republican
Bishop, Al	3020 Lee nn Blvd Billings MT 59102-0442	9	Republican
Brooke, Vivian M.	1610 Ma teline Ave Missoula MT 59801-5806	33	Democratic
Brown, Robert "Bob"	333 Cougar Trl Whitefish MT 59937-8431	40	Republican
Burnett, James H. "Jim"	HC 50 Box 4460 Luther MT 59051-9701	12	Republican
Christiaens, B.F. "Chris"	709 4th Ave N Great Falls MT 59401-1509	23	Democratic
Cole, Mack	Box 462 Hysham MT 59038-0462	4	Republican
Crippen, Bruce D.	PO Box 80747 Billings MT 59108-0747	10	Republican
Crismore, William S.	237 Airfield Rd Libby MT 59923-9301	41	Repuhlican
Devlin, Gerry	PO Box 186 Terry MT 59349-0186	2	Republican
Doherty, Steve	1531 3rd Ave Sw Great Falls MT 59404-2715	24	Democratic
Eck, Dorothy	10 W Garfield St Bozeman MT 59715-5602	15	Democratic
Emerson, C.A. "Casey"	116 Sunset Blvd Bozeman MT 59715-6652	14	Republican
Estrada, Sharon	528 Clark Billings MT 59101-1725	7	Republican
Forrester, Gary	2527 Gardiner St Billings MT 59101-6702	8	Democratic
Foster, Mike	414 N Cedar St Townsend MT 59644-2100	20	Republican
Franklin, Eve	4021 4th Ave S Great Falls MT 59405-3633	21	Democratic
Gage, Delwyn	PO Box 787 Cut Bank MT 59427-0787	43	Republican
Grosfield, Lorents	HC 87 Box 2145 Big Timber MT 59011-9703	13	Republican
Halligan, Mike	269 W Front PO Box 8234 Missoula MT 59802-8234	34	Democratic
Harding, Ethel M.	PO Box 251 Polson MT 59860-0251	37	Republican
Hargrove, Don	37 Big Chief Trl Bozeman MT 59715-9419	16	Repuhlican
Harp, John G.	53 Willow Dr Kalispell MT 59901-2834	42	Republican
Hertel, John R.	RR 1 Box 30 Moore MT 59464-9703	47	Republican
Holden, Ric	164 Road 253 Glendive MT 59330-9438	1	Republican
Jabs, Reiny	HCR 36 Hardin MT 59034-9613	3	Republican
Jacobson, Judy H.	330 Blacktail Canyon Rd Butte MT 59701-7507	18	Democratic
Jenkins, Loren	Box 9 Big Sandy MT 59520-0009	45	Republican
Jergeson, Greg	Box 1568 Chinook MT 59523-9401	46	Democratic
Keating, Thomas F.	PO Box 20522 Billings MT 59104-0522	5	Republican
Klampe, Terry	PO Box 368 Florence MT 59833-0368	31	Democratic
Lynch, John "J.D."	527 W Mercury St Butte MT 59701-1629	19	Democratic
Mesaros, Kenneth "Ken"	2191 Milligan Rd Cascade MT 59421-8001	25	Ropublican
Miller, Ken	PO Box 186 Laurel MT 59044-0186	11	Republican
Mohl, Arnie A.	3303 Hwy 2 E Kalispell MT 59901-6653	39	Republican

Nelson, Linda J.	469 Griffin Rd Medicine Lake MT 59247-9708	49	Democratic
Pipinich, Bob	4430 Montana Hwy 200 E Missoula MT 59802-8828	29	Democratic
Sprague, Mike	174 Erickson Court Billings MT 59105-2345	6	Republican
Stang, Barry "Spook"	PO Box M St. Regis MT 59866-0340	36	Democratic
Swysgood, Charles "Chuck"	506 S Atlantic St Dillon MT 59725-2723	17	Republican
Toews, Daryl	HC 66 Box 34 Lustre MT 59225-9703	48	Republican
Tveit, Larry J.	RR 1 Box 1475 Fairview MT 59221-9705	50	Republican
Van Valkenburg, Fred R.	112 University Ave Missoula MT 59801-4224	32	Democratic
Waterman, Mignon	530 Hazelgreen Ct Helena MT 59601-5410	26	Democratic
Weldon, Jeff	24460 Doney Rd Arlee MT 59821-9617	35	Democratic
Wilson, Bill	1305 2nd Ave N Great Falls MT 59401-3265	22	Democratic

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OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES 1995

100 Members

67 Republicans 33 Democrats

OFFICERS

Speaker . . . . . John Mercer
Speaker Pro Tempore . . . . . Marian Hanson
Majority Leader . . . . . Larry "Hal" Grinde
Majority Whip . . . . . H.S Hanson
Minority Leader . . . . . Ray Peck
Minority Whip . . . . . Dan Harrington
Cbief Clerk of the House . . . . . Marilyn Miller

MEMBERS

Name	Residence or Mailing Address	Dist No	Party
Ahner, Chris	1470 Boston Rd Helena MT 59601-7330	51	Republican
Anderson, Shiell	Hayhook Ranch, HC 85 Box 4251 Livingston MT 59047-9513	25	Republican
Arnott, Peggy	1512 Colorado Billings MT 59102-3250	20	Republican
Barnett, Joe	201 Spooner Rd Belgrade MT 59714-3429	32	Republican
Barnhart, Beverly	614 S 6th Ave Bozeman MT 59715-4566	29	Democratic
Bergman, Ellen	1019 S Strevell Ave Miles City MT 59301-4917	4	Republican
Bergsagel, Ernest	HC 84 Box 8045 Malta MT 59538-9701	95	Republican
Boharski, William E.	1433 5Th Ave W Kalispell MT 59901-5521	79	Republican
Bohlinger, John C.	2233 Remington Sq Billings MT 59102-2489	14	Republican
Brainard, Matt	818 Woody St Missoula MT 59802-3632	62	Republican
Carey, Bill	721 Woodford Missoula MT 59801-2523	67	Democratic
Clark, Robert C.	PO Box 216 Ryegate MT 59074-0216	8	Republican
Cobb, John	PO Box 388 Augusta MT 59410-0388	50	Republican
Cocchiarella, Vicki	535 Livingston Ave Missoula MT 59801-8903	64	Democratic
Curtiss, Aubyn A.	PO Box 216 Fortine MT 59918-0216	81	Republican
Debruycker, Roger	HC 77 Box 8 Floweree MT 59440-9801	89	Republican
Denny, Matt	5610 Gharrett Missoula MT 59803-3010	63	Republican
Devaney, Charles R.	141 Lavalley St Plentywood MT 59254-2124	97	Republican
Ellingson, Jon	430 Ryman St Missoula MT 59801-4208	65	Democratic
Elliott, Jim	100 Trout Creek Rd Trout Creek MT 59874-9609	72	Democratic
Ellis, Jr., Alvin A.	HC 50 Box 4840 Red Lodge MT 59068-9724	23	Republican
Ewer, David	1016 5th Ave Helena MT 59601-4444	53	Democratic
Feland, Gary	215 11th Ave N Shelby MT 59474-1720	88	Republican
Fisher, Marjorie I.	201B 2nd St E Whitefish MT 59937-2411	80	Republican
Forbes, Rose	707 45th St N Great Falls MT 59401-1108	42	Republican
Fuchs, Daniel C.	395 Windsor Cir N Billings MT 59105-2409	15	Republican
Galvin, Patrick G.	105 29Th Ave Nw Great Falls MT 59404-1333	48	Democratic
Grady, EdwaRd J. "Ed"	HC 30 Canyon Creek MT 59633-9802	55	Republican
Green, Dick	210 Silverbow Dr Victor MT 59875-9630	61	Republican
Grimes, Duane	Gruber Est Box 81 Clancy MT 59634-9710	39	Republican
Grinde, Larry Hal	RR 3 Lewistown MT 59457-9803	94	Republican
Hagener, Antoinette R.	612 17th St Havre MT 59501-5509	90	Democratic
Hanson, H.S. "Sonny"	2237 Green Terrace Dr Billings MT 59102-0629	9	Republican
Hanson, Marian W.	PO Box 237 Ashland MT 59003-0237	1	Republican
Harper, Hal	9 Comstock Rd Helena MT 59601-5524	52	Democratic
Harrington, Dan W.	1201 N Excelsior Ave Butte MT 59701-8505	38	Democratic
Hayne, Harriet	PO Box 285 Dupuyer MT 59432-0285	86	Republican
Heavy Runner, George	Box 506 Browning MT 59417-0506	85	Democratic
Herron, Jack R.	360 5th Ave E # N Kalispell MT 59901-4925	77	Republican

Hibbard, Chase	PO Box 835 Helena MT 59624-0835	54	Republican
Holland, Don	PO Box 148 Forsyth MT 59327-0148	7	Republican
Hurdle, Joan	PO Box 1991 Billings MT 59103-1991	13	Democratic
Johnson, John	124 Gresham St Glendive MT 59330-1910	2	Democratic
Johnson, Royal C.	2915 Illinois St Billings MT 59102-0814	10	Republican
Jore, Rick	5200 Cheff Ln Ronan MT 59864-9806	73	Republican
Kadas, Mike	922 Taylor St Missoula MT 59802-4845	66	Democratic
Kasten, Betty Lou	HC 77 Box A-14 Brockway MT 59214-9701	99	Republican
Keenan, Bob	Box 697 Bigfork MT 59911-0697	75	Republican
Kitzenberg, Sam	130 Bonnie St Apt 1 Glasgow MT 59230-2101	96	Republican
Knox, Dick	IIC 83 Box 14 Winifred MT 59489-9702	93	Republican
Kottel, Deb	6301 43rd St Sw Great Falls MT 59404-5249	45	Democratic
Larson, Don	PO Box 285 Seeley Lake MT 59868-0285	58	Democratic
Marshall, Rod	2520 Fairway Dr Bozeman MT 59715-5843	28	Republican
Martinez, Bonnie	769 Fallow Ln #110 Billings MT 59102-7040	17	Republican
Masolo, Gay Ann	20 Buck Dr Townsend MT 59644-9649	40	Republican
Mccann, Matt	PO Box 1093 Harlem MT 59526-1093	92	Democratic
Mcculloch, Linda	5205 Deschamps Ln Missoula MT 59802-9471	70	Democratic
Mcgee, Daniel W.	1925 Pinyon Dr Laurel MT 59044-9381	21	Republican
Mckee, Jeanette S.	133 Creekside Dr Hamilton MT 59840-9384	60	Republican
Menahan, William T. "Red"	1304 W 5th St Anaconda MT 59711-1813	57	Democratic
Mercer, John A.	PO Box 450 Polson MT 59860-0450	74	Republican
Mills, Norm	1908 9th St W Billings MT 59102-3310	19	Republican
Molnar, Brad	PO Box 517 Laurel MT 59044-0517	22	Republican
Murdock, Judy	Box Q Lodge Grass MT 59050-0553	6	Republican
Nelson, Thomas E.	1116 Moon Valley Rd Billings MT 59105-2024	11	Republican
Ohs, Karl	PO Box 212 Harrison MT 59735-0212	33	Republican
Orr, Scott J.	PO Box 1318 Libby MT 59923-1318	82	Republican
Pavlovich, Robert J. "Bob"	2751 Yale Ave Butte MT 59701-4205	37	Democratic
Peck, Ray	729 4th Ave Havre MT 59501-4020	91	Democratic
Quilici, Joe	3040 Kossuth St Butte MT 59701-6336	36	Democratic
Raney, Bob	212 S 6th St Livingston MT 59047-3023	26	Democratic
Ream, Rebert R. "Bob"	School of Forestry, University Of Montana Missoula MT 59812-1063	69	Democratic
Rehbein, Jr., William	PO Box 156 Lambert MT 59243-0156	100	Republican
Rose, John "Sam"	PO Box 604 Choteau MT 59422-0604	87	Republican
Ryan, William M. "Bill"	8 18th Ave S Great Falls MT 59405-4113	44	Democratic
Schwinden, Dore	HC 37 Box 6060 Wolf Point MT 59201-9204	98	Democratic
Shea, Debbie	100 Moon Ln Butte MT 59701-3975	35	Democratic
Simon, Bruce T.	217 Clark Ave Billings MT 59101-6040	18	Republican
Simpkins, Richard D.	1221 Park Garden Rd Great Falls MT 59404-3627	49	Republican
Sliter, Paul	604 5th Ave E Kalispell MT 59901-5308	76	Republican
Smith, Liz	311 Freeze Out Ln Deer Lodge MT 59722-9701	56	Republican
Smith, Susan L.	317 Main St Kalispell MT 59901-4847	84	Republican
Soft, Loren L.	161 Norris Court Billings MT 59105-2340	12	Republican
Somerville, Roger	PO Box 186 Lakeside MT 59922-0186	78	Republican
Squires, Carolyn M.	2111 S 10th St W Missoula MT 59801-3412	68	Democratic
Story, Jr., Rebert R.	RR 1 Valley Creek Rd Park City MT 59063-9801	24	Republican
Stovall, Jay	8325 Pryor Rd Billings MT 59101-9013	16	Republican
Swanson, Emily	15042 Kelly Canyon Rd Bozeman MT 59715-9625	30	Democratic
Tash, Bill	45 Vista Dr Dillon MT 59725-3100	34	Republican
Taylor, Lila V.	Box 595 HC 42 Busby MT 59016-9705	5	Republican
Trexler, Cliff	111 S 1st St Hamilton MT 59840-2531	59	Republican
Tropila, Joe	209 2nd St Nw Great Falls MT 59404-1301	47	Democratic
Tuss, Carley	1910 Colorado Ave Black Eagle MT 59414-1207	46	Democratic
Vick, Steve	5875 Thorpe Rd Belgrade MT 59714-8909	31	Republican
Wagner, Douglas T.	PO Box 190021 Hungry Horse MT 59919-0021	83	Republican
Wells, Jack	150 Coulee Dr Bozeman MT 59715-7717	27	Republican
Wennemar, Kenneth	17510 Beckwith St Lot 22 Frenchtown MT 59834-9700	71	Democratic
Wiseman, William R.	3310 Centennial Ct Great Falls MT 59404-3675	41	Republican
Wyatt, Diana E.	300 31st St S Great Falls MT 59405-3356	43	Democratic
Zook, Tom	HC 40 Miles City MT 59301-9806	3	Republican

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44 *(House Bill No. 16; Wyatt)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF JUSTICE FOR THE FISCAL YEAR ENDING JUNE 30, 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . *137*

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53 *(Senate Bill No. 34; Swysgood)* AN ACT GENERALLY REVISING LAWS PERTAINING TO COMMERCIAL MOTOR VEHICLES; REVISING DEFINITIONS; CREATING A THIRD-PARTY COMMERCIAL DRIVER TESTING PROGRAM; WAIVING DRIVING TESTS FOR A QUALIFIED APPLICANT WORKING IN A FARM-RELATED SERVICE INDUSTRY AND MEETING THE REQUIREMENTS FOR A SEASONAL COMMERCIAL DRIVER'S LICENSE; REQUIRING COMMERCIAL DRIVERS HAVING ANY MEASURABLE OR DETECTABLE ALCOHOL CONCENTRATION TO SUBMIT TO TESTING; CLARIFYING THE STATUS OF CERTAIN FERTILIZER SPREADER TRUCKS AND SPREADER TRAILERS AS COMMERCIAL MOTOR VEHICLES; AMENDING SECTIONS 61-1-134, 61-1-502, 61-5-104, 61-5-110, 61-5-117, 61-8-806, AND 61-8-808, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. 155

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57 *(Senate Bill No. 108; Holden)* AN ACT GENERALLY REVISING THE LAWS RELATING TO ALFALFA LEAF-CUTTING BEES; ELIMINATING THE REQUIREMENT THAT IMPORTED BEES AND BEES FOR SALE BE CERTIFIED; ELIMINATING THE REQUIREMENT FOR ANNUAL REGISTRATION BY BEE GROWERS; REMOVING RESTRIC-

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58 *(House Bill No. 25; Peck)* AN ACT SUBSTITUTING JANUARY 1 FOR MARCH 1 AS THE DATE THAT A TEACHER OR SPECIALIST MAY BEGIN APPLYING FOR CERTIFICATION; AMENDING SECTION 20-4-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *170*

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61 *(House Bill No. 12; Quilici)* AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 1996 AND 1997; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; REAPPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND; REVISING THE PROCEDURES AND REQUIREMENTS FOR THE ENERGY CONSERVATION PROGRAM; AMENDING SECTION 90-4-605, MCA; AND PROVIDING AN EFFECTIVE DATE. *185*

62 *(Senate Bill No. 68; Lynch)* AN ACT REVISING THE LAWS RELATING TO GROSS VEHICLE WEIGHT LIMITATIONS; INCREASING THE PERCENTAGE AMOUNT OF TOLERANCE BY WHICH VEHICLES MAY EXCEED WEIGHT LIMITATIONS WITHOUT INCURRING PENALTIES FROM 5 PERCENT TO 7 PERCENT FOR ALL VEHICLES; AND AMENDING SECTION 61-10-144, MCA. *188*

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63 *(House Bill No. 10; McCann)* AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE; AND PROVIDING AN EFFECTIVE DATE. *189*

64 *(House Bill No. 118; Devaney)* AN ACT REMOVING THE REQUIREMENT THAT BANK CALL REPORTS BE PUBLISHED; PROVIDING FOR CONTINGENT TERMINATION TO CONFORM TO CHANGES IN FEDERAL BANKING LAWS; AND AMENDING SECTION 32-1-231, MCA. *193*

65 *(House Bill No. 193; Larson)* AN ACT ADDING TWO MEMBERS OF THE PUBLIC TO THE BOARDS OF DIRECTORS OF THE MONTANA INSURANCE GUARANTY ASSOCIATION AND THE MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION; AND AMENDING SECTIONS 33-10-104 AND 33-10-204, MCA. *193*

66 *(Senate Bill No. 52; Harp)* AN ACT CLARIFYING ANNEXATION LAW BY SUBSTITUTING REAL PROPERTY OWNERS FOR FREEHOLDERS AND, WITH RESPECT TO MUNICIPAL ANNEXATION WITH THE PROVISION OF SERVICES LAWS, BY SUBSTITUTING REAL PROPERTY OWNERS FOR RESIDENT FREEHOLDERS; AMENDING SECTIONS 7-2-4205, 7-2-4305, 7-2-4313, 7-2-4314, 7-2-4323, 7-2-4324, 7-2-4409, 7-2-4502, 7-2-4506, 7-2-4601, 7-2-4606, 7-2-4610, 7-2-4704, 7-2-4705, 7-2-4710, 7-2-4741, AND 7-2-4751, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *194*

67 *(House Bill No. 73; Pavlovich)* AN ACT ESTABLISHING A PORTION OF MONTANA STATE HIGHWAY 78, FROM COLUMBUS THROUGH ABSAROKEE AND ROSCOE TO RED LODGE, AS THE DONALD J. RUHL MEDAL OF HONOR HIGHWAY. *200*

68 *(House Bill No. 54; Nelson)* AN ACT CLARIFYING THAT INSURANCE POOLS ESTABLISHED JOINTLY BY POLITICAL SUBDIVISIONS MAY OBTAIN EXCESS INSURANCE WITHOUT PROCEEDING UNDER THE PROVISIONS OF SECTION 33-2-302(2) THROUGH (4) OF THE SURPLUS LINES INSURANCE LAW; AMENDING SECTION 2-9-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *201*

69 *(Senate Bill No. 37; Bishop)* AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ELIMINATE THE OFFICE OF SECRETARY OF STATE AND ASSIGNING THE DUTIES OF THAT OFFICE TO THE LIEUTENANT GOVERNOR; AMENDING ARTICLE III, SECTIONS 4 AND 5, ARTICLE IV, SECTION 8, ARTICLE V, SECTION 14, ARTICLE VI, SECTIONS 1, 2, 3, 4, 6, 7, AND 10, ARTICLE X, SECTION 4, AND ARTICLE XIV, SECTIONS 2 AND 9, OF THE MONTANA CGNSTITUTION; AND PROVIDING A DELAYED EFFECTIVE DATE. *202*

70 *(Senate Bill No. 36; Bishop)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE ESTABLISHMENT OF PATERNITY OF A CHILD; AMENDING SECTIONS 40-5-232, 40-5-233, 40-5-234, 40-5-236, 40-5-237, 40-6-102, 40-6-105, 40-6-115, 40-6-117, 40-6-118, AND 50-15-210, MCA; AND PROVIDING AN EFFECTIVE DATE. *208*

71 *(Senate Bill No. 91; Cole)* AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO CONTRACTS WITH PRIVATE PARTIES TO ACT AS AGENTS OF THE DEPARTMENT IN ISSUING PERMITS FOR EXCESS SIZE AND WEIGHT OF VEHICLES; PROVIDING ANNUAL PERMITS AND FEES FOR OVERWEIGHT VEHICLES; AND AMENDING SECTIONS 61-10-121 AND 61-10-125, MCA. *217*

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72 *(Senate Bill No. 95; Bishop)* AN ACT REVISING THE REQUIREMENTS FOR OBTAINING A HEARING AID TRAINEE LICENSE; ESTABLISHING THE BOARD'S POWER TO INITIATE COMPLAINTS, CONDUCT INVESTIGATIONS, AND SUSPEND OR REVOKE LICENSES; CHANGING THE TRAINING PERIOD FROM 12 MONTHS TO 180 DAYS; REDUCING THE NUMBER OF TRAINEE LICENSE RENEWALS FOLLOWING FAILURE TO PASS EXAMINATIONS FROM TWO TO ONE; INCREASING THE CONTINUING EDUCATION REQUIREMENTS FOR LICENSE RENEWAL APPLICANTS; AND AMENDING SECTIONS 37-16-202, 37-16-401, 37-16-403, 37-16-404, 37-16-405, 37-16-406, 37-16-407, AND 37-16-411, MCA. *219*

73 *(Senate Bill No. 96; Foster)* AN ACT REVISING THE LAWS RELATING TO TRAFFIC SPEED ZONES; PROHIBITING THE STATE HIGHWAY COMMISSION FROM INCREASING A SPEED LIMIT UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 61-8-309, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. *226*

74 *(Senate Bill No. 99; Keating)* AN ACT ALLOWING THE BOARD OF COUNTY COMMISSIONERS TO DETERMINE THE SITE FOR THE AUCTION SALE OF REAL OR PERSONAL PROPERTY VALUED IN EXCESS OF $2,500; AND AMENDING SECTION 7-8-2212, MCA. . . . *227*

75 *(Senate Bill No. 104; Hargrove)* AN ACT CHANGING THE NAME OF THE HIGHWAY COMMISSION TO THE TRANSPORTATION COMMISSION; CLARIFYING CERTAIN RESPONSIBILITIES AND AUTHORITY OF THE COMMISSION AND THE DEPARTMENT OF TRANSPORTATION RELATED TO RAIL AND TRANSIT PROGRAMS AND TO INTERMODAL TRANSPORTATION; CLARIFYING THE RESPONSIBILITIES AND AUTHORITY OF THE COMMISSION AND THE DEPARTMENT RELATED TO THE ALLOCATION AND ADMINISTRATION OF CERTAIN APPROPRIATED FUNDS; AMENDING SECTIONS 2-15-2502, 60-1-103, 60-2-110, 60-2-129, AND 60-3-219, MCA; AND PROVIDING AN EFFECTIVE DATE. *227*

76 *(Senate Bill No. 111; Devlin)* AN ACT CREATING A COUNTY PREDATORY ANIMAL CONTROL PROGRAM TO PROTECT CATTLE; AND PROVIDING FOR FUNDING OF THE PROGRAM. *232*

77 *(House Bill No. 114; Ahner)* AN ACT CLARIFYING THAT MEMBERS OF THE ORGANIZED MILITIA ARE ENTITLED TO AN UNPAID LEAVE OF ABSENCE DURING ANY PERIOD OF STATE SERVICE DURING A STATE EMERGENCY AND ARE ENTITLED TO REEMPLOYMENT AFTER THE EMERGENCY; AMENDING SECTION 10-1-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *233*

78 *(Senate Bill No. 160; Nelson)* AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH SPEED LIMITS ON HIGHWAYS BEING SURVEYED OR UNDER CONSTRUCTION OR REPAIR; AND AMENDING SECTION 61-8-303, MCA. *234*

79 *(Senate Bill No. 196; Gage)* AN ACT REPEALING THE MONTANA RATEMAKING ACT; REPEALING SECTIONS 33-16-231, 33-16-232, 33-16-233, 33-16-234, 33-16-235, AND 33-16-236; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *235*

80 *(House Bill No. 48; Larson)* AN ACT REQUIRING PASSENGER TRANSPORT VEHICLES TO COMPLY WITH MOTOR CARRIER SAFETY RULES, WHETHER OR NOT THE TRANSPORTATION IS FOR HIRE; AMENDING SECTION 44-1-1005, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *236*

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81 *(House Bill No. 96; Larson)* AN ACT EXEMPTING VEHICLES OWNED BY SPECIAL DISTRICTS FROM VEHICLE REGISTRATION FEES, THE WEED CONTROL FEE, AND THE NEW CAR SALES TAX; ALLOWING VEHICLES OWNED BY SPECIAL DISTRICTS TO HAVE EXEMPT LICENSE PLATES; AMENDING SECTIONS 61-3-321, 61-3-332, 61-3-502, AND 61-3-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *237*

82 *(House Bill No. 138; Hanson)* AN ACT REVISING THE DUE DATE OF ANNUAL REPORTS OF UTILITIES; AMENDING SECTION 69-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *245*

83 *(House Bill No. 152; Cocchiarella)* AN ACT REVISING SECURITY REQUIREMENTS FOR SELF-INSURED EMPLOYERS; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO REDUCE THE AMOUNT OF A SECURITY DEPOSIT IF CONCURRENCE IS REACHED WITH THE MONTANA SELF-INSURERS GUARANTY FUND FOR AN EMPLOYER ELECTING COVERAGE UNDER WORKERS' COMPENSATION PLAN NO. 1; AMENDING SECTION 39-71-2106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *246*

84 *(Senate Bill No. 25; Jergeson)* AN ACT AMENDING STATE PERSONNEL LAWS BY CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES TO IMPLEMENT THE LAWS AND BY SUBSTITUTING AN INTERNAL SERVICES FUND ACCOUNT FOR A STATE SPECIAL REVENUE FUND ACCOUNT AS THE ACCOUNT INTO WHICH FUNDS FROM CHARGES TO STATE AGENCIES FOR ADMINISTRATION OF THE STATE CENTRAL PAYROLL SYSTEM ARE DEPOSITED; AMENDING SECTIONS 2-18-102, 2-18-401, AND 2-18-403, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . *247*

85 *(Senate Bill No. 48; Keating)* AN ACT REVISING AIR QUALITY LAWS TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO EXTEND THE TIME FOR NOTIFYING AN APPLICANT FOR A CONSTRUCTION PERMIT OF APPROVAL OR DENIAL OF AN APPLICATION; REVISING CERTAIN PROVISIONS OF THE AIR QUALITY LAWS TO CONFORM WITH FEDERAL CLEAN AIR ACT REQUIREMENTS; AND AMENDING SECTIONS 75-2-211, 75-2-403, AND 75-2-413, MCA. *249*

86 *(House Bill No. 91; Hanson)* AN ACT EXTENDING THE TIME IN WHICH A CANDIDATE FOR A STATE DISTRICT OFFICE MUST REPORT A CONTRIBUTION OF $100 OR MORE FROM 24 HOURS TO 48 HOURS; ALLOWING REPORTS TO BE FILED BY MAIL OR BY ELECTRONIC COMMUNICATION; AND AMENDING SECTION 13-37-226, MCA. . . *253*

87 *(House Bill No. 170; Rose)* AN ACT ALLOWING MEMBERS OF AN IRRIGATION DISTRICT, BY SPECIAL ELECTION OR PETITION, TO REQUIRE THE BOARD OF COMMISSIONERS OF THE IRRIGATION DISTRICT TO IMPOSE AN ACREAGE LIMITATION ON THE SIZE OF FARMS THAT WILL BE SERVICED BY THE IRRIGATION DISTRICT; ALLOWING A LANDOWNER OR LESSEE WHO IRRIGATES ACREAGE IN EXCESS OF THE LIMITATION TO CONTINUE OPERATIONS UNDER CERTAIN CONDITIONS; AND ALLOWING AN IRRIGATION DISTRICT THAT HAS IMPLEMENTED AN ACREAGE LIMITATION TO WITHHOLD WATER TO ACREAGE IN EXCESS OF THE LIMITATION. *255*

88 *(Senate Bill No. 49; Swysgood)* AN ACT EXEMPTING FROM PROPERTY TAXATION TRAILERS AND SEMITRAILERS THAT ARE REGISTERED THROUGH A PROPORTIONAL REGISTRATION AGREEMENT; REVISING REQUIREMENTS FOR INFORMATION ON APPLICATIONS FOR THE REGISTRATION OF CERTAIN TRUCKS

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89 *(House Bill No. 31; Ewer)* AN ACT EXEMPTING A MINOR EMPLOYED AS AN OFFICIAL OR REFEREE FOR A NONPROFIT ATHLETIC ORGANIZATION FROM THE PROVISIONS OF THE MONTANA CHILD LABOR STANDARDS ACT; PROHIBITING A MINOR UNDER THE AGE OF 14 FROM OFFICIATING AT AN ADULT EVENT OR ACTIVITY; AMENDING SECTION 41-2-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *265*

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91 *(House Bill No. 119; Quilici)* AN ACT AUTHORIZING THE ADJUTANT GENERAL TO ADOPT RULES GOVERNING THE ARMED FORCES OF THE STATE AND THE DEPARTMENT OF MILITARY AFFAIRS; AMENDING SECTION 10-1-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *270*

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97 *(Senate Bill No. 202; Jergeson)* AN ACT REMOVING THE TERMINATION OF THE FRAUD, WASTE, AND ABUSE HOTLINE; REPEALING SECTION 6, CHAPTER 20, SPECIAL LAWS OF NOVEMBER 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 284

98 *(Senate Bill No. 216; Beck)* AN ACT ESTABLISHING CONTINUING EDUCATION REQUIREMENTS FOR CREDIT LIFE AND DISABILITY INSURANCE PRODUCERS; ELIMINATING PRELICENSING EDUCATION REQUIREMENTS FOR INSURANCE PRODUCERS; AMENDING SECTIONS 33-2-708, 33-17-1203, AND 33-30-312, MCA; AND REPEALING SECTIONS 33-17-207, 33-17-208, AND 33-17-209, MCA. 284

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106 *(House Bill No. 146; McGee)* AN ACT ALLOWING JOINT PAYMENT, BY THE DEPARTMENT OF TRANSPORTATION AND A CITY, COUNTY, OR CONSOLIDATED LOCAL GOVERNMENT, OF CERTAIN CONSTRUCTION CONTRACTS; AND AMENDING SECTION 60-2-210, MCA. 295

107 *(House Bill No. 147; McGee)* AN ACT ALLOWING ENGINEERING DOCTORATE DEGREE GRADUATES WITH 4 YEARS' EXPERIENCE TO TAKE THE PROFESSIONAL ENGINEERING EXAMINATION; ADDING CONTINUING EDUCATION OR OTHER OPTIONS TO CONTINUED PRACTICE IN ENGINEERING OR LAND SURVEYING AS CRITERIA FOR BIENNIAL REGISTRATION RENEWAL; PROVIDING FOR INJUNCTIVE RELIEF AGAINST THE UNLICENSED PRACTICE OF ENGINEERING OR LAND SURVEYING; AND AMENDING SECTIONS 37-67-306, 37-67-315, AND 37-67-332, MCA. 295

108 *(House Bill No. 148; McGee)* AN ACT REVISING CERTAIN PROVISIONS OF PROFESSIONAL ENGINEER AND LAND SURVEYOR LICENSURE; CHANGING THE TERM "ENGINEER-IN-TRAINING" TO "ENGINEER INTERN"; CHANGING THE TERM "LAND SURVEYOR-IN-TRAINING" TO "LAND SURVEYOR INTERN"; PROHIBITING LOCAL GOVERNMENTS FROM IMPOSING FEES OR EXAMINATION REQUIREMENTS ON LICENSEES; ESTABLISHING SEMESTER HOUR REQUIREMENTS FOR REGISTRANTS; REMOVING THE DURATION REQUIREMENT FOR PROFESSIONAL LAND SURVEYOR EXAMINATIONS; REQUIRING APPLICANTS WHO FAIL THE EXAMINATIONS TWICE TO WAIT 1 YEAR BEFORE TAKING A THIRD EXAMINATION; PROHIBITING APPLICANTS WHO FAIL THE EXAMINATIONS THREE TIMES FROM TAKING IT AGAIN EXCEPT UNDER SPECIAL CIRCUMSTANCES; REMOVING THE DURATION REQUIREMENT FOR EXAMINATIONS TAKEN BY LAND SURVEYORS FROM OTHER STATES; CLARIFYING REQUIREMENTS PERTAINING TO PARTNERSHIPS AND CORPORATIONS; REMOVING THE 6-MONTH DEADLINE FOR INVESTIGATION OF CHARGES; AND AMENDING SECTIONS 37-67-101, 37-67-303, 37-67-304, 37-67-305, 37-67-307, 37-67-308, 37-67-310, 37-67-311, 37-67-312, 37-67-313, 37-67-314, 37-67-320, AND 37-67-331, MCA. 298

109 *(House Bill No. 174; Hagener)* AN ACT REVISING THE LAW RELATING TO NOTICE TO OTHER JURISDICTIONS OF DECREES OF SEPARATION OR INVALIDITY OF MARRIAGE; REQUIRING NOTICE OF INVALIDITY OF MARRIAGE; ELIMINATING NOTICE FOR DECREES OF SEPARATION; AND AMENDING SECTIONS 40-1-402 AND 40-4-108, MCA. 308

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112 *(House Bill No. 216; Cocchiarella)* AN ACT EXEMPTING EMPLOYMENT OF AN EMPLOYER'S SPOUSE FOR WHOM AN EXEMPTION BASED ON MARITAL STATUS MAY BE CLAIMED UNDER FEDERAL TAX LAW FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT UNLESS COVERAGE IS ELECTED; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE. *321*

113 *(House Bill No. 243; Menahan)* AN ACT ALLOWING LICENSED ELECTRICIANS TO RENEW A LAPSED STATE LICENSE WITHOUT EXAMINATION WITHIN 1 YEAR OF THE LICENSE EXPIRATION DATE UPON PAYMENT OF RENEWAL AND DELINQUENCY FEES; AMENDING SECTION 37-68-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *323*

114 *(House Bill No. 285; Larson)* AN ACT EXEMPTING CERTAIN EMPLOYEES OF A LICENSED OUTFITTER FROM COVERAGE UNDER THE STATE OVERTIME LAW; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *324*

115 *(House Bill No. 288; Marshall)* AN ACT PROVIDING THAT A PERSON WHO TAKES A MOUNTAIN SHEEP USING AN UNLIMITED MOUNTAIN SHEEP LICENSE, WITH THE EXCEPTION OF A MOUNTAIN SHEEP TAKEN PURSUANT TO AN ADULT EWE LICENSE, IS NOT ELIGIBLE TO RECEIVE ANOTHER SPECIAL LICENSE FOR THAT SPECIES FOR THE NEXT 7 YEARS; AND AMENDING SECTION 87-2-702, MCA. *327*

116 *(House Bill No. 291; Fuchs)* AN ACT ALLOWING THE POSSESSION, TRANSPORTATION, SALE, OR PURCHASE OF THE BONES OF AN ELK, ANTELOPE, MOOSE, OR DEER THAT HAS BEEN LAWFULLY KILLED OR THAT HAS DIED OF NATURAL CAUSES; AND AMENDING SECTION 87-3-111, MCA. *328*

117 *(House Bill No. 310; Barnett)* AN ACT ALLOWING REGULATED COMPANIES TO IMMEDIATELY RECOVER IN THEIR RATES AND CHARGES FEES LEVIED BY THE MONTANA CONSUMER COUNSEL;

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118 *(House Bill No. 379; Murdock)* AN ACT ALLOWING A GOVERNING BODY TO DETERMINE THE TIME OF ITS MEETING AS THE BOARD OF COUNTY CANVASSERS; AND AMENDING SECTION 13-15-401, MCA. 331

119 *(Senate Bill No. 24; Swysgood)* AN ACT REVISING THE LAWS GOVERNING VOTER INFORMATION PAMPHLETS TO REQUIRE A VOTER INFORMATION PAMPHLET TO BE SENT WITH CERTAIN ARSENTEE BALLOTS IF THERE IS A STATEWIDE BALLOT ISSUE ON THE BALLOT; REVISING THE TIME FOR SUBMITTING ARGUMENTS ADVOCATING ACCEPTANCE OR REJECTION OF A BALLOT MEASURE; REVISING THE TIME FOR PRINTING THE VOTER INFORMATION PAMPHLET; AND AMENDING SECTIONS 13-13-214, 13-27-406, AND 13-27-410, MCA. 332

120 *(Senate Bill No. 69; Holden)* AN ACT RELATING TO MILITARY JUSTICE IN THE MONTANA NATIONAL GUARD; CLARIFYING THAT THE FEDERAL UNIFORM CODE OF MILITARY JUSTICE AND ITS IMPLEMENTING REGULATIONS, FORMS, AND USAGES ARE ADOPTED FOR USE BY THE MILITARY FORCES OF THIS STATE WHEN SERVING OTHER THAN IN A FEDERAL CAPACITY UNDER TITLE 10, U.S.C.; PROVIDING FOR THE ADMINISTRATION OF MILITARY JUSTICE; AND AMENDING SECTION 10-1-104, MCA. 334

121 *(Senate Bill No. 238; Van Valkenburg)* AN ACT EXEMPTING TEMPORARY UNIVERSITY SYSTEM EMPLOYEES WHO HAVE NEGOTIATED AN ALTERNATIVE BENEFITS PACKAGE THROUGH COLLECTIVE BARGAINING WITH THE UNIVERSITY SYSTEM FROM THE REQUIREMENTS TO PAY CERTAIN STATE-MANDATED BENEFITS; PROHIBITING THE COST OF AN ALTERNATIVE BENEFITS PACKAGE FROM EXCEEDING THE COST OF AN EMPLOYEE'S STATE BENEFITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 335

122 *(Senate Bill No. 269; Crippen)* AN ACT ADOPTING THE INTERSTATE WILDLIFE VIOLATOR COMPACT; AND PROVIDING AUTHORITY TO IMPLEMENT THE COMPACT TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS. 336

123 *(Senate Bill No. 299; Beck)* AN ACT PROVIDING A PROCEDURE FOR TERMINATING LOCAL WATER QUALITY DISTRICTS OR JOINT LOCAL WATER QUALITY DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 345

124 *(House Bill No. 46; Simon)* AN ACT EXPANDING THE CRIME OF ARSON TO INCLUDE PROPERTY NOT CURRENTLY INCLUDED AND TO INCLUDE THE DAMAGE OR DESTRUCTION OF ONE'S OWN PROPERTY TO OBTAIN A PECUNIARY OR OTHER GAIN THROUGH FRAUD OR DECEPTION; PROVIDING THAT ONLY PERSONAL PROPERTY OF ANOTHER, EXCEPT A VEHICLE, THAT EXCEEDS $500 IN VALUE MAY BE THE SUBJECT OF ARSON; AND AMENDING SECTION 45-6-103, MCA. 346

125 *(House Bill No. 69; Fisher)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE PROTECTION AND TREATMENT OF VICTIMS OF CRIME AND TO THE PAYMENT OF RESTITUTION BY THE OFFENDER; AMENDING SECTIONS 27-2-201, 44-2-601, 44-5-303, 45-9-205, 46-11-701, 46-18-101, 46-18-112, 46-18-113, 46-18-115, 46-18-201, 46-18-202, 46-18-222, 46-18-241, 46-18-242, 46-18-243, 46-18-244, 46-18-

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126 *(House Bill No. 97; Menahan)* AN ACT AUTHORIZING THE ISSUANCE OF PERSONALIZED VETERANS' LICENSE PLATES; AND PROVIDING AN APPLICABILITY DATE. 369

127 *(House Bill No. 99; Fuchs)* AN ACT REVISING THE DEFINITION OF DISPLACED HOMEMAKER TO CONFORM TO THE DEFINITION IN THE CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT; AMENDING SECTION 39-7-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 370

128 *(House Bill No. 104; Cobb)* AN ACT MAKING PERMANENT THE PROVISION ALLOWING THE BOARD OF REGENTS TO RETAIN UNSPENT APPROPRIATIONS FOR LONG-TERM MAINTENANCE; AMENDING SECTION 5, CHAPTER 5, SPECIAL LAWS OF JULY 1992; REPEALING SECTION 23, CHAPTER 787, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 371

129 *(House Bill No. 151; Peck)* AN ACT REMOVING THE TERMINATION OF THE SCHOOL DISTRICT COMPENSATED ABSENCE LIABILITY FUND, WHICH INCLUDED IN THE FUND UNTIL JUNE 30, 1995, THE ACCUMULATED AMOUNTS OF SICK LEAVE AND VACATION LEAVE FOR NONTEACHING AND ADMINISTRATIVE DISTRICT EMPLOYEES; CHANGING THE SCHOOL FISCAL YEAR USED IN CALCULATING THE COMPENSATED ABSENCE LIABILITY FUND RESERVE; AMENDING SECTION 20-9-512, MCA; REPEALING SECTION 3, CHAPTER 754, LAWS OF 1991; AND PROVIDING AN EFFECTIVE DATE. . 371

130 *(House Bill No. 163; Kasten)* AN ACT GENERALLY REVISING THE REQUIREMENTS FOR BID SECURITY AND CONTRACT PERFORMANCE SECURITY; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION REQUIRE BID SECURITY AND CONTRACT PERFORMANCE SECURITY IN CERTAIN CIRCUMSTANCES; EXTENDING THE TERM OF CERTAIN CONTRACTS; AMENDING SECTIONS 18-2-201, 18-2-202, 18-2-203, 18-2-204, 18-2-205, 18-2-206, 18-2-207, 18-2-208, 18-2-302, 18-4-304, 18-4-312, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 372

131 *(House Bill No. 168; Orr)* AN ACT REQUIRING THAT WORKERS' COMPENSATION INSURANCE PREMIUMS AND WEEKLY COMPENSATION BENEFITS FOR VOLUNTEER FIREFIGHTERS BE BASED ON THE NUMBER OF TRAINING HOURS, RESPONSE TIME, AND TIME AT THE EMPLOYER'S PREMISES TIMES THE AVERAGE WEEKLY WAGE DIVIDED BY 40 HOURS; DEFINING VOLUNTEER HOURS; AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE. 380

132 *(House Bill No. 173; Ewer)* AN ACT ALLOWING THE DEPARTMENT OF JUSTICE TO PROVIDE CERTAIN GAMBLING INFORMATION TO GAMBLING REGULATORY AGENCIES OF JURISDICTIONS OUTSIDE THE STATE; AMENDING SECTION 23-5-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 384

133 *(House Bill No. 180; Clark)* AN ACT CLARIFYING THE LAW RELATING TO MOTOR VEHICLE WINDOW TINTING; AND AMENDING SECTION 61-9-405, MCA. 385

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135 *(House Bill No. 284; Tropila)* AN ACT RAISING THE NUMBER OF CANDIDATES NECESSARY BEFORE AN ELECTION ADMINISTRATOR IS REQUIRED TO CONDUCT A PRIMARY ELECTION; AND AMENDING SECTIONS 13-14-115 AND 13-14-117, MCA. 388

136 *(House Bill No. 316; Harrington)* AN ACT CLARIFYING CURRENT CREDITABLE SERVICE PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; PROVIDING THAT MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM WHO BECAME MEMBERS ON OR AFTER JULY 1, 1989, MAY PURCHASE AT THE ACTUARIAL COST MEMBERSHIP SERVICE FOR CERTAIN SERVICE PERFORMED OUT-OF-STATE, PRIVATE TEACHING SERVICE, EMPLOYMENT WHILE ON LEAVE, AND TIME SPENT ON AN INJURY-RELATED LEAVE; PROVIDING THAT KINDERGARTEN THROUGH GRADE 12 PRIVATE TEACHING SERVICE MUST BE SERVICE AS A CERTIFIED TEACHER; AMENDING SECTIONS 19-20-402, 19-20-403, 19-20-405, 19-20-408, 19-20-411, AND 19-20-412, MCA; AND PROVIDING AN EFFECTIVE DATE. 389

137 *(Senate Bill No. 58; Forrester)* AN ACT REVISING REPORTING REQUIREMENTS FOR VOLUNTEER FIRE COMPANIES; AND AMENDING SECTIONS 7-33-2311 AND 19-17-402, MCA. 395

138 *(Senate Bill No. 59; Crippen)* AN ACT PROVIDING THAT A SUBPOENA REMAINS IN EFFECT UNLESS QUASHED OR UNTIL FINAL DETERMINATION OF THE ACTION; AND AMENDING SECTION 46-15-101, MCA. 396

139 *(Senate Bill No. 239; Van Valkenburg)* AN ACT PROVIDING THAT THE BEER WHOLESALER INTERBRAND COMPETITION LAW DOES NOT APPLY TO BRANDS PRODUCED IN LIMITED QUANTITIES; AND AMENDING SECTION 16-3-220, MCA. 397

140 *(Senate Bill No. 243; Wilson)* AN ACT REPLACING THE SKIER RESPONSIBILITY CODE REQUIRED BY LAW TO BE POSTED BY A SKI AREA OPERATOR WITH THE UPDATED VERSION OF THE CODE; AND AMENDING SECTION 23-2-733, MCA. 398

141 *(Senate Bill No. 392; Gage)* AN ACT AUTHORIZING THE GOVERNOR OR A DESIGNEE TO PARTICIPATE IN THE PACIFIC NORTHWEST ECONOMIC REGION; AMENDING SECTIONS 5-11-702, 5-11-703, AND 5-11-704, MCA; AND PROVIDING AN EFFECTIVE DATE. 398

142 *(Senate Bill No. 22; Gage)* AN ACT PROVIDING A LIMITED EXEMPTION FROM WORKERS' COMPENSATION COVERAGE FOR A JOCKEY WHO IS LICENSED BY THE BOARD OF HORSERACING; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 402

143 *(Senate Bill No. 94; Nelson)* AN ACT CLARIFYING THE LAWS GOVERNING WRITE-IN CANDIDATES; REQUIRING AN INDIVIDUAL FILING A DECLARATION OF INTENT FOR A WRITE-IN CANDIDACY TO RECORD THE CANDIDATE'S FIRST AND LAST NAMES AND ANY NICKNAME, INITIALS, OR DERIVATIVE OR DIMINUTIVE USED IN PLACE OF A FIRST NAME OR FIRST AND MIDDLE NAMES; REQUIRING THAT ELECTION OFFICIALS COUNT A WRITE-IN VOTE ONLY

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145 *(Senate Bill No. 240; Van Valkenburg)* AN ACT CREATING A RESTRICTED LICENSE TO PRACTICE MEDICINE; PROVIDING QUALIFICATIONS; AMENDING SECTION 37-3-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *408*

146 *(Senate Bill No. 270; Burnett)* AN ACT REQUIRING THE DESTRUCTION OF RECORDS OF REPORTS OF CHILD ABUSE OR NEGLECT IF THE CHILD IS DETERMINED NOT TO HAVE BEEN ABUSED OR NEGLECTED AND THE INITIAL REPORT IS UNFOUNDED; AND AMENDING SECTIONS 41-3-202 AND 41-3-204, MCA. *410*

147 *(Senate Bill No. 275; Devlin)* AN ACT INSTITUTING A GRADUATED PLANT NURSERY LICENSING SCALE BASED ON THE ANNUAL GROSS AMOUNT OF SALES OF NURSERY STOCK; AMENDING SECTION 80-7-106, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *411*

148 *(House Bill No. 559; Menahan)* AN ACT EXEMPTING PINOCHLE TOURNAMENTS SPONSORED BY NONPROFIT ORGANIZATIONS FROM CERTAIN PROVISIONS OF THE CARD GAMES LAWS. *412*

149 *(Senate Bill No. 203; Grosfield)* AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE UNITED STATES NATIONAL PARK SERVICE AND THE STATE OF MONTANA FOR THE BIGHORN CANYON NATIONAL RECREATION AREA AND THE LITTLE BIGHORN BATTLEFIELD NATIONAL MONUMENT; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION. *413*

150 *(House Bill No. 64; Ewer)* AN ACT REVISING THE QUALIFICATIONS FOR POLICE OFFICERS; AMENDING SECTION 7-32-4112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *437*

151 *(House Bill No. 144; Harrington)* AN ACT ELIMINATING THE ENUMERATION OF THE ALLOCATION OF FINES, FORFEITURES, AND PENALTIES INCURRED BY A VIOLATION OF THE STATE'S TAX LAWS; REPEALING SECTION 15-1-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *437*

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158 *(House Bill No. 141; Story)* AN ACT CLARIFYING TERMS APPLICABLE TO THE TAXATION OF GASOLINE, DIESEL, AND SPECIAL FUEL; PROVIDING AN ALLOWANCE FOR COLLECTING TAXES ON MOTOR FUELS RATHER THAN FOR THE EVAPORATION OF FUEL; ELIMINATING THE REQUIREMENT FOR RECORDKEEPING FOR SEPARATE STORAGE TANKS; CLARIFYING THAT THE DEPARTMENT OF TRANSPORTATION HAS 120 WORKING DAYS IN WHICH TO APPROVE OR REJECT A CLAIM FOR A REFUND; ALLOWING THE DEPARTMENT OF JUSTICE TO EXPEND FUNDS FROM THE TRIBAL MOTOR FUELS ADMINISTRATION ACCOUNT; LIMITING THE USE OF RESTRICTIVE ENDORSEMENTS ON NEGOTIABLE INSTRUMENTS; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO COLLECT DELINQUENT MOTOR FUEL TAXES; AMENDING SECTIONS 15-70-201, 15-70-205, 15-70-222, 15-70-226, AND 15-70-235, MCA; AND PROVIDING EFFECTIVE DATES. 445

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166 *(Senate Bill No. 284; Van Valkenburg)* AN ACT DIRECTING THE PUBLIC SERVICE COMMISSION TO USE A MARKET COMPARISON METHODOLOGY WHEN DETERMINING THE REASONABLENESS OF THE COST OF COAL OR OTHER BOILER FUEL PURCHASED BY A REGULATED PUBLIC UTILITY FROM ITS AFFILIATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 469

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174 *(Senate Bill No. 220; Bartlett)* AN ACT AUTHORIZING COURTS TO KEEP COURT RECORDS BY MEANS OF ELECTRONIC FILING AND STORAGE; AND AMENDING SECTIONS 3-2-402, 3-5-501, 3-6-302, 3-10-501, 3-10-503, 3-10-511, 3-10-512, AND 3-11-206, MCA. *479*

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176 *(House Bill No. 142; Somerville)* AN ACT PROVIDING FOR RESPONSE TO INCIDENTS BY DISASTER AND EMERGENCY SERVICES PERSONNEL; DEFINING "INCIDENT"; PROVIDING A STATUTORY APPROPRIATION; AUTHORIZING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES; AND AMENDING SECTIONS 10-3-103, 10-3-104, 10-3-105, 10-3-111, 10-3-301, 10-3-305, 10-3-312, AND 17-7-502, MCA. *494*

177 *(House Bill No. 179; Feland)* AN ACT PROVIDING THAT A CHARGE FOR VIOLATION OF SECTION 45-7-306, MCA, AFTER COMMITMENT TO A STATE PRISON OR TO THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES MAY, UNDER CERTAIN CIRCUMSTANCES, BE FILED IN ANY COUNTY IN THE STATE; AND AMENDING SECTIONS 46-3-110, 46-3-112, 46-3-113, 46-3-114, AND 46-3-115, MCA. *500*

178 *(House Bill No. 208; Cobb)* AN ACT IMPLEMENTING THE PUBLIC'S CONSTITUTIONAL RIGHT TO KNOW BY PROVIDING FOR PUBLIC ACCESS TO INFORMATION RELATING TO CIVIL AND CRIMINAL SANCTIONS IMPOSED FOR GAMBLING LAW VIOLATIONS; AMENDING SECTION 23-5-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *501*

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180 *(House Bill No. 324; Simpkins)* AN ACT PROVIDING THAT A MEMBER OF THE JUDGES', HIGHWAY PATROL OFFICERS', GAME WARDENS', MUNICIPAL POLICE OFFICERS', OR FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM MAY PURCHASE ADDITIONAL SERVICE FOR THE PURPOSE OF CALCULATING RETIREMENT BENEFITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *508*

181 *(House Bill No. 333; Kasten)* AN ACT REPEALING MATTRESS REGULATION LAWS; REPEALING SECTIONS 50-36-101, 50-36-102, 50-36-103, 50-36-104, 50-36-105, 50-36-106, AND 50-36-107, MCA; AND PROVIDING AN EFFECTIVE DATE. *511*

182 *(House Bill No. 334; Kasten)* AN ACT ELIMINATING THE REGULATION OF FLOUR AND BREAD BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; REPEALING SECTIONS 50-34-101, 50-34-102, 50-34-103, 50-34-104, 50-34-105, 50-34-106, 50-34-107, 50-34-108, 50-34-109, AND 50-34-110, MCA; AND PROVIDING AN EFFECTIVE DATE. *512*

183 *(House Bill No. 337; Cobb)* AN ACT REQUIRING THE LEGISLATIVE AUDITOR TO PARTICIPATE WITH THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF THE INSPECTOR GENERAL IN JOINT AUDITS OF THE MONTANA MEDICAID PROGRAM. *512*

184 *(House Bill No. 455; Bergman)* AN ACT PROVIDING THAT IF A CANDIDATE FOR SUPERVISOR OF A CONSERVATION DISTRICT IS UNOPPOSED, THE DISTRICT'S GOVERNING BODY MAY, WITHOUT AN ELECTION, DECLARE THE CANDIDATE ELECTED BY ACCLAMATION; PROVIDING THAT IF THERE IS NO CANDIDATE FOR SUPERVISOR OF A CONSERVATION DISTRICT, THE DISTRICT'S GOVERNING BODY SHALL APPOINT A SUPERVISOR WITHOUT AN ELECTION; AND AMENDING SECTION 76-15-303, MCA. *513*

185 *(House Bill No. 502; Cocchiarella)* AN ACT CLARIFYING THE MONTANA RADON CONTROL ACT; CLARIFYING WHEN A RADON DISCLOSURE STATEMENT MUST BE PROVIDED TO A BUYER; AND AMENDING SECTIONS 75-3-602 AND 75-3-606, MCA. *514*

186 *(Senate Bill No. 384; Benedict)* AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION INSURANCE RATING LAWS; PROVIDING DEFINITIONS; PROVIDING FOR THE DETERMINATION OF A COMPETITIVE WORKERS' COMPENSATION MARKET; REQUIRING THE COMMISSIONER OF INSURANCE TO DESIGNATE AN ADVISORY ORGANIZATION; AUTHORIZING THE FILING AND ADOPTION BY AN INSURER OF AN ADVISORY ORGANIZATION'S PROSPECTIVE LOSS COSTS; AUTHORIZING AN INSURER TO FILE ITS OWN RATES AND SUPPLEMENTARY RATE INFORMATION; PROVIDING FOR RATE REVIEW; ELIMINATING THE REQUIREMENT THAT A RATING ORGANIZATION FILE WORKERS' COMPENSATION RATES; AMENDING SECTIONS 33-16-303, 33-16-403, 33-16-1002, 33-16-1011, 33-16-1012, 39-71-435, 39-71-2204, 39-71-2205, 39-71-2211, AND 39-71-2316,

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187 *(House Bill No. 161; Curtiss)* AN ACT INCREASING THE PENALTY FOR SEXUAL ABUSE OF CHILDREN BY POSSESSING ANY VISUAL OR PRINT MEDIUM IN WHICH CHILDREN ARE ENGAGED IN ACTUAL OR SIMULATED SEXUAL CONDUCT; EXPANDING THE DEFINITION OF THE OFFENSE; AND AMENDING SECTIONS 45-5-620 AND 45-5-625, MCA. 533

188 *(House Bill No. 204; Tropila)* AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO SPECIALLY MARK A CERTIFICATE OF OWNERSHIP FOR A SALVAGE VEHICLE; AND AMENDING SECTION 61-3-212, MCA. 535

189 *(House Bill No. 212; Anderson)* AN ACT REVISING CERTAIN PROVISIONS OF LAW REGARDING PESTICIDES AND AGRICULTURAL CHEMICALS; REVISING THE MONTANA PESTICIDES ACT REGARDING LICENSE AND PERMIT REVOCATION, INVESTIGATION AND ENFORCEMENT, THE ISSUANCE OF COMPLIANCE ORDERS, AND PENALTIES; MAKING UNIFORM THE PROCEDURES FOR CONTESTING AND APPEALING PENALTIES ASSESSED BY THE DEPARTMENT OF AGRICULTURE UNDER THE MONTANA PESTICIDES ACT; REVISING THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT BY REMOVING THE REQUIREMENT THAT CERTAIN CHEMICAL ANALYSES BE REPORTED; REMOVING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ASSESS CIVIL PENALTIES UNDER THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT; REVISING THE PROCESS FOR ISSUANCE OF COMPLIANCE ORDERS; AMENDING SECTIONS 80-8-211, 80-8-304, 80-8-305, 80-8-306, 80-15-202, 80-15-403, AND 80-15-412, MCA; AND PROVIDING AN EFFECTIVE DATE. 536

190 *(House Bill No. 321; Ewer)* AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 543

191 *(House Bill No. 331; Kottel)* AN ACT PROVIDING THAT THE CAPITOL RESTORATION COMMISSION MAY RETAIN AND USE THE INTEREST EARNED ON MONEY DEPOSITED TO ITS ACCOUNT; AMENDING SECTION 5-17-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 544

192 *(Senate Bill No. 289; Brooke)* AN ACT REVISING THE AUTHORITY OF THE DEPARTMENT OF AGRICULTURE IN ISSUING COMPLIANCE ORDERS THAT REQUIRE THE CLEANUP OF AGRICULTURAL CHEMICAL SPILLS TO EXCEPT SPILLS AT COMMERCIAL WOOD TREATMENT FACILITIES AND SPILLS THAT THREATEN A PUBLIC WATER SUPPLY SYSTEM; AND AMENDING SECTION 80-15-403, MCA. 544

193 *(Senate Bill No. 365; Cole)* AN ACT CHANGING CRITERIA FOR APPROVAL OF RECLAIMED VEGETATION SEEDED USING INTRODUCED SPECIES APPROVED BY THE DEPARTMENT OF STATE LANDS; AMENDING SECTION 82-4-235, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE. 545

194 *(House Bill No. 62; Hanson)* AN ACT REVISING RESTRICTIONS ON THE USE OF RIFLES FOR BIRD HUNTING TO CLARIFY THAT WILD TURKEY MAY NOT BE HUNTED WITH RIFLES DURING THE SPRING HUNTING SEASON; AND AMENDING SECTION 87-3-401, MCA. . . 547

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195 *(House Bill No. 100; McKee)* AN ACT REVISING CERTAIN LAWS RELATING TO UNEMPLOYMENT INSURANCE; REQUIRING UNEMPLOYMENT INSURANCE COVERAGE FOR ELECTION JUDGES; REQUIRING OUT-OF-STATE EMPLOYING UNITS TO FURNISH BUSINESS RECORDS IN STATE OR TO PAY FOR AN AUDIT OCCURRING OUTSIDE MONTANA; LIMITING THE USE OF PENALTY AND INTEREST FUNDS TO THE DETECTION AND COLLECTION OF UNPAID TAXES AND BENEFIT OVERPAYMENTS AND FOR CERTAIN ADMINISTRATIVE COSTS; SUBJECTING LIABLE CORPORATE OFFICERS TO CIVIL ACTION AND LIEN; ESTABLISHING A PROFILING SYSTEM; ELIMINATING PENSION PLANS NEGOTIATED UNDER COLLECTIVE BARGAINING AGREEMENTS AS A DIRECT EMPLOYEE CONTRIBUTION; ESTABLISHING LIABILITY FOR LIMITED LIABILITY COMPANIES; AUTHORIZING ACCESS TO CERTAIN GOVERNMENTAL RECORDS; AUTHORIZING THE BOARD OF LABOR APPEALS TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR VIDEOCONFERENCE; AMENDING SECTIONS 13-4-106, 39-51-201, 39-51-203, 39-51-204, 39-51-603, 39-51-1105, 39-51-1109, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2104, 39-51-2203, 39-51-2307, 39-51-2403, 39-51-2404, AND 39-51-2407, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE. *547*

196 *(House Bill No. 135; Cobb)* AN ACT REQUIRING THE ATTORNEY GENERAL TO REPRESENT THE STATE IN BANKRUPTCY PROCEEDINGS IN WHICH THE STATE'S INTEREST MAY BE AFFECTED; AMENDING SECTION 2-15-501, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. *562*

197 *(House Bill No. 137; Story)* AN ACT GENERALLY REVISING WATER LAWS; PROVIDING FOR NOTICE OF AVAILABILITY OF DECREES TO BE SENT TO THE SUCCESSORS OF THE ORIGINAL OWNERS OF WATER RIGHTS; AMENDING SECTION 85-2-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *564*

198 *(House Bill No. 169; Orr)* AN ACT PERMITTING DISPENSING OF DANGEROUS DRUGS UPON A PRESCRIPTION OF A PHYSICIAN OR DENTIST LICENSED TO PRACTICE IN ANOTHER STATE; AMENDING SECTION 50-32-101, MCA; AND PROVIDING AN APPLICABILITY DATE. *565*

199 *(House Bill No. 185; Bergsagel)* AN ACT REVISING THE LAW REQUIRING A FIXED ALLOTMENT OF COUNTY LAND PLANNING FUNDS; AND AMENDING SECTION 90-1-108, MCA. *568*

200 *(House Bill No. 245; Ahner)* AN ACT GENERALLY REVISING THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PROVIDE CHILD-CARE ASSISTANCE TO CERTAIN LOW-INCOME FAMILIES WHO ARE NOT CURRENTLY RECEIVING AID TO FAMILIES WITH DEPENDENT CHILDREN AND WHO NEED CHILD CARE IN ORDER TO WORK; REPEALING PROVISIONS RELATING TO A DEMONSTRATION PROGRAM AND SPECIAL GUARDIANSHIPS; AMENDING SECTION 53-4-707, MCA; AND REPEALING SECTIONS 53-4-203 AND 53-4-243, MCA. *569*

201 *(House Bill No. 253; Barnhart)* AN ACT ALLOWING A COURT TO ORDER THE PARTIES IN A PROCEEDING FOR DISSOLUTION OF MARRIAGE INVOLVING MINOR CHILDREN TO ATTEND AN EDUCATIONAL PROGRAM CONCERNING THE EFFECTS OF DISSOLUTION OF MARRIAGE ON CHILDREN. *570*

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202 *(House Bill No. 318; Rose)* AN ACT ALLOWING AN ORGANIZATION THAT TRANSPORTS PERSONS WITH A DISABILITY TO APPLY FOR SPECIAL PARKING PERMITS; AND AMENDING SECTION 49-4-301, MCA. *571*

203 *(House Bill No. 319; Tropila)* AN ACT PROVIDING THAT ABSENTEE BALLOTS MAY BE PICKED UP IN PERSON; PROVIDING THAT AN ELECTOR MAY DESIGNATE ANOTHER PERSON TO PICK UP AN ABSENTEE BALLOT ON BEHALF OF THE ELECTOR; PROVIDING THAT A DESIGNATED PERSON MAY PICK UP A BALLOT FOR ONLY FOUR OTHER ELECTORS; AND AMENDING SECTIONS 13-13-213 AND 13-13-214, MCA. *572*

204 *(House Bill No. 381; Knox)* AN ACT AMENDING PERMITTING AND ENFORCEMENT PROCEDURES FOR THE METAL MINE RECLAMATION LAWS; AUTHORIZING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES; ALLOWING THE PERMIT REVIEW PERIOD TO BE INCREASED FOR CERTAIN OPERATIONS; AMENDING SECTIONS 82-4-304, 82-4-337, 82-4-341, 82-4-361, AND 82-4-362, MCA; AND PROVIDING EFFECTIVE DATES. *573*

205 *(House Bill No. 474; Cobb)* AN ACT PROVIDING FOR JUVENILE PROBATION OFFICER TRAINING; AND AMENDING SECTION 41-5-702, MCA. *579*

206 *(House Bill No. 520; Fuchs)* AN ACT GENERALLY REVISING THE LAWS RELATING TO LIVESTOCK BY CLASSIFYING OSTRICHES, RHEAS, AND EMUS AS LIVESTOCK; AMENDING SECTIONS 15-1-101, 15-24-921, 20-25-234, 23-2-633, 27-1-222, 39-3-402, 67-1-204, 81-2-702, 81-4-201, 81-5-104, 81-6-302, 81-7-401, AND 87-3-130, MCA; AND PROVIDING AN APPLICABILITY DATE. *580*

207 *(Senate Bill No. 19; Gage)* AN ACT INCLUDING GREYHOUND RACES AS RACES THAT MAY BE SIMULCAST UNDER THE BOARD OF HORSERACING'S AUTHORITY; AMENDING SECTION 23-4-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *588*

208 *(Senate Bill No. 87; Gage)* AN ACT REVISING THE MUNICIPAL FINANCE CONSOLIDATION ACT TO ALLOW THE STATE AND STATE ENTITIES TO PARTICIPATE IN THE ISSUANCE OF BONDS; AND AMENDING SECTIONS 17-5-1602, 17-5-1604, 17-5-1606, 17-5-1607, 17-5-1609, 17-5-1611, 17-5-1623, 17-5-1643, 17-5-1644, 17-5-1645, 17-5-1646, 17-5-1647, 17-5-1650, AND 17-5-1651, MCA. *589*

209 *(Senate Bill No. 205; Forrester)* AN ACT INCREASING THE ALLOWABLE LENGTH FOR CERTAIN VEHICLES; AND AMENDING SECTION 61-10-104, MCA. *597*

210 *(Senate Bill No. 268; Hargrove)* AN ACT REVISING THE RESTRICTIONS ON OPERATING A SNOWMOBILE WITHOUT A MONTANA DRIVER'S LICENSE BY ALLOWING THE OPERATION BY A PERSON WHO HAS COMPLETED AN APPROVED SNOWMOBILE SAFETY EDUCATION COURSE AND WHO IS ACCOMPANIED AND SUPERVISED BY A PERSON WHO IS 18 YEARS OF AGE OR OLDER; AND AMENDING SECTION 23-2-631, MCA. *598*

211 *(House Bill No. 117; Anderson)* AN ACT REQUIRING DEVELOPMENT OF A TREATMENT PLAN FOR REGAINING FITNESS OF A DEFENDANT WHO HAS BEEN FOUND UNFIT TO PROCEED IN A CRIMINAL PROCEEDING; PROVIDING FOR PETITION TO THE COMMITTING COURT FOR AN ORDER OF COMPLIANCE WITH THE TREATMENT PLAN; AND AMENDING SECTION 46-14-221, MCA. *600*

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212 *(House Bill No. 166; McGee)* AN ACT ALLOWING FIRE SERVICE AREAS TO ADOPT A FIRE CODE AND PLAN FOR ENFORCEMENT UPON CERTIFICATION BY THE DEPARTMENT OF JUSTICE; PROVIDING FOR FIRE INSPECTIONS IN FIRE SERVICE AREAS; AND AMENDING SECTIONS 7-33-2402, 50-61-102, 50-61-114, AND 50-63-202, MCA. . . . 601

213 *(House Bill No. 11; Bergsagel)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS; AND PROVIDING EFFECTIVE DATES. 602

214 *(House Bill No. 77; Cocchiarella)* AN ACT REQUIRING A SCHOOL DISTRICT TO WAIVE TUITION FOR A CHILD WHO IS DEFINED AS A HOMELESS CHILD UNDER THE FEDERAL STEWART B. MCKINNEY ACT; AMENDING SECTION 20-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 605

215 *(House Bill No. 154; Kasten)* AN ACT ALLOWING THE GOVERNING BODY OF A COUNTY TO HOLD, IN CONJUNCTION WITH A GENERAL ELECTION OR A SCHOOL ELECTION, AN ELECTION TO EXCEED THE MAXIMUM LEVY FOR THE ERECTION, MAINTENANCE, AND OPERATION OF CERTAIN COUNTY-OWNED OR COUNTY-OPERATED HOSPITALS, NURSING HOMES, OR OTHER HOSPITAL FACILITIES; AMENDING SECTION 7-6-2531, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 606

216 *(House Bill No. 165; Story)* AN ACT ALLOWING THE GOVERNING BODY TO SET OFFICE HOURS FOR COUNTY OFFICES BY RESOLUTION APTER A PUBLIC HEARING AND WITH THE CONSENT OF ANY AFFECTED ELECTED COUNTY OFFICER; AND AMENDING SECTIONS 7-3-181, 7-4-102, 7-4-2211, 7-4-2611, 7-21-3426, 7-21-3452, AND 20-3-204, MCA. 607

217 *(House Bill No. 188; Wiseman)* AN ACT REQUIRING A PUBLIC HEARING BEFORE THE LOCAL OPTION TAX ON LIGHT VEHICLES MAY BE CHANGED; EXTENDING THE CURRENT DISPOSITION OF THE LOCAL OPTION TAX REVENUE BETWEEN THE COUNTY AND CITIES WITHIN THE COUNTY; AMENDING SECTION 61-3-537, MCA, SECTION 4, CHAPTER 749, LAWS OF 1991, AND SECTION 1, CHAPTER 217, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 610

218 *(House Bill No. 215; Cocchiarella)* AN ACT AMENDING THE REQUIREMENTS FOR A HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA FOR THE DENIAL OR CONDITIONING OF A PERMIT; AND AMENDING SECTION 75-10-403, MCA. 612

219 *(House Bill No. 226; Vick)* AN ACT GRANTING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES AUTHORITY TO RETAIN AND SPEND MONEY FORFEITED UNDER FEDERAL LAW FOR CRIMINAL JUSTICE PURPOSES; AMENDING SECTION 44-13-102, MCA; AND PROVIDING AN EFFECTIVE DATE. 616

220 *(House Bill No. 235; Grady)* AN ACT GENERALLY REVISING THE FUNDING OF CERTAIN DEPARTMENT OF AGRICULTURE PROGRAMS; ALLOWING ADMINISTRATIVE COSTS AS A PERMISSIBLE USE OF REVENUE FROM THE NOXIOUS WEED MANAGEMENT PROGRAM; CREATING A STATE SPECIAL REVENUE ACCOUNT FOR

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221 *(House Bill No. 252; Squires)* AN ACT REQUIRING A MEDICAL GAS PIPING INSTALLATION ENDORSEMENT TO INSTALL PIPE USED SOLELY FOR TRANSPORTING GASES USED FOR MEDICAL PURPOSES; AND AMENDING SECTION 37-69-320, MCA. *622*

222 *(House Bill No. 263; Curtiss)* AN ACT CLARIFYING THE TRUST RESPONSIBILITIES OF THE BOARD OF LAND COMMISSIONERS; AND AMENDING SECTION 77-1-202, MCA. *623*

223 *(House Bill No. 274; Wagner)* AN ACT GRANTING THE DEPARTMENT OF STATE LANDS BROADER DISCRETION TO EXPEDITE SALES OF STATE TIMBER IN EMERGENCY SITUATIONS AND LIMITED ACCESS OPPORTUNITY SITUATIONS; EXEMPTING CERTAIN LIMITED ACCESS OPPORTUNITY TIMBER SALES FROM THE BID PROCESS REQUIREMENTS; EXEMPTING CERTAIN EMERGENCY AND LIMITED ACCESS OPPORTUNITY TIMBER SALES FROM THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING SECTION 77-5-201, MCA. *624*

224 *(House Bill No. 292; Fuchs)* AN ACT REQUIRING A REVIEWING AUTHORITY TO PREPARE A WRITTEN STATEMENT AS TO THE CONDITIONS SURROUNDING A SUBDIVISION APPROVAL OR CERTIFICATION DENIAL OR CONDITION IMPOSITION RELATED TO SANITARY RESTRICTIONS; AND AMENDING SECTION 76-4-104, MCA. *625*

225 *(House Bill No. 329; Heavy Runner)* AN ACT ALLOWING A STUDENT FROM A TRIBALLY CONTROLLED COMMUNITY COLLEGE OR A STATE-FUNDED, 2-YEAR POSTSECONDARY INSTITUTION TO PARTICIPATE IN THE LEGISLATIVE INTERN PROGRAM; REQUIRING TRIBAL GOVERNMENTS TO BE NOTIFIED; AND AMENDING SECTIONS 5-6-102 AND 5-6-106, MCA. *627*

226 *(House Bill No. 342; Pavlovich)* AN ACT REVISING THE CONTRACTUAL RELATION BETWEEN SUPPLIERS AND DISTRIBUTORS OF TABLE WINE; REFERENCING THE APPLICABILITY OF MONTANA STATUTORY PROVISIONS; PROHIBITING PRICE CONTROL; AMENDING SECTIONS 16-3-416 AND 16-3-419, MCA; AND PROVIDING AN APPLICABILITY DATE. *628*

227 *(House Bill No. 527; Larson)* AN ACT PROVIDING THAT THE MAXIMUM VIDEO GAMBLING MACHINE PAYOUT IS $800; AND AMENDING SECTION 23-5-608, MCA. *630*

228 *(House Bill No. 549; Shea)* AN ACT REVISING THE LAWS RELATING TO RETAIL BEER AND TABLE WINE RETAIL LICENSES FOR OFF-PREMISES CONSUMPTION; PROVIDING FOR THE ISSUANCE OF CONDITIONAL LICENSES TO ACCOMMODATE NEW OR REMOD-

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229 *(Senate Bill No. 2; Crippen)* AN ACT GENERALLY REVISING THE LAWS CONCERNING THE FINANCING OF SPECIAL IMPROVEMENT DISTRICTS AND RURAL SPECIAL IMPROVEMENT DISTRICTS; REVISING THE INFORMATION THAT MUST BE INCLUDED IN THE NOTICE OF INTENTION TO CREATE AN IMPROVEMENT DISTRICT; ALLOWING A BOARD OF COUNTY COMMISSIONERS OR A MUNICIPAL GOVERNING BODY TO CREATE A SPECIAL IMPROVEMENT DISTRICT RESERVE ACCOUNT; ALLOWING A BOARD OF COUNTY COMMISSIONERS OR A MUNICIPAL GOVERNING BODY TO IMPOSE AN ADDITIONAL INTEREST RATE ON UNPAID ASSESSMENTS; REQUIRING THAT 5 PERCENT OF THE PRINCIPAL AMOUNT OF BONDS OR WARRANTS BE DEPOSITED IN THE REVOLVING FUND FOR BONDS AND WARRANTS SECURED BY THE REVOLVING FUND; LIMITING THE DURATION OF THE REVOLVING FUND OBLIGATION; ESTARLISHING FACTORS TO BE CONSIDERED BEFORE PLEDGING THE REVOLVING FUND; AMENDING SECTIONS 7-12-2105, 7-12-2153, 7-12-2176, 7-12-2182, 7-12-2183, 7-12-2185, 7-12-4106, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, 7-12-4225, 7-14-4712, AND 7-14-4732, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 634

230 *(Senate Bill No. 82; Hertel)* AN ACT CHANGING THE DATE FOR SETTING THE SALARIES OF COUNTY OFFICERS; AMENDING SECTIONS 7-4-2503 AND 7-4-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 645

231 *(Senate Bill No. 103; Hargrove)* AN ACT REVISING THE DEFINITION OF "FEDERAL-AID SYSTEMS" TO CONFORM TO CURRENT LAW; CLARIFYING THE STATE'S RESPONSIBILITY FOR COSTS ASSOCIATED WITH THE RELOCATION OF UTILITIES FOR HIGHWAY CONSTRUCTION; AND AMENDING SECTIONS 60-4-401 AND 60-4-403, MCA. 648

232 *(Senate Bill No. 114; Mohl)* AN ACT REVISING THE VALUE THRESHOLD AT WHICH THE DEPARTMENT OF TRANSPORTATION SHALL OFFER REAL PROPERTY AT PUBLIC AUCTION; ELIMINATING THE PROVISION ALLOWING A LANDOWNER FROM WHOM THE DEPARTMENT OF TRANSPORTATION ACQUIRES REAL PROPERTY TO REDEEM THE PROPERTY AT THE SALE PRICE WITHIN 10 DAYS AFTER THE SALE; AMENDING SECTIONS 60-4-202 AND 60-4-203, MCA; AND REPEALING SECTION 60-4-204, MCA. 649

233 *(Senate Bill No. 117; Hertel)* AN ACT ALLOWING COUNTY COMMISSIONERS TO SET THE COST-OF-LIVING INCREMENT FOR SALARIES AT A PERCENTAGE OF THE CONSUMER PRICE INDEX; AMENDING SECTIONS 7-4-2503 AND 7-4-2504, MCA; AND PROVIDING AN EFFECTIVE DATE. 650

234 *(Senate Bill No. 151; Bartlett)* AN ACT REVISING THE DEFINITIONS OF TEMPORARY SERVICE CONTRACTOR AND TEMPORARY WORKER; AND AMENDING SECTION 39-71-116, MCA. 653

235 *(Senate Bill No. 233; Harp)* AN ACT REQUIRING THE RETURN OF ATTORNEY FEES AND COSTS PAID BY AN INSURER TO AN ATTORNEY FOR A WORKERS' COMPENSATION CLAIMANT CONVICTED OF OBTAINING BENEFITS THROUGH FRAUD OR DECEPTION; ALLOWING BENEFITS TO BE MODIFIED WHEN THEY WERE OBTAINED BY FRAUD OR DECEPTION; AMENDING SECTIONS

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39-71-613 AND 39-71-2909, MCA; AND PROVIDING AN EFFECTIVE DATE. 656

236 *(Senate Bill No. 245; Jenkins)* AN ACT REVISING THE MAXIMUM ALLOWABLE WEIGHT ON AXLES EQUIPPED WITH SINGLE TIRES OR WITH WIDE-BASE TIRES; REPEALING OBSOLETE STATUTORY LANGUAGE RELATING TO PERMISSIBLE WEIGHT LOADS; AMENDING SECTIONS 61-10-101, 61-10-107, 61-10-108, 61-10-109, 61-10-110, 61-10-121, 61-10-124, 61-10-126, 61-10-128, 61-10-141, 61-10-144, 61-10-145, AND 61-10-201, MCA; REPEALING SECTION 61-10-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 657

237 *(Senate Bill No. 253; Holden)* AN ACT CREATING AN INSURANCE FRAUD PROTECTION ACT; AMENDING SECTION 45-6-301, MCA; AND PROVIDING AN EFFECTIVE DATE. 668

238 *(Senate Bill No. 287; Hertel)* AN ACT ALLOWING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES AUTHORIZING A WORKERS' COMPENSATION INSURER OR THE DEPARTMENT, UNDER CERTAIN CONDITIONS, TO WAIVE THE REQUIREMENT THAT AN EMPLOYER HAVE A SAFETY COMMITTEE; AMENDING SECTION 39-71-1505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 673

239 *(Senate Bill No. 317; Benedict)* AN ACT CLARIFYING THE EXCLUSION OF LAWYERS AND ACCOUNTANTS FROM THE DEFINITION OF INVESTMENT ADVISER; AND AMENDING SECTION 30-10-103, MCA. 674

240 *(Senate Bill No. 329; Waterman)* AN ACT REVISING CERTAIN PROVISIONS OF LONG-TERM HEALTH CARE INSURANCE; PROHIBITING THE ISSUANCE OF A REFUND TO A PERSON WHO IS NOT THE OWNER OF THE POLICY; INCREASING FROM 10 TO 30 DAYS THE PERIOD DURING WHICH A DISSATISFIED CONSUMER MAY RETURN A LONG-TERM CARE INSURANCE POLICY AND RECEIVE A REFUND OF THE PREMIUM; REQUIRING THAT POLICIES WITH NONFORFEITURE BENEFITS BE OFFERED; REQUIRING APPROPRIATE SALE CRITERIA TO ACCOMPANY EACH APPLICATION FOR A LONG-TERM CARE POLICY; ALLOWING THE INSURANCE COMMISSIONER TO ADOPT RULES PERTAINING TO NONFORFEITURE BENEFITS AND APPROPRIATE SALE CRITERIA; AND AMENDING SECTIONS 33-22-1107, 33-22-1114, 33-22-1119, AND 33-22-1121, MCA. 679

241 *(Senate Bill No. 337; Sprague)* AN ACT REVISING THE DEFINITION OF "BUILDING"; CLARIFYING LEGISLATIVE CONSENT TO BUILDING COSTS; AND AMENDING SECTIONS 18-2-101 AND 18-2-102, MCA. . 683

242 *(Senate Bill No. 364; Sprague)* AN ACT REVISING MONTANA MILK PRICE CONTROL PROVISIONS BY REMOVING THE AUTHORITY OF THE BOARD OF MILK CONTROL TO FIX THE FORMULA ESTABLISHING MINIMUM WHOLESALE, JOBBER, AND RETAIL PRICES OF MILK; REQUIRING MILK DISTRIBUTORS WHO HAVE MILK PROCESSING FACILITIES IN THIS STATE TO MAKE A FIRST CALL OR REQUEST FOR MILK FROM MONTANA SOURCES AND, WHENEVER POSSIBLE, TO PURCHASE FROM MONTANA SOURCES IF MILK IS AVAILABLE FROM THE MONTANA PRODUCER AT THE PRICE SET BY THE BOARD; EXCEPTING PROVISIONS FROM THE BOARD'S RULES OF FAIR TRADE PRACTICES; AMENDING SECTIONS 81-23-101, 81-23-102, 81-23-202, 81-23-302, AND 81-23-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 685

243 *(Senate Bill No. 375; Benedict)* AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS;

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AUTHORIZING PAYMENT OF MEDICAL CLAIMS WITHOUT ACCEPTANCE OF LIABILITY; REQUIRING INSURERS TO ACT PROMPTLY ON CLAIMS; DEFINING "OBJECTIVE MEDICAL FINDINGS" AND REQUIRING INJURY AND DISABILITY TO BE ESTABLISHED BY OBJECTIVE MEDICAL FINDINGS; REVISING THE DEFINITION OF "INJURY"; DEFINING "ACTUAL WAGE LOSS"; REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY BENEFITS; REVISING PROVISIONS REGARDING TERMINATION OF BENEFITS UPON RETIREMENT; REVISING PROVISIONS FOR LUMP-SUM CONVERSIONS; ALLOWING SUSPENSION OF BENEFITS WHILE A CLAIMANT IS INCARCERATED FOR A MISDEMEANOR; REVISING THE DEFINITION OF DISABLED WORKER; EXEMPTING PAYMENT AGREEMENTS BETWEEN A PREFERRED PROVIDER ORGANIZATION AND AN INSURER FROM PRESCRIPTION DRUG PAYMENT LIMITS; REVISING REHABILITATION BENEFITS; AUTHORIZING THE WORKERS' COMPENSATION COURT JUDGE TO STAY PROCEEDINGS IN CERTAIN CIRCUMSTANCES; REVISING THE DEFINITION OF "WAGES"; AUTHORIZING A REDUCTION IN BENEFITS FOR THIRD-PARTY RECOVERIES; AUTHORIZING THE TERMINATION OF TEMPORARY TOTAL BENEFITS UPON NOTIFICATION OF A WORKER'S RELEASE TO RETURN TO WORK; REQUIRING A SOLE PROPRIETOR, PARTNER, CORPORATE OFFICER, OR MANAGER OR MEMBER OF A LIMITED LIABILITY COMPANY OR A DESIGNEE TO PROVIDE NOTICE OF INJURY WITHIN 30 DAYS; AUTHORIZING TERMINATION OF CERTAIN BENEFITS FOR NONCOOPERATION WITH A REHABILITATION PROVIDER; REVISING THE FILING TIME FOR OCCUPATIONAL DISEASE CLAIMS; REVISING PROVISIONS FOR PAYMENT OF MEDICAL EXPENSES IN OCCUPATIONAL DISEASE CLAIMS; EXTENDING TEMPORARY PARTIAL DISABILITY BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123, 39-71-407, 39-71-603, 39-71-609, 39-71-701, 39-71-702, 39-71-703, 39-71-710, 39-71-711, 39-71-712, 39-71-721, 39-71-723, 39-71-727, 39-71-741, 39-71-744, 39-71-1011, 39-71-1032, 39-71-2001, 39-72-403, AND 39-72-704, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . *694*

244 *(Senate Bill No. 394; Devlin)* AN ACT INCLUDING THE GRAY WOLF IN THE DEFINITION OF PREDATORY ANIMAL FOR PURPOSES OF PREDATORY ANIMAL CONTROL IF THE GRAY WOLF IS REMOVED FROM THE LIST OF THREATENED OR ENDANGERED ANIMALS BY THE FEDERAL GOVERNMENT; REVISING THE APPLICABLE DEFINITION; AMENDING SECTIONS 81-7-101, 81-7-102, 81-7-104, 81-7-118, 81-7-501, AND 81-7-505, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE. *715*

245 *(House Bill No. 270; McCulloch)* AN ACT ALLOWING AN OWNER OF REAL PROPERTY TO PETITION TO BE INCLUDED IN A TRANSPORTATION DISTRICT; AND AMENDING SECTION 7-14-241, MCA. . . . *718*

246 *(House Bill No. 320; Galvin)* AN ACT CLARIFYING THE EXEMPTION FROM THE REQUIREMENTS OF THE OLD FUND LIABILITY TAX TO EXPLICITLY EXCLUDE AN EMPLOYER OR EMPLOYEE WHO IS SUBJECT TO THE EQUIVALENT OF FEDERAL WORKERS' COMPENSATION LEGISLATION; AMENDING SECTIONS 39-71-2501 AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *719*

247 *(House Bill No. 355; Rehbein)* AN ACT CHANGING THE PERIOD OF TIME WITHIN WHICH A PROSECUTION FOR THEFT MUST BE COMMENCED; AND AMENDING SECTION 45-1-205, MCA. *723*

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248 *(House Bill No. 424; Keenan)* AN ACT CLARIFYING THAT THE 24-MONTH REDEMPTION PERIOD FOR A PROPERTY TAX LIEN APPLIES ONLY TO PROPERTY ON WHICH THERE ARE DELINQUENT SPECIAL IMPROVEMENT DISTRICT ASSESSMENTS OR DELINQUENT RURAL SPECIAL IMPROVEMENT DISTRICT ASSESSMENTS; AND AMENDING SECTION 15-18-111, MCA. *724*

249 *(House Bill No. 436; Kottel)* AN ACT REVISING CERTIFICATION REQUIREMENTS FOR CHEMICAL DEPENDENCY COUNSELORS; PROVIDING FOR THE ESTABLISHMENT OF REQUIREMENTS BY RULE; AND AMENDING SECTION 53-24-215, MCA. *725*

250 *(House Bill No. 475; Forbes)* AN ACT ESTABLISHING AN INTEREST ON TRUST ACCOUNTS PROGRAM FOR NOMINAL OR SHORT-TERM DEPOSITS OF CUSTOMER FUNDS BY TITLE INSURERS OR TITLE INSURANCE PRODUCERS; PROVIDING THAT THE PROGRAM BE ADMINISTERED BY THE MONTANA LAND TITLE ASSOCIATION FOUNDATION; AND AMENDING SECTION 33-25-201, MCA. *726*

251 *(House Bill No. 551; Clark)* AN ACT REQUIRING CERTAIN SEXUAL AND VIOLENT OFFENDERS TO PROVIDE DNA SAMPLES; PROVIDING THAT DNA RECORDS ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; ESTABLISHING A DNA IDENTIFICATION INDEX WITHIN THE DEPARTMENT OF JUSTICE TO MAINTAIN DNA RECORDS; ESTABLISHING USES FOR DNA RECORDS; PROVIDING THAT DNA RECORDS ARE NOT SEALED UNDER THE MONTANA YOUTH COURT ACT; AMENDING SECTION 41-5-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *728*

252 *(House Bill No. 553; Grady)* AN ACT ELIMINATING THE STATE-SPONSORED CREDIT CARD; AMENDING SECTION 17-1-504, MCA; REPEALING SECTIONS 31-1-601, 31-1-602, AND 31-1-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *732*

253 *(Senate Bill No. 171; Franklin)* AN ACT REVISING PHYSICAL THERAPY LAWS; AUTHORIZING LICENSURE OF PHYSICAL THERAPIST ASSISTANTS AND ESTABLISHING STANDARDS FOR LICENSURE; CLARIFYING REQUIREMENTS FOR SUPERVISING PHYSICAL THERAPIST ASSISTANTS, AIDES, AND STUDENTS; ESTABLISHING CONTINUING EDUCATION REQUIREMENTS FOR PHYSICAL THERAPISTS AND ASSISTANTS BY RULE; AND AMENDING SECTIONS 37-11-101, 37-11-105, 37-11-201, 37-11-203, 37-11-301, 37-11-303, 37-11-304, 37-11-305, 37-11-306, 37-11-307, 37-11-308, 37-11-309, 37-11-320, AND 37-11-321, MCA. *732*

254 *(Senate Bill No. 255; Franklin)* AN ACT PROVIDING FOR THE WITHHOLDING OF TAX FROM WAGES RECEIVED BY MEMBERS OF THE NATIONAL GUARD AND RESERVES WHILE PARTICIPATING IN DRILLS AND TRAINING; AMENDING SECTIONS 15-30-201 AND 15-30-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *739*

255 *(House Bill No. 65; McKee)* AN ACT GENERALLY REVISING THE LAWS GOVERNING COMMITMENT TO RESIDENTIAL FACILITIES FOR PERSONS WHO ARE SERIOUSLY DEVELOPMENTALLY DISABLED; SETTING QUALIFICATIONS FOR A PERSON TO BE COMMITTED TO A RESIDENTIAL FACILITY; AMENDING SECTIONS 53-20-102, 53-20-104, 53-20-106, 53-20-107, 53-20-112, 53-20-113, 53-20-114, 53-20-116, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-127, 53-20-128, 53-20-129, 53-20-130, 53-20-133, 53-20-146, AND 53-20-161, MCA; REPEALING SECTIONS 53-20-105 AND 53-20-111, MCA, AND SECTION 27, CHAPTER 381, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *741*

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256 *(House Bill No. 84; Story)* AN ACT CLARIFYING THE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO PLACE A DEFENDANT SUFFERING FROM A MENTAL DISEASE OR DEFECT; AND AMENDING SECTION 46-14-312, MCA. *758*

257 *(House Bill No. 219; Kottel)* AN ACT ALLOWING A MONTANA RESIDENT ON ACTIVE MILITARY DUTY AND LIVING OUTSIDE OF MONTANA TO PURCHASE LICENSE PLATES AND REGISTER A MOTOR VEHICLE FOR THE COST OF REGISTRATION ALONE; AMENDING SECTIONS 15-6-201 AND 61-3-303, 61-3-502, AND 61-3-504, MCA. . . *760*

258 *(House Bill No. 259; Tuss)* AN ACT INCREASING THE PENALTY FOR VIOLATION OF A CURFEW ORDINANCE; AND AMENDING SECTION 7-32-2302, MCA. *766*

259 *(House Bill No. 335; Squires)* AN ACT CREATING THE MONTANA WHEELCHAIR WARRANTY ACT; PROVIDING FOR WHEELCHAIR WARRANTIES; PROVIDING PROCEDURES TO CORRECT NONCONFORMITIES TO WARRANTIES; AND PROVIDING FOR CONSUMERS' RIGHTS; AND PROVIDING AN APPLICABILITY DATE. *767*

260 *(House Bill No. 368; Holland)* AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY ELIMINATING CERTAIN COUNTY TREASURER SCHOOL BUDGETING FUNCTIONS; ELIMINATING THE REQUIREMENT THAT THE COUNTY TREASURER PREPARE A STATEMENT SHOWING THE AMOUNT OF THE OUTSTANDING OBLIGATIONS FOR EACH FUND; ELIMINATING THE REQUIREMENT THAT THE COUNTY SUPERINTENDENT DELIVER A FINAL BUDGET TO THE COUNTY TREASURER; ELIMINATING THE REQUIREMENT THAT THE COUNTY TREASURER RECEIVE A COPY OF A BUDGET AMENDMENT; ELIMINATING THE REQUIREMENT THAT A PURCHASE OF ORDERED PERSONAL PROPERTY BE RECORDED WITH THE COUNTY TREASURER; ELIMINATING THE REQUIREMENT THAT WARRANTS BE ENDORSED BY HOLDERS; ELIMINATING THE REQUIREMENT THAT THE COUNTY TREASURER INCLUDE OUTSTANDING WARRANTS IN AN ITEMIZED REPORT TO TRUSTEES; AUTHORIZING MONEY FROM THE SALE OF BONDS TO BE CREDITED IN A UNIFIED INVESTMENT PROGRAM WITH THE COUNTY TREASURER; REVISING THE PROCEDURE FOR ISSUANCE OF WARRANTS; ELIMINATING THE REQUIREMENT THAT THE COUNTY TREASURER RECEIVE A COPY OF AN EMERGENCY BUDGET; AMENDING SECTIONS 20-9-121, 20-9-134, 20-9-165, 20-9-209, 20-9-212, 20-9-213, 20-9-221, 20-15-210, 20-15-325, 20-15-326, AND 20-15-404, MCA; REPEALING SECTIONS 20-9-206, 20-9-222, AND 20-9-224, MCA; AND PROVIDING AN EFFECTIVE DATE. *769*

261 *(House Bill No. 372; McKee)* AN ACT ELIMINATING THE REQUIREMENT THAT A PERSON WHO PASSES THE GENERAL SECURITIES PRINCIPAL'S EXAMINATION IS ALSO REQUIRED TO PASS THE UNIFORM INVESTMENT ADVISER LAW EXAMINATION; ELIMINATING THE REQUIREMENT THAT A SALESPERSON DUALLY REGISTERED AS INVESTMENT ADVISER REPRESENTATIVE WITH A BROKER-DEALER DUALLY REGISTERED AS AN INVESTMENT ADVISER PAY THE $50 FEE TO REGISTER AS AN INVESTMENT ADVISER REPRESENTATIVE; AMENDING SECTIONS 30-10-201 AND 30-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *778*

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262 *(House Bill No. 375; Harper)* AN ACT PROHIBITING THE POSSESSION OR TRANSPORTATION OF CERTAIN LIVE FISH AWAY FROM THE BODY OF WATER IN WHICH THE FISH WERE TAKEN; AMENDING SECTION 87-3-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *783*

263 *(House Bill No. 384; Ream)* AN ACT REVISING THE LAWS RELATED TO MANAGEMENT AND HUNTING OF BLACK BEARS; ESTABLISHING A FEE FOR A COMBINATION SPORTS LICENSE THAT INCLUDES A BLACK BEAR TAG; CLARIFYING THAT THE MEAT OF A BEAR INFECTED WITH TRICHINOSIS IS NOT CONSIDERED SUITABLE FOR FOOD; AMENDING SECTIONS 87-2-501, 87-2-701, 87-2-711, AND 87-3-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *785*

264 *(House Bill No. 385; Johnson)* AN ACT GENERALLY REVISING CHILD SUPPORT LAWS AND THE METHOD BY WHICH THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES COLLECTS AND ENFORCES SUPPORT; AUTHORIZING SALE OF SUPPORT DEBTS; AMENDING SECTIONS 27-2-201, 40-5-202, 40-5-206, 40-5-221, 40-5-226, 40-5-255, AND 40-5-443, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *789*

265 *(House Bill No. 428; Ewer)* AN ACT REVISING BANKING LAWS; CONFORMING MONTANA STATUTES TO PROVISIONS OF THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994; REVISING THE CONSOLIDATION AND MERGER OF BANKS; REVISING THE PERIOD OF EXISTENCE REQUIRED OF A BANK TO BE ACQUIRED BY A BANK HOLDING COMPANY; PROVIDING FOR THE SALE AND RELOCATION OF BRANCH BANKS; REVISING THE MONTANA ELECTRONIC FUNDS TRANSFER ACT TO REFLECT CURRENT TECHNOLOGY AND TO COMPLY WITH FEDERAL LAWS AND REGULATIONS; REQUIRING DISCLOSURES RELATING TO OTHER CHARGES AND SURCHARGES; CHANGING FROM MANDATORY TO DISCRETIONARY THE ADOPTION OF RULES BY THE DEPARTMENT OF COMMERCE CONCERNING BANK DRAFTS AND RETAIL INSTALLMENT SALES; AMENDING SECTIONS 31-1-211, 32-1-202, 32-1-204, 32-1-371, 32-1-381, 32-1-382, 32-1-383, 32-1-437, 32-1-465, 32-6-102, 32-6-103, 32-6-104, AND 32-6-301, MCA; REPEALING SECTIONS 32-6-201, 32-6-202, 32-6-203, 32-6-204, 32-6-305, 32-6-307, 32-6-308, AND 32-6-309, MCA; AND PROVIDING EFFECTIVE DATES. *800*

266 *(House Bill No. 431; Shea)* AN ACT CLARIFYING THE PORTION OF A SCHOOL DISTRICT GENERAL FUND BUDGET THAT REQUIRES VOTER APPROVAL; AMENDING SECTION 20-9-353, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . *812*

267 *(House Bill No. 433; Grady)* AN ACT GRANTING THE FISH, WILDLIFE, AND PARKS COMMISSION THE AUTHORITY TO DESIGNATE SPECIAL LICENSES OR PERMITS, SEASONS, CONDITIONS, OR PROGRAMS FOR HUNTING BY MONTANA'S YOUTH; AND AMENDING SECTION 87-1-301, MCA. *814*

268 *(House Bill No. 439; Ohs)* AN ACT ESTABLISHING A POLICY FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS REGARDING ENTRY UPON PRIVATE LAND BY REQUIRING THE DEPARTMENT TO WORK WITH THE LANDOWNER ON LAND ENTRY AND USER POLICIES. *815*

269 *(House Bill No. 454; Harper)* AN ACT REVISING AND UPDATING THE UNIFORM TRADE SECRETS ACT; REVISING INJUNCTIVE RELIEF

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270 *(House Bill No. 461; Ryan)* AN ACT CREATING THE MONTANA EMERGENCY RESPONSE TO HAZARDOUS MATERIAL INCIDENTS ACT; AMENDING SECTION 75-1-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 817

271 *(House Bill No. 467; Green)* AN ACT PROVIDING TERM LIMITS FOR THE MEMBERS OF THE PUBLIC SERVICE COMMISSION; AND AMENDING SECTION 69-1-105, MCA. 824

272 *(House Bill No. 489; Grady)* AN ACT ALLOWING THE SALE OF CERTAIN STATE LAND OR THE EXCHANGE OF CERTAIN STATE LAND; ALLOWING A COMMITMENT TO USE THE PROPERTY FOR A COMMUNITY SERVICE OR PUBLIC PURPOSE TO CONSTITUTE PARTIAL OR TOTAL CONSIDERATION FOR THE TRANSFER OF THE LAND; AND AMENDING SECTION 77-2-351, MCA. 825

273 *(House Bill No. 501; Anderson)* AN ACT REQUIRING A WRITTEN UNDERTAKING IN ANY CIVIL ACTION SEEKING AN INJUNCTION OR RESTRAINING ORDER TO SET ASIDE A DECISION BY THE BOARD OF LAND COMMISSIONERS REGARDING THE USE OR DISPOSITION OF STATE LANDS. 826

274 *(House Bill No. 536; Mills)* AN ACT REVISING THE LAWS RELATING TO OUT-OF-STATE MAIL SERVICE PHARMACIES; SPECIFYING THE REQUIREMENTS FOR SALE CF PRESCRIPTION DRUGS BY OUT-OF-STATE MAIL SERVICE PHARMACIES TO MEMBERS OF A GROUP HEALTH INSURANCE CONTRACT OR PLAN FOR A UNIT OF STATE OR LOCAL GOVERNMENT; REMOVING LICENSING OF AND REQUIRING REGISTRATION OF OUT-OF-STATE MAIL SERVICE PHARMACIES; SPECIFYING REGISTRATION REQUIREMENTS; GRANTING RULEMAKING AUTHORITY TO THE BOARD OF PHARMACY REGARDING OUT-OF-STATE MAIL SERVICE PHARMACIES; AMENDING SECTIONS 2-18-704, 37-7-701, AND 37-7-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 826

275 *(Senate Bill No. 150; Waterman)* AN ACT REVISING THE LAW REGARDING THE PROVISION OF ADOPTION INFORMATION; ALLOWING LIMITED DISCLOSURE OF NONIDENTIFYING ADOPTION INFORMATION; PROVIDING FOR COURT APPOINTMENT OF A CONFIDENTIAL INTERMEDIARY TO ASSIST IN A SEARCH FOR INFORMATION FOR CERTAIN PERSONS INVOLVED IN AN ADOPTION; DEFINING APPLICABLE TERMS; PROVIDING A PENALTY; AND AMENDING SECTIONS 40-8-103 AND 40-8-126, MCA. 830

276 *(House Bill No. 55; Bohlinger)* AN ACT REVISING THE STATE CHILD SUPPORT INCOME DEDUCTION LAWS TO CONFORM TO THE REQUIREMENTS OF 42 U.S.C. 666(A)(8)(B); AMENDING SECTION 40-5-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . 833

277 *(House Bill No. 534; Harrington)* AN ACT ALLOWING CERTAIN UNDEVELOPED LAND OWNED BY A LOCAL ECONOMIC DEVELOPMENT ORGANIZATION TO QUALIFY AS AN INDUSTRIAL PARK FOR PROPERTY TAX PURPOSES; AND AMENDING SECTION 15-24-1901, MCA. 835

278 *(House Bill No. 570; Wiseman)* AN ACT RELATING TO THE TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114,

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279 *(House Bill No. 572; Harrington)* AN ACT INCREASING THE TIME IN WHICH AN ECONOMIC DEVELOPMENT LEVY IS EFFECTIVE TO 6 YEARS FROM 5 YEARS; AMENDING SECTION 90-5-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 842

280 *(Senate Bill No. 258; Bartlett)* AN ACT ALLOWING A COUNTY TO RETAIN CERTAIN LAND ACQUIRED BY TAX DEED IF IT IS IN THE BEST INTEREST OF THE COUNTY OR WILL ADVANCE THE PUBLIC BENEFIT OR WELFARE; CLARIFYING THE REPURCHASE RIGHTS OF TAXPAYERS AND SUCCESSORS; REQUIRING THE DEPARTMENT OF REVENUE TO DETERMINE THE FAIR MARKET VALUE OF TAX-DEED LAND; SUBSTITUTING SALES PRICE FOR FAIR MARKET VALUE IN CERTAIN SECTIONS OF LAW PERTAINING TO THE SALE OF TAX-DEED LAND; REQUIRING PUBLIC NOTICE OF THE DONATION OR RETENTION OF TAX-DEED LAND; ELIMINATING THE REQUIREMENT THAT THE SALE OF LAND ACQUIRED BY TAX DEED BE HELD AT THE COURTHOUSE; AND AMENDING SECTIONS 7-8-2301, 7-8-2302, 7-8-2303, AND 7-8-2502, MCA. 843

281 *(Senate Bill No. 277; Nelson)* AN ACT ALLOWING A FARM MUTUAL INSURER TO INSURE PROPERTY WITHIN AN INCORPORATED CITY OR TOWN WITH A POPULATION OF LESS THAN 15,000 AND ALLOWING COVERAGE TO CONTINUE EVEN IF THE POPULATION OF THE INCORPORATED CITY OR TOWN MEETS OR EXCEEDS 15,000; AND AMENDING SECTION 33-4-501, MCA. 846

282 *(Senate Bill No. 286; Franklin)* AN ACT PROVIDING FOR THE PAYMENT OF COUNSEL FEES AND COSTS, INCLUDING BLOOD TEST COSTS, IN AN ACTION TO DETERMINE THE EXISTENCE OF THE FATHER AND CHILD RELATIONSHIP; AMENDING SECTION 40-6-119, MCA; AND PROVIDING AN APPLICABILITY DATE. 847

283 *(Senate Bill No. 355; Forrester)* AN ACT GENERALLY REVISING THE LAWS RELATING TO TOW TRUCKS AND ABANDONED VEHICLES; CLASSIFYING TOW TRUCKS BASED ON WEIGHT; REQUIRING LIABILITY INSURANCE AND ANNUAL SAFETY INSPECTIONS FOR COMMERCIAL TOW TRUCKS; ESTABLISHING A LAW ENFORCEMENT ROTATION SYSTEM FOR THE REMOVAL OF WRECKED, DISABLED, OR ABANDONED VEHICLES; LIMITING THE USE OF NONCOMMERCIAL TOW TRUCKS; CREATING A PRIMA FACIE PRESUMPTION OF OWNERSHIP OF AN ABANDONED VEHICLE; INCREASING THE VALUE OF A JUNK VEHICLE; AMENDING SECTIONS 61-1-120, 61-8-356, 61-9-416, 61-12-402, AND 69-12-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 847

284 *(House Bill No. 202; Nelson)* AN ACT ALLOWING AN INDIVIDUAL INCOME TAX DEDUCTION FOR ONE-HALF OF PREMIUM PAYMENTS FOR MEDICAL CARE INSURANCE; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION. 857

285 *(House Bill No. 233; Knox)* AN ACT PROVIDING FOR THE DISSOLUTION OF A K-12 SCHOOL DISTRICT; AMENDING SECTION 20-6-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 860

286 *(House Bill No. 246; Quilici)* AN ACT REVISING CERTAIN PROVISIONS RELATING TO COMPETITIVE BIDDING FOR CONTRACTS FOR

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287 *(House Bill No. 249; Marshall)* AN ACT GENERALLY REVISING THE LAWS RELATING TO LOCAL GOVERNMENT REGULATION OF TRAFFIC; ALLOWING A CITY TO REGULATE SKATEBOARDING AND ROLLERBLADING ON CITY STREETS; ALLOWING A LOCAL AUTHORITY TO ADOPT VARIABLE SPEED LIMITS TO ADAPT TO TRAFFIC CONDITIONS; AND AMENDING SECTIONS 7-14-4102, 61-8-303, AND 61-8-310, MCA. 863

288 *(House Bill No. 289; Soft)* AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY ELIMINATING THE 12 PERCENT A YEAR UTILITY RATE INCREASE LIMIT FOR MUNICIPAL UTILITIES; ELIMINATING THE REQUIREMENT FOR AN ANNUAL REPORT; AMENDING SECTION 69-7-101, MCA; AND REPEALING SECTIONS 69-7-102 AND 69-7-121, MCA. 865

289 *(House Bill No. 323; Ryan)* AN ACT PROVIDING THAT A PERSON WITH A CONCEALED WEAPON PERMIT NEED NOT COMPLY WITH THE 5-DAY WAITING PERIOD REQUIRED BY FEDERAL LAW FOR THE PURCHASE OF A HANDGUN. 866

290 *(House Bill No. 414; Harper)* AN ACT REVISING THE NAME AND DUTIES OF THE WORKERS' COMPENSATION CLASSIFICATION AND RATING COMMITTEE; REVISING THE FUNDING REQUIREMENTS FOR THE COMMITTEE; REQUIRING THE COMMITTEE TO ESTABLISH AND REVISE WORKERS' COMPENSATION CLASSIFICATIONS PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; ELIMINATING THE REQUIREMENT FOR THE COMMITTEE TO ESTABLISH WORKERS' COMPENSATION ADVISORY PREMIUM RATES; ALLOWING ANY POLICYHOLDER OR INSURER TO FILE AN OBJECTION TO A CLASSIFICATION ASSIGNED TO A POLICYHOLDER PURSUANT TO RULES GOVERNING THE ISSUANCE OR APPLICATION OF CLASSIFICATIONS; REVISING THE PROCEDURE FOR A HEARING TO REVIEW CLASSIFICATIONS OR RULES RELATING TO CLASSIFICATIONS; ALLOWING AN ADDITIONAL HEARING BEFORE SEEKING LEGAL REDRESS THROUGH A COURT; CHANGING THE VENUE AND JURISDICTION FOR JUDICIAL REVIEW TO THE WORKERS' COMPENSATION COURT FROM THE DISTRICT COURT FOR APPEALS FROM DECISIONS OF THE CLASSIFICATION REVIEW COMMITTEE; AND AMENDING SECTIONS 2-4-702, 33-16-1011, AND 33-16-1012, MCA. 866

291 *(House Bill No. 415; Forbes)* AN ACT REVISING CERTAIN LAWS RELATING TO THE MONTANA SCHOOL FOR THE DEAF AND BLIND; REVISING ADMISSION ELIGIBILITY; AUTHORIZING NEGOTIATIONS WITH OUT-OF-STATE EDUCATIONAL INSTITUTIONS FOR ADMISSION OF OUT-OF-STATE STUDENTS; CLARIFYING PROVISIONS RELATING TO THE SUSPENSION AND EXPULSION OF STUDENTS; STATUTORILY APPROPRIATING FEES PAID BY OUT-OF-STATE STUDENTS; AMENDING SECTIONS 17-7-502, 20-8-104, 20-8-106, 20-8-107, AND 20-8-116, MCA; REPEALING SECTION 20-8-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 869

292 *(House Bill No. 417; Mills)* AN ACT ALLOWING THE GOVERNING BODY OF THE CITY TO DETERMINE HOW MANY CITY JUDGES THE CITY COURT WILL HAVE; AND AMENDING SECTIONS 1-11-101, 3-11-101, AND 3-11-201, MCA. 873

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293 *(House Bill No. 425; Keenan)* AN ACT REQUIRING THE PAYMENT OF ALL TAXES ASSESSED AND LEVIED ON LAND BEFORE A FINAL SUBDIVISION PLAT IS APPROVED; AND AMENDING SECTION 76-3-611, MCA. *874*

294 *(House Bill No. 434; Cobb)* AN ACT CREATING A TREASURE STATE LIVING CULTURAL TREASURES PROGRAM; AND PROVIDING FOR NOMINATION AND SELECTION OF HONOREES. *875*

295 *(House Bill No. 560; Simon)* AN ACT PROVIDING FOR MEDICAL CARE SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR ESTABLISHMENT AND ADMINISTRATION OF ACCOUNTS; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF FUNDS CONTAINED WITHIN AN ACCOUNT AND FUNDS WITHDRAWN FOR ELIGIBLE MEDICAL EXPENSES GR FOR THE LONG-TERM CARE OF AN EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR THE ACCOUNT HOLDER; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE MEDICAL EXPENSES AND LONG-TERM CARE; PROVIDING PENALTIES; AMENDING SECTION 15-30-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION. *877*

296 *(Senate Bill No. 8; Crippen)* AN ACT PROVIDING THAT CERTAIN COUNTY IMPROVEMENT DISTRICTS MAY DECLARE BANKRUPTCY UNDER FEDERAL MUNICIPAL BANKRUPTCY LAW; PROVIDING THAT COUNTIES MAY NOT DECLARE BANKRUPTCY; AND AMENDING SECTIONS 7-7-4111, 7-7-4112, AND 7-7-4113, MCA. *883*

297 *(Senate Bill No. 78; Grosfield)* AN ACT MODIFYING CERTAIN REQUIREMENTS FOR THE WATER POLLUTION CONTROL ADVISORY COUNCIL; REVISING FEE REQUIREMENTS FOR HOLDERS OF A PERMIT OR AUTHORIZATION UNDER THE WATER QUALITY LAWS; REVISING THE ENFORCEMENT PROVISIONS OF THE WATER QUALITY LAWS TO CLARIFY EXISTING ENFORCEMENT AUTHORITY; AMENDING SECTIONS 75-5-221, 75-5-401, 75-5-516, 75-5-601, 75-5-616, 75-5-621, 75-5-631, 75-5-632, AND 75-5-636, MCA; AND PROVIDING AN EFFECTIVE DATE. *885*

298 *(Senate Bill No. 112; Stang)* AN ACT REIMBURSING A SCHOOL DISTRICT FOR PUPIL TRANSPORTATION COSTS BASED ON A WEIGHTED RIDERSHIP SYSTEM; ESTABLISHING A PASSENGER COUNT FOR HIGH SCHOOL TRANSPORTATION PROGRAMS; CLARIFYING THAT A K-12 SCHOOL DISTRICT HAS TWO REPRESENTATIVES ON THE COUNTY TRANSPORTATION COMMITTEE; ESTABLISHING CRITERIA FOR THE REVIEW OF A BUS ROUTE BY THE COUNTY TRANSPORTATION COMMITTEE; LIMITING STATE AND COUNTY REIMBURSEMENT FOR AN INDIVIDUAL TRANSPORTATION CONTRACT; INCREASING THE PER DIEM RATE FOR ROOM AND BOARD FOR AN ELIGIBLE TRANSPORTEE; AMENDING SECTIONS 20-10-101, 20-10-103, 20-10-131, 20-10-132, 20-10-141, AND 20-10-142, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. *891*

299 *(Senate Bill No. 121; Hertel)* AN ACT ELIMINATING THE REQUIREMENT FOR PUBLISHING THE COUNTY ANNUAL REPORT IN A NEWSPAPER; AMENDING SECTION 7-5-2123, MCA; AND PROVIDING AN EFFECTIVE DATE. *901*

300 *(Senate Bill No. 122; Toews)* AN ACT REVISING THE PROCESS OF GRANTING RIGHT-OF-WAY EASEMENTS ON STATE LANDS; ELIMINATING THE REQUIREMENT THAT PLATS BE VERIFIED BY AFFI-

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301 *(Senate Bill No. 147; Hertel)* AN ACT GENERALLY REVISING THE WATER RESOURCE ADMINISTRATION OF STATE WATER PROJECT LAWS; ESTABLISHING A SELF-SUPPORTING LEASE MANAGEMENT PROGRAM FOR WATER PROJECT LANDS; ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO TRANSFER OR DISPOSE OF AN INACTIVE STATE WATER PROJECT WITHOUT A DETERMINATION OF MARKET VALUE; CLARIFYING THE DEPARTMENT OF NATURAL RESGURCES AND CONSERVATION'S DUTY TO MAINTAIN FINANCIAL RECORDS OF STATE WATER PROJECTS; AMENDING SECTIONS 85-1-202, 85-1-204, 85-1-206, 85-1-209, 85-1-210, 85-1-211, AND 85-1-215, MCA; AND PROVIDING AN EFFECTIVE DATE. *903*

302 *(Senate Bill No. 204; Grosfield)* AN ACT CLARIFYING EXISTING ENFORCEMENT AUTHORITY UNDER THE PUBLIC WATER SUPPLY LAWS; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CONSIDER ESTABLISHED CRITERIA WHEN SEEKING CIVIL OR ADMINISTRATIVE PENALTIES; AND AMENDING SECTIONS 75-6-109 AND 75-6-114, MCA. *912*

303 *(Senate Bill No. 211; Keating)* AN ACT REVISING THE LAWS RELATING TO A PROPERTY OWNER'S LIABILITY TOWARD PERSONS WHO MAKE RECREATIONAL USE OF THE PROPERTY; AND AMENDING SECTIONS 70-16-301 AND 70-16-302, MCA. *914*

304 *(Senate Bill No. 298; Van Valkenburg)* AN ACT PROVIDING FOR A SERVICE CHARGE UPON THE DISHONOR OR STOP PAYMENT OF A CHECK, DRAFT, OR ORDER FOR PAYMENT; AND AMENDING SECTION 27-1-717, MCA. *915*

305 *(Senate Bill No. 374; Harp)* AN ACT REVISING CERTAIN STATE FUND INSURANCE LAWS; AUTHORIZING THE STATE FUND TO REFUSE WORKERS' COMPENSATION COVERAGE TO AN EMPLOYER OR AN EMPLOYER'S PRINCIPALS WHO HAVE DEFAULTED ON A STATE FUND OBLIGATION; PROVIDING THE STATE FUND BOARD OF DIRECTORS WITH DISCRETION TO ASSESS A POLICY CHARGE, A MINIMUM PREMIUM, OR BOTH, IN LIEU OF A MINIMUM YEARLY PREMIUM; AUTHORIZING THE STATE FUND TO PROVIDE EMPLOYERS' LIABILITY INSURANCE AS PART OF THE REQUIRED COVERAGE; REQUIRING THE STATE FUND TO BELONG TO A LICENSED ADVISORY OR RATING ORGANIZATION; PROHIBITING, WITH EXCEPTIONS, THE SALE OR DISTRIBUTION OF INFORMATION PROVIDED TO A WORKERS' COMPENSATION RATING ORGANIZATION; REDUCING TO 20 DAYS THE TIME REQUIRED FOR NOTIFYING AN EMPLOYER OF THE CANCELLATION OF COVERAGE; AMENDING SECTIONS 39-71-2311, 39-71-2313, 39-71-2316, AND 39-71-2339, MCA; AND PROVIDING AN EFFECTIVE DATE. *916*

306 *(House Bill No. 357; Boharski)* AN ACT CREATING A COMMISSION ON SENTENCING TO STUDY SENTENCING PRACTICES AND GUIDELINES AND THE EFFECTS OF SENTENCES; PROVIDING FOR THE SUBMISSION OF PROPOSED SENTENCING GUIDELINES TO THE LEGISLATURE BY THE COMMISSION; PROVIDING FOR RECOM-

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307 *(House Bill No. 409; Barnett)* AN ACT REVISING THE LAW REGARDING DETACHED FACILITIES OF BANKS; AMENDING SECTION 32-1-372, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 921

308 *(Senate Bill No. 156; Waterman)* AN ACT REVISING CERTAIN STATUTES RELATING TO THE UNIVERSITY SYSTEM; RESTRUCTURING THE UNIVERSITY SYSTEM BY INCORPORATING THE VOCATIONAL-TECHNICAL CENTERS INTO THE SYSTEM; REMOVING THE VOCATIONAL-TECHNICAL CENTER REPRESENTATIVE FROM THE GUARANTEED STUDENT LOAN ADVISORY COUNCIL; DELETING REFERENCES TO VOCATIONAL-EDUCATIONAL CENTERS; REMOVING VOCATIONAL-TECHNICAL CENTER STUDENTS FROM WORKERS' COMPENSATION COVERAGE; REQUIRING FIVE COUNTIES TO LEVY 1 1/2 MILLS TO SUPPORT VOCATIONAL-TECHNICAL EDUCATION; ELIMINATING CERTAIN MISCELLANEOUS FINANCE PROVISIONS RELATING TO UNIVERSITY SYSTEM CONSTRUCTION AND BOND PROJECTS; REVISING THE NAMES OF THE UNITS OF THE UNIVERSITY SYSTEM; CLARIFYING THE DEFINITION OF RESIDENT STUDENT AND PROVISIONS RELATING TO DOMICILE; AMENDING SECTIONS 2-15-1520, 2-18-401, 17-1-102, 17-2-102, 17-2-107, 17-2-110, 17-7-102, 17-7-304, 19-3-403, 19-20-302, 20-1-101, 20-5-402, 20-7-701, 20-9-212, 20-25-201, 20-25-211, 20-25-301, 20-25-303, 20-25-501, 20-25-503, 20-32-101, 20-32-102, 20-32-103, 23-1-313, 37-8-102, 37-31-304, 39-29-101, 39-30-103, 39-71-117, 39-71-118, 39-71-744, 50-40-204, AND 50-74-305, MCA; REPEALING SECTIONS 20-16-101, 20-16-102, 20-16-103, 20-16-104, 20-16-105, 20-16-106, 20-16-107, 20-16-108, 20-16-109, 20-16-201, 20-16-202, 20-16-203, 20-16-204, 20-16-205, 20-16-206, 20-16-207, 20-25-251, 20-25-401, 20-25-431, 20-25-432, 20-25-433, 20-25-434, AND 60-2-216, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY PROVISION. 922

309 *(Senate Bill No. 207; Mesaros)* AN ACT PROVIDING PROTECTION FOR AGRICULTURAL ACTIVITIES FROM GOVERNMENTAL ZONING AND NUISANCE RESTRICTIONS. 959

310 *(Senate Bill No. 246; Weldon)* AN ACT PROVIDING FOR THE ISSUANCE OF AN ADMINISTRATIVE WARRANT DIRECTING A PAWNBROKER TO HOLD PROPERTY FOR 30 DAYS; PROVIDING FOR A CHALLENGE TO AN ADMINISTRATIVE WARRANT; AUTHORIZING RESTITUTION TO A PERSON SUFFERING ECONOMIC LOSS AS A RESULT OF THE CRIME; AND AMENDING SECTIONS 46-5-212 AND 46-18-241, MCA. 962

311 *(Senate Bill No. 251; Swysgood)* AN ACT PROVIDING A TRANSPORTATION ENERGY POLICY FOR THE STATE OF MONTANA; PROVIDING AN ALTERNATIVE FUELS POLICY AND IMPLEMENTING GUIDELINES; AND AMENDING SECTION 90-4-1001, MCA. 963

312 *(Senate Bill No. 281; Crismore)* AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ISSUE A TERM PERMIT FOR A TRUCK TRACTOR-SEMITRAILER COMBINATION WHEN THE SEMITRAILER EXCEEDS 53 FEET IN LENGTH BUT DOES NOT EXCEED 57 FEET IN LENGTH; AND AMENDING SECTION 61-10-124, MCA. 964

313 *(Senate Bill No. 283; Jabs)* AN ACT REVISING THE TYPE OF VEHICLE COMBINATION USED FOR HAULING RAW LOGS THAT IS SUBJECT TO LENGTH RESTRICTIONS; AND AMENDING SECTION 61-10-104, MCA. 967

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314 *(Senate Bill No. 294; Mohl)* AN ACT DEFINING A FERTILIZER SPREADER TRUCK OR TRAILER AS SPECIAL MOBILE EQUIPMENT FOR CERTAIN PURPOSES; EXEMPTING FERTILIZER SPREADER TRUCKS AND TRAILERS FROM CERTAIN GVW FEES; AMENDING SECTIONS 61-1-104 AND 61-10-206, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *969*

315 *(Senate Bill No. 296; Harding)* AN ACT ALLOWING NONPROFIT ORGANIZATIONS TO SELL BAKED GOODS AND PRESERVES; EXEMPTING GARDENERS, FARM OWNERS, AND FARM OPERATORS WHO SELL RAW AND UNPROCESSED FARM PRODUCTS AT A FARMER'S MARKET FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; ALLOWING PERSONS TO SELL BAKED GOODS AND PRESERVES AT FARMER'S MARKETS AND EXEMPTING THEM FROM LICENSURE UNDER FOOD ESTARLISHMENT LAWS; REQUIRING ORGANIZED FARMER'S MARKETS AUTHORIZED BY A MUNICIPAL OR COUNTY AUTHORITY TO KEEP RECORDS; AMENDING SECTIONS 50-50-102, 50-50-103, AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *970*

316 *(House Bill No. 304; Fisher)* AN ACT AUTHORIZING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES AND LOCAL GOVERNMENTAL ENTITIES TO CONTRACT FOR THE DESIGN, FINANCING, CONSTRUCTION, OR OPERATION OF REGIONAL CORRECTIONAL FACILITIES; AUTHORIZING THE DEPARTMENT TO GRANT A LOCAL GOVERNMENTAL ENTITY AN OPTION TO PURCHASE A REGIONAL CORRECTIONAL FACILITY OWNED SOLELY BY THE STATE; PROVIDING FOR CONTRACT TERMS AND A TIME LIMIT ON CONTRACTS; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; AMENDING SECTION 53-21-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *973*

317 *(House Bill No. 332; Clark)* AN ACT ESTABLISHING INDIVIDUAL LICENSURE FOR LAWFUL POSSESSION OF A FIREARM FOR THE PURPOSES OF THE FEDERAL GUN-FREE SCHOOL ZONES ACT OF 1990. . . . . *977*

318 *(House Bill No. 343; Holland)* AN ACT PROVIDING AN EXEMPTION FROM THE COAL SEVERANCE TAX FOR A CERTAIN AMOUNT OF COAL PRODUCED FOR A COAL ENHANCEMENT FACILITY; AMENDING SECTIONS 15-23-703, 15-35-102, AND 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. *977*

319 *(House Bill No. 376; Simpkins)* AN ACT PROVIDING THAT ENGLISH IS THE OFFICIAL AND PRIMARY LANGUAGE OF THE STATE AND LOCAL GOVERNMENTS. *985*

320 *(House Bill No. 387; Boharski)* AN ACT CLARIFYING THAT AN INSURER MAY GIVE PREMIUM DISCOUNTS TO AN INSURED BASED UPON FAVORABLE ASPECTS OF THE INSURED'S CLAIMS HISTORY; AND AMENDING SECTIONS 33-16-201 AND 33-18-210, MCA. *986*

321 *(House Bill No. 442; Smith)* AN ACT CLARIFYING THAT ONLY A PHYSICIAN MAY PERFORM AN ABORTION; AND AMENDING SECTIONS 37-20-103 AND 50-20-109, MCA. *989*

322 *(House Bill No. 472; Knox)* AN ACT ALLOWING AN EXISTING APPROPRIATIVE WATER RIGHT TO BE TEMPORARILY CHANGED TO INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE; ESTABLISHING ADDITIONAL CRITERIA FOR AND LIMITATIONS ON CHANGES TO INSTREAM FLOW TO BENEFIT THE FISHERY

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323 *(House Bill No. 542; Tash)* AN ACT CREATING THE MONTANA PUBLIC HEALTH IMPROVEMENT TASK FORCE; PROVIDING FOR THE APPOINTMENT AND DUTIES OF THE TASK FORCE; REQUIRING A PUBLIC HEALTH IMPROVEMENT PLAN; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO AWARD GRANTS FOR PUBLIC HEALTH IMPROVEMENT DEMONSTRATION PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. 999

324 *(House Bill No. 557; Ellingson)* AN ACT ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL HEALTH BOARDS TO ESTABLISH SANITATION STANDARDS REGULATING THE PRACTICE OF TATTOOING; AND AMENDING SECTIONS 50-1-202 AND 50-2-116, MCA. 1004

325 *(House Bill No. 563; Sliter)* AN ACT TRANSFERRING THE WARRANT WRITING AND BAD DEBT MANAGEMENT FUNCTIONS OF THE STATE AUDITOR TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION, WHO IS THE EX OFFICIO STATE TREASURER; AMENDING SECTIONS 2-18-411, 2-18-412, 2-18-702, 3-2-503, 7-4-2502, 17-1-101, 17-1-111, 17-1-122, 17-3-1004, 17-4-101, 17-4-102, 17-4-103, 17-4-104, 17-4-105, 17-4-106, 17-4-107, 17-4-108, 17-6-212, 17-8-211, 17-8-301, 17-8-303, 17-8-305, 17-8-306, 17-8-307, 23-7-312, 32-1-537, 39-3-213, 39-51-3207, 44-2-314, 53-18-102, 85-8-612, 87-1-206, AND 87-1-603, MCA; REPEALING SECTION 17-1-121, MCA; AND PROVIDING AN EFFECTIVE DATE. 1007

326 *(Senate Bill No. 244; Waterman)* AN ACT REQUIRING THE DEPARTMENT OF FAMILY SERVICES TO DEVELOP A STATE POLICY AND PLAN FOR PERMANENT PLACEMENT FOR CHILDREN IN THE CHILD WELFARE SYSTEM; DIRECTING THE DEPARTMENT TO CONDUCT AN INTERIM REVIEW OF ADOPTION LAWS TO FACILITATE IMPLEMENTATION OF THE PERMANENT PLACEMENT POLICY AND PLAN AND TO IMPROVE THE ADOPTION PROCESS; AND REQUIRING A REPORT TO THE 1997 LEGISLATURE. 1023

327 *(Senate Bill No. 310; Jacobson)* AN ACT ALLOWING PHYSICIAN ASSISTANTS-CERTIFIED TO PRESCRIBE, DISPENSE, AND ADMINISTER A SCHEDULE II DRUG FOR UP TO 34 DAYS; GRANTING A PHYSICIAN ASSISTANT-CERTIFIED AND A NUTRITIONIST WHO ARE MEMBERS OF THE BOARD OF MEDICAL EXAMINERS FULL VOTING RIGHTS; AND AMENDING SECTIONS 2-15-1841 AND 37-20-404, MCA. 1025

328 *(House Bill No. 196; Swanson)* AN ACT GENERALLY REVISING THE LAW RELATING TO OUTFITTERS AND GUIDES; CREATING THE PROFESSIONAL GUIDE LICENSE; REVISING LICENSING REQUIREMENTS AND QUALIFICATIONS FOR OUTFITTERS AND GUIDES; REQUIRING SUBMISSION OF AN OPERATIONS PLAN FOR OUTFITTERS AND ESTARLISHING A SYSTEM FOR REVIEW OF THE PLAN; REVISING DUTIES AND LIABILITIES RELATED TO OUTFITTING TO INCLUDE PROFESSIONAL GUIDES; REVISING QUALIFICATIONS AND CONDITIONS APPLICABLE TO OUTFITTER-SPONSORED CLASS B-10 AND B-11 LICENSES; ALLOWING THE BOARD OF OUTFITTERS TO HIRE QUALIFIED INVESTIGATORS; GRANTING THE EXECUTIVE DIRECTOR OF THE BOARD OF OUTFITTERS AND BOARD INVESTIGATORS EX OFFICIO WARDEN STATUS; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-306, 37-47-307, 37-47-341, 37-47-343, 37-47-

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345, 37-47-401, 37-47-402, 37-47-403, 37-47-404, 87-2-511, AND 87-1-503, MCA; REPEALING SECTIONS 37-47-102 AND 37-47-309, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . *1026*

329 *(Senate Bill No. 186; Beck)* AN ACT EXPANDING THE AUTHORITY OF THE DEPARTMENT OF STATE LANDS TO RECLAIM ABANDONED HARD-ROCK AND OPENCUT MINE SITES; AUTHORIZING THE FILING OF LIENS; LIMITING REDISTURBANCE OF RECLAIMED SITES; AMENDING SECTION 82-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1039*

330 *(Senate Bill No. 212; Bishop)* AN ACT PROVIDING PROCEDURAL SAFEGUARDS FOR JOINT AND SEVERAL LIABILITY DETERMINATIONS; PERMITTING THE CONSIDERATION OF NEGLIGENCE BY AN EMPLOYER OR COEMPLOYEE IN CERTAIN CIVIL ACTIONS; AMENDING SECTION 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *1045*

331 *(Senate Bill No. 288; Keating)* AN ACT CLARIFYING THE BURDEN OF PROOF FOR ACTIONS IN WHICH AN AGENCY DETERMINES NOT TO CONDUCT AN ENVIRONMENTAL IMPACT STATEMENT; EXEMPTING THE LEGISLATURE FROM THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING SECTION 75-1-201, MCA. *1047*

332 *(Senate Bill No. 63; Crippen)* AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION WHEN THE DEFENDANT IS AN OUT-OF-STATE CORPORATION; AND AMENDING SECTION 25-2-122, MCA. *1050*

333 *(House Bill No. 280; Barnett)* AN ACT GENERALLY REVISING THE LAWS RELATING TO MILK CONTROL; REALLOCATING THE BOARD OF MILK CONTROL FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF LIVESTOCK; TRANSFERRING THE RESPONSIBILITIES FOR MILK CONTROL FROM THE DEPABTMENT OF COMMERCE TO THE DEPABTMENT OF LIVESTOCK; AMENDING SECTIONS 2-15-1802, 81-23-101, 81-23-103, 81-23-105, 81-23-202, 81-23-203, 81-23-302, AND 81-23-406, MCA; AND PROVIDING AN EFFECTIVE DATE. *1051*

334 *(House Bill No. 294; Ohs)* AN ACT INCREASING THE PENALTY FOR PASSING IN A NO-PASSING ZONE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1059*

335 *(House Bill No. 322; Hibbard)* AN ACT ESTABLISHING THAT INNKEEPERS MAY EVICT GUESTS OR REFUSE ACCOMMODATIONS AND SERVICES UNDER CERTAIN CONDITIONS; ESTABLISHING THE LIABILITY OF INNKEEPERS IN INCIDENTS INVOLVING THE UNLAWFUL CONSUMPTION OR POSSESSION OF ALCOHOL AT HOTELS; AND ESTABLISHING PARENTS' OR GUARDIANS' LIABILITY FOR MINORS' DAMAGE TO PUBLIC ACCOMMODATIONS. *1059*

336 *(House Bill No. 393; Grady)* AN ACT ALLOWING COUNTY COMMISSIONERS TO ASSIGN THE SUPERVISION OF COUNTY ROADS TO EITHER A COUNTY SURVEYOR OR A COUNTY ROAD SUPERINTENDENT; AND AMENDING SECTIONS 7-4-2812, 7-14-2102, AND 7-14-2301, MCA. *1061*

337 *(House Bill No. 513; DeBruycker)* AN ACT EXCEPTING A PERSON WHO BUYS AGRICULTURAL COMMODITIES EXCLUSIVELY FOR THE FEEDING OF LIVESTOCK FROM THE DEFINITION OF COMMODITY DEALER; PROVIDING PENALTIES; AMENDING SECTIONS 80-4-402 AND 80-4-429, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1063*

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338 *(Senate Bill No. 185; Van Valkenburg)* AN ACT GENERALLY REVISING THE PROCESS BY WHICH A HABITUAL TRAFFIC OFFENDER IS PENALIZED; PROVIDING FOR ADMINISTRATIVE REVOCATION OF A HABITUAL TRAFFIC OFFENDER'S DRIVING PRIVILEGES; PROVIDING A METHOD FOR AN OFFENDER TO CONTEST THE DECLARATION; PROVIDING THAT CERTIFIED DRIVING RECORDS ARE EVIDENCE OF CONVICTIONS; PROVIDING FOR A MANDATORY MINIMUM SENTENCE FOR A PERSON DRIVING WHILE A LICENSE IS REVOKED BECAUSE OF A HABITUAL TRAFFIC OFFENDER DECLARATION; AMENDING SECTIONS 61-11-204, 61-11-207, 61-11-210, 61-11-211, 61-11-212, AND 61-11-213, MCA; AND REPEALING SECTIONS 61-11-205, 61-11-206, 61-11-208, AND 61-11-209, MCA. *1066*

339 *(Senate Bill No. 265; Beck)* AN ACT ESTABLISHING AN EXPENDABLE TRUST TO BE USED FOR PROVIDING LIBRARY SERVICE TO MONTANANS; PROVIDING THAT DONATIONS TO THE MONTANA STATE LIBRARY BE USED TO FUND THE TRUST; PROVIDING AN EXCEPTION TO THE REQUIREMENT THAT NONGENERAL FUND MONEY BE EXPENDED PRIOR TO GENERAL FUND MONEY; AMENDING SECTIONS 17-2-108 AND 22-1-103, MCA; AND PROVIDING AN EFFECTIVE DATE. *1069*

340 *(Senate Bill No. 307; Harding)* AN ACT CLARIFYING THE DEFINITION OF ACUPUNCTURE; PROHIBITING UNLICENSED PERSONS FROM PURPORTING TO PRACTICE ACUPUNCTURE; AND AMENDING SECTIONS 37-13-103, 37-13-104, AND 37-13-301, MCA. *1071*

341 *(House Bill No. 273; Grinde)* AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V, SECTION 6, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE LEGISLATURE SHALL MEET IN REGULAR SESSION BIENNIALLY IN EVEN-NUMBERED YEARS OR IN ODD-NUMBERED YEARS; AND PROVIDING A DELAYED EFFECTIVE DATE. *1072*

342 *(House Bill No. 307; Harrington)* AN ACT CREATING AN EXPRESS "TITLE ONLY" PROCEDURE FOR CERTAIN DEALERS OF USED MOTOR VEHICLES; ALLOWING A MOTOR VEHICLE DEALER, BROKER, OR WHOLESALER TO TRANSFER A USED MOTOR VEHICLE TO ANOTHER MOTOR VEHICLE DEALER, BROKER, OR WHOLESALER BY USE OF A DEALER REASSIGNMENT SECTION ON A CERTIFICATE OF OWNERSHIP; REQUIRING A FEE; REQUIRING APPLICATION FOR A CERTIFICATE OF OWNERSHIP IN CERTAIN CIRCUMSTANCES; APPROPRIATING MONEY FROM THE GENERAL FUND TO THE DEPARTMENT OF JUSTICE FOR IMPLEMENTATION; AMENDING SECTIONS 61-3-203, 61-4-111, 61-4-112, AND 61-10-222, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. *1073*

343 *(House Bill No. 485; Bergsagel)* AN ACT RELATING TO PRESERVATION OF HERITAGE PROPERTY; CHANGING THE MEMBERSHIP OF THE PRESERVATION REVIEW BOARD; PROVIDING FOR THE APPOINTMENT PROCEDURE AND SUPERVISION OF THE HISTORIC PRESERVATION OFFICER; REQUIRING THE DEVELOPMENT OF PROCEDURES AND GUIDELINES FOR INVENTORYING, DOCUMENTING, AND EVALUATING HERITAGE PROPERTIES; PROVIDING A PROCEDURE FOR NOMINATION OF PROPERTY TO THE NATIONAL REGISTER OF HISTORIC PLACES; REQUIRING AVOIDANCE AND MITIGATION IN THE DEVELOPMENT OF CERTAIN PROPERTY; AMENDING SECTIONS 2-15-1512, 22-3-421, AND 22-3-423, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . *1076*

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344 *(Senate Bill No. 264; Gage)* AN ACT ESTABLISHING THE MONTANA PROFESSIONAL EMPLOYER ORGANIZATIONS LICENSING ACT; REQUIRING LICENSING OF AND STANDARDS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; REQUIRING PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE COVERAGE; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING EXEMPTIONS AND PENALTIES; AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE. *1081*

345 *(Senate Bill No. 303; Pipinich)* AN ACT PROHIBITING A PERSON FROM OPERATING A PERSONAL WATERCRAFT AT GREATER THAN NO-WAKE SPEED WITHIN 100 FEET OF A DOCK, SWIMMER, SWIMMING RAFT, NONMOTORIZED BOAT, OR ANCHORED VESSEL ON A LAKE OR WITHIN 50 FEET OF A DOCK, SWIMMER, SWIMMING RAFT, NONMOTORIZED BOAT, OR ANCHORED VESSEL ON A RIVER; CLARIFYING THE AGE REQUIREMENTS FOR OPERATION OF A MOTORBOAT OR PERSONAL WATERCRAFT; AMENDING SECTIONS 23-2-523 AND 23-2-531, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1098*

346 *(Senate Bill No. 312; Mesaros)* AN ACT REQUIRING THE DEPARTMENT OF LIVESTOCK TO TAKE CERTAIN ACTIONS WITH REGARD TO WILD BUFFALO OR BISON ENTERING THE STATE OF MONTANA; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO COOPERATE WITH THE DEPARTMENT OF LIVESTOCK IN MANAGING CERTAIN WILD BUFFALO OR BISON AS A SPECIES REQUIRING DISEASE CONTROL; REPEALING SECTION 87-1-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1100*

347 *(Senate Bill No. 328; Bartlett)* AN ACT CLARIFYING THAT THE PROPERTY TAX IMPOSED ON PERSONAL PROPERTY OWNED BY A BUSINESS IS A BUSINESS EQUIPMENT TAX; REQUIRING THE DEPARTMENT OF REVENUE TO NOTIFY TAXPAYERS THAT THE STATEMENT FOR REPORTING PERSONAL PROPERTY OWNED BY A BUSINESS IS FOR BUSINESS EQUIPMENT AND OTHER BUSINESS PERSONAL PROPERTY; AND AMENDING SECTION 15-8-301, MCA. *1103*

348 *(Senate Bill No. 393; Aklestad)* AN ACT CLARIFYING THE REQUIREMENTS FOR BRINGING A CLASS ACTION FOR TAX REFUNDS; CLARIFYING THAT A MEMBER OF THE CLASS MUST HAVE PAID THE TAX UNDER PROTEST; AMENDING SECTIONS 15-1-406 AND 15-1-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1104*

349 *(House Bill No. 531; Orr)* AN ACT PROVIDING FOR THE DESIGN OF CONSUMER REPORT CARDS ON HEALTH CARE SERVICES. . . . *1106*

350 *(Senate Bill No. 278; Brooke)* AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; CHANGING THE NAME OF THE OFFENSE OF DOMESTIC ABUSE TO PARTNER OR FAMILY MEMBER ASSAULT; AUTHORIZING LOCAL GOVERNMENTS TO ESTABLISH MISDEMEANOR PROBATION OFFICES; PROVIDING FOR A NOTICE OF RIGHTS TO VICTIMS; AUTHORIZING THE SEIZURE OF WEAPONS BY A POLICE OFFICER IN A PARTNER OR FAMILY MEMBER ASSAULT SITUATION; REQUIRING HEALTH CARE PROVIDERS TO PROVIDE SUSPECTED VICTIMS WITH A NOTICE OF RIGHTS; PROVIDING FOR TEMPORARY ORDERS OF PROTECTION, ORDERS OF PROTECTION, AND A PROCEDURE FOR ISSUANCE OF THOSE ORDERS; AND AMENDING SECTIONS 3-10-301, 7-32-2227,

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27-19-201, 27-19-316, 40-4-121, 40-4-123, 40-4-124, 40-4-217, 40-4-219, 45-5-206, 45-5-220, 45-5-626, 46-6-105, 46-6-311, 46-6-602, 46-9-302, AND 46-18-202, MCA. *1108*

351 *(House Bill No. 347; Kottel)* AN ACT GENERALLY REVISING THE LAW RELATING TO THE CRIME OF THREATENING PUBLIC OFFICIALS; EXPANDING THE OFFENSE OF THREATENING A PUBLIC OFFICIAL TO INCLUDE INJURY TO THE PUBLIC OFFICIAL'S PERSON, SPOUSE, CHILD, PARENT, SIBLING, OR PROPERTY; REVISING THE PENALTY FOR THREATENING A PUBLIC OFFICIAL; INCREASING THE PENALTY FOR IMPERSONATING A PUBLIC OFFICIAL; AMENDING SECTIONS 45-7-102 AND 45-7-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1128*

352 *(Senate Bill No. 231; Mesaros)* AN ACT REVISING THE PURPOSE AND POLICY OF THE MONTANA ENVIRONMENTAL POLICY ACT TO INCLUDE PRIVATE PROPERTY RIGHT CONSIDERATIONS AND IMPACTS OF STATE GOVERNMENT ACTIONS; AND AMENDING SECTIONS 75-1-102, 75-1-103, AND 75-1-201, MCA. *1130*

353 *(Senate Bill No. 242; Gage)* AN ACT REVISING THE MEMBERSHIP OF THE BOARD OF HORSERACING; ALLOWING THE GOVERNOR TO MAKE IMMEDIATE APPOINTMENTS TO IMPLEMENT THE REVISIONS; AMENDING SECTION 2-15-1881, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1134*

354 *(Senate Bill No. 293; Harding)* AN ACT GENERALLY REVISING THE LAWS RELATED TO MEDICAID FRAUD AND ABUSE, RECOVERY OF MEDICAID OVERPAYMENTS, AND IMPOSITION OF SANCTIONS FOR MEDICAID FRAUD AND ABUSE AND FOR FAILURE OF HEALTH CARE FACILITIES TO COMPLY WITH APPLICABLE STANDARDS AND REQUIREMENTS; ESTABLISHING A MEDICAID FRAUD CONTROL UNIT IN THE DEPARTMENT OF JUSTICE; SPECIFYING THE POWERS AND DUTIES OF THE UNIT; ESTABLISHING CRIMINAL OFFENSES RELATED TO MEDICAID FRAUD; SPECIFYING CERTAIN DUTIES OF MEDICAID APPLICANTS, RECIPIENTS, AND PROVIDERS WITH RESPECT TO THE TRUTH, COMPLETENESS, AND ACCURACY OF DOCUMENTS AND INFORMATION SUBMITTED FOR MEDICAID PURPOSES; SPECIFYING THE SANCTIONS THAT MAY BE APPLIED TO PROVIDERS AND OTHER PERSONS WHO ENGAGE IN MEDICAID FRAUD AND ABUSE AND TO HEALTH CARE FACILITIES THAT FAIL TO COMPLY WITH APPLICABLE STANDARDS AND REQUIREMENTS; AMENDING SECTIONS 45-2-101, 45-2-103, 45-2-104, 50-20-109, 53-6-106, 53-6-107, 53-6-108, 53-6-111, AND 61-5-405, MCA; AND PROVIDING EFFECTIVE DATES. *1135*

355 *(Senate Bill No. 311; Weldon)* AN ACT REVISING THE MONTANA SMALL BUSINESS LICENSING COORDINATION ACT; ESTABLISHING A PLAN FOR A BUSINESS REGISTRATION AND LICENSING SYSTEM; ESTABLISHING A BOARD OF REVIEW; AMENDING SECTION 30-16-103, MCA; AND PROVIDING AN EFFECTIVE DATE. *1157*

356 *(Senate Bill No. 321; Swysgood)* AN ACT INCREASING THE PERCENTAGE OF DISTRIBUTOR'S GASOLINE LICENSE TAX CREDITABLE TO THE SNOWMOBILE ACCOUNT; CLARIFYING PERCENTAGES OF THE ACCOUNT THAT MUST BE USED FOR ENFORCEMENT AND WEED CONTROL PURPOSES; AMENDING SECTION 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE. *1160*

357 *(Senate Bill No. 341; Holden)* AN ACT GENERALLY REVISING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION PLAN; ESTABLISHING LIMITS ON ELIGIBILITY; PROHIBITING REFERRAL

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OF INDIVIDUALS TO THE PLAN FOR CERTAIN PURPOSES AND MAKING THOSE REFERRALS AN UNFAIR TRADE PRACTICE; MAKING OFFICERS AND DIRECTORS OF THE ASSOCIATION NOT INDIVIDUALLY LIABLE FOR CERTAIN ACTIONS; PROVIDING DEFINITIONS; DELETING PREGNANCY AS AN ASSOCIATION PLAN EXCLUSION; REVISING ASSOCIATION PLAN MINIMUM BENEFITS; ALLOWING THE ASSOCIATION BOARD AND THE COMMISSIONER OF INSURANCE TO ESTABLISH REFERRAL FEES; REQUIRING WAIVER OF PREEXISTING CONDITION EXCLUSIONS UNDER CERTAIN CIRCUMSTANCES; MODIFYING THE COMPOSITION OF THE ASSOCIATION BOARD; ADDING HEALTH SERVICE CORPORATIONS TO THE MANNER IN WHICH PREMIUMS ARE CALCULATED; AND AMENDING SECTIONS 27-1-732, 33-22-1501, 33-22-1503, 33-22-1504, 33-22-1512, 33-22-1515, 33-22-1516, AND 33-22-1521, MCA. *1162*

358 *(Senate Bill No. 378; Swysgood)* AN ACT ELIMINATING STATE REGULATION FOR CERTAIN MOTOR CARRIERS; TRANSFERRING THE SINGLE-STATE REGISTRATION PERMIT PROGRAM TO THE DEPARTMENT OF TRANSPORTATION; AMENDING SECTIONS 30-14-803, 39-2-304, 69-12-101, 69-12-102, AND 69-12-301, MCA; REPEALING SECTIONS 69-12-103 AND 69-12-405, MCA; AND PROVIDING AN EFFECTIVE DATE. *1170*

359 *(Senate Bill No. 408; Sprague)* AN ACT PROVIDING THAT THE STATE LOTTERY DIRECTOR MAY ENTER INTO CONTRACTS FOR MATERIALS, EQUIPMENT, SUPPLIES, AND SERVICES; EXEMPTING THE STATE LOTTERY FROM CERTAIN LAWS REGULATING CONTRACTS WITH THE STATE; AMENDING SECTIONS 18-4-132, 18-8-103, AND 23-7-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1178*

360 *(House Bill No. 111; Devaney)* AN ACT CLARIFYING THE ARREST AUTHORITY OF DEPARTMENT OF TRANSPORTATION MOTOR CARRIER SERVICES DIVISION EMPLOYEES WHO ARE APPOINTED AS PEACE OFFICERS; AUTHORIZING THE DIRECTOR OF THE DEPABTMENT OF TRANSPORTATION TO APPOINT EMPLOYEES OF ANOTHER STATE TO ENFORCE MONTANA GROSS VEHICLE WEIGHT LAWS AT JOINT WEIGH STATIONS; AND AMENDING SECTIONS 61-12-201, 61-12-206, AND 61-12-208, MCA. *1180*

361 *(House Bill No. 176; Hagener)* AN ACT REQUIRING ALL COURTS OF ORIGINAL JURISDICTION TO IMPOSE A USER SURCHARGE IN CRIMINAL, CIVIL, AND PROBATE CASES; PROVIDING THAT THE SURCHARGE BE USED FOR STATE FUNDING OF COURT INFORMATION TECHNOLOGY; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. *1181*

362 *(House Bill No. 184; DeBruycker)* AN ACT REVISING THE LICENSURE OF PSYCHOLOGISTS; DELETING THE RESIDENCY REQUIREMENT FOR APPLICANTS; PRESCRIBING A MAXIMUM OF SUPERVISED POSTGRADUATE ACTIVITY TO BE ALLOWED IN MEETING THE EXPERIENCE REQUIREMENT; ALLOWING THE ADMISSION THROUOH ENDORSEMENT OF LICENSED PSYCHOLOGISTS FROM OTHER STATES; DELETING THE PROVISION REGARDING RECIPROCITY IN ADMITTING LICENSEES FROM OTHER STATES; ALLOWING THE LICENSURE OF FOREIGN-TRAINED APPLICANTS; PROVIDING FOR THE LICENSURE OF SENIOR PSYCHOLOGISTS; AND AMENDING SECTIONS 37-17-302, 37-17-304, AND 37-17-308, MCA. *1182*

363 *(House Bill No. 194; Bergman)* AN ACT AMENDING THE REQUIREMENT FOR DESIGNING, ERECTING, AND MAINTAINING WELCOME

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AND FAREWELL SIGNS ON HIGHWAYS AT MONTANA'S BORDERS; AND AMENDING SECTION 60-2-218, MCA. *1184*

364 *(House Bill No. 248; Bergsagel)* AN ACT GENERALLY REVISING LAWS PERTAINING TO DRIVER LICENSING AND EXAMINATION; CLARIFYING ELIGIBILITY REQUIREMENTS FOR DRIVER LICENSING; CREATING A COOPERATIVE DRIVER TESTING PROGRAM IN CONJUNCTION WITH A STATE-APPROVED HIGH SCHOOL TRAFFIC EDUCATION COURSE; EXTENDING THE TERM OF A DRIVER'S LICENSE IN CERTAIN CIRCUMSTANCES; PROVIDING FOR ELECTRONIC TRANSFER OF DRIVING RECORDS; ELIMINATING MAIL RENEWALS AND PROFILE PHOTOGRAPHS FOR MINORS; ADJUSTING THE DISPOSITION OF LICENSE FEES; AMENDING SECTIONS 61-5-105, 61-5-106, 61-5-107, 61-5-110, 61-5-111, AND 61-5-121, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE. *1186*

365 *(House Bill No. 287; Ream)* AN ACT PROVIDING THAT THE DEPARTMENT OF REVENUE IS A JUDGMENT LIEN CREDITOR; PROVIDING THAT THE PRIORITY DATE FOR A TAX LIEN CREATED BY A WARRANT FOR DISTRAINT IS THE DATE THE TAX WAS DUE; PROVIDING THAT THE ACCELERATED PRIORITY DATE ON REAL OR PERSONAL PROPERTY CREATED BY A WARRANT FOR DISTRAINT IS NOT VALID AGAINST PURCHASERS, CERTAIN HOLDERS OF SECURITY INTERESTS, JUDGMENT LIEN CREDITORS, AND OTHER LIENHOLDERS WHOSE INTEREST IS RECORDED PRIOR TO THE FILING OF THE WARRANT FOR DISTRAINT; AMENDING SECTION 15-1-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *1193*

366 *(House Bill No. 301; Soft)* AN ACT RELATING TO HEALTH CARE FACILITIES; PROVIDING DEFINITIONS; CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY REQUIRE WRITTEN EVIDENCE FOR LICENSURE; REQUIRING NOTICE TO THE DEPARTMENT THAT A HEALTH CARE FACILITY IS READY TO BE INSPECTED; REMOVING THE REQUIREMENT FOR AN ANNUAL PHYSICIAN'S STATEMENT AND VISIT FOR PLACEMENT OF A RESIDENT IN A CATEGORY A PERSONAL-CARE FACILITY; DELETING MINIMUM RESIDENT REQUIREMENTS FOR CATEGORY A PERSONAL-CARE FACILITIES; PROVIDING REQUIREMENTS FOR HOME INFUSION THERAPY SERVICES, ADULT FOSTER CARE HOMES, AND FOR RETIREMENT HOMES; AMENDING SECTIONS 27-6-103, 50-4-102, 50-5-101, 50-5-103, 50-5-204, 50-5-226, 50-5-227, 50-5-301, 50-51-102, AND 50-51-201, MCA; AND REPEALING SECTIONS 52-3-301, 52-3-302, 52-3-303, 52-3-304, 52-3-305, 52-3-311, 52-3-312, 52-3-313, AND 52-3-314, MCA. *1194*

367 *(House Bill No. 315; Harrington)* AN ACT PROVIDING THAT A VOLUNTEER FIRE COMPANY OR DEPARTMENT AND ITS EMPLOYEES ARE NOT LIABLE FOR CIVIL DAMAGES, EXCEPT DAMAGES FOR GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT, FOR THEIR ACTS OR OMISSIONS THAT ARE DIRECTLY RELATED TO A HAZARDOUS MATERIAL INCIDENT. *1210*

368 *(House Bill No. 326; Cocchiarella)* AN ACT PROVIDING THE RIGHT OF AN EMPLOYEE OF A PRIVATE OR PUBLIC EMPLOYMENT AGENCY OR LABOR UNION, A BUILDING CODE COMPLIANCE INSPECTOR, AN EMPLOYEE OF THE DEPARTMENT OF COMMERCE, A PERSON WHO IS PROFESSIONALLY RESPONSIBLE FOR A JOB SITE, OR A LICENSED ELECTRICIAN OR LICENSED PLUMBER TO ASK A PERSON WORKING AT A JOB SITE FOR PROOF OF LICENSURE AS AN

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369 *(House Bill No. 340; Nelson)* AN ACT ADDING SEXUAL ASSAULT ON A CHILD, SEXUAL INTERCOURSE WITHOUT CONSENT INVOLVING A CHILD, INCEST INVOLVING A CHILD, AND RITUAL ABUSE OF A MINOR TO THE LIST OF OFFENSES THAT DEPRIVE A PARENT OF THE RIGHT TO BAR THE CHILD'S ADOPTION BY NOT CONSENTING IN WRITING TO ADOPTION OF THE CHILD; REVISING THE LAW EXCUSING CONSENT FOR ADOPTION IN THE CASE OF A PARENT WHO HAS COMMITTED CERTAIN CRIMES AGAINST THE CHILD TO EXCUSE CONSENT FROM A PARENT WHO HAS COMMITTED CERTAIN CRIMES AGAINST ANY CHILD; PROVIDING FOR TERMINATION OF PARENTAL RIGHTS IN CERTAIN INSTANCES; AMENDING SECTION 40-8-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1211*

370 *(House Bill No. 351; Peck)* AN ACT AUTHORIZING THE BOARD OF REGENTS TO DISPOSE OF UNIVERSITY LAND; ESTABLISHING PROCEDURES FOR THE DISPOSITION OF UNIVERSITY LAND; REQUIRING THE CONCURRENCE OF THE BOARD OF LAND COMMISSIONERS FOR THE SALE OR EXCHANGE OF UNIVERSITY LAND; AMENDING SECTIONS 20-25-422 AND 77-1-101, MCA; AND PROVIDING AN EFFECTIVE DATE. *1213*

371 *(House Bill No. 352; Peck)* AN ACT IMPLEMENTING THE CONSTITUTIONAL REQUIREMENT FOR STRICT ACCOUNTABILITY FOR REVENUE RECEIVED AND SPENT BY THE STATE BY PROHIBITING UNITS OF THE UNIVERSITY SYSTEM FROM TRANSFERRING CERTAIN FUNDS OR PROPERTY TO A NONPROFIT CORPORATION OR FOUNDATION ESTABLISHED FOR THE BENEFIT OF A UNIT OF THE UNIVERSITY SYSTEM UNLESS CERTAIN CONDITIONS ARE MET; AND PROVIDING AN EFFECTIVE DATE. *1216*

372 *(House Bill No. 356; Boharski)* AN ACT IMPLEMENTING TRUTH IN SENTENCING BY MAKING THE TIME A PRISONER WILL ACTUALLY SERVE MORE APPARENT; CHANGING GOOD TIME, PAROLE, AND CONSECUTIVE SENTENCE PROVISIONS; ABOLISHING GOOD TIME AS OF FEBRUARY 1, 1997; ABOLISHING THE DESIGNATION OF CRIMINALS AS DANGEROUS OR NONDANGEROUS FOR PURPOSES OF PAROLE; AMENDING SECTIONS 44-2-601, 46-18-401, 46-18-402, 46-23-201, 46-23-202, 46-23-216, 46-23-217, 46-23-426, 53-30-105, AND 53-30-132, MCA; REPEALING SECTIONS 46-18-404 AND 53-30-105, MCA; AND PROVIDING EFFECTIVE DATES. *1217*

373 *(House Bill No. 360; Quilici)* AN ACT PROVIDING AN EXCEPTION TO THE ORIGINAL COST RULE WHEN A PUBLIC UTILITY PURCHASES CERTAIN PROPERTY; AMENDING SECTION 69-3-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1222*

374 *(House Bill No. 404; McCulloch)* AN ACT CLARIFYING THE ALLOCATION OF PETITION SIGNATURES TO LEGISLATIVE DISTRICTS; AMENDING SECTION 13-27-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1223*

375 *(House Bill No. 405; Nelson)* AN ACT ALLOWING THE FORMATION OF VOLUNTARY PURCHASING POOLS FOR DISABILITY INSURANCE; ASSIGNING THE COMMISSIONER OF INSURANCE CERTAIN DUTIES REGARDING VOLUNTARY PURCHASING POOLS; PROVIDING GUIDELINES FOR COLLECTION OF CHARGES AND PREMIUMS;

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REVISING ASSOCIATIONS ELIGIBLE TO PURCHASE GROUP DISABILITY INSURANCE POLICIES; AND AMENDING SECTION 33-22-501, MCA. *1224*

376 *(House Bill No. 457; Vick)* AN ACT PROHIBITING THE POSSESSION OR CONSUMPTION OF TOBACCO PRODUCTS BY MINORS; PROVIDING FOR CRIMINAL MONETARY PENALTIES OR FOR ADJUDICATION BY A YOUTH COURT UPON CONVICTION; AND AMENDING SECTION 41-5-203, MCA. *1227*

377 *(House Bill No. 466; Nelson)* AN ACT REVISING THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT; REVISING DEFINITIONS; CLARIFYING REIMBURSEMENT TREATMENT; REVISING RESTRICTIONS ON PREMIUM RATES; RESTRICTING THE AUTHORITY OF THE COMMISSIONER OF INSURANCE TO ADOPT RULES; PROHIBITING THE COMMISSIONER OF INSURANCE FROM REQUIRING PRIOR APPROVAL OF RATING METHODS AND PREMIUMS; DELETING EFFECTIVE DATES RELATED TO THE DEVELOPMENT OF BENEFIT PLANS AND THE COMMISSIONER'S APPROVAL OF THE PLANS; PROVIDING FOR WAIVERS OF COVERAGE BY EMPLOYEES; ELIMINATING THE HEALTH BENEFIT PLAN COMMITTEE; PROVIDING FOR THE CONTENT OF BASIC AND STANDARD HEALTH BENEFIT PLANS; REQUIRING AN ANNUAL ACTUARIAL REVIEW OF THE SMALL EMPLOYER CARRIER REINSURANCE PROGRAM; CHANGING THE COMPOSITION OF THE BOARD OF THE MONTANA SMALL EMPLOYER REINSURANCE PROGRAM; AMENDING SECTIONS 33-22-1803, 33-22-1804, 33-22-1809, 33-22-1811, 33-22-1818, 33-22-1819, 33-22-1820, AND 33-22-1821, MCA; AND REPEALING SECTION 33-22-1812, MCA. *1228*

378 *(House Bill No. 511; Johnson)* AN ACT CREATING THE HEALTH CARE ADVISORY COUNCIL; PROVIDING FOR MEMBERSHIP, MEETINGS, COORDINATION, AND STAFF SUPPORT; PROVIDING FOR A TRANSITIONAL MEETING BETWEEN THE HEALTH CARE ADVISORY COUNCIL AND THE MONTANA HEALTH CARE AUTHORITY; MAINTAINING THE RESPONSIBILITY OF THE STATE HEALTH PLAN WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; ELIMINATING THE MONTANA HEALTH CARE AUTHORITY; TRANSFERRING THE RESPONSIBILITY FOR THE HEALTH CARE DATA BASE TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; TRANSFERRING THE RESPONSIBILITY FOR CERTIFICATES OF PUBLIC ADVANTAGE TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 33-22-1809, 50-4-502, 50-4-601, 50-4-603, 50-4-604, 50-4-609, 50-4-610, 50-4-611, AND 50-4-612, MCA; REPEALING SECTIONS 50-1-201, 50-4-101, 50-4-102, 50-4-201, 50-4-202, 50-4-301, 50-4-302, 50-4-303, 50-4-304, 50-4-305, 50-4-306, 50-4-307, 50-4-308, 50-4-309, 50-4-310, 50-4-311, 50-4-401, 50-4-402, 50-4-501, AND 50-4-503, MCA, AND SECTION 21, CHAPTER 606, LAWS OF 1993; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . *1246*

379 *(House Bill No. 556; Simon)* AN ACT GENERALLY REVISING STATE INSURANCE LAWS; PROVIDING FOR THE DISCLOSURE OF MATERIAL TRANSACTIONS; CREATING A RISK-BASED CAPITAL FOR INSURERS ACT; AMENDING SECTIONS 2-6-109, 33-1-207, 33-1-208, 33-1-209, 33-1-311, 33-1-413, 33-1-501, 33-2-117, 33-2-301, 33-2-302, 33-2-305, 33-2-307, 33-2-501, 33-2-521, 33-2-523, 33-2-525, 33-2-526, 33-2-528, 33-2-529, 33-2-531, 33-2-701, 33-2-705, 33-2-708, 33-2-803, 33-2-806, 33-2-820, 33-2-1111, 33-2-1201, 33-2-1216, 33-2-1217, 33-2-1218, 33-2-1394, 33-2-1510, 33-2-1605, 33-3-431, 33-4-202, 33-4-203, 33-5-401, 33-7-117, 33-10-201, 33-10-202, 33-11-102, 33-11-104, 33-11-108, 33-14-304, 33-15-

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301, 33-15-303, 33-16-202, 33-16-235, 33-17-102, 33-17-211, 33-17-405, 33-17-503, 33-17-603, 33-18-212, 33-18-301, 33-22-131, 33-22-132, 33-22-201, 33-22-202, 33-22-301, 33-22-303, 33-22-504, 33-22-508, 33-22-1120, 33-22-1803, 33-22-1811, 33-22-1819, 33-30-102, 33-30-107, 33-30-108, 33-30-202, 33-30-204, 33-30-311, 33-30-1001, AND 33-31-111, MCA; REPEALING SECTIONS 33-30-312 AND 33-30-313, MCA; AND PROVIDING EFFECTIVE DATES. *1257*

380 *(House Bill No. 564; Trexler)* AN ACT REVISING THE TIME PERIODS RELATING TO LIVESTOCK GRAZING TRANSPORTATION PERMITS; PROVIDING THAT TRANSPORTATION PERMITS FOR GRAZING PURPOSES ARE VALID FOR A PERIOD OF 8 MONTHS FROM THE DATE OF ISSUANCE; AMENDING SECTION 81-3-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1349*

381 *(Senate Bill No. 76; Swysgood)* AN ACT EXTENDING THE JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET; AMENDING SECTION 11, CHAPTER 387, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1352*

382 *(Senate Bill No. 80; Keating)* AN ACT EXEMPTING FROM OVERTIME REQUIREMENTS AN EMPLOYEE EMPLOYED AS A RADIO ANNOUNCER, NEWS EDITOR, OR CHIEF ENGINEER IN A SECOND- OR THIRD-CLASS CITY OR A TOWN; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1353*

383 *(Senate Bill No. 124; Crismore)* AN ACT MODIFYING THE MANDATORY REQUIREMENT FOR SANITARY INSPECTIONS OF SCHOOLHOUSES, CHURCHES, THEATERS, JAILS, AND OTHER BUILDINGS TO A DISCRETIONARY REQUIREMENT FOR PUBLIC HEALTH INSPECTIONS; MODIFYING THE ENFORCEMENT PROVISIONS; AND AMENDING SECTION 50-1-203, MCA. *1356*

384 *(Senate Bill No. 158; Waterman)* AN ACT IMPLEMENTING LONG-TERM CARE REFORM; STATING THE PURPOSE AND POLICY OF THE STATE IN REGARD TO PROVIDING STATE PROGRAMS OF ASSISTANCE FOR THE ELDERLY AND FOR PERSONS WITH DISABILITIES; DIRECTING STATE AGENCY COOPERATION IN THE DEVELOPMENT, IMPLEMENTATION, AND COORDINATION OF STATE PROGRAMS OF ASSISTANCE FOR THE ELDERLY AND FOR PERSONS WITH DISABILITIES; AND REQUIRING A REPORT TO THE 55TH LEGISLATURE ON THE PROGRESS OF LONG-TERM CARE REFORM. *1357*

385 *(Senate Bill No. 167; Benedict)* AN ACT PROVIDING FOR THE REVIEW OF FEDERAL MANDATES TO STATE AND LOCAL GOVERNMENTS; REQUIRING AGENCIES TO IMPLEMENT FEDERAL MANDATES IN THE MOST COST-EFFECTIVE MANNER; PROVIDING FOR LEGISLATIVE REVIEW AND OVERSIGHT; REQUIRING A STUDY AND REPORT ON FEDERAL MANDATES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1359*

386 *(Senate Bill No. 174; Jacobson)* AN ACT REVISING CERTAIN PROVISIONS OF THE LOCAL CITIZEN REVIEW BOARD PILOT PROGRAM; PROVIDING THAT PROGRAM ADMINISTRATIVE PROCEDURES BE ADOPTED BY THE SUPREME COURT RATHER THAN THE YOUTH COURT; DESIGNATING THE DISTRICT COURT JUDGE RATHER THAN THE YOUTH COURT JUDGE AS THE ENTITY TO ADMINISTER THE LOCAL CITIZEN REVIEW BOARD PILOT PROGRAM; INCREASING THE TIME ALLOWED FOR THE DEPARTMENT OF FAMILY SERVICES TO RESPOND TO RECOMMENDATIONS OF THE LOCAL CITIZEN REVIEW BOARD; GRANTING JUDICIAL IMMUNITY TO

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387 *(Senate Bill No. 193; Doherty)* AN ACT GENERALLY REVISING THE LAWS GOVERNING ELECTIONS; ENCOURAGING ELECTOR PARTICIPATION BY CONSOLIDATING THE TIMES AT WHICH ISSUES ARE SUBMITTED TO ELECTORS; ESTABLISHING UNIFORM TIMES FOR THE OPENING AND CLOSING OF POLLS; AND AMENDING SECTIONS 7-2-2215, 7-2-2605, 7-2-2709, 7-2-4104, 7-2-4106, 7-2-4902, 7-3-103, 7-3-149, 7-3-176, 7-3-186, 7-3-187, 7-3-192, 7-3-1205, 7-3-1208, 7-3-1229, 7-3-1231, 7-3-4208, 7-3-4213, 7-3-4222, 7-3-4223, 7-3-4305, 7-3-4310, 7-3-4311, 7-5-133, 7-5-136, 7-5-4321, 7-6-2344, 7-6-4255, 7-7-2223, 7-7-2227, 7-7-2229, 7-7-2237, 7-7-4226, 7-7-4227, 7-7-4235, 7-7-4426, 7-7-4427, 7-8-4201, 7-11-305, 7-11-307, 7-12-4243, 7-13-2208, 7-13-2231, 7-13-2323, 7-13-2341, 7-13-4204, 7-14-210, 7-14-1134, 7-14-2205, 7-14-2504, 7-14-4404, 7-14-4512, 7-14-4642, 7-15-2111, 7-15-4408, 7-16-2411, 7-16-2442, 7-31-106, 7-31-107, 7-31-109, 7-32-235, 7-34-2110, 7-34-2414, 7-35-2106, 22-1-303, 22-1-402, 67-11-303, 76-1-604, 85-9-206, AND 85-9-623, MCA. *1370*

388 *(Senate Bill No. 208; Mesaros)* AN ACT GENERALLY REVISING THE LAWS RELATING TO CONFINEMENT COSTS FOR INMATES, INCLUDING COSTS OF MEDICAL CARE; PROVIDING THAT THE BOARD OF COUNTY COMMISSIONERS MAY ESTARLISH THE RATE OF DAILY CREDIT FOR CONFINEMENT COSTS; AMENDING SECTIONS 7-32-2222, 7-32-2242, 7-32-2245, 46-18-403, AND 46-19-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1402*

389 *(Senate Bill No. 218; Christiaens)* AN ACT GENERALLY REVISING LANDLORD AND TENANT LAWS; ALLOWING ALL LANDLORDS TO ADOPT WRITTEN RULES AND REQUIRING DISTRIBUTION TO TENANTS; PROVIDING REMEDIES FOR CERTAIN BREACHES OF A RENTAL AGREEMENT BY A TENANT; REVISING NOTICE REQUIREMENTS FOR TERMINATION OF A MOBILE HOME RENTAL AGREEMENT; REVISING SECURITY DEPOSIT DEDUCTIONS; AND AMENDING SECTIONS 70-24-311, 70-24-422, 70-24-436, AND 70-25-201, MCA. *1404*

390 *(Senate Bill No. 222; Cole)* AN ACT REQUIRING THE COUNTY TREASURER TO DEPOSIT CERTAIN FEES COLLECTED BY THE SHERIFF IN THE COUNTY GENERAL FUND UNLESS THE COUNTY HAS INSTITUTED A PUBLIC SAFETY LEVY IN WHICH CASE THE FEES MUST BE DEPOSITED IN THE ACCOUNT ESTABLISHED TO FUND PUBLIC SAFETY SERVICES; AMENDING SECTIONS 7-6-2513 AND 7-32-2141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1409*

391 *(Senate Bill No. 272; Grosfield)* AN ACT ELIMINATING, UNDER CERTAIN CONDITIONS, THE REQUIREMENT THAT THE SURVIVING SPOUSE OF A JOINT TENANCY THAT DOES NOT REQUIRE A PERSONAL REPRESENTATIVE FILE AN APPLICATION WITH THE DEPARTMENT OF REVENUE FOR INHERITANCE TAX PURPOSES; REVISING THE INFORMATION REQUIREMENTS THAT MUST BE FILED BY THE SURVIVING SPOUSE FOR THE RELEASE OF THE LIEN FOR INHERITANCE TAXES; AMENDING SECTIONS 7-4-2613, 72-16-502, AND 72-16-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICARILITY DATE. . *1410*

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392 *(Senate Bill No. 295; Jacobson)* AN ACT ESTABLISHING CRITERIA FOR THE ISSUANCE OF SPECIAL PARKING PERMITS; LIMITING THE USE OF SPECIAL PARKING PLACES; LIMITING THE TERM OF A HANDICAP PARKING PERMIT TO A MAXIMUM PERIOD OF 3 YEARS; AND AMENDING SECTIONS 49-4-301, 49-4-302, AND 49-4-305, MCA. *1413*

393 *(Senate Bill No. 297; Doherty)* AN ACT CLARIFYING THE OFFENSES OF FAILING TO CARRY AN APPROVED INSURANCE CARD IN A MOTOR VEHICLE AND FAILING TO EXHIBIT THE INSURANCE CARD UPON DEMAND; PROVIDING THAT A PERSON CONVICTED OF ONE OF THOSE OFFENSES MUST BE ASSESSED 5 POINTS UNDER THE HABITUAL TRAFFIC OFFENDER LAW; AND AMENDING SECTIONS 61-6-301, 61-6-302, 61-6-304, AND 61-11-203, MCA. . *1416*

394 *(Senate Bill No. 353; Halligan)* AN ACT GENERALLY REVISING JUDICIAL PROCEDURES; PROVIDING FOR APPOINTMENT OF A NONATTORNEY AS GUARDIAN AD LITEM IN A CASE INVOLVING SUPPORT, CUSTODY, AND VISITATION; ALLOWING DISTRICT COURT JUDGES TO APPOINT JUDGES PRO TEMPORE OR SPECIAL MASTERS TO CONDUCT PRELIMINARY, NONDISPOSITIVE PROCEEDINGS IN CRIMINAL CASES; PROVIDING FOR THE COSTS OF A JUDGE PRO TEMPORE OR SPECIAL MASTER TO BE PAID BY A CONVICTED DEFENDANT; AMENDING SECTIONS 3-5-113, 3-5-116, 40-4-205, AND 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1419*

395 *(Senate Bill No. 373; Foster)* AN ACT ESTABLISHING CRITERIA FOR THE ISSUANCE OF BONDS FOR METAL MINE RECLAMATION ACTIVITIES; AND AMENDING SECTION 82-4-338, MCA. *1424*

396 *(Senate Bill No. 401; Christiaens)* AN ACT REQUIRING THAT CORONERS, HEALTH CARE FACILITIES, AND HEALTH CARE PROVIDERS INFORM MORTUARY PERSONNEL IF A DECEASED INDIVIDUAL HAD AN INFECTIOUS DISEASE AT THE TIME OF DEATH; AND AMENDING SECTION 50-16-530, MCA. *1425*

397 *(Senate Bill No. 407; Swysgood)* AN ACT ESTABLISHING THE VALUE OF INDUSTRIAL GARNETS AND ASSOCIATED BYPRODUCTS FOR NET PROCEEDS PROPERTY TAX PURPOSES AND FOR RESOURCE INDEMNITY TRUST TAX PURPOSES; EXEMPTING 1,000 TONS OF ROUGHER GARNET CONCENTRATE, UNDER CERTAIN CONDITIONS, FROM THE NET PROCEEDS TAX; ESTABLISHING A SPECIFIC RESOURCE INDEMNITY TRUST TAX RATE FOR INDUSTRIAL GARNETS AND ASSOCIATED BYPRODUCTS; AMENDING SECTIONS 15-6-131, 15-8-111, 15-23-103, 15-23-106, 15-23-115, 15-23-502, 15-23-503, 15-23-521, 15-38-103, AND 15-38-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *1426*

398 *(Senate Bill No. 416; Swysgood)* AN ACT GENERALLY REVISING THE LAWS GOVERNING CERTIFICATE OF NEED FOR HEALTH CARE FACILITIES; REMOVING BATCHING AND CHALLENGE PERIODS; REMOVING CERTAIN FUNCTIONS FROM CERTIFICATE OF NEED; REVISING APPLICATION, REVIEW, AND APPEAL PROCEDURES; CONTINGENTLY REPEALING THE CERTIFICATE OF NEED PROGRAM; AMENDING SECTIONS 20-7-436, 33-31-111, 33-31-203, 33-31-221, 50-4-102, 50-5-101, 50-5-207, 50-5-301, 50-5-302, 50-5-304, 50-5-306, AND 50-5-310, MCA; REPEALING SECTIONS 50-4-311, 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, AND 50-5-316, MCA; AND PROVIDING EFFECTIVE DATES. *1434*

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399 *(Senate Bill No. 418; Gage)* AN ACT REVISING THE TAXABILITY OF TAX BENEFIT ITEMS FOR MONTANA INDIVIDUAL INCOME TAX PURPOSES; INCORPORATING THE FEDERAL TAX BENEFIT LAW RELATED TO THE RECOVERY OF AMOUNTS DEDUCTED IN A PRIOR TAX YEAR; DISALLOWING DEDUCTIONS FOR EXPENSES ASSOCIATED WITH THE PRODUCTION OF EXEMPT OR EXCLUDABLE INCOME; AMENDING SECTIONS 15-30-111 AND 15-30-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *1455*

400 *(House Bill No. 8; Bergsagel)* AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 53RD LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE. *1458*

401 *(House Bill No. 18; Zook)* AN ACT INCREASING THE STATUTORY APPROPRIATION FOR AN EMERGENCY OR DISASTER DUE TO FIRE; AMENDING SECTION 10-3-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1463*

402 *(House Bill No. 121; Simon)* AN ACT REVISING THE SCOPE OF PODIATRY TO INCLUDE THE HUMAN ANKLE; REQUIRING CERTIFICATION BY THE BOARD OF MEDICAL EXAMINERS FOR ANKLE SURGERY; LIMITING THE SITES AT WHICH ANKLE SURGERY MAY BE PERFORMED; AND AMENDING SECTIONS 37-6-101 AND 37-6-102, MCA. *1464*

403 *(House Bill No. 150; Ahner)* AN ACT CLARIFYING THE COMPOSITION AND DUTIES OF A YOUTH PLACEMENT COMMITTEE; REQUIRING A YOUTH PLACEMENT COMMITTEE TO MAKE RECOMMENDATIONS FOR PLACEMENT OF A YOUTH PRIOR TO COMMITMENT OF THE YOUTH TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTIONS 41-5-525, 41-5-526, AND 41-5-527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1465*

404 *(House Bill No. 158; Fuchs)* AN ACT REVISING THE STATE SCAFFOLDING LAWS; AUTHORIZING THE USE OF COMPARATIVE NEGLIGENCE LAW IN DETERMINING LIABILITY; AMENDING SECTION 50-77-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1467*

405 *(House Bill No. 164; Harper)* AN ACT PROVIDING FOR THE COLLECTION OF A TAX ON COMPRESSED NATURAL GAS AT THE RETAIL LEVEL; ESTABLISHING REQUIREMENTS FOR DEALER LICENSING AND RECORDKEEPING AND PROCEDURES FOR INSPECTION, PAYMENT OF TAX, PENALTIES, AND ADMINISTRATION RELATED TO THE TAX; REQUIRING THE OWNERS OF CERTAIN VEHICLES POWERED BY COMPRESSED NATURAL GAS TO PURCHASE A TEMPORARY TRIP PERMIT; AMENDING SECTIONS 15-70-104 AND 15-71-102, MCA; AND PROVIDING EFFECTIVE DATES. *1468*

406 *(House Bill No. 197; Ewer)* AN ACT REVISING THE TYPES OF INVESTMENT OF PUBLIC MONEY ALLOWED BY LOCAL GOVERNING BODIES; SUBJECTING SCHOOL DISTRICT TRUSTEES TO SIMILAR LIMITATIONS; AMENDING SECTIONS 7-6-202, 7-6-206, AND 20-9-213,

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MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION. *1475*

407 *(House Bill No. 214; Kottel)* AN ACT GENERALLY REVISING THE LAWS RELATING TO REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE PUBLIC OF REGISTRATION INFORMATION NECESSARY FOR PUBLIC PROTECTION; AND AMENDING SECTIONS 46-18-201, 46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, AND 46-23-507, MCA. *1478*

408 *(House Bill No. 232; Jore)* AN ACT REQUIRING THAT A WRITTEN STATEMENT OF A SHERIFF'S CAUSE FOR DENIAL OF A CONCEALED WEAPON PERMIT BE GIVEN TO THE APPLICANT; CLARIFYING THE APPEAL OF THE DENIAL OF A PERMIT; ALLOWING THE FAMILIARITY WITH FIREARMS PREREQUISITE TO A PERMIT TO BE SATISFIED BY THE APPLICANT PHYSICALLY SHOWING THE SHERIFF OR THE SHERIFF'S DESIGNEE THAT THE APPLICANT KNOWS HOW TO HANDLE FIREARMS; ALLOWING THE GOVERNOR TO NEGOTIATE CONCEALED WEAPON PERMIT RECIPROCITY AGREEMENTS WITH OTHER STATES AND REQUIRING THE GOVERNOR TO ESTABLISH AN ADVISORY COUNCIL; ADDRESSING THE FEDERAL BACKGROUND CHECK AND 5-DAY WAITING PERIOD REQUIREMENTS FOR A HANDGUN PURCHASE; AMENDING SECTIONS 45-8-321 AND 45-8-324, MCA; AND PROVIDING CONTINGENT TERMINATION DATES. *1484*

409 *(House Bill No. 286; Pavlovich)* AN ACT CLARIFYING THAT IT IS AN UNLAWFUL ACT FOR ANY BREWER OR BEER IMPORTER TO COERCE, ATTEMPT TO COERCE, OR PERSUADE A BEER WHOLESALER TO SET A PRICE FOR ANY PRODUCT; AND AMENDING SECTION 16-3-221, MCA. *1486*

410 *(House Bill No. 295; Holland)* AN ACT REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO ISSUE ORDERS OF NONCOMPLIANCE FOR FAILURE TO MEET CAMPAIGN FINANCE REPORTING REQUIREMENTS; AND AMENDING SECTION 13-37-121, MCA. *1488*

411 *(House Bill No. 305; Kadas)* AN ACT AUTHORIZING THE ISSUANCE OF A LOAN TO THE DEPARTMENT OF JUSTICE TO BE APPROPRIATED FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE LITIGATION IN THE CLARK FORK RIVER BASIN; EXTENDING REPAYMENT AND PROVIDING FOR INTEREST ON PREVIOUS LOANS; AND PROVIDING AN EFFECTIVE DATE. *1489*

412 *(House Bill No. 325; Simpkins)* AN ACT GENERALLY REVISING THE LAWS RELATING TO CERTAIN RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; DESIGNATING JURISDICTION AND VENUE FOR JUDICIAL REVIEW OF FINAL ADMINISTRATIVE DECISIONS OF THE BOARD; PROHIBITING INDEPENDENT CONTRACTORS FROM BECOMING MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING THE CALCULATION OF THE PERS SURVIVORSHIP BENEFIT;

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CLARIFYING THE DEFINITION OF DEPUTY SHERIFF FOR PURPOSES OF DETERMINING ELIGIBILITY FOR MEMBERSHIP IN THE SHERIFFS' RETIREMENT SYSTEM; ALLOWING THE BOARD TO USE MAILING LISTS OF PERSONS PARTICIPATING IN THE RETIREMENT SYSTEMS ADMINISTERED BY THE BOARD FOR PURPOSES OF MAILING MATERIALS ON BEHALF OF CERTAIN THIRD PARTIES FOR A FEE; AMENDING DISABILITY PROVISIONS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS ADMINISTERED BY THE BOARD TO CONFORM WITH PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT; PROVIDING FOR CONVERSION OF THE DISABILITY RETIREMENT OF A MEMBER OF THOSE SYSTEMS TO A SERVICE RETIREMENT WHEN THE MEMBER REACHES NORMAL RETIREMENT AGE; CLARIFYING THE TYPES OF INVESTMENTS THAT THE BOARD OF INVESTMENTS IS REQUIRED TO INVEST IN FOR THE SOCIAL SECURITY AGENCY ACCOUNT; PROVIDING FOR THE DIRECT TRANSFER OF MEMBERS' CONTRIBUTIONS BETWEEN PUBLIC RETIREMENT SYSTEMS; AMENDING SECTIONS 2-6-109, 19-1-202, 19-1-602, 19-2-303, 19-2-401, 19-2-406, 19-2-704, 19-3-403, 19-3-509, 19-3-511, 19-3-1015, 19-3-1205, 19-5-612, 19-6-612, 19-6-802, 19-7-101, 19-7-612, 19-7-802, 19-8-712, 19-8-902, 19-9-405, 19-9-904, 19-13-404, 19-13-804, AND 19-20-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE PROVISIONS. . *1490*

413 *(House Bill No. 354; Mills)* AN ACT REVISING THE LAWS GOVERNING MICROBUSINESS DEVELOPMENT; INCREASING THE ALLOWABLE AMOUNT OF A MICROBUSINESS LOAN; APPROPRIATING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF COMMERCE FOR MICROBUSINESS DEVELOPMENT; AMENDING SECTIONS 17-6-407 AND 17-6-411, MCA; AND PROVIDING AN EFFECTIVE DATE. *1509*

414 *(House Bill No. 578; Johnson)* AN ACT MAKING PERMANENT THE JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES; APPROPRIATING FUNDS FOR USE BY THE OVERSIGHT COMMITTEE; AND PROVIDING AN EFFECTIVE DATE. *1513*

415 *(Senate Bill No. 90; Baer)* AN ACT PROVIDING IMMUNITY FROM LIABILITY TO CERTAIN FIREARMS SAFETY INSTRUCTORS FOR THE CONDUCT, ACTS, AND OMISSIONS OF STUDENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1515*

416 *(Senate Bill No. 135; Cole)* AN ACT CLARIFYING THE REQUIREMENT THAT ACTIVITIES, SERVICES, OR FACILITIES THAT ARE REQUIRED OF LOCAL GOVERNMENTS OR SCHOOL DISTRICTS BY THE STATE MUST CONTAIN A METHOD TO FULLY FUND THE ACTIVITIES, SERVICES, OR FACILITIES; PROHIBITING THE INTRODUCTION OF A BILL VIOLATING SECTION 1-2-112 OR 1-2-113, MCA; REQUIRING AN ESTIMATE OF THE FISCAL IMPACT OF A BILL BEFORE INTRODUCTION OF THE BILL; PROVIDING FOR ENFORCEMENT; AND AMENDING SECTIONS 1-2-112 AND 1-2-113, MCA. *1516*

417 *(Senate Bill No. 210; Bishop)* AN ACT GENERALLY REVISING AND CLARIFYING THE LAW REGARDING VIOLATIONS OF FISH AND GAME CRIMINAL STATUTES AND RESIDENCY REQUIREMENTS; REVISING DEFINITIONS; REVISING PENALTIES; ALLOWING FORMER GAME WARDENS TO BE APPOINTED AS EX OFFICIO WARDENS; CREATING THE OFFENSE OF UNLAWFUL POSSESSION OF A HUNTING LICENSE OR PERMIT OF ANOTHER; CREATING THE FELONY OFFENSE OF SALE OF WILDLIFE OR WILDLIFE PARTS; PROVIDING THAT ONE-HALF OF THE MONEY FROM CERTAIN

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418 *(Senate Bill No. 234; Grosfield)* AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW STATE GOVERNMENT BY GENERALLY REVISING THE ENVIRONMENTAL AND NATURAL RESOURCE FUNCTIONS OF STATE GOVERNMENT; CREATING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW; REORGANIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AS THE DEPARTMENT OF PUBLIC HEALTH; REVISING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AS THE BOARD OF PUBLIC HEALTH; ELIMINATING THE DEPARTMENT OF STATE LANDS; ELIMINATING THE BOARD OF NATURAL RESOURCES AND CONSERVATION; TRANSFERRING THE BOARD OF LAND COMMISSIONERS' POWERS, EXCEPT RULEMAKING AUTHORITY, TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTIONS 2-1-202, 2-1-209, 2-15-104, 2-15-212, 2-15-213, 2-15-225, 2-15-1519, 2-15-1523, 2-15-1845, 2-15-1875, 2-15-2101, 2-15-2104, 2-15-2105, 2-15-2108, 2-15-2110, 2-15-2204, 2-15-2210, 2-15-3307, 2-15-3308, 7-1-111, 7-7-4407, 7-8-2507, 7-13-202, 7-13-231, 7-13-4502, 7-13-4513, 7-13-4517, 7-14-120, 7-22-2151, 7-22-2403, 7-22-2409, 7-22-2418, 7-33-2402, 7-34-2301, 7-34-2412, 13-2-402, 15-6-135, 15-6-201, 15-32-102, 15-32-106, 15-32-203, 15-60-101, 15-60-201, 17-5-101, 20-5-402, 20-6-621, 20-6-624, 20-7-436, 20-25-212, 20-25-604, 23-1-302, 23-2-522, 27-6-206, 27-32-302, 37-2-104, 37-2-301, 37-7-103, 37-9-101, 37-14-322, 37-21-101, 37-27-320, 37-27-321, 37-30-403, 37-30-412, 37-30-422, 37-31-204, 37-31-331, 37-41-104, 37-42-102, 40-1-107, 40-1-203, 40-1-204, 40-1-206, 40-1-208, 40-1-209, 40-5-235, 40-5-704, 40-6-105, 40-6-106, 40-6-123, 40-6-126, 40-6-128, 50-1-101, 50-1-302, 50-2-101, 50-2-116, 50-4-201, 50-4-304, 50-4-402, 50-5-101, 50-5-602, 50-5-1103, 50-6-102, 50-6-103, 50-6-104, 50-6-203, 50-6-207, 50-6-302, 50-8-101, 50-9-102, 50-10-101, 50-15-101, 50-15-304, 50-15-702, 50-16-101, 50-16-102, 50-16-602, 50-16-701, 50-16-1003, 50-17-102, 50-18-102, 50-18-103, 50-18-104, 50-18-105, 50-18-109, 50-18-113, 50-19-101, 50-19-201, 50-19-303, 50-20-104, 50-21-102, 50-23-101, 50-23-103, 50-23-105, 50-23-106, 50-30-102, 50-31-103, 50-31-307, 50-34-101, 50-36-101, 50-40-103, 50-44-102, 50-49-103, 50-50-102, 50-51-102, 50-52-101, 50-53-102, 50-60-204, 50-60-803, 50-70-103, 50-70-110, 50-71-109, 50-78-102, 52-2-111, 52-2-202, 52-2-303, 52-2-704, 52-2-731, 52-2-733, 52-2-735, 52-3-605, 52-3-811, 52-4-204, 52-4-205, 53-2-322, 53-6-106, 53-6-107, 53-6-108, 53-6-110, 53-6-401, 53-20-213, 53-20-305, 53-20-307, 53-21-145, 53-21-165, 53-21-201, 53-21-204, 53-21-212, 60-11-111, 67-4-211, 69-3-1204, 69-3-1205, 72-16-217, 72-17-102, 75-1-201, 75-2-103, 75-2-502, 75-3-103, 75-3-401, 75-3-502, 75-3-602, 75-5-103, 75-5-221, 75-5-1105, 75-5-1106, 75-6-102, 75-7-117, 75-7-401, 75-7-411, 75-10-103, 75-10-203, 75-10-403, 75-10-404, 75-10-501, 75-10-503, 75-10-532, 75-10-602, 75-10-623, 75-10-625, 75-10-626, 75-10-701, 75-10-802, 75-10-903, 75-10-913, 75-10-918, 75-10-950, 75-10-1003, 75-10-1101, 75-11-203, 75-11-302, 75-20-104, 75-20-202, 75-20-205, 75-20-208, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-218, 75-20-219, 75-20-220, 75-20-221, 75-20-225, 75-20-226, 75-20-301, 75-20-302, 75-20-303, 75-20-304, 75-20-401, 75-20-402, 75-20-406, 75-20-501, 75-20-1202, 76-2-411, 76-2-412, 76-3-504, 76-3-505, 76-4-102,

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419 *(Senate Bill No. 347; Crismore)* AN ACT AUTHORIZING THE DEPARTMENT OF STATE LANDS TO NEGOTIATE RECIPROCAL ACCESS TO FACILITATE THE MANAGEMENT OF ISOLATED STATE FOREST LANDS; ALLOWING THE BOARD TO WAIVE SURVEY REQUIREMENTS; AND DEFINING "ANALYSIS REQUIREMENTS". *1879*

420 *(Senate Bill No. 376; Christiaens)* AN ACT PROVIDING FOR THE REGULATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; PROVIDING FOR EXCEPTIONS FROM REGULATION; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ISSUE AND REVOKE CERTIFICATES OF AUTHORITY; PROVIDING FOR ELIGIBILITY AND APPLICATIONS FOR CERTIFICATES; PROVIDING MINIMUM RESERVE AND FUNDING REQUIREMENTS; REQUIRING CERTAIN REPORTS; PROVIDING PENALTIES; PROVIDING FOR THE APPLICATION OF THE MONTANA INSURANCE CODE; REQUIRING CERTAIN DISCLOSURES IN INSURANCE POLICIES ISSUED BY SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AND AMENDING SECTION 33-1-1111, MCA. *1879*

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421 *(Senate Bill No. 387; Beck)* AN ACT CLARIFYING APPLICATION OF COMMON-LAW RULES OF ISSUE AND CLAIM PRECLUSION TO THE ADJUDICATION OF EXISTING WATER RIGHTS; EXPANDING THE WATER CLAIM APPEAL PROCESS; CLARIFYING STANDING FOR OBJECTIONS TO WATER CLAIMS; ESTABLISHING A WATER ADJUDICATION ADVISORY COMMITTEE; AMENDING SECTIONS 3-7-103, 85-2-233, AND 85-2-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1887*

422 *(Senate Bill No. 395; Bartlett)* AN ACT REVISING THE LAWS GOVERNING THE BOARD OF NURSING; AUTHORIZING THE BOARD OF NURSING TO GIVE TEMPORARY APPROVAL TO PRACTICE IN A FIELD OF ADVANCED PRACTICE REGISTERED NURSING TO A PERSON WHO HAS COMPLETED THE ADVANCED PRACTICE REGISTERED NURSING EDUCATION REQUIRED IN ORDER TO APPLY TO TAKE THE PERSON'S FIRST NATIONAL CERTIFICATION EXAMINATION; PROVIDING RULEMAKING AUTHORITY FOR TEMPORARY APPROVAL TO PRACTICE; AMENDING SECTIONS 37-8-202 AND 37-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1890*

423 *(House Bill No. 420; Ewer)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE ISSUANCE AND REPAYMENT OF BONDS BY LOCAL GOVERNMENTS AND SCHOOL DISTRICTS; AMENDING SECTIONS 7-6-1103, 7-7-109, 7-7-2210, 7-7-2238, 7-7-2251, 7-7-2252, 7-7-2254, 7-7-2255, 7-7-2256, 7-7-2257, 7-7-2259, 7-7-2262, 7-7-2268, 7-7-2269, 7-7-2301, 7-7-2302, 7-7-2304, 7-7-2407, 7-7-2501, 7-7-4209, 7-7-4236, 7-7-4254, 7-7-4255, 7-7-4257, 7-7-4259, 7-7-4262, 7-7-4268, 7-7-4269, 7-7-4301, 7-7-4302, 7-7-4304, 7-7-4422, 7-7-4424, 7-7-4428, 7-7-4432, 7-7-4433, 7-7-4434, 7-12-2174, 7-12-4206, 7-15-4322, 20-9-408, 20-9-412, 20-9-427, 20-9-429, 20-9-430, 20-9-431, 20-9-432, 20-9-433, 20-9-434, 20-15-404, AND 90-5-103, MCA; REPEALING SECTIONS 7-7-2267, 7-7-2275, 7-7-4267, AND 20-9-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *1893*

424 *(House Bill No. 462; Ewer)* AN ACT REVISING CERTAIN WORKERS' COMPENSATION LAWS; DEFINING "VOLUNTEER"; INCLUDING CERTAIN VOLUNTEER FIREFIGHTERS AND AMBULANCE SERVICE WORKERS IN THE DEFINITION OF EMPLOYEE; EXEMPTING A VOLUNTEER FROM THE COVERAGE UNDER THE WORKERS' COMPENSATION LAWS UNLESS COVERAGE IS ELECTED; AUTHORIZING THE BOARD OF INVESTMENTS TO INVEST STATE FUND MONEY IN COMMON STOCK UNDER CERTAIN CONDITIONS; AUTHORIZING THE STATE FUND TO USE EXISTING DEBT COLLECTION PROCEDURES AS AN OPTION; AMENDING SECTIONS 39-71-118, 39-71-743, 39-71-2320, AND 39-71-2363, MCA; AND PROVIDING EFFECTIVE DATES. *1917*

425 *(House Bill No. 464; Harper)* AN ACT AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADDRESS INCIDENTS OF DISEASE OR ILLEGAL INTRODUCTION OF FISH; AMENDING SECTION 87-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *1921*

426 *(House Bill No. 478; Story)* AN ACT GENERALLY REVISING THE NATURAL STREAMBED AND LAND PRESERVATION ACT; AMENDING SECTIONS 75-7-103, 75-7-106, 75-7-111, 75-7-112, 75-7-113, 75-7-114, 75-7-117, 75-7-121, 75-7-122, AND 75-7-123, MCA; AND PROVIDING EFFECTIVE DATES. *1924*

427 *(House Bill No. 488; Tuss)* AN ACT PROHIBITING INSURERS FROM DENYING, CANCELING, FAILING TO RENEW, OR LIMITING COVER-

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428 *(House Bill No. 512; DeBruycker)* AN ACT REQUIRING THAT AT LEAST 50 PERCENT OF FISHING LICENSE FUNDS ALLOCATED FOR OPERATION AND MAINTENANCE OF FISHING ACCESS SITES AND STREAM, RIVER, AND LAKE FRONTAGES BE PRIORITIZED AND EXPENDED FOR WEED CONTROL, STREAMBANK RESTORATION, AND GENERAL OPERATION AND MAINTENANCE; REQUIRING A REPORT ON PROGRAM SUCCESS TO THE 56TH LEGISLATURE; AMENDING SECTION 87-1-605, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. *1932*

429 *(House Bill No. 518; Tuss)* AN ACT ESTABLISHING UNIFORM PROCEDURES FOR THE LICENSING, DISCIPLINE, AND GENERAL REGULATION OF PROFESSIONS AND OCCUPATIONS REGULATED BY LICENSING BOARDS ADMINISTRATIVELY ATTACHED TO THE DEPARTMENT OF COMMERCE; ELIMINATING THE STATE LICENSE REQUIREMENT FOR EMPLOYMENT AGENCIES AND POLYGRAPH EXAMINERS; ELIMINATING THE HERITAGE OF MONTANA ENTERPRISE ACT; AMENDING SECTIONS 17-7-502, 37-1-101, 37-1-121, 37-1-131, 37-3-309, 37-3-313, 37-3-323, 37-3-403, 37-4-307, 37-4-402, 37-4-406, 37-5-307, 37-6-302, 37-6-303, 37-6-304, 37-6-311, 37-7-101, 37-7-302, 37-7-303, 37-7-321, 37-7-606, 37-8-409, 37-8-431, 37-9-101, 37-9-203, 37-9-302, 37-9-304, 37-9-305, 37-10-304, 37-11-303, 37-11-304, 37-11-308, 37-12-201, 37-12-307, 37-12-322, 37-13-306, 37-15-102, 37-15-202, 37-15-308, 37-16-202, 37-16-301, 37-16-407, 37-17-202, 37-17-306, 37-17-307, 37-18-202, 37-18-303, 37-18-305, 37-18-307, 37-19-301, 37-19-306, 37-19-401, 37-19-702, 37-20-302, 37-20-403, 37-22-304, 37-23-103, 37-23-202, 37-23-205, 37-24-202, 37-24-308, 37-25-307, 37-26-201, 37-26-403, 37-27-105, 37-28-201, 37-28-202, 37-28-203, 37-29-201, 37-29-303, 37-29-306, 37-29-403, 37-30-301, 37-30-305, 37-31-322, 37-32-305, 37-34-201, 37-34-305, 37-40-203, 37-40-304, 37-47-307, 37-50-203, 37-50-314, 37-50-317, 37-51-204, 37-51-306, 37-51-311, 37-53-211, 37-53-302, 37-54-105, 37-54-210, 37-54-211, 37-54-302, 37-54-310, 37-54-311, 37-60-202, 37-60-301, 37-60-312, 37-60-411, 37-65-306, 37-66-307, 37-67-202, 37-67-320, 37-68-201, 37-68-310, 37-68-312, 37-71-212, AND 37-71-213, MCA; REPEALING SECTIONS 20-26-1401, 20-26-1402, 20-26-1403, 20-26-1404, 20-26-1407, 20-26-1408, 20-26-1409, 20-26-1410, 20-26-1411, 37-3-322, 37-4-306, 37-4-321, 37-4-323, 37-4-324, 37-4-404, 37-5-303, 37-5-304, 37-5-311, 37-6-310, 37-7-203, 37-7-304, 37-7-305, 37-7-311, 37-7-607, 37-7-608, 37-7-710, 37-8-407, 37-8-417, 37-8-430, 37-8-433, 37-8-441, 37-8-442, 37-9-303, 37-9-311, 37-10-204, 37-10-303, 37-10-308, 37-10-311, 37-11-202, 37-11-307, 37-11-309, 37-11-320, 37-11-321, 37-12-303, 37-12-321, 37-13-305, 37-13-311, 37-13-312, 37-13-313, 37-13-314, 37-14-304, 37-14-321, 37-15-305, 37-15-309, 37-15-321, 37-16-406, 37-16-411, 37-16-414, 37-17-304, 37-17-311, 37-17-318, 37-18-304, 37-18-311, 37-19-305, 37-19-311, 37-19-312, 37-19-316, 37-19-404, 37-20-409, 37-22-306, 37-22-311, 37-22-312, 37-23-204, 37-23-207, 37-23-211, 37-23-212, 37-24-305, 37-24-307, 37-24-309, 37-25-306, 37-26-404, 37-26-408, 37-26-409, 37-26-410, 37-27-213, 37-27-216, 37-28-206, 37-28-210, 37-28-301, 37-29-311, 37-29-312, 37-29-313, 37-29-321, 37-30-306, 37-30-309, 37-30-502, 37-31-306, 37-31-307, 37-31-332, 37-32-303, 37-32-310, 37-34-304, 37-34-306, 37-34-308, 37-40-303, 37-40-311, 37-47-341, 37-47-342, 37-47-343, 37-47-346, 37-50-321, 37-50-322, 37-50-336, 37-51-206, 37-51-321, 37-51-322, 37-51-604, 37-51-606, 37-53-501, 37-53-502, 37-53-503, 37-54-401, 37-54-402, 37-54-406, 37-54-417, 37-60-212, 37-60-307, 37-60-308, 37-60-321, 37-60-322, 37-62-101, 37-62-102, 37-62-201, 37-62-202, 37-62-203, 37-62-204, 37-62-205, 37-62-206,

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430 *(House Bill No. 530; Wiseman)* AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY CREATING AN ALTERNATIVE ACCOUNTING METHOD FOR LOCAL GOVERNMENT ENTITIES; AMENDING SECTIONS 2-7-503, 2-7-504, 2-7-513, 7-3-4371, 7-3-4372, 7-6-2111, 7-6-2112, 7-6-2202, 7-6-2203, 7-6-2211, 7-6-2213, 7-6-2302, 7-6-2311, 7-6-2312, 7-6-2314, 7-6-2315, 7-6-2316, 7-6-2317, 7-6-2318, 7-6-2319, 7-6-2320, 7-6-2321, 7-6-2324, 7-6-2325, 7-6-2330, 7-6-2331, 7-6-2525, 7-6-4103, 7-6-4104, 7-6-4105, 7-6-4106, 7-6-4107, 7-6-4108, 7-6-4109, 7-6-4110, 7-6-4111, 7-6-4112, 7-6-4113, 7-6-4119, 7-6-4121, 7-6-4124, 7-6-4131, 7-6-4132, 7-6-4133, 7-6-4203, 7-6-4205, 7-6-4221, 7-6-4223, 7-6-4224, 7-6-4225, 7-6-4226, 7-6-4227, 7-6-4228, 7-6-4229, 7-6-4230, 7-6-4231, 7-6-4232, 7-6-4235, 7-6-4236, 7-6-4240, 7-6-4241, 7-6-4408, AND 15-10-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2007*

431 *(House Bill No. 544; Tuss)* AN ACT APPROPRIATING MONEY TO THE BOARD OF REGENTS TO PROVIDE FINANCIAL ASSISTANCE TO RESIDENT NONBENEFICIARY STUDENTS ATTENDING TRIBALLY CONTROLLED COMMUNITY COLLEGES IN MONTANA; PROVIDING REQUIREMENTS FOR RECEIPT OF MONEY; PROVIDING FOR A REVERSION OF UNSPENT FUNDS TO THE GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2035*

432 *(House Bill No. 561; Larson)* AN ACT INCREASING THE MOTORCYCLE SAFETY TRAINING FEE; AMENDING SECTION 20-7-514, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *2037*

433 *(House Bill No. 577; Kadas)* AN ACT PROVIDING THAT WHEN THE LEGISLATURE IS IN SESSION, IT MAY REVIEW MONEY FROM A NONSTATE OR NONFEDERAL SOURCE THAT WOULD BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND AND THAT IS RESTRICTED BY LAW OR BY THE TERMS OF A CONTRACT, A TRUST AGREEMENT, OR A DONATION OF $5,000 OR MORE THAT IS ACCOMPANIED BY A WRITTEN AGREEMENT; AMENDING SECTION 17-7-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2037*

434 *(House Bill No. 41; Smith)* AN ACT PROVIDING A PROCEDURE BY WHICH MEDICATION MAY BE INVOLUNTARILY ADMINISTERED TO A PATIENT AT A MENTAL HEALTH FACILITY; PROVIDING PROTECTIONS FOR THE PATIENT; PROVIDING FOR AN ANNUAL REPORT TO THE GOVERNOR; AND AMENDING SECTIONS 53-21-104 AND 53-21-127, MCA. *2039*

435 *(House Bill No. 209; Cobb)* AN ACT REVISING THE MONTANA STATE INCOME TAX BY PROVIDING A MINIMUM STANDARD DEDUCTION, ADJUSTED TO THE 1980 INFLATION FACTOR, AND BY INCREASING TIIE MINIMUM INCOME FILING REQUIREMENT; AMENDING SECTIONS 15-30-122 AND 15-30-142, MCA; AND PROVIDING AN APPLICABILITY DATE AND A COORDINATION PROVISION. *2043*

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436 *(House Bill No. 240; Soft)* AN ACT ESTABLISHING THE JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION; PROVIDING FOR APPOINTMENTS TO THE COMMISSION; DIRECTING THE COMMISSION TO CONDUCT A COMPREHENSIVE REVIEW AND ASSESSMENT OF THE MONTANA JUVENILE JUSTICE SYSTEM AND JUVENILE MENTAL HEALTH SYSTEM; APPROPRIATING FUNDS FOR THE OPERATION OF THE COMMISSION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. *2045*

437 *(House Bill No. 279; Ohs)* AN ACT AUTHORIZING THE CREATION OF STATE DEBT BY THE ISSUANCE OF GENERAL OBLIGATION RENEWABLE RESOURCE BONDS; REPEALING SECTION 85-1-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2048*

438 *(House Bill No. 380; McKee)* AN ACT ESTABLISHING THE EXTENDED JURISDICTION PROSECUTION ACT; PROVIDING THAT A YOUTH COURT MAY IMPOSE AN ADULT CRIMINAL SENTENCE THAT IS STAYED ON CERTAIN CONDITIONS; PROVIDING THAT A YOUTH COURT JUDGE MAY SENTENCE A YOUTH TO A STATE YOUTH CORRECTIONAL FACILITY; PROVIDING THAT A YOUTH COURT JUDGE MAY RETAIN JURISDICTION IN CERTAIN DISPOSITIONS; PROVIDING FOR THE TRANSFER OF A YOUTH COURT CASE TO DISTRICT COURT AFTER DISPOSITION IN YOUTH COURT; AMENDING SECTIONS 41-5-206 AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2049*

439 *(House Bill No. 539; Soft)* AN ACT AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; ASSESSING TOBACCO EDUCATION FEES; REQUIRING LICENSE SUSPENSIONS FOR PERSONS FAILING TO COMPLY WITH THE LAW; PROVIDING FOR THE DISPLAY OF WARNING SIGNS; PROHIBITING THE SALE OF SINGLE CIGARETTES; PROVIDING STATUTORY APPROPRIATIONS; AND AMENDING SECTIONS 16-11-144, 16-11-304, 16-11-307, 16-11-308, AND 17-7-502, MCA. *2058*

440 *(House Bill No. 588; Ohs)* AN ACT CLARIFYING THE PROPERTY TAX REFUND PROVISIONS RELATED TO ERRORS IN THE DESCRIPTION OR LOCATION OF REAL PROPERTY OR IMPROVEMENTS; AMENDING SECTION 15-16-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . *2062*

441 *(Senate Bill No. 13; Halligan)* AN ACT REVISING THE MANNER IN WHICH A PERSON IS GIVEN NOTICE THAT THE PERSON'S DRIVER'S LICENSE OR DRIVING PRIVILEGES WILL BE SUSPENDED IF THE PERSON FAILS TO APPEAR IN COURT OR PAY ASSESSED FINES, COSTS, OR RESTITUTION AFTER BEING CITED FOR OR CONVICTED OF A MOTOR VEHICLE VIOLATION; AND AMENDING SECTION 61-5-214, MCA. *2063*

442 *(Senate Bill No. 27; Grosfield)* AN ACT CLARIFYING CERTAIN REVENUE ALLOCATIONS; AMENDING SECTIONS 15-35-108, 15-65-121, 17-5-704, 17-7-502, 60-3-201, AND 85-1-603, MCA; AND PROVIDING EFFECTIVE DATES. *2064*

443 *(Senate Bill No. 55; Eck)* AN ACT CLARIFYING THE RESPONSIBILITY OF THE DEPARTMENT OF FAMILY SERVICES FOR PAYMENT OF ADMINISTRATIVE COSTS ASSOCIATED WITH THE PROVISION OF PROTECTIVE SERVICES; AMENDING SECTIONS 52-1-110 AND 53-2-322, MCA; AND PROVIDING AN EFFECTIVE DATE. *2072*

444 *(Senate Bill No. 189; Weldon)* AN ACT REQUIRING NOTICE AT THE TIME OF SEIZURE OF A DRIVER'S LICENSE BY A PEACE OFFICER

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OF A RIGHT TO A HEARING UPON SUSPENSION OR REVOCATION OF THE LICENSE; EXTENDING THE EFFECTIVE PERIOD FOR A TEMPORARY DRIVING PERMIT FROM 72 HOURS TO 5 DAYS; AUTHORIZING A DISTRICT COURT TO STAY SUSPENSION OR REVOCATION ACTION PENDING THE HEARING; AUTHORIZING THE DEPARTMENT OF JUSTICE TO SUSPEND OR REVOKE A DRIVER'S LICENSE OF A TRIBAL MEMBER THAT IS SEIZED UNDER AUTHORITY OF A TRIBAL GOVERNMENT OR BY A TRIBAL PEACE OFFICER; AUTHORIZING THE DEPARTMENT TO RECOGNIZE A TRIBAL COURT ORDER SUSPENDING, REVOKING, OR REINSTATING THE DRIVER'S LICENSE OF A TRIBAL MEMBER PURSUANT TO TRIBAL LAW OR REGULATION REQUIRING ALCOHOL OR DRUG TESTING OF MOTOR VEHICLE OPERATORS; AMENDING SECTIONS 61-8-402 AND 61-8-403, MCA; AND PROVIDING EFFECTIVE DATES. *2074*

445 *(Senate Bill No. 201; Burnett)* AN ACT AUTHORIZING DRUG OR ALCOHOL TESTING AS A CONDITION OF CONTINUED EMPLOYMENT WHEN THE EMPLOYER HAS REASON TO BELIEVE THAT AN EMPLOYEE MAY HAVE CONTRIBUTED TO A WORK-RELATED ACCIDENT THAT CAUSES DEATH OR PERSONAL INJURY OR PROPERTY DAMAGE IN EXCESS OF $1,500; PROVIDING FOR REMOVAL OF REQUIRED TEST FROM EMPLOYEE'S WORK RECORD; AMENDING SECTION 39-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2077*

446 *(Senate Bill No. 219; Doherty)* AN ACT PROVIDING FOR A MANDATORY FINE FOR THE POSSESSION AND STORAGE OF DANGEROUS DRUGS; PROVIDING THAT THE REVENUE FROM THE FINE BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTION 17-7-502, MCA; REPEALING SECTIONS 15-25-101, 15-25-102, 15-25-111, 15-25-112, 15-25-113, 15-25-114, 15-25-115, 15-25-121, 15-25-122, AND 15-25-123, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. *2078*

447 *(Senate Bill No. 316; Bishop)* AN ACT PROVIDING FOR THE USE OF A PRELIMINARY ALCOHOL SCREENING TEST FOR A PERSON SUSPECTED OF DRIVING UNDER THE INFLUENCE; ESTABLISHING THAT IT IS UNLAWFUL FOR A PERSON UNDER AGE 21 TO DRIVE WITH AN ALCOHOL CONCENTRATION OF 0.02 OR MORE; PROHIBITING THE TRANSFER OF AN OWNER'S INTEREST IN A VEHICLE THAT IS SUBJECT TO TEMPORARY SEIZURE OR RENDERED INOPERABLE BECAUSE OF THE OWNER'S DRINKING AND DRIVING OFFENSE; REQUIRING A SENTENCING COURT TO TEMPORARILY SEIZE OR RENDER INOPERABLE THE VEHICLE OF A PERSON CONVICTED OF DRIVING WITH A SUSPENDED OR REVOKED LICENSE WHEN THE SUSPENSION OR REVOCATION IS BECAUSE OF THE PERSON'S DRINKING AND DRIVING OFFENSE; INCREASING TO 6 MONTHS THE SUSPENSION AND REVOCATION TIME PERIOD FOR A FIRST REFUSAL TO SUBMIT TO A BLOOD, BREATH, OR URINE TEST; PROVIDING THAT A FOURTH DRIVING WHILE UNDER THE INFLUENCE OFFENSE OR EXCESSIVE ALCOHOL CONCENTRATION OFFENSE CONSTITUTES A FELONY; PROVIDING THAT RECORDS OF CONVICTIONS FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; PROHIBITING DEFERRED PROSECUTIONS OR SENTENCING FOR DRIVING UNDER THE INFLUENCE OFFENSES OR FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES; AND AMENDING SECTIONS 46-16-130, 61-5-212, 61-8-402, 61-8-421, 61-8-714, AND 61-8-722, MCA. *2080*

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448 *(Senate Bill No. 339; Christiaens)* AN ACT REVISING INSURANCE COVERAGE FOR MENTAL ILLNESS, ALCOHOLISM, AND DRUG ADDICTION; REVISING THE DEFINITION OF MENTAL ILLNESS; DEFINING PARTIAL HOSPITALIZATION BENEFITS; ALLOWING USE OF PARTIAL HOSPITALIZATION BENEFITS IN LIEU OF INPATIENT BENEFITS; REDUCING THE LIMIT OF CALENDAR DAYS A YEAR FOR INPATIENT BENEFITS; ALLOWING APPLICATION OF SEPARATE COINSURANCE FACTORS FOR MENTAL ILLNESS AND FOR ALCOHOLISM AND DRUG ADDICTION AND RAISING THE LIMIT FOR MENTAL ILLNESS; AMENDING SECTIONS 33-22-702 AND 33-22-703, MCA; AND PROVIDING AN APPLICABILITY DATE. *2089*

449 *(Senate Bill No. 340; Crippen)* AN ACT PROVIDING FOR THE FORMATION, REGISTRATION, AND REGULATION OF LIMITED LIABILITY PARTNERSHIPS; AND AMENDING SECTIONS 30-13-201, 30-13-202, 30-13-206, 30-13-209, 30-13-213, 30-13-217, 35-10-102, 35-10-116, 35-10-307, 35-10-308, 35-10-312, 35-10-401, 35-10-621, 35-10-628, 35-10-629, 35-10-635, AND 35-10-636, MCA. *2092*

450 *(Senate Bill No. 372; Stang)* AN ACT REQUIRING PAYMENT OF COMPENSATION TO STATE EMPLOYEES FOR TIME SPENT IN ANSWERING SUBPOENAS IN CIVIL ACTIONS; ALLOWING STATE OFFICES TO REQUIRE REIMBURSEMENT FROM THE PARTY ISSUING THE SUBPOENA; AND PROVIDING AN EFFECTIVE DATE. *2104*

451 *(Senate Bill No. 412; Grosfield)* AN ACT GENERALLY REVISING THE TAXATION OF OIL AND NATURAL GAS; ELIMINATING THE OIL AND NATURAL GAS NET PROCEEDS TAX, THE LOCAL GOVERNMENT SEVERANCE TAX, THE STATE OIL AND GAS SEVERANCE TAX, AND THE OIL AND GAS PRIVILEGE AND LICENSE TAX; IMPOSING OIL AND NATURAL GAS PRODUCTION TAXES BASED ON THE TYPE OF WELL AND TYPE OF PRODUCTION; PROVIDING FOR THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES; PROVIDING A DISBURSEMENT TO SCHOOL DISTRICTS AND LOCAL GOVERNMENTS TO REPLACE NET PROCEEDS AND LOCAL GOVERNMENT SEVERANCE TAX REVENUE; EXEMPTING OIL AND NATURAL GAS PRODUCTION FROM THE RESOURCE INDEMNITY TRUST TAX; PROVIDING AN ALLOCATION OF OIL AND NATURAL GAS PRODUCTION TAX REVENUE FOR THE PURPOSES OF THE MONTANA RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT ACT; PROVIDING FOR THE ACCELERATED PAYMENT OF LOCAL GOVERNMENT SEVERANCE TAXES FOR PRODUCTION YEAR 1995; AUTHORIZING COUNTIES TO ESTABLISH AN OIL AND NATURAL GAS ACCELERATED TAX FUND; ALLOWING SCHOOL DISTRICTS TO USE ACCELERATED LOCAL GOVERNMENT SEVERANCE TAX PAYMENTS FOR ANY BUDGET PURPOSE; AMENDING SECTIONS 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-1-501, 15-6-208, 15-16-102, 15-23-103, 15-23-104, 15-23-106, 15-23-115, 15-38-105, 15-38-121, 15-38-202, 17-7-502, 20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, 20-10-146, 82-11-118, 82-11-135, AND 82-11-162, MCA; REPEALING SECTIONS 15-16-121, 15-23-601, 15-23-602, 15-23-603, 15-23-605, 15-23-606, 15-23-607, 15-23-608, 15-23-609, 15-23-610, 15-23-611, 15-23-612, 15-23-613, 15-23-614, 15-23-621, 15-23-631, 15-36-101, 15-36-102, 15-36-103, 15-36-104, 15-36-105, 15-36-106, 15-36-107, 15-36-108, 15-36-109, 15-36-110, 15-36-112, 15-36-113, 15-36-114, 15-36-120, 15-36-121, 15-36-122, 15-36-126, 82-11-131, 82-11-132, AND 82-11-133, MCA, AND CHAPTER 33, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY PROVISIONS. *2105*

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452 *(Senate Bill No. 415; Grosfield)* AN ACT CLARIFYING THAT THE ENVIRONMENTAL QUALITY PROTECTION FUND ALLOWS FOR PRIVATE FUNDS TO BE DONATED TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REMEDIATE A SPECIFIC RELEASE AT A SPECIFIC FACILITY; AMENDING SECTION 75-10-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2146*

453 *(Senate Bill No. 424; Gage)* AN ACT REVISING THE CALCULATION OF UNIT VALUE FOR LOCAL GOVERNMENT SEVERANCE TAX PURPOSES; EXCLUDING FROM THE UNIT VALUE CALCULATION NET PROCEEDS TAXES ON OIL AND NATURAL GAS THAT ARE ATTRIBUTABLE TO AN EMERGENCY LEVY IMPOSED IN FISCAL YEAR 1990 ON 1988 PRODUCTION; AMENDING SECTION 15-36-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2148*

454 *(House Bill No. 7; Bergsagel)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE. *2156*

455 *(House Bill No. 17; Wiseman)* AN ACT PROVIDING PAY ADJUSTMENTS FOR STATE EMPLOYEES IN THE STATEWIDE, TEACHERS', LIQUOR STORE OCCUPATIONS, AND BLUE-COLLAR PAY PLANS; PROVIDING PAY ADJUSTMENTS FOR JUDGES AND ELECTED STATE OFFICIALS; PROVIDING EXPENSE PAYMENT ADJUSTMENTS FOR LEGISLATORS; PROVIDING THAT THE SALARY FOR THE POSITION IN THE DEPARTMENT OF JUSTICE OF TRAINING COORDINATOR FOR COUNTY ATTORNEYS IS THE SAME AS THAT ESTABLISHED FOR A FULL-TIME COUNTY ATTORNEY IN A COUNTY WITH A POPULATION IN EXCESS OF 30,000; GENERALLY REVISING THE LAWS RELATING TO STATE EMPLOYEE COMPENSATION AND THE STATEWIDE CLASSIFICATION PLAN; PROVIDING AN APPROPRIATION TO FUND PAY ADJUSTMENTS; REQUIRING THAT EMPLOYEES IN COLLECTIVE BARGAINING UNITS RATIFY COLLECTIVE BARGAINING AGREEMENTS PRIOR TO RECEIVING PAY ADJUSTMENTS; PROVIDING PAY ADJUSTMENTS FOR MEMBERS OF THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 2-16-405, 2-18-101, 2-18-103, 2-18-203, 2-18-301, 2-18-303, 2-18-304, 2-18-312, 2-18-313, 2-18-314, 2-18-315, 2-18-703, 3-2-104, 3-5-211, 5-2-301, 15-2-102, 19-5-101, AND 44-4-101, MCA; REPEALING SECTIONS 2-16-404 AND 2-18-305, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. *2159*

456 *(House Bill No. 19; Bergsagel)* AN ACT ALLOCATING COAL TAX REVENUE TO THE LONG-RANGE BUILDING PROGRAM; ESTABLISHING A LONG-RANGE BUILDING PROGRAM ACCOUNT; TERMINATING THE ALLOCATION OF COAL TAX REVENUE TO HIGHWAY RECONSTRUCTION; TRANSFERRING FUNDS FROM THE LONG-RANGE BUILDING PROGRAM ACCOUNT TO THE GENERAL FUND UPON OCCURRENCE OF A CONTINGENCY; AMENDING SECTIONS 15-35-108 AND 16-11-119, MCA, AND SECTIONS 1 AND 4, CHAPTER 191, LAWS OF 1991; AND PROVIDING AN EFFECTIVE DATE. *2186*

457 *(House Bill No. 167; Shea)* AN ACT PROVIDING FOR SCHOOL DISTRICT COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL GUN-FREE SCHOOLS ACT OF 1994; AMENDING SECTION 20-5-202, MCA; AND PROVIDING AN EFFECTIVE DATE. *2191*

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458 *(House Bill No. 186; Kasten)* AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD PROTECTIVE SERVICES; DELETING REFERENCES TO "DEPENDENT YOUTH"; ADDING A CHILD'S GUARDIAN AS A MANDATORY REPORTER OF SUSPECTED CHILD ABUSE OR NEGLECT; ADDING PERSONS TO WHOM CONFIDENTIAL RECORDS MAY BE DISCLOSED; PROVIDING FOR LIMITED IMMUNITY FOR A PERSON WHO PROVIDES OR USES EMPLOYMENT-RELATED CHILD ABUSE INFORMATION; CLARIFYING THAT A CHILD'S HEARSAY STATEMENTS MAY BE USED AT A CONTESTED HEARING; CLARIFYING PROVISIONS REGARDING POTENTIAL COURT-ORDERED PLACEMENTS; REVISING LIMITED EMANCIPATION OPTIONS FOR YOUTH; LIMITING ACCESS OF RECORDS TO PARENTS WHOSE PARENTAL RIGHTS HAVE BEEN TERMINATED; CLARIFYING THAT CERTAIN FACILITIES MAY BE REGISTERED INSTEAD OF LICENSED; AMENDING SECTIONS 20-5-321, 20-7-422, 40-6-125, 40-6-126, 40-8-111, 41-3-102, 41-3-103, 41-3-201, 41-3-203, 41-3-205, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-408, 41-3-602, 41-3-603, 41-3-607, 41-3-609, 41-3-611, 52-1-103, 52-2-101, 52-2-112, 52-2-113, AND 52-2-211, MCA; REPEALING SECTION 41-3-1112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . *2192*

459 *(House Bill No. 195; Swanson)* AN ACT IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S ADVISORY COUNCIL ON PRIVATE LAND/PUBLIC WILDLIFE; CREATING PROGRAMS FOR HUNTER MANAGEMENT AND HUNTING ACCESS ENHANCEMENT WITHIN THE BLOCK MANAGEMENT PROGRAM; RESTRICTING THE LIABILITY OF LANDOWNERS WHO PARTICIPATE IN THE PROGRAMS; PROVIDING A MORATORIUM ON THE ISSUANCE OF NEW LAND-BASED HUNTING OUTFITTER LICENSES; REVISING THE CLASS B-11 RESIDENT SPONSOR LIMIT BY ALLOWING THE ISSUANCE OF ONLY 10 CERTIFICATES FOR EACH SPONSOR AND PROVIDING THAT ALL DEER HUNTING UNDER THE LICENSE MUST BE CONDUCTED ON THE SPONSOR'S DEEDED LAND; REVISING REQUIREMENTS FOR LICENSEES WHO USE AN OUTFITTER-RESERVED LICENSE; ALLOWING VARIABLE PRICING OF OUTFITTER-SPONSORED CLASS B-10 AND CLASS B-11 LICENSES; AMENDING SECTIONS 87-1-201, 87-1-242, 87-2-505, 87-2-510, AND 87-2-511, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND TERMINATION DATES. *2216*

460 *(House Bill No. 298; Galvin)* AN ACT INCREASING THE NUMBER OF HOURS A RETIREE MAY RETURN TO COVERED EMPLOYMENT UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM PRIOR TO A TEMPORARY REDUCTION IN SERVICE RETIREMENT BENEFITS; INCREASING THE EARNINGS LIMITATION FOR RETIRED MEMBERS WHO ARE 65 YEARS OF AGE AND OLDER; PROVIDING AN EXCEPTION; AMENDING SECTION 19-3-1106, MCA; AND PROVIDING AN EFFECTIVE DATE. *2225*

461 *(House Bill No. 309; Grimes)* AN ACT RELATING TO MEDICAL MALPRACTICE CLAIMS AND RECOVERIES; LIMITING NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE CASES; REVISING THE LAW RELATING TO PERIODIC PAYMENT OF FUTURE DAMAGES IN MEDICAL MALPRACTICE CASES; AMENDING SECTION 25-9-403, MCA; AND PROVIDING AN APPLICABILITY DATE. *2227*

462 *(House Bill No. 311; Grinde)* AN ACT PROVIDING FOR A REVIEW AND ASSESSMENT OF PROPOSED STATE GOVERNMENT EXECUTIVE BRANCH ACTIONS THAT MIGHT RESULT IN DEPRIVING A PROPERTY OWNER OF ALL OR PART OF THE USE OR ECONOMIC VALUE

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463 *(House Bill No. 349; Raney)* AN ACT CREATING THE FUTURE FISHERIES IMPROVEMENT PROGRAM; PROVIDING FOR THE PROTECTION AND ENHANCEMENT OF MONTANA FISHERIES THROUGH VOLUNTARY ENHANCEMENT OF SPAWNING STREAMS AND OTHER HABITATS FOR THE NATURAL REPRODUCTION OF FISH AND GROWTH OF POPULATIONS OF WILD FISH; DIRECTING A PORTION OF STATE FISHERIES MONEY TO FUND THE FUTURE FISHERIES IMPROVEMENT PROGRAM; AUTHORIZING THE GOVERNOR TO APPOINT A FUTURE FISHERIES REVIEW PANEL AND ESTABLISHING THE DUTIES OF THE PANEL; DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ESTABLISH AND ADMINISTER THE PROGRAM; REQUIRING THE DEPARTMENT TO SUBMIT REGULAR PROGRAM PROGRESS REPORTS TO THE FISH, WILDLIFE, AND PARKS COMMISSION AND TO SUBMIT A PROGRESS REPORT AND THE ANTICIPATED EXPENSES AND RELATED PROJECTIONS TO THE LEGISLATURE; AND PROVIDING EFFECTIVE DATES AND TERMINATION DATES. 2233

464 *(House Bill No. 338; Grimes)* AN ACT AMENDING THE METAL MINE RECLAMATION LAWS TO PROVIDE RECLAMATION REQUIREMENTS FOR OPEN PITS AND ROCK FACES; AND AMENDING SECTION 82-4-336, MCA. 2236

465 *(House Bill No. 366; Kasten)* AN ACT GENERALLY REVISING THE LAWS RELATED TO ADULT PROTECTIVE SERVICES; INCORPORATING PROTECTIVE SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES INTO THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT; EXPANDING THE LIST OF PERSONS TO WHOM CERTAIN CONFIDENTIAL INFORMATION MAY BE RELEASED; GRANTING LIMITED IMMUNITY TO PERSONS WHO PROVIDE OR USE BACKGROUND OR EMPLOYMENT SCREENING INFORMATION REGARDING AN EMPLOYEE'S OR VOLUNTEER'S HISTORY OF ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION IN MAKING AN EMPLOYMENT DECISION; REVISING DEFINITIONS; AMENDING SECTIONS 52-3-202, 52-3-207, 52-3-803, 52-3-804, 52-3-813, AND 52-3-814, MCA; REPEALING SECTIONS 52-4-101, 52-4-102, 52-4-103, 52-4-104, 52-4-105, 52-4-106, 52-4-107, 52-4-108, AND 52-4-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2239

466 *(House Bill No. 429; Molnar)* AN ACT GENERALLY REVISING YOUTH COURT CONFIDENTIALITY PROVISIONS; PROVIDING THAT CERTAIN YOUTH CASE RECORDS MUST BE SEALED WHEN THE COURT'S JUDGMENTS HAVE BEEN FULFILLED; CLARIFYING THAT JUSTICE'S COURT RECORDS RELATED TO A YOUTH CONTINUE TO BE A MATTER OF PUBLIC RECORD AFTER THE YOUTH REACHES 18 YEARS OF AGE; REQUIRING NOTIFICATION OF AND CONSULTATION WITH VICTIMS OF JUVENILE FELONY OFFENSES; AMENDING SECTIONS 41-5-521, 41-5-603, 41-5-604, 46-24-207, AND 52-2-211, MCA; REPEALING SECTIONS 41-5-601 AND 41-5-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2244

467 *(House Bill No. 444; Harper)* AN ACT PROVIDING REBUTTABLE PRESUMPTIONS IN CHILD CUSTODY PROCEEDINGS; ALLOWING A PARENT TO OBJECT AND HAVE A HEARING IN VISITATION PROCEEDINGS AND CUSTODY MODIFICATION PROCEEDINGS IF A

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468 *(House Bill No. 473; Knox)* AN ACT GENERALLY REVISING LOCAL SUBDIVISION LAWS; MODIFYING THE REQUIREMENTS FOR AN ENVIRONMENTAL ASSESSMENT; MODIFYING BONDING REQUIREMENTS FOR PUBLIC IMPROVEMENTS; MODIFYING PARK DEDICATION REQUIREMENTS; ESTABLISHING PAYMENT CRITERIA FOR THE EXTENSION OF CAPITAL FACILITIES; ESTABLISHING MITIGATION GUIDELINES; PROVIDING FOR SUITS AGAINST LOCAL GOVERNMENTS; AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-207, 76-3-507, 76-3-603, 76-3-608, AND 76-3-609, MCA; REPEALING SECTIONS 76-3-606 AND 76-3-607, MCA; AND PROVIDING AN APPLICABILITY DATE. 2255

469 *(House Bill No. 482; Grimes)* AN ACT REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION FOR A MINOR OR INCOMPETENT PERSON; PROVIDING A JUDICIAL WAIVER OF NOTIFICATION; PROVIDING PENALTIES; AMENDING SECTION 41-1-405, MCA; AND REPEALING SECTION 50-20-107, MCA. 2263

470 *(House Bill No. 514; DeBruycker)* AN ACT INCREASING THE VALUE OF PROJECTS FOR WHICH THE DEPABTMENT OF ADMINISTRATION MAY PREPARE WORKING DRAWINGS; AMENDING SECTION 18-2-111, MCA; AND PROVIDING AN EFFECTIVE DATE. 2267

471 *(House Bill No. 521; Wagner)* AN ACT REQUIRING CERTAIN STATE ADMINISTRATIVE AND LOCAL AGENCIES TO JUSTIFY THE ADOPTION OF RULES THAT ARE MORE STRINGENT THAN CORRESPONDING FEDERAL REGULATIONS; REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, AND LOCAL UNITS OF GOVERNMENT TO REVIEW AND REVISE CERTAIN RULES TO ENSURE COMPLIANCE WITH THIS ACT; AMENDING SECTIONS 50-2-116, 75-2-111, 75-2-301, 75-2-503, 75-3-201, 75-5-201, 75-5-311, 75-6-103, 75-10-204, 75-10-405, 75-10-603, 76-3-501, 76-3-504, 76-4-104, AND 80-15-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY PROVISIONS. 2268

472 *(House Bill No. 545; Murdock)* AN ACT EXEMPTING FROM PROPERTY TAXATION THE VALUE OF IMPROVEMENTS MADE TO COMMERCIAL BUILDINGS THAT REMOVE BARRIERS TO PERSONS WITH DISABILITIES. 2290

473 *(House Bill No. 552; Quilici)* AN ACT CHANGING THE DEPOSIT OF FUNDS COLLECTED FOR THE STATE WARRANT SYSTEM FROM THE SPECIAL REVENUE FUND TO THE INTERNAL SERVICE FUND; AMENDING SECTION 17-8-305, MCA; AND PROVIDING AN EFFECTIVE DATE. 2290

474 *(House Bill No. 562; Wennemar)* AN ACT DELETING THE AGRICULTURAL SPECIAL ELIGIBILITY CRITERIA FOR SOD, ORNAMENTAL, NURSERY, OR HORTICULTURAL PROPERTY THAT REQUIRED AT LEAST 10 ACRES IN THE PRODUCTION OF THOSE CROPS; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN APPLICABILITY DATE. 2291

475 *(House Bill No. 585; Bergsagel)* AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF $9 MILLION OF

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476 *(House Bill No. 600; Sliter)* AN ACT PROVIDING FLEXIBILITY FOR FUNDING THE STATE'S RECREATIONAL BOATING SAFETY PROGRAM BY ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONTRACT WITH COUNTIES TO IMPLEMENT PARTS OF THE PROGRAM; REDUCING FROM 25 PERCENT TO 20 PERCENT THE AMOUNT OF THE BOAT FEE IN LIEU OF TAX THAT MAY BE USED FOR IMPROVING REGIONAL BOATING FACILITIES AND ALLOCATING THAT AMOUNT FOR AN ADDITIONAL 7 YEARS; DELAYING TERMINATION OF THE BOATING ADVISORY COUNCIL FOR 7 YEARS; ALLOWING THE BOATING ADVISORY COUNCIL TO ADVISE THE DEPARTMENT ON THE EXPENDITURE OF ALL FUNDS IN THE MOTORBOAT ACCOUNT AND TO BE REIMBURSED FOR COSTS FROM THE MOTORBOAT ACCOUNT; REVISING THE FINE FOR FAILURE TO PAY THE BOAT FEE IN LIEU OF TAX; REMOVING LAMBETH STATE PARK FROM THE LIST OF PRIMITIVE PARKS IN ORDER TO ALLOW ROAD AND FACILITY IMPROVEMENTS AT THE PARK; ADDING BIG PINE MANAGEMENT AREA TO THE LIST OF PRIMITIVE PARKS; AMENDING SECTIONS 23-1-116, 23-2-518, 23-2-519, 23-2-533, AND 23-2-536, MCA, AND SECTION 6, CHAPTER 511, LAWS OF 1993; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 2294

477 *(House Bill No. 602; Kitzenberg)* AN ACT AUTHORIZING LOANS TO LOCAL GOVERNMENT FOR BUSINESSES ESTIMATED TO EMPLOY AT LEAST 50 PEOPLE; PROVIDING THAT LOANS MUST BE USED TO PROVIDE INFRASTRUCTURE FOR A BUSINESS; PROVIDING FOR REPAYMENT OF THE LOANS THROUGH INFRASTRUCTURE FEES; PROVIDING A TAX CREDIT FOR INFRASTRUCTURE FEES PAID; AMENDING SECTIONS 17-6-305, 17-6-309, 17-6-311, AND 17-6-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2297

478 *(House Bill No. 603; Zook)* AN ACT EXEMPTING CERTAIN CONSTRUCTION PROJECTS FROM CERTAIN STATE LAWS; AUTHORIZING FUNDING FOR THE PROJECTS; ESTABLISHING PARAMETERS AND CONDITIONS FOR THE PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2300

479 *(House Bill No. 272; Stovall)* AN ACT CLARIFYING CERTAIN LABOR LAWS AND TAX LAWS TO INCLUDE A SERVICE CHARGE RECEIVED BY EMPLOYEES OF THE FOOD, BEVERAGE, AND LODGING INDUSTRY; AMENDING SECTIONS 15-30-111, 15-30-201, 39-3-201, AND 39-3-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 2302

480 *(House Bill No. 537; Larson)* AN ACT PROHIBITING ESTABLISHMENTS THAT HAVE ONE OR MORE COMMON OWNERS AND VIDEO GAMING MACHINES FROM BEING WITHIN 150 FEET OF EACH OTHER; EXTENDING THE EXEMPTION PERIOD FOR PREMISES NOT MEETING CURRENT PREMISES APPROVAL REQUIREMENTS; AND AMENDING SECTION 23-5-117, MCA. 2307

481 *(Senate Bill No. 64; Gage)* AN ACT REVISING THE LAWS RELATING TO A YOUTH WHO POSSESSES OR ATTEMPTS TO PURCHASE AN INTOXICATING SUBSTANCE; AND AMENDING SECTIONS 16-6-314, 41-5-601, 41-5-602, 41-5-603, 41-5-604, 45-5-624, AND 61-2-302, MCA. . 2310

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482 *(Senate Bill No. 66; Lynch)* AN ACT PROVIDING THAT A PERSON CONVICTED OF A SPECIFIED NUMBER OF MAJOR VIOLENT OFFENSES MUST BE SENTENCED TO LIFE IN PRISON UNLESS THE DEATH PENALTY IS APPLICABLE AND IMPOSED; PROVIDING THAT THE LIFE SENTENCE BE SERVED ONLY IN PRISON AND BE SERVED WITH NO POSSIBILITY OF PAROLE OR EARLY RELEASE ON ANY GROUNDS; AMENDING SECTIONS 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, 45-5-503, 45-5-625, 45-5-627, 45-6-103, 46-18-111, 46-18-201, 46-18-222, 46-18-225, 46-18-502, 46-23-201, AND 46-23-411, MCA; AND PROVIDING EFFECTIVE DATES. *2317*

483 *(Senate Bill No. 98; Foster)* AN ACT PROMOTING CAMPAIGN REFORM AND INTEGRITY; AND CREATING THE CIVIL OFFENSE OF POLITICAL LIBEL. *2329*

484 *(Senate Bill No. 126; Beck)* AN ACT REVISING THE PROVISIONS UNDER WHICH AN AGENCY MAY CHARGE A FEE FOR PROVIDING CERTAIN PUBLIC INFORMATION; ALLOWING THE DEPARTMENT OF REVENUE TO CHARGE A FEE FOR PROVIDING INFORMATION FROM ANY PROPERTY VALUATION AND ASSESSMENT SYSTEM DATA BASE MAINTAINED BY THE DEPARTMENT; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY CHARGE FEDERAL AND STATE AGENCIES, BUT NOT LOCAL TAXING JURISDICTIONS AND CERTAIN STATE AGENCIES, A FEE FOR PROVIDING PROPERTY VALUATION AND ASSESSMENT SYSTEM DATA BASE INFORMATION; ALLOWING AN AGENCY TO CHARGE A FEE FOR PROVIDING ONLINE COMPUTER ACCESS TO ELECTRONIC INFORMATION; AMENDING SECTION 2-6-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2330*

485 *(Senate Bill No. 138; Mesaros)* AN ACT REVISING THE TAXATION OF CERTAIN LAND BY CHANGING THE CLASSIFICATION OF 1 ACRE OF QUALIFYING AGRICULTURAL LAND BENEATH CERTAIN IMPROVEMENTS FROM RESIDENTIAL TO AGRICULTURAL AND CLARIFYING THE VALUATION OF LAND DESCRIBED IN SECTION 15-6-133(1)(C), MCA; AMENDING SECTIONS 15-6-133, 15-6-134, 15-7-202, 15-7-206, AND 15-7-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICARILITY DATES. *2331*

486 *(Senate Bill No. 140; Toews)* AN ACT AUTHORIZING THE BOARD OF PUBLIC EDUCATION TO PLACE A WRITTEN REPRIMAND IN A PERSON'S CERTIFICATION FILE AS A RESULT OF A HEARING ON REVOCATION OR SUSPENSION OF A TEACHER, ADMINISTRATOR, OR SPECIALIST CERTIFICATE; AUTHORIZING THE BOARD OF PUBLIC EDUCATION TO INFORM A SCHOOL DISTRICT OF THE EXISTENCE OF A LETTER OF REPRIMAND UPON REQUEST; CLARIFYING THE PROCEDURE FOR NOTIFYING A PERSON WHEN THE BOARD OF PUBLIC EDUCATION INTENDS TO CONSIDER A LETTER OF REPRIMAND OR THE SUSPENSION OR REVOCATION OF A CERTIFICATE; AMENDING SECTION 20-4-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2337*

487 *(Senate Bill No. 144; Brooke)* AN ACT CLOSING THE UPPER CLARK FORK RIVER BASIN TO FURTHER APPROPRIATIONS; AMENDING THE DUTIES OF THE UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE; PROVIDING FOR A 10-YEAR UPPER CLARK FORK RIVER BASIN INSTREAM FLOW PILOT PROGRAM TO BENEFIT THE FISHERY RESOURCE; PROVIDING FOR THE AWARDING OF REASONABLE ATTORNEY FEES TO THE PREVAILING PARTY IN WATER USE PERMIT AND CHANGE APPROVAL PROCEEDINGS; AMENDING SECTIONS 85-2-102, 85-2-125, 85-2-335, 85-2-336, 85-2-338, 85-2-402,

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85-2-404, AND 85-2-436, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. 2339

488 *(Senate Bill No. 153; Brooke)* AN ACT CONFORMING CERTAIN DEFINITIONS TO THE FEDERAL SAFE DRINKING WATER ACT; AUTHORIZING THE BOABD OF HEALTH AND ENVIRONMENTAL SCIENCES TO ESTABLISH REQUIREMENTS BY RULE FOR VOLUNTARY PROGRAMS FOR CROSS-CONNECTIONS; SPECIFYING THE WATER SUPPLY, SEWAGE, AND WASTE SYSTEMS THAT REQUIRE REVIEW AND APPROVAL OF PLANS AND SPECIFICATIONS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; CLARIFYING CERTAIN DEFINITIONS IN THE OPERATOR CERTIFICATION LAWS; ALLOWING VOLUNTABY PARTICIPATION IN A WELLHEAD PROTECTION PROGRAM; AUTHORIZING COUNTY GOVERNMENTS TO ADOPT WELLHEAD PROTECTION AREA ORDINANCES; AND AMENDING SECTIONS 37-42-101, 37-42-102, 75-6-102, 75-6-103, AND 75-6-112, MCA. 2357

489 *(Senate Bill No. 163; Nelson)* AN ACT ALLOWING THE ISSUANCE OF COMBINED LICENSE PLATES FOR VETERANS OR PERSONS WITH A DISABILITY AND AMATEUR RADIO OPERATORS; AMENDING SECTIONS 49-4-302, 49-4-304, 61-3-424, 61-3-452, 61-3-453, 61-3-454, AND 61-3-504, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 2363

490 *(Senate Bill No. 200; Lynch)* AN ACT REVISING THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; CLARIFYING THE EXEMPTION FROM LIABILITY FOR PERSONS HOLDING INDICIA OF OWNERSHIP PRIMARILY TO PROTECT SECURITY INTERESTS; EXTENDING A LIMITED EXEMPTION TO FIDUCIARIES; DEFINING "FORECLOSURE" AND "FIDUCIARY"; CLARIFYING THE STATUTE OF LIMITATIONS FOR COST RECOVERY TO CONFORM TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT; AMENDING SECTIONS 75-10-701, 75-10-711, 75-10-715, 75-10-718, AND 75-10-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 2366

491 *(Senate Bill No. 209; Swysgood)* AN ACT REFORMING THE PUBLIC ASSISTANCE SYSTEM; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ESTABLISH A DEMONSTRATION PROJECT CALLED THE FAMILIES ACHIEVING INDEPENDENCE IN MONTANA (FAIM) PROJECT; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ADMINISTER A FOOD STAMP PROGRAM; PROVIDING RULEMAKING AUTHORITY FOR THE FOOD STAMP PROGRAM; ALLOWING PUBLIC ASSISTANCE INFORMATION TO BE USED FOR AGENCY PURPOSES; REVISING AID TO FAMILIES WITH DEPENDENT CHILDREN AND MEDICAID TO INCLUDE THE FAIM PROJECT; AND AMENDING SECTIONS 53-2-105, 53-2-211, 53-4-201, 53-4-202, 53-4-212, 53-4-241, 53-4-702, 53-4-706, 53-4-707, 53-4-717, 53-6-101, 53-6-113, 53-6-131, AND 53-6-134, MCA. 2378

492 *(Senate Bill No. 236; Waterman)* AN ACT RELATING TO MEDICAID; PROVIDING FOR CONSERVATION OF MEDICAID FUNDS BY IMPOSITION OF RESTRICTIONS ON ELIGIBILITY AND BY ALLOWING OR REQUIRING RECOVERY OF MEDICAID EXPENSES FROM INDIVIDUALS AND ESTATES; PROVIDING FOR LIENS AGAINST ESTATES AND PROPERTY OF OTHER INDIVIDUALS; PROVIDING FOR UNDUE HARDSHIP EXCEPTIONS; AUTHORIZING RULEMAKING BY

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493 *(Senate Bill No. 250; Nelson)* AN ACT AUTHORIZING A SCHOOL DISTRICT TO ESTABLISH A NONBUDGETED LITIGATION RESERVE FUND; AMENDING SECTION 20-9-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2415*

494 *(Senate Bill No. 271; Burnett)* AN ACT DECLARING THE POLICY OF THE STATE TO PLACE A CHILD REMOVED FROM THE HOME WITH THE EXTENDED FAMILY UPON DEPARTMENT OF FAMILY SERVICES' APPROVAL OF THE HOME; REQUIRING A DEPARTMENT INVESTIGATION OF PERSONS LIVING IN THE HOME; AND AMENDING SECTIONS 41-3-101 AND 52-2-102, MCA. *2416*

495 *(Senate Bill No. 330; Swysgood)* AN ACT GENERALLY REVISING THE WATER QUALITY NONDEGRADATION PROVISIONS OF MONTANA WATER QUALITY LAWS; CHANGING THE DEFINITION OF HIGH-QUALITY WATERS; CHANGING THE DEFINITION OF INTERESTED PERSON; AND AMENDING SECTIONS 75-5-103 AND 75-5-303, MCA. *2417*

496 *(Senate Bill No. 324; Bartlett)* AN ACT PROHIBITING STATE AGENCIES FROM SHIFTING STATE PROGRAM COSTS TO LOCAL GOVERNMENTS WITHOUT AUTHORIZATION IN STATE LAW; AND REQUIRING THE OPPORTUNITY FOR A HEARING PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT. *2421*

497 *(Senate Bill No. 331; Beck)* AN ACT GENERALLY REVISING THE MONTANA WATER QUALITY ACT; ESTABLISHING WATER QUALITY STANDARDS; REQUIRING THAT TREATMENT STANDARDS BE ECONOMICALLY, ENVIRONMENTALLY, AND TECHNOLOGICALLY FEASIBLE; AMENDING SECTIONS 75-5-103, 75-5-106, 75-5-301, 75-5-302, 75-5-304, 75-5-305, 75-5-401, 75-5-403, 75-5-605, 75-5-614, 75-5-631, 75-5-636, AND 75-6-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2423*

498 *(Senate Bill No. 349; Foster)* AN ACT REQUIRING SITE-SPECIFIC AMBIENT AIR QUALITY AND METEOROLOGICAL MONITORING AT COMMERCIAL HAZARDOUS WASTE INCINERATORS; REQUIRING COMMERCIAL HAZARDOUS WASTE INCINERATORS TO PROVIDE TELEMETERING SERVICE TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES WITH AN IMMEDIATE NOTIFICATION SYSTEM ACTIVATED WHEN EMISSIONS APPROACH OR EXCEED PERMITTED LIMITS; CLARIFYING ALLOWABLE INTAKES; REQUIRING COMMERCIAL HAZARDOUS WASTE INCINERATORS TO ACHIEVE THE LOWEST ALLOWABLE EMISSION LEVELS; ESTABLISHING A PRESUMPTION OF CONTINUING VIOLATION FOR CERTAIN VIOLATIONS OF THE CLEAN AIR ACT OF MONTANA; AMENDING SECTIONS 75-2-231 AND 75-2-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2434*

499 *(Senate Bill No. 350; Van Valkenburg)* AN ACT REQUIRING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO NOTIFY AN EMPLOYER IF A PROBATIONER OR PAROLEE HAS BEEN CONVICTED OF AN OFFENSE INVOLVING THEFT FROM AN EMPLOYER; AND AMENDING SECTION 46-23-1004, MCA. *2437*

500 *(Senate Bill No. 354; Forrester)* AN ACT PROVIDING FOR CONTRACTOR REGISTRATION; PROVIDING FOR FEES TO FUND THE ADMINI-

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501 *(Senate Bill No. 371; Grosfield)* AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING CERTAIN STATE WATERS AS OUTSTANDING RESOURCE WATERS; ESTABLISHING A PROCESS FOR STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING ACTIVITIES THAT ARE EXEMPT FROM THE WATER QUALITY NONDEGRADATION REVIEW PROCESS; AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-303, MCA. 2452

502 *(Senate Bill No. 388; Harp)* AN ACT PROVIDING FOR AN INTEGRATED MEDICAID MANAGED CARE PROGRAM; PROVIDING A PUBLIC POLICY ON MEDICAID MANAGED CARE; PROVIDING DEFINITIONS; SPECIFYING REQUIREMENTS FOR MEDICAID MANAGED CARE NETWORKS; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PROVIDE FOR DIFFERING BENEFITS FOR PERSONS ENROLLED IN THE PROGRAM; SPECIFYING REQUIREMENTS FOR MANAGED HEALTH CARE ENTITIES; PROVIDING REQUIREMENTS RELATING TO ENROLLEES OF THE PROGRAM; PROVIDING FOR PAYMENT REDUCTIONS AND ADJUSTMENTS; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO SEEK NECESSARY WAIVERS; PROVIDING FOR OVERSIGHT BY THE LEGISLATIVE AUDITOR; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 33-1-102, MCA; AND PROVIDING AN EFFECTIVE DATE. 2461

503 *(Senate Bill No. 389; Tveit)* AN ACT CLARIFYING THE ADMINISTRATION AND REGULATION OF GAME FARMS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF LIVESTOCK; REVISING GAME FARM PROVISIONS REGARDING LICENSURE, FEES, DEFINITIONS, INSPECTIONS, IMPORTATION, AND REPORTING; CREATING THE GAME FARM ADVISORY COUNCIL; AMENDING SECTIONS 81-1-102, 87-4-406, 87-4-408, 87-4-410, 87-4-411, 87-4-414, 87-4-415, 87-4-417, 87-4-419, 87-4-422, 87-4-424, AND 87-4-426, MCA; AND PROVIDING AN EFFECTIVE DATE. 2471

504 *(Senate Bill No. 402; Eck)* AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; ALLOWING THE DEPARTMENT TO ENFORCE ORDERS FOR PERIODIC PAYMENTS OF HEALTH OR MEDICAL NEEDS OR ENROLLMENT IN HEALTH OR MEDICAL INSURANCE PLANS; AMENDING SECTIONS 33-22-1202, 40-4-204, 40-4-208, 40-5-201, 40-5-203, AND 40-6-116, MCA; REPEALING SECTIONS 40-5-440, 40-5-441, AND 40-5-442, MCA; AND PROVIDING AN EFFECTIVE DATE. 2480

505 *(Senate Bill No. 406; Nelson)* AN ACT REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO GRANT CLOSURE TO NONCOMMERCIAL FABM AND RESIDENTIAL UNDER-

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GROUND STORAGE TANKS THAT ARE 1,100 GALLONS OR LESS IN CAPACITY. 2506

506 *(Senate Bill No. 423; Grosfield)* AN ACT REVISING CERTAIN SCHOOL FINANCE LAWS; CHANGING THE STATUS OF SCHOOL DISTRICT GENERAL BONUS PAYMENTS IN DETERMINING GENERAL FUND BALANCE OPERATING RESERVE FUNDS; ALLOWING RURAL SCHOOL DISTRICTS TO NEGOTIATE FOR VOLUNTARY IMPACT PAYMENTS TO THE DISTRICT BUILDING FUND TO COVER DEVELOPMENT IN THE DISTRICT; AMENDING SECTIONS 20-9-104, 20-9-508, AND 76-3-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2506

507 *(House Bill No. 136; Ellis)* AN ACT REVISING THE METHOD OF CONTRACTING FOR COUNTY PRINTING; AND AMENDING SECTIONS 7-5-2401, 7-5-2403, 7-5-2404, 7-5-2405, 7-5-2411, 7-5-2412, AND 7-5-2413, MCA. 2509

508 *(House Bill No. 460; Quilici)* AN ACT ESTABLISHING A BLUE RIBBON TELECOMMUNICATIONS TASK FORCE TO EXAMINE MONTANA'S TELECOMMUNICATIONS INFRASTRUCTURE AND TO MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE TO ENSURE THE IMPLEMENTATION OF POLICIES, PRACTICES, AND STATUTES REGARDING ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT; PROVIDING A GENERAL FUND APPROPRIATION; AUTHORIZING ADDITIONAL SPENDING OF NONGENERAL FUND REVENUE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 2512

509 *(Senate Bill No. 83; Grosfield)* AN ACT GENERALLY REVISING LAWS CONCERNING DEDICATED REVENUE AND STATUTORY APPROPRIATIONS; AMENDING SECTIONS 2-7-514, 3-5-901, 3-10-601, 15-24-925, 15-25-111, 15-25-122, 15-35-108, 15-60-102, 15-60-210, 15-70-101, 15-70-102, 15-71-104, 17-1-501, 17-1-502, 17-1-503, 17-1-504, 17-1-505, 17-2-111, 17-5-704, 17-6-409, 17-7-502, 19-8-504, 20-4-109, 20-5-324, 20-7-420, 20-7-504, 20-7-506, 20-7-605, 20-9-166, 20-9-331, 20-9-333, 20-9-342, 20-9-343, 20-9-346, 20-9-360, 20-9-361, 23-2-507, 23-2-644, 23-2-807, 23-2-823, 23-4-202, 23-7-202, 23-7-402, 27-12-206, 39-71-2501, 39-71-2503, 39-71-2504, 46-18-235, 52-6-105, 61-2-107, 61-3-502, 61-4-112, 61-5-121, 61-8-204, 61-10-126, 61-10-148, 61-10-225, 61-10-226, 75-5-634, 75-5-635, 75-6-109, 75-6-114, 75-6-115, 76-15-530, 77-1-808, 77-1-809, 77-1-810, 80-11-310, 82-4-426, 82-11-149, 87-1-114, 90-1-108, 90-6-201, 90-6-202, 90-6-205, 90-6-207, AND 90-6-212, MCA; REPEALING SECTIONS 15-25-123, 23-1-131, 60-2-224, AND 75-5-507, MCA; AND PROVIDING EFFECTIVE DATES. 2515

510 *(Senate Bill No. 181; Weldon)* AN ACT REVISING THE DEFINITION OF "UNZONED COMMERCIAL OR INDUSTRIAL AREA" AS APPLIED TO OUTDOOR ADVERTISING; REVISING THE LIMITATIONS ON CERTAIN OUTDOOR ADVERTISING SIGNS; REVISING THE FEES FOR CERTAIN SIGN PERMITS; AMENDING SECTIONS 75-15-103, 75-15-105, 75-15-111, 75-15-113, AND 75-15-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2564

511 *(House Bill No. 4; Zook)* AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1995; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO FISCAL YEAR 1996; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2570

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512 *(House Bill No. 6; Bergsagel)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AMENDING SECTION 1, CHAPTER 613, LAWS OF 1993; AND PROVIDING EFFECTIVE DATES. *2576*

513 *(House Bill No. 24; Menahan)* AN ACT REVISING CERTAIN PROCEDURES FOR APPOINTMENTS TO INTERIM JOINT SUBCOMMITTEES; AMENDING SECTION 5-5-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2580*

514 *(House Bill No. 68; Schwinden)* AN ACT GENERALLY REVISING INDUSTRIAL SAFETY LAWS; TRANSFERRING THE LICENSING OF CONSTRUCTION BLASTERS, BOILER AND STEAM ENGINE OPERATORS, AND CRANE AND HOIST OPERATORS TO THE DEPARTMENT OF COMMERCE FROM THE DEPARTMENT OF LABOR AND INDUSTRY; AUTHORIZING THE DEPARTMENT OF COMMERCE TO ESTABLISH APPROPRIATE TRAINING COURSES; CLARIFYING BOILER ENGINEER EXPERIENCE REQUIREMENTS; ESTABLISHING A NEW CLASS OF LICENSE FOR SEASONAL AGRICULTURAL PURPOSES; TRANSFERRING LICENSURE FUNCTIONS OF THE FIRE PREVENTION AND INVESTIGATION PROGRAM FROM THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF COMMERCE; TRANSFERRING BOILER SAFETY AND INSPECTIONS FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE DEPARTMENT OF COMMERCE; REQUIRING SAFETY COMPLIANCE LANGUAGE TO BE EXPRESSLY STATED IN THE CONTRACT BETWEEN A CONTRACTOR AND A GOVERNMENTAL ENTITY; IMPOSING A FEE FOR ALL BOILER INSPECTIONS; ELIMINATING HEARING OR COMPLAINT REQUIREMENTS PRIOR TO THE DEPARTMENT ORDERING WORKPLACE SAFETY IMPROVEMENTS; AMENDING SECTIONS 37-72-101, 39-71-201, 50-5-115, 50-39-101, 50-39-102, 50-39-103, 50-39-104, 50-39-106, 50-39-107, 50-71-103, 50-71-323, 50-74-101, 50-74-219, 50-74-303, 50-74-304, 50-74-305, 50-74-307, 50-74-309, 50-74-312, 50-74-314, 50-74-317, 50-76-102, 50-76-103, 50-76-104, 50-76-106, AND 50-76-110, MCA; AND PROVIDING AN EFFECTIVE DATE. *2581*

515 *(House Bill No. 89; Peck)* AN ACT GENERALLY REVISING THE VITAL STATISTICS LAWS TO STANDARDIZE PROCEDURES AND TO CONFORM TO NATIONAL STANDARDS; CLARIFYING THE INFORMATION AVAILABLE FROM THE SYSTEM OF VITAL STATISTICS; REVISING BIRTH REGISTRATION REQUIREMENTS; REVISING PROCEDURES AND CRITERIA FOR ISSUING A DELAYED OR ALTERED BIRTH CERTIFICATE; REVISING THE JUDICIAL PROCEDURE FOR ESTABLISHING THE FACTS OF BIRTH; REVISING THE LAWS GOVERNING CERTIFICATES OF ADOPTION AND ANNULMENT OF ADOPTION; PROVIDING FOR CERTIFICATES OF FOREIGN BIRTH; REVISING THE LAWS FOR CERTIFICATES OF BIRTH FOLLOWING ADOPTION, LEGITIMATION, OR ESTABLISHMENT OF PATERNITY; REVISING STANDARDS FOR PRESERVING VITAL RECORDS; REVISING THE CONTENT OF VITAL RECORDS; AMENDING SECTIONS 37-27-321, 40-8-126, 50-15-101, 50-15-102, 50-15-103, 50-15-111, 50-15-204, 50-15-303, 50-15-403, 50-15-405, AND 50-16-542, MCA; REPEALING SECTIONS 50-15-110, 50-15-112, 50-15-113, 50-15-201, 50-15-205, AND 50-15-206, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. *2593*

516 *(House Bill No. 200; Bergman)* AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; ADDING DEFINITIONS; EXEMPTING COR-

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PORATE OFFICERS AND MANAGERS OF LIMITED LIABILITY COMPANIES FROM COVERAGE UNLESS THE EMPLOYER ELECTS TO COVER THE OFFICER OR MANAGER AND THE INSURER ALLOWS THE ELECTION; CLARIFYING PROHIBITIONS REGARDING MEDICAL PROVIDER SELF-REFERRAL; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR VIDEOCONFERENCE; CLABIFYING THE STATUS OF LIMITED LIABILITY COMPANIES; CLARIFYING THE DEPARTMENT'S RESPONSIBILITY IN APPROVING THE GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INVESTMENT INCOME OF THE UNINSURED EMPLOYERS' FUND TO BE DEPOSITED IN THE FUND; REMOVING THE LIMIT ON AN UNINSURED EMPLOYER'S LIABILITY FOR CLAIMS; INCREASING THE AUTHORITY TO FILE CEASE AND DESIST ORDERS TO INCLUDE PERSONS, BUSINESSES, AND ENTITIES THAT HAVE CONTRACTED WITH UNINSURED EMPLOYERS AND PROVIDING FOR PENALTIES; PROVIDING A DISTRICT COURT WITH THE OPTION TO REQUEST THE WORKERS' COMPENSATION JUDGE TO DETERMINE THE AMOUNT OF RECOVERABLE DAMAGES DUE TO AN INJURED UNINSURED WORKER; REMOVING THE REFERENCES TO WAGE SUPPLEMENT; REQUIRING THE BOARD OF INVESTMENTS TO INVEST CERTAIN MONEY IN THE SUBSEQUENT INJURY FUND AND REQUIRING THE INVESTMENT INCOME TO BE DEPOSITED IN THE FUND; REDUCING THE TIME PERIOD ALLOWED FOR A PARTY TO RESPOND TO A WORKERS' COMPENSATION MEDIATOR'S RECOMMENDATION; REVISING THE MEDICAL PANEL PROCESS; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-315, 39-71-318, 39-71-401, 39-71-432, 39-71-433, 39-71-503, 39-71-504, 39-71-507, 39-71-516, 39-71-710, 39-71-721, 39-71-723, 39-71-737, 39-71-902, 39-71-1108, 39-71-2103, 39-71-2411, 39-71-2905, 39-72-601, 39-72-602, AND 39-72-612, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES. *2611*

517 *(House Bill No. 201; Ellis)* AN ACT REQUIRING THAT ANNUAL SUSTAINABLE YIELD BE USED AS A FACTOR IN THE MANAGEMENT OF FORESTED STATE TRUST LANDS; DEFINING "ANNUAL SUSTAINABLE YIELD" AND ESTABLISHING ANNUAL SUSTAINABLE YIELD AS THE ANNUAL TIMBER SALE REQUIREMENT; PROVIDING FOR DECENNIAL REVIEW OF ANNUAL SUSTAINABLE YIELD; PROVIDING THAT A PORTION OF INCOME FROM SUSTAINABLE YIELD FROM SCHOOL TRUST LAND BE USED TO FUND SCHOOL TECHNOLOGY; AMENDING SECTION 20-9-343, MCA; AND PROVIDING AN EFFECTIVE DATE. *2632*

518 *(House Bill No. 308; Ewer)* AN ACT REVISING LAWS RELATING TO COUNTY WATER AND SEWER DISTRICTS; PROVIDING FOR RATES BASED UPON THE DIRECT BENEFIT OF FACILITIES; CLARIFYING THAT WATER AND SEWER DISTRICTS ARE SUBJECT TO OPEN MEETING REQUIREMENTS; PROVIDING FOR NOTICE AND FOR PUBLIC HEARINGS; PROVIDING FOR TERMINATION OF SERVICES AND COLLECTION OF DELINQUENT CHARGES AS A TAX LIEN UPON PROPERTY OR BY FILING SUIT IN ANY COURT WITH JURISDICTION; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS; CLARIFYING THE AUTHORITY TO ISSUE REFUNDING BONDS; AMENDING SECTIONS 7-13-2218, 7-13-2274, 7-13-2275, 7-13-2301, 7-13-2321, AND 7-13-2324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2635*

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519 *(House Bill No. 395; Raney)* AN ACT IMPLEMENTING AN INTEGRATED NOXIOUS WEED CONTROL PROGRAM FOR STATE AGENCIES AND ENTITIES BY CLARIFYING WHAT PROVISIONS REGARDING PLANS OF OPERATIONS AND BUDGETS MUST BE INCLUDED IN COOPERATIVE AGREEMENTS BETWEEN STATE AGENCIES AND ENTITIES AND THE DISTRICT WEED BOARDS; REQUIRING THE COORDINATION OF WEED CONTROL EFFORTS THROUGH THE STATE WEED COORDINATOR; APPROPRIATING MONEY FROM THE RESOURCE DEVELOPMENT ACCOUNT TO THE DEPARTMENT OF STATE LANDS AND FROM THE NOXIOUS WEED MANAGEMENT STATE SPECIAL REVENUE FUND TO THE DEPARTMENT OF AGRICULTURE TO DEVELOP NOXIOUS WEED MANAGEMENT PLANS; AMENDING SECTION 7-22-2151, MCA; AND PROVIDING AN EFFECTIVE DATE. *2641*

520 *(House Bill No. 421; Ewer)* AN ACT REVISING THE LAWS ON COUNTY HOSPITALS; PROVIDING FOR COUNTY HEALTH CARE FACILITIES; PROVIDING FOR THE PLEDGE OF TAXES TO THE REPAYMENT OF CERTAIN BONDS; AUTHORIZING THE CONSTRUCTION, LEASING, AND FINANCING OF HEALTH CARE FACILITIES; CLARIFYING THAT CERTAIN BONDS MAY BE ISSUED WITHOUT AN ELECTION; AMENDING SECTIONS 7-6-2512, 7-8-2102, 7-8-2103, 7-34-2201, 7-34-2202, 7-34-2203, 7-34-2204, 7-34-2301, 7-34-2303, 7-34-2401, 7-34-2402, 7-34-2411, 7-34-2414, 7-34-2415, 7-34-2416, 7-34-2417, 7-34-2418, 7-34-2501, AND 53-2-802, MCA; REPEALING SECTIONS 7-34-2302 AND 7-34-2412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2642*

521 *(House Bill No. 445; Grady)* AN ACT ESTABLISHING A NOXIOUS WEED SEED FREE FORAGE PROGRAM AND ADVISORY COUNCIL; ESTABLISHING THE POWERS, DUTIES, AND RULEMAKING AUTHORITY OF THE DEPARTMENT OF AGRICULTURE IN ADMINISTERING THE PROGRAM; AUTHORIZING APPLICABLE FEES; PROVIDING FOR ENFORCEMENT AUTHORITY AND FOR PENALTIES, ORDERS, INJUNCTIONS, AND EMBARGOES APPLICABLE TO THE PROGRAM; AMENDING SECTION 7-22-2126, MCA; AND PROVIDING EFFECTIVE DATES. *2649*

522 *(House Bill No. 446; Orr)* AN ACT PROHIBITING THE EXCLUSION OF CERTAIN PREEXISTING CONDITIONS FROM HEALTH BENEFIT PLANS; PROVIDING DEFINITION; AMENDING SECTIONS 33-22-110 AND 33-22-1811, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *2656*

523 *(House Bill No. 484; DeBruycker)* AN ACT RELATING TO PROVISION OF HEALTH CARE FOR MEDICAID RECIPIENTS; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO CONTRACT FOR A STUDY BY THE LEGISLATIVE AUDITOR CONCERNING THE FEASIBILITY OF CHANGING MEDICAID FROM FEE-FOR-SERVICES COVERAGE TO PRIVATE INSURANCE COVERAGE; SPECIFYING THE CONTENTS OF THE CONTRACT; REQUIRING REPORTS TO THE LEGISLATURE, THE LEGISLATIVE FINANCE COMMITTEE, AND THE OFFICE OF BUDGET AND PROGRAM PLANNING; REQUIRING THE LEGISLATIVE FINANCE COMMITTEE AND THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO APPLY FOR A MEDICAID WAIVER UPON A DETERMINATION BY THE OFFICE OF BUDGET AND PROGRAM PLANNING; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. *2660*

524 *(House Bill No. 490; Squires)* AN ACT EXTENDING THE STATE EMPLOYEE PROTECTION ACT; CLARIFYING THE DEFINITION OF EM-

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PLOYEE; AUTHORIZING ADDITIONAL SERVICE AS AN ALTERNATIVE TO BENEFITS UNDER THE STATE EMPLOYEE PROTECTION ACT FOR A MEMBER WHO IS INVOLUNTARILY TERMINATED FROM MEMBERSHIP BY A REDUCTION IN FORCE, ABOLISHMENT OR MERGER OF AN AGENCY, OR RESTRUCTURING OF STATE AGENCIES BY LEGISLATIVE ACTION; AMENDING SECTIONS 2-18-1202, 2-18-1203, 2-18-1204, AND 2-18-1205, MCA; REPEALING SECTION 11, CHAPTER 477, LAWS OF 1993; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. *2662*

525 *(House Bill No. 504; Cobb)* AN ACT REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES GOVERNING THE USE OF A PERSONAL ASSISTANT BY A PERSON WITH A DISABILITY; PROVIDING THAT THE ACTIONS OF A PERSONAL ASSISTANT ARE NOT SUBJECT TO REGULATION BY THE BOARD OF NURSING; PROVIDING DEFINITIONS; AND AMENDING SECTION 37-8-103, MCA. *2665*

526 *(House Bill No. 509; Anderson)* AN ACT AUTHORIZING MERGERS AND CONSOLIDATIONS OF HEALTH CARE FACILITIES; AUTHORIZING IMPLEMENTATION OF COOPERATIVE AGREEMENTS, MERGERS, AND CONSOLIDATIONS OF PHYSICIANS; PROVIDING FOR ENFORCEMENT OF THE TERMS AND CONDITIONS OF CERTIFICATES OF PUBLIC ADVANTAGE AUTHORIZING COOPERATIVE, MERGER, OR CONSOLIDATION AGREEMENTS AMONG HEALTH CARE FACILITIES AND PHYSICIANS; ESTABLISHING FEES FOR APPLICATIONS FOR CERTIFICATES OF PUBLIC ADVANTAGE AND FOR REPORTS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 50-4-601, 50-4-602, 50-4-603, AND 50-4-611, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2669*

527 *(House Bill No. 533; Arnott)* AN ACT RELATING TO HEALTH BENEFIT PLANS; PROVIDING FOR THE PORTABILITY OF HEALTH BENEFIT PLANS BY REQUIRING INSURERS TO WAIVE CERTAIN TIME PERIODS APPLICABLE TO PREEXISTING CONDITIONS; REQUIRING CERTAIN INCREASES IN PLAN CHARGES TO BE DISTRIBUTED PROPORTIONATELY AMONG ALL PLANS OF AN INSURER; REQUIRING DISCLOSURE OF CERTAIN POLICY FEATURES AT OR BEFORE THE TIME OF APPLICATION; CREATING A LOW-COST UNIFORM HEALTH BENEFIT PLAN; CAPPING PREMIUM RATES ON CERTAIN CONVERSION POLICIES; AMENDING SECTIONS 33-22-101, 33-22-508, AND 33-30-1007, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. *2672*

528 *(House Bill No. 540; Molnar)* AN ACT GENERALLY REVISING THE MONTANA YOUTH COURT ACT; AND AMENDING SECTIONS 40-6-233, 41-3-102, 41-5-102, 41-5-304, 41-5-306, 41-5-403, 41-5-514, 41-5-522, 41-5-604, 41-5-802, AND 41-5-811, MCA. *2680*

529 *(House Bill No. 550; Kasten)* AN ACT PROVIDING IMPROVED TAXPAYER SERVICE TO BUSINESSES BY STREAMLINING AND SIMPLIFYING WAGE-BASED REPORTING FOR WITHHOLDING TAX, UNEMPLOYMENT INSURANCE TAX, AND OLD FUND LIABILITY TAX; PROVIDING A UNIFORM DEFINITION OF INDEPENDENT CONTRACTOR; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-211, 15-1-701, 15-1-704, 15-1-708, 15-2-201, 15-30-201, 15-30-303, 39-51-1105, 39-51-1303, 39-51-1304, AND 39-71-2503, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY PROVISIONS. *2689*

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530 *(House Bill No. 574; Rehbein)* AN ACT GENERALLY REVISING LIQUOR LAWS; PROVIDING FOR THE CONVERSION OF EMPLOYEE-OPERATED STATE LIQUOR STORES TO AGENCY LIQUOR STORES; PROVIDING THAT ELIGIBLE STATE LIQUOR STORE EMPLOYEES HAVE A RIGHT OF FIRST REFUSAL IN BECOMING AGENTS FOR THE CONVERTED STORES; PROVIDING FOR THE PURCHASE OF LIQUOR ASSETS IN STORES BY THE AGENTS OPERATING THE STORES OVER AN 18-MONTH PERIOD; PROHIBITING NEW AGENCY LIQUOR STORES FOR 4 YEARS IN CITIES OR TOWNS THAT HAD AN AGENCY LIQUOR STORE IN 1994; PROVIDING FOR A STATE LIEN ON LIQUOR IN AGENCY LIQUOR STORES; PROHIBITING A PERSON FROM HAVING AN OWNERSHIP INTEREST IN MORE THAN ONE AGENCY LIQUOR STORE; PROHIBITING AN OWNERSHIP INTEREST IN AN AGENCY LIQUOR STORE BY A PERSON HAVING ANOTHER TYPE OF LIQUOR LICENSE; PROVIDING FOR A BONUS PAYMENT FOR CERTAIN STATE LIQUOR DIVISION EMPLOYEES WHO REMAIN IN EMPLOYMENT DURING THE CONVERSION PROCESS; AMENDING LAWS RELATING TO TABLE WINE TO CLARIFY THE DISTRIBUTION AND SALE OF TABLE WINE IN RELATION TO AGENCY LIQUOR STORES; PROVIDING FOR THE CONTRACTUAL AND OTHER ADMINISTRATION OF AGENCY LIQUOR STORES; INCREASING THE CASE DISCOUNT ON THE SALE OF LIQUOR TO 8 PERCENT AND LIMITING THE DISCOUNT TO ALCOHOLIC BEVERAGE LICENSEES; PROVIDING THAT AGENCY STORES MAY BE OPEN ON MONDAYS IF A MAJORITY OF THE ALL-BEVERAGES LICENSEES IN THE AGENCY'S MARKET AREA AGREE; AMENDING SECTIONS 2-17-101, 16-1-103, 16-1-105, 16-1-106, 16-1-301, 16-1-302, 16-1-303, 16-1-304, 16-1-402, 16-2-101, 16-2-104, 16-2-105, 16-2-106, 16-2-107, 16-2-108, 16-2-201, 16-2-301, 16-3-103, 16-3-106, 16-3-307, 16-3-401, 16-3-402, 16-3-403, 16-3-411, 16-4-105, 16-4-401, 16-6-107, 16-6-303, 17-8-244, AND 30-9-104, MCA; REPEALING SECTIONS 16-2-302 AND 16-2-303, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. *2704*

531 *(House Bill No. 584; Bergsagel)* AN ACT APPROPRIATING FUNDS FOR THE LAW ENFORCEMENT ACADEMY PROJECT; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2731*

532 *(House Bill No. 598; Hibbard)* AN ACT PROVIDING THAT WHEN THE GRANTOR IDENTIFIED ON A REALTY TRANSFER CERTIFICATE IS NOT THE PERSON TO WHOM THE PROPERTY IS ASSESSED, THE DEPARTMENT OF REVENUE MAY NOT SUBSTITUTE THE GRANTEE'S NAME FOR THAT OF THE PERSON TO WHOM THE PROPERTY IS ASSESSED BUT SHALL INCLUDE THE GRANTEE'S NAME WITH THAT OF THE PERSON TO WHOM THE PROPERTY IS ASSESSED; PROVIDING THAT ALL TRANSFERS OF REAL PROPERTY MUST BE REPORTED BUT EXEMPTING CERTAIN TRANSFERS FROM THE REQUIREMENT THAT THE SALES PRICE BE REPORTED; AMENDING SECTIONS 15-7-304 AND 15-7-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *2732*

533 *(House Bill No. 607; Grinde)* AN ACT CREATING THE OFFENSE OF CAPITOL DESECRATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *2733*

534 *(Senate Bill No. 113; Brooke)* AN ACT INCREASING FROM 10 DAYS TO 6 MONTHS THE MAXIMUM JAIL SENTENCE THAT MAY BE IMPOSED UPON THE THIRD OR SUBSEQUENT CONVICTION OF DRIV-

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ING WITHOUT LIABILITY INSURANCE; AND AMENDING SECTION 61-6-304, MCA. 2734

535 *(Senate Bill No. 127; Bishop)* AN ACT PROVIDING THAT THE DISTRICT COURT CRIMINAL REIMBURSEMENT PROGRAM PAY FOR CERTAIN EXPENSES INCURRED IN STATE DISTRICT COURT FOR POST-CONVICTION RELIEF HEARINGS AND HABEAS CORPUS PROCEEDINGS AND FOR CERTAIN EXPENSES INCURRED BY THE STATE IN FEDERAL HABEAS CORPUS CASES CHALLENGING THE VALIDITY OF A CONVICTION OR OF A SENTENCE; AMENDING SECTION 3-5-901, MCA; AND PROVIDING AN EFFECTIVE DATE. . 2735

536 *(Senate Bill No. 226; Keating)* AN ACT REVISING COUNSELING LAWS; REVISING THE DEFINITION OF PROFESSIONAL COUNSELING; REQUIRING LICENSURE TO ENGAGE IN THE PRACTICE OF PROFESSIONAL COUNSELING OR FOR A PERSON TO REPRESENT THAT THE PERSON IS A PROFESSIONAL COUNSELOR; AUTHORIZING COUNSELING BY CERTAIN INDIVIDUALS ACTING WITHIN THE SCOPE OF THEIR PROFESSIONAL PRACTICE; AMENDING SECTIONS 37-23-102, 37-23-201, AND 37-23-311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 2738

537 *(Senate Bill No. 229; Hargrove)* AN ACT CREATING THE OFFENSE OF USE OR POSSESSION OF PROPERTY SUBJECT TO CRIMINAL FORFEITURE; PROVIDING FOR CRIMINAL FORFEITURE OF PROPERTY USED IN OR DERIVED FROM DRUG-RELATED CRIMES; SPECIFYING THE TYPES OF PROPERTY THAT ARE SUBJECT TO CRIMINAL FORFEITURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2741

538 *(Senate Bill No. 361; Weldon)* AN ACT TRANSFERRING PART OF THE HIGHWAY TRAFFIC SAFETY PROGRAM FROM THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF TRANSPORTATION; EXPANDING ARREST AUTHORITY FOR CERTAIN TRAFFIC OFFENSES; AMENDING SECTIONS 2-15-2007, 61-2-102, 61-2-103, AND 61-12-206, MCA; AND PROVIDING AN EFFECTIVE DATE. 2743

539 *(Senate Bill No. 346; Forrester)* AN ACT ALLOWING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO TEMPORARILY MODIFY WATER QUALITY STANDARDS; AMENDING SECTIONS 75-5-301 AND 75-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2745

540 *(Senate Bill No. 352; Grosfield)* AN ACT PROVIDING A LIMITATION ON THE CRIMINAL LIABILITY OF A LANDOWNER OR AGENT WHO TAKES A PUBLICLY OWNED WILD BUFFALO OR BISON, SUSPECTED OF CARRYING DISEASE, THAT IS PRESENT ON THE LANDOWNER'S PRIVATE PROPERTY OR THREATENING THE LANDOWNER'S LIVESTOCK UNDER CERTAIN CONDITIONS; PROHIBITING SUPPLEMENTAL FEEDING OF BIG GAME ANIMALS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF LIVESTOCK TO WORK TO PREVENT CONTACT BETWEEN WILD BUFFALO OR BISON AND LIVESTOCK AND TO REPORT TO THE LEGISLATURE REGARDING THAT WORK; AMENDING SECTIONS 87-1-215 AND 87-3-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2749

541 *(Senate Bill No. 357; Van Valkenburg)* AN ACT ALLOWING ALL MEMBERS OF THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM TO RECEIVE A REGULAR SERVICE RETIREMENT BENEFIT AFTER 20 YEARS OF SERVICE REGARDLESS OF AGE; INCREASING THE BENEFIT FOR EACH YEAR OF SERVICE AFTER 20 YEARS FOR MEMBERS HIRED BEFORE JULY 1, 1981; ELIMINATING THE MAXI-

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542 *(Senate Bill No. 358; Halligan)* AN ACT RELATING TO THE INCOME AND CORPORATE TAX CREDIT FOR RECYCLING OF MATERIAL; EXTENDING THE TERMINATION DATE FOR THE CREDIT; PROVIDING THAT CERTAIN DEPRECIABLE PROPERTY USED FOR THE TREATMENT OF HAZARDOUS WASTES IN SOILS QUALIFIES FOR THE CREDIT; AMENDING SECTIONS 15-32-601, 15-32-602, AND 15-32-603, MCA, AND SECTION 9, CHAPTER 712, LAWS OF 1991; AND PROVIDING AN APPLICABILITY DATE AND A TERMINATION DATE. 2757

543 *(Senate Bill No. 377; Weldon)* AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY REQUIRING COUNTIES TO ESTABLISH CERTAIN ADMINISTRATIVE BOARDS, DISTRICTS, AND COMMISSIONS BY RESOLUTION; ALLOWING COUNTY COMMISSIONERS TO ACT AS CERTAIN ADMINISTRATIVE BOARDS, DISTRICTS, OR COMMISSIONS IF THERE ARE NOT ENOUGH QUALIFIED PERSONS TO SERVE ON THE BOARDS, DISTRICTS, OR COMMISSIONS; REVISING THE METHOD OF ESTABLISHING A MUNICIPAL BOARD OF PARK COMMISSIONERS; REPEALING THE MUNICIPAL WINTER WORK PROGRAM; AMENDING SECTIONS 7-8-2103, 7-13-213, 7-13-215, 7-13-2510, 7-13-2521, 7-16-2105, 7-16-2203, 7-16-2301, 7-16-2327, 7-16-4201, 7-16-4222, 7-21-3401, 7-21-3406, 7-22-2103, 7-22-2109, 7-22-2215, 7-22-2216, 7-22-2411, 7-22-2415, 7-35-2108, AND 7-35-2109, MCA; REPEALING SECTIONS 7-13-214, 7-13-2522, 7-13-2523, 7-13-2524, 7-13-2525, 7-13-2526, 7-16-2204, 7-16-2302, 7-16-2303, 7-16-2305, 7-16-2306, 7-16-2307, 7-16-2308, 7-16-2309, 7-16-2310, 7-16-2311, 7-16-2313, 7-16-2321, 7-16-4202, 7-16-4203, 7-16-4204, 7-16-4205, 7-16-4206, 7-16-4207, 7-16-4208, 7-16-4209, 7-16-4210, 7-16-4211, 7-16-4221, 7-16-4224, 7-16-4301, 7-16-4302, 7-16-4303, 7-16-4304, 7-16-4305, 7-16-4306, 7-16-4307, 7-16-4308, 7-16-4309, 7-21-3403, 7-21-3404, 7-21-3405, 7-22-2105, 7-22-2413, AND 7-22-2414, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 2760

544 *(Senate Bill No. 385; Eck)* AN ACT RELATING TO MEDICAL SERVICES FOR CHILDREN OF POOR FAMILIES; PROVIDING FOR THE EXPANSION OF MEDICAID SERVICES TO CERTAIN CHILDREN; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ADOPT RULES PROVIDING FOR MONTHLY FEES TO BE PAID BY CERTAIN MEDICAID RECIPIENTS; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO COOPERATE WITH AND MAKE GRANTS TO A NONPROFIT CORPORATION TO PROVIDE MEDICAL SERVICES FOR CHILDREN INELIGIBLE FOR THE MONTANA MEDICAID PROGRAM; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE. 2771

545 *(Senate Bill No. 398; Gage)* AN ACT GENERALLY REVISING THE LAWS GOVERNING THE LEGISLATIVE BRANCH; ELIMINATING AND REVISING CERTAIN COMMITTEES AND DUTIES; AMENDING SECTIONS 1-11-201, 1-11-303, 2-4-401, 2-15-401, 2-15-1514, 2-15-1523, 2-18-103, 2-18-201, 5-1-106, 5-2-301, 5-5-215, 5-11-101, 5-11-102, 5-11-103, 5-11-105, 5-11-106, 5-11-107, 5-11-111, 5-11-112, 5-11-201, 5-11-202, 5-11-203, 5-11-205, 5-11-206, 5-11-207, 5-11-208, 5-11-209, 5-11-301, 5-11-402, 5-11-404, 5-11-405, 5-12-204, 5-12-205, 5-12-301, 5-12-302, 5-12-303, 5-12-304, 5-13-202, 5-13-301, 5-13-302, 5-13-304, 5-13-305, 5-14-103, 5-15-104, 5-16-101, 5-16-104, 5-19-104, 5-19-107, 13-27-201, 13-27-202, 13-27-504,

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546 *(Senate Bill No. 345; Swysgood)* AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY CREATING A NEW DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; TRANSFERRING ALL PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE NEW DEPARTMENT; TRANSFERRING ALL PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF FAMILY SERVICES TO THE NEW DEPARTMENT, WITH THE EXCEPTION OF JUVENILE CORRECTIONS PROGRAMS; TRANSFERRING JUVENILE CORRECTIONS PROGRAMS TO THE DEPARTMENT OF CORRECTIONS; TRANSFERRING THE MENTAL HEALTH PROGRAMS, SUBSTANCE ABUSE PROGRAMS, AND DEVELOPMENTAL DISABILITIES PROGRAMS AND ASSOCIATED PROGRAMS AND SUPPORT STAFF CURRENTLY ADMINISTERED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO THE NEW DEPARTMENT; TRANSFERRING ALL HEALTH SERVICES PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE NEW DEPARTMENT, EXCEPT FOR LABORATORY SERVICES; ABOLISHING THE EXISTING DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE EXISTING DEPARTMENT OF FAMILY SERVICES; CONTINGENTLY ABOLISHING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AND TRANSFERRING ITS DUTIES TO THE NEW DEPARTMENT; CHANGING THE NAME OF THE BOARD OF SOCIAL AND REHABILITATION APPEALS TO THE BOARD OF PUBLIC ASSISTANCE; CHANGING THE NAME OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO THE DEPARTMENT OF CORRECTIONS; CHANGING THE NAME OF THE BOARD OF PARDONS TO THE BOARD OF PARDONS AND PAROLE; CHANGING THE NAME OF THE WOMEN'S CORRECTIONAL CENTER TO THE WOMEN'S CORRECTIONAL SYSTEM; AMENDING SECTIONS 2-4-102, 2-15-104, 2-15-211, 2-15-225, 2-15-231, 2-15-232, 2-15-1845, 2-15-1875, 2-15-2109, 2-15-2201, 2-15-2203, 2-15-2204, 2-15-2205, 2-15-2210, 2-15-2212, 2-15-2301, 2-15-2302, 2-15-2402, 2-18-103, 2-18-303, 3-10-601, 7-4-2913, 7-6-2427, 7-13-4502, 7-22-2151, 7-32-2222, 7-32-2242, 7-33-2402, 7-34-2301, 7-34-2412, 10-2-401, 10-2-402, 10-2-403, 10-2-404, 10-2-416, 10-2-417, 13-2-402, 15-6-201, 15-6-209, 15-25-121, 15-25-122, 15-30-128, 15-30-303, 15-60-101, 15-60-201, 16-1-404, 16-1-408, 16-1-411, 16-11-119, 17-3-1001, 17-3-1002, 17-4-105, 17-5-430, 17-5-432, 17-8-303, 18-2-301, 18-4-133, 18-4-313, 18-5-402, 20-5-321, 20-5-402, 20-6-621, 20-6-624, 20-7-404, 20-7-436, 20-8-116, 20-25-421, 20-25-604, 20-26-1407, 23-1-302, 23-1-303, 23-1-312, 23-5-112, 27-1-718, 27-6-206, 27-32-302, 31-3-141, 33-22-702, 33-22-705, 33-22-1202, 37-2-104, 37-2-301, 37-7-103, 37-9-101, 37-14-322, 37-21-101, 37-27-320, 37-27-321, 37-30-307, 37-30-412, 37-30-422, 37-31-204, 37-31-308, 37-31-331, 37-41-104, 39-30-103, 39-30-106, 39-30-107, 39-71-743, 39-71-744, 39-71-1003, 39-71-1004, 39-71-1011, 39-71-1014, 39-71-1031, 39-71-2001, 40-1-107, 40-1-203, 40-1-204, 40-1-206, 40-1-208, 40-1-209, 40-4-204, 40-4-205, 40-4-208, 40-4-209, 40-4-215, 40-4-218, 40-5-103, 40-5-143, 40-5-158, 40-5-161, 40-5-162, 40-5-164, 40-5-165, 40-5-173, 40-5-185, 40-5-196, 40-5-201, 40-5-

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547 *(House Bill No. 5; Bergsagel)* AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1997; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; APPROPRIATING $3.5 MILLION IN GENERAL FUND MONEY FOR SCHOOL FACILITIES; PROVIDING FOR AN ALLOWANCE FOR MAINTENANCE BASED UPON A PERCENTAGE OF CONSTRUCTION COST; REPEALING SECTION 23, CHAPTER 624, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *3188*

548 *(House Bill No. 9; Bergsagel)* AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECT GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE. *3196*

549 *(House Bill No. 15; Bergsagel)* AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1997; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . *3200*

550 *(House Bill No. 157; Denny)* AN ACT INCREASING PENALTIES FOR CERTAIN SEX OFFENSES; INCREASING THE MAXIMUM PENALTY FOR CERTAIN SEX OFFENSES TO LIFE IMPRISONMENT PROVIDING THAT CERTAIN SEXUAL OFFENDERS ARE TO REGISTER AS SEXUAL OFFENDERS FOR THE REMAINDER OF THEIR LIVES UNLESS A COURT FINDS THAT PUBLIC PROTECTION NO LONGER DEMANDS REGISTRATION; REGULATING THE DISSEMINATION OF MATERIAL IN THE SEX OFFENDER REGISTER; AND AMENDING SECTIONS 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-625, 46-18-202, 46-23-502, 46-23-506, AND 46-23-507, MCA. *3202*

551 *(House Bill No. 396; Hayne)* AN ACT CLARIFYING WHO IS RESPONSIBLE FOR PAYING THE EXPENSES OF CUTTING OR RAISING UTILITY WIRES OR MOVING UTILITY POLES WHEN THE WIRES OR POLES IMPEDE THE MOVEMENT OF CERTAIN HOUSES, BUILDINGS, DERRICKS, OR OTHER STRUCTURES; AND AMENDING SECTION 69-4-603, MCA. *3208*

552 *(House Bill No. 471; Simpkins)* AN ACT EXTENDING THE TERMINATION DATE OF THE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS; PROVIDING THAT THE COMMITTEE MAY SPECIFY THE DATE BY WHICH RETIREMENT PROPOSALS MUST BE SUBMITTED TO THE COMMITTEE FOR REVIEW; PROVIDING APPROPRIATIONS; AMENDING SECTION 5-21-105, MCA, AND SECTION 9, CHAPTER 549, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *3210*

553 *(House Bill No. 493; Ewer)* AN ACT CREATING THE SAFE DRINKING WATER TREATMENT REVOLVING FUND ACT; AUTHORIZING THE ISSUANCE OF $10 MILLION IN GENERAL OBLIGATION BONDS TO PROVIDE THE STATE MATCHING FUNDS FOR THE SAFE DRINKING WATER TREATMENT REVOLVING FUND; AUTHORIZING THE ISSUANCE OF $5 MILLION IN GENERAL OBLIGATION BONDS TO PROVIDE THE STATE MATCHING FUNDS FOR THE STATE WASTE

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554 *(House Bill No. 524; McKee)* AN ACT REVISING THE POPULATION AND ECONOMIC WELL-BEING REQUIREMENTS TO QUALIFY AS A RESORT COMMUNITY; EXCLUDING GOODS AND SERVICES SOLD FOR RESALE FROM THE RESORT TAX; REQUIRING NOTICE PRIOR TO THE ELECTION OF THE GOODS AND SERVICES SUBJECT TO THE RESORT TAX; AMENDING SECTIONS 7-6-4461, 7-6-4463, AND 7-6-4464, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . *3225*

555 *(House Bill No. 547; Clark)* AN ACT PROHIBITING, FOR THE REST OF THEIR LIVES, THE PURCHASE OR POSSESSION OF FIREARMS BY CERTAIN CRIMINALS; ALLOWING THE SENTENCING ORDER TO INCORPORATE BY REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED RELEASE; AMENDING SECTION 46-18-801, MCA; AND PROVIDING APPLICABILITY PROVISIONS. *3228*

556 *(House Bill No. 576; Grady)* AN ACT REVISING THE TYPES OF FUNDS SUBJECT TO APPROPRIATION; GENERALLY REVISING THE LAW CONCERNING BUDGET AMENDMENTS; REQUIRING CERTAIN FEES AND CHARGES TO BE COMMENSURATE WITH COSTS; REQUIRING AN AUDIT AND BUDGET ANALYSIS OF CERTAIN FUND TYPES; AMENDING SECTIONS 2-8-304, 17-2-103, 17-7-402, AND 17-8-101, MCA; AND PROVIDING AN EFFECTIVE DATE. *3230*

557 *(House Bill No. 594; Bergsagel)* AN ACT PROVIDING FOR THE FINANCING OF INSTITUTIONAL FACILITIES; AUTHORIZING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO ENTER INTO A LOAN AGREEMENT WITH THE MONTANA HEALTH FACILITY AUTHORITY FOR THE PURPOSE OF FINANCING THE COSTS OF ACQUIRING, CONSTRUCTING, AND EQUIPPING FACILITIES FOR THE MENTALLY ILL AT THE MONTANA STATE HOSPITAL IN WARM SPRINGS, INCLUDING THE ESTABLISHMENT OF RESERVES AND THE PAYMENT OF THE COSTS OF THE FINANCING; AUTHORIZING THE CREATION OF A SPECIAL LIMITED OBLIGATION OF THE DEPARTMENT; PROVIDING A STATUTORY APPROPRIATION AND AN APPROPRIATION OF LOAN PROCEEDS; AUTHORIZING THE PAYMENT OF THE SPECIAL LIMITED OBLIGATION FROM FACILITY REVENUE; EXPANDING THE ADULT CORRECTIONS SERVICES TO INCLUDE THE FORENSIC UNIT AT WARM SPRINGS; AUTHORIZING THE USE OF INMATE LABOR FOR CERTAIN PROJECTS; AMENDING SECTIONS 17-7-502, 53-1-202, 53-1-413, AND 90-7-317, MCA; AND PROVIDING EFFECTIVE DATES. *3234*

558 *(House Bill No. 601; Somerville)* AN ACT REPEALING THE LICENSE REQUIREMENTS FOR PUBLIC CONTRACTORS; AMENDING SECTIONS 15-50-101, 15-50-205, 15-50-206, AND 18-1-106, MCA; REPEALING SECTIONS 37-71-101, 37-71-102, 37-71-103, 37-71-104, 37-71-105, 37-71-201, 37-71-202, 37-71-203, 37-71-204, 37-71-211, 37-71-212, 37-71-213, 37-71-301, AND 37-71-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *3238*

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561 *(Senate Bill No. 86; Gage)* AN ACT CLARIFYING THE DEFINITION OF "DEPARTMENT" AS THE TERM APPLIES TO TAXES ON FUEL; ALLOWING TAXES PAYABLE TO THE DEPARTMENT OF TRANSPORTATION TO BE PAID BY ELECTRONIC FUNDS TRANSFER; AUTHORIZING THE DEPARTMENT TO REQUIRE THAT CERTAIN TAX RETURNS AND INFORMATION BE PROVIDED IN ELECTRONIC FORMAT; AUTHORIZING THE DEPARTMENT TO ADOPT RULES; AMENDING SECTIONS 15-1-101, 15-1-201, AND 15-1-801, MCA; AND PROVIDING AN EFFECTIVE DATE. 3246

562 *(Senate Bill No. 136; Baer)* AN ACT GENERALLY REVISING LAWS CONCERNING ETHICS; CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE INTERESTS RAISING THE APPEARANCE OF IMPROPRIETY AND TO VOTE ON MATTERS AS PROVIDED IN LEGISLATIVE RULES; PROVIDING REQUIREMENTS FOR A PUBLIC EMPLOYEE, PUBLIC OFFICER, OR LEGISLATOR TO RECEIVE MORE THAN ONE PUBLIC SALARY FOR OVERLAPPING HOURS OF EMPLOYMENT; PROHIBITING PUBLIC OFFICERS AND PUBLIC EMPLOYEES FROM USING PUBLIC TIME, EQUIPMENT, FACILITIES, SUPPLIES, PERSONNEL, OR FUNDS FOR ANY CAMPAIGN ACTIVITY; RESTRICTING EMPLOYMENT BY CURRENT AND FORMER PUBLIC OFFICIALS AND EMPLOYEES; PROVIDING FOR EDUCATION AND TRAINING ON ETHICAL MATTERS; PROVIDING ENFORCEMENT PROVISIONS FOR ETHICS VIOLATIONS; CREATING AN ETHICS COMMISSION TO PROVIDE REVIEW OF ETHICS DECISIONS IN CASES INVOLVING STATE OFFICERS AND STATE EMPLOYEES; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-104, 2-2-105, 2-2-111, 2-2-112, 2-2-121, 2-2-125, 2-2-131, 2-2-302, 2-18-102, 5-7-213, AND 13-35-226, MCA; REPEALING SECTION 2-2-132, MCA; AND PROVIDING AN EFFECTIVE DATE. 3251

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565 *(Senate Bill No. 224; Christiaens)* AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA. 3277

566 *(Senate Bill No. 292; Brown)* AN ACT CREATING THE "WOMAN'S RIGHT-TO-KNOW ACT"; PROVIDING FOR THE PUBLICATION AND DISSEMINATION OF INFORMATION CONCERNING ABORTION; CLARIFYING INFORMED CONSENT; PROVIDING CIVIL REMEDIES FOR FAILURE TO OBTAIN INFORMED CONSENT; AMENDING SECTIONS 50-20-104, 50-20-106, AND 50-20-112, MCA; AND PROVIDING AN EFFECTIVE DATE. 3290

567 *(Senate Bill No. 333; Bishop)* AN ACT REQUIRING THAT A FIRST-TIME OFFENDER OF DRIVING UNDER THE INFLUENCE OR WITH EXCESSIVE ALCOHOL CONCENTRATION WHO IS DIAGNOSED AS CHEMICALLY DEPENDENT RECEIVE TREATMENT; REQUIRING THAT A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE GR WITH EXCESSIVE ALCOHOL CONCENTRATION RECEIVE TREATMENT BASED UPON THE FINDINGS OF A CERTIFIED CHEMICAL DEPENDENCY COUNSELOR PURSUANT TO DIAGNOSIS AND PATIENT PLACEMENT RULES ADOPTED BY THE DEPARTMENT GF CORRECTIONS AND HUMAN SERVICES; REQUIRING AT LEAST 1 YEAR OF TREATMENT FOLLOWUP AFTER A SECOND OR SUBSEQUENT CONVICTION; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA. 3298

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571 *(House Bill No. 90; Feland)* AN ACT EXEMPTING THE FIRST 3 BARRELS A DAY OF STRIPPER WELL PRODUCTION FROM THE STATE SEVERANCE TAX IF THE AVERAGE PRICE PER BARREL OF OIL RECEIVED DURING A CALENDAR QUARTER IS LESS THAN $30; EXCLUDING NONWORKING INTEREST OWNERS FROM THE STRIPPER WELL EXEMPTION; AMENDING SECTIONS 15-36-101 AND 15-36-121, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION. *3320*

572 *(House Bill No. 293; Ream)* AN ACT PROVIDING FOR THE MODERNIZATION OF THE STATE INCOME TAX WITHHOLDING AND OLD FUND LIABILITY TAX LAWS BY PROVIDING THE OPTION OF USING MODERN TECHNOLOGY TO FILE AND REMIT TAXES; ALIGNING THE TIMING OF PAYMENT OF WITHHOLDING TAX AND OLD FUND LIABILITY TAX WITH THE PAYMENT OF FEDERAL WITHHOLDING TAX, THUS REDUCING PAPERWORK FOR BOTH THE EMPLOYERS AND THE STATE; REDUCING THE PERIOD DURING WHICH INTEREST DOES NOT HAVE TO BE PAID ON REFUNDS OF OVERPAYMENT OF INCOME TAXES FROM 6 MONTHS TO 45 DAYS; AMENDING SECTIONS 15-30-149, 15-30-201, 15-30-204, 39-71-2501, AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. *3327*

573 *(House Bill No. 418; Devaney)* AN ACT INCREASING THE PRIVILEGE AND LICENSE TAX ON PRODUCERS OF OIL AND NATURAL GAS; AMENDING SECTION 82-11-131, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. *3336*

574 *(House Bill No. 497; Bohlinger)* AN ACT RELATING TO PROPERTY TAXES; PROVIDING FOR A PAYMENT TO CERTAIN TAXPAYERS FOR PROPERTY TAXES PAID; REQUIRING A CLAIM FORM FOR A PROPERTY TAX PAYMENT TO BE SENT TO THE TAXPAYER; INCREASING THE EXEMPT VALUE OF RESIDENTIAL PROPERTY AND THE INCOME ELIGIBILITY SCHEDULE UNDER THE PROPERTY TAX ASSISTANCE PROGRAM; CHANGING THE APPLICATION DATE FOR THE PROGRAM FROM MARCH 1 TO MARCH 15; PROVIDING MORE INFORMATION IN THE DEPARTMENT'S NOTICE OF CLASSIFICATION, INCLUDING INFORMATION FOR COMPARISON OF MILLS AND TAXES FOR THE PRIOR YEAR; INCREASING THE MAXIMUM PROPERTY TAX CREDIT FOR THE ELDERLY TO $1,000 FROM $400; APPROPRIATING FUNDS FOR REIMBURSEMENT PAYMENTS AND FOR ADMINISTRATION OF REIMBURSEMENTS; AMENDING SECTIONS 15-6-134, 15-6-151, 15-7-102, AND 15-30-176, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE. *3338*

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577 *(House Bill No. 569; Orr)* AN ACT REVISING THE ALLOCATION OF THE METAL MINES LICENSE TAX; ALLOCATING A PORTION OF THE TAX TO THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM ACCOUNT AND TO THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM ACCOUNT; ANNUALLY ALLOCATING $240,000 FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM ACCOUNT TO MONTANA STATE UNIVERSITY - NORTHERN; INSERTING LANGUAGE RELATING TO THE GROUND WATER ASSESSMENT ACCOUNT TO CONFORM TO SENATE BILL NO. 46, WHICH WAS ENACTED AS CHAPTER 31, LAWS OF 1995; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 15-38-202, 20-9-231, 85-1-604, AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . *3350*

578 *(House Bill No. 587; Quilici)* AN ACT GENERALLY REVISING CIGARETTE AND TOBACCO LAWS IN TITLE 16, CHAPTERS 10 AND 11, MCA; CLARIFYING PROVISIONS RELATING TO THE MONTANA CIGARETTE SALES ACT, THE CIGARETTE SALES TAX, THE TAX ON TOBACCO PRODUCTS, AND THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; AMENDING SECTIONS 3-10-301, 16-10-102, 16-10-103, 16-10-104, 16-10-201, 16-10-204, 16-10-301, 16-10-303, 16-10-402, 16-10-403, 16-11-102, 16-11-111, 16-11-113, 16-11-114, 16-11-115, 16-11-116, 16-11-117, 16-11-118, 16-11-121, 16-11-131, 16-11-132, 16-11-133, 16-11-143, 16-11-144, 16-11-145, 16-11-148, 16-11-149, 16-11-201, 16-11-202, 16-11-203, 16-11-204, AND 16-11-308, MCA; REPEALING SECTION 16-10-401, MCA; AND PROVIDING AN EFFECTIVE DATE. *3357*

579 *(House Bill No. 591; Wiseman)* AN ACT PROVIDING FOR A STATEWIDE TRAUMA CARE SYSTEM; CREATING AN EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL AND A TRAUMA CARE COMMITTEE; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CREATE AND ADMINISTER THE SYSTEM; REQUIRING THE DEPARTMENT TO ADOPT RULES; PROVIDING FOR DESIGNATION OF TRAUMA CARE FACILITIES; PROVIDING FOR REGIONAL TRAUMA CARE ADVISORY COMMITTEES; PROVIDING FOR CONFIDENTIALITY OF TRAUMA DATA AND QUALITY IMPROVEMENT RECORDS; AMENDING SECTION 50-6-103, MCA; AND PROVIDING EFFECTIVE DATES. *3376*

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581 *(Senate Bill No. 338; Jergeson)* AN ACT EXEMPTING FROM THE STATE SEVERANCE TAX FOR 24 MONTHS OIL OR NATURAL GAS PRODUCED FROM A WELL DRILLED AFTER MARCH 31, 1995; AMENDING SECTIONS 15-36-101 AND 15-36-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND CONTINGENT APPLICABILITY DATES. *3398*

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584 *(Senate Bill No. 382; Harp)* AN ACT GENERALLY REVISING THE METHOD OF SELECTING CLEANUP REQUIRED FOR REMEDIAL ACTIONS; CREATING A VOLUNTARY CLEANUP AND REDEVELOPMENT PROCESS; ESTABLISHING THE MIXED FUNDING PILOT PROGRAM; REQUIRING THE DEPARTMENT TO SET UP A COLLABORATIVE PROCESS THAT ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY AND RELATED FUNDING NECESSARY TO CLEAN UP STATE SUPERFUND SITES; AMENDING SECTIONS 15-37-117, 75-10-701, 75-10-721, AND 75-10-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND TERMINATION DATES. *3419*

585 *(Senate Bill No. 397; Eck)* AN ACT PROVIDING THAT CERTAIN PROPERTY LEASED FROM A GOVERNMENTAL ENTITY BY INSTITUTIONS OF PURELY PUBLIC CHARITY IS EXEMPT FROM PROPERTY TAXATION; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. *3434*

586 *(House Bill No. 416; McKee)* AN ACT APPROPRIATING $1.5 MILLION FOR THE SCHOOL FISCAL YEAR ENDING JUNE 30, 1996, AND $2 MILLION FOR THE SCHOOL FISCAL YEAR ENDING JUNE 30, 1997, TO PAY STATE ADVANCES AND REIMBURSEMENTS FOR SCHOOL FACILITIES; LIMITING THE ELIGIBILITY FOR A STATE REIMBURSEMENT FOR SCHOOL FACILITIES TO A DISTRICT HAVING OUTSTANDING BONDED INDEBTEDNESS ON BONDS SOLD AFTER JULY 1, 1991; PROVIDING A STATE ADVANCE FOR SCHOOL FACILITIES IN THE FIRST SCHOOL FISCAL YEAR IN WHICH A DEBT SERVICE PAYMENT IS DUE; AMENDING SECTIONS 20-9-346, 20-9-367, 20-9-369, 20-9-370, 20-9-371, 20-9-406, 20-9-422, AND 20-9-439, MCA; AND PROVIDING AN EFFECTIVE DATE. *3437*

587 *(House Bill No. 3; Zook)* AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1995; AMENDING SECTION 1, CHAPTER 30, SPECIAL LAWS OF NOVEMBER 1993, AND SECTION 18, CHAPTER 624, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *3445*

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27 *(McCann)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO PROVIDE CONSTITUTIONAL STATUS TO THE ITEM VETO. *3687*

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CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. The following amounts are appropriated from the general fund for fiscal years 1995, 1996, and 1997 for the operation of the 54th legislature and costs of preparing for the 55th legislature:

House of Representatives	$2,506,000
Senate	$1,520,871
Legislative Council	$664,049

Section 2. Effective date. [This act] is effective on passage and approval.

Approved January 13, 1995

CHAPTER NO. 2

[SB 100]

AN ACT AUTHORIZING LOANS TO LOCAL GOVERNMENT FOR BUSINESSES ESTIMATED TO EMPLOY AT LEAST 2,000 PEOPLE; PROVIDING THAT LOANS MAY BE USED TO PROVIDE INFRASTRUCTURE FOR A BUSINESS; PROVIDING FOR REPAYMENT OF THE LOANS THROUGH INFRASTRUCTURE FEES; PROVIDING A TAX CREDIT FOR INFRASTRUCTURE FEES PAID; AMENDING SECTIONS 17-6-308, 17-6-309, 17-6-311, AND 17-6-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adoptod by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish halances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notos secured by the account or fund to make the loans. Loans must be on terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes. *The board may make a loan provided for in [section 5].*

(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer $15.5 million of the permanent coal tax trust fund for seed capital project loans and $8.1 million of the permanent coal tax trust fund for research and development project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1997, for seed capital project loans and heyond June 30, 1995, for research and development project loans. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board of investmenta pursuant to the provisions of 17-6-201.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

Section 2. Section 17-6-309, MCA, is amended to read:

"**17-6-309. Investment preferences.** *(1)* ~~In~~ *Subject to the provisions of subsection (2), in* deciding which of several investments of equal or comparable security and return are te be made when sufficient funds are not available to fund all possible investments, the board shall give preference to the business investments that:

~~(1)~~*(a)* assist employee-owned enterprises in providing new jobs or in preserving existing jobs for Montana residents or in otherwise contributing to the long-term benefit of the Montana economy;

~~(2)~~*(b)* are for locally owned enterprises that are either expanding or establishing new operations;

~~(3)~~*(c)* provide jobs that will be substantially filled by current Montana residents as opposed to providing jobs that will be filled by nonresidents coming into the stato to fill such jobs;

~~(4)~~*(d)* maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

~~(5)~~*(e)* encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

~~(5)~~*(f)* benefit small- and medium-sized businesses as defined in rules adopted by the hoard.

(2) The board may make a loan to enhance economic development and create jobs if the loan will result in the creation of a business estimated to employ at least 2,000 people in Montana."

Section 3. Section 17-6-311, MCA, is amended to read:

"**17-6-311. Limitation on size of investments.** (1) Except as provided in subsections (2) ~~and (3)~~ *through (4)*, ~~no~~ *an* investment may *not* be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund.

(2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company; however, the total amount of such debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

(4) A loan made pursuant to 17-6-309(2) may not exceed $20 million."

Section 4. Section 17-6-312, MCA, is amended to read:

"17-6-312. State participation in loans. (1) ~~State~~ *Subject to 17-6-311(4), state* participation in any loan to a business enterprise, except for a loan guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state sball participate in the security for a loan in the same proportion as tbe loan participation amount.

(2) Tbe purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1)."

Section 5. Economic development loan — infrastructure tax credit. (1) A loan made pursuant to 17-6-309(2) may be used to build infrastructure, such as water systems, sewer systems, wator treatment facilities, sewage treatment facilities, and roads, that allows the location or creation of a business in Montana. The loan may be made to a local government that will creato the necessary infrastructure. The infrastructure may serve as collateral for the loan. The local government receiving the loan may charge fees to the users of the infrastructure. A loan repayment agreement must provide for repayment of the loan from tbe entity authorized to charge fees for the use of the services of the infrastructure.

(2) A loan pursuant to 17-6-309(2) and this section may not be made until the board is satisfied that the condition in 17-6-309(2) will be met. If the condition contained in 17-6-309(2) is not met, any credits received pursuant to subsection (3) must be returned to the state.

(3) A business that is created as the result of a loan made pursuant to 17-6-309(2) and subsection (1) of this section is entitled to a credit against taxes due under Title 15, chapter 31, for the portion of the fees attributable to the use of the infrastructure. The total amount of tax credit claimed may not exceed the amount of the loan.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [section 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved January 20, 1995

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CHAPTER NO. 3

[HB 22]

AN ACT ALLOWING STATE AGENCIES THAT ARE SUBJECT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO USE AN AMENDED PROPOSAL NOTICE OR THE ADOPTION NOTICE TO CORRECT DEFICIENCIES IN STATEMENTS OF REASONABLE NECESSITY, IN CITATIONS OF AUTHORITY FOR RULES, AND IN CITATIONS OF SECTIONS IMPLEMENTED BY RULES; AND AMENDING SECTION 2-4-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-305, MCA, is amended to read:

"**2-4-305. Requisites for validity — authority and statement of reasons.** (1) The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating ~~therein its~~ *in the statement the* reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the Montana Administrative Register, the differences must be described in the statement of reasons for and against agency action. When ~~no~~ written or oral submissions have *not* been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference ~~shall~~ *must* clearly indicate ~~that~~ *the* portion of the language ~~which~~ *that* is statutory and the portion ~~which~~ *that* is *an* amplification of the language.

(3) Each proposed and adopted rule ~~shall~~ *must* include a citation to the specific grant of rulemaking authority pursuant to which ~~it~~ *the rule* or any part ~~thereof~~ *of the rule* is adopted. In addition, each proposed and adopted rule ~~shall~~ *must* include a citation to the specific section or sections in the Montana Code Annotated ~~which~~ *that* the rule purports to implement.

(4) Each rule *that is* proposed and adopted by an agency ~~implementing~~ *and that implements* a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy~~, as used in the definition set forth in 2-4-102(10),~~ and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency bas authority to adopt rules to implement, interpret, make specific, or otherwise carry out tbe provisions of the statute, ~~no~~ *a* rule adopted is *not* valid or effective unless *it is*:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. ~~Such~~ *Subject to the provisions of subsection (8),* reasonable necessity must he demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

(7) ~~No~~ *A* rule is *not* valid unless *it is* adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption ~~thereof~~ *of the rule* is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in statements of reasonable necessity, in citations of authority for rules, and in citations of sections implemented by rules."

Approved January 23, 1995

CHAPTER NO. 4

[HB 23]

AN ACT CLARIFYING THE FEE FOR PROVIDING INFORMATION IN AN ELECTRONIC FORMAT; AMENDING SECTIONS 1-11-301 AND 2-6-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-301, MCA, is amended te read:

"1-11-301. Publication and sale of Montana Code Annotated — free distribution. (1) The legislative council, with the advice of the code commissioner, shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of stato law relating te contracts and bids, except as provided in this section.

(2) The methods of sale te the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications may be included as an alternative specification and bid and as a part of a contract to be let hy bids by the code commissioner.

(3) The sales price to the public *of all Montana Code Annotated material* must be fixed by the legislative council but may not exceed the cost price plus 25%. All revenue generated from the sale of the Montana Code Annotated or ancillary puhlications must be deposited in the stato special revenue fund. Appropriations from the fund may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state, Montana local governmental agencies tbat are supported by public funds, and nonprofit organizations may not exceed the cost price of the sets plus 5%.

(5) (a) The Montana Code Annotated and supplements and otber subsequent and ancillary publications except annotations must be provided at no cost to the following:

(i) each library designated as a depository library under 22-1-214, one copy;

(ii) each library designated as a federation beadquarters library under 22-1-402, one copy.

(b) The stato law library in Helena must be provided with four copies of the Montana Code Annotated and supplements, including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection."

Section 2. Section 2-6-110, MCA, is amended to read:

"**2-6-110. Electronic information — public access.** (1) Except as provided by law, each person is entitled to a copy of information compiled, created, or otherwise in the custody of public agencies that is in electronic format, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic information.

(2) Except as provided by law and subject to subsection ~~(4)~~ *(3)*, an agency may charge a fee, not to exceed:

(a) tbe agency's actual cost of purchasing tbe electronic media used for transferring data, if the person requesting the information does not provide the media; ~~or~~

(b) expenses incurred by the agency as a result of mainframe processing charges or other out-of-pocket expenses directly associated with the request for information.*; and*

~~(3)~~*(c)* ~~An agency may also charge an hourly fee~~ *the hourly rate for the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312* for eacb hour, or fraction of an hour, after one-half hour of copying service has been provided. ~~The hourly fee may not exceed the hourly rate for the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312.~~

~~(4)~~*(3)* In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the computer-assisted mass appraisal system. Tbe fee must be charged to persons requesting the data base or any part of the data base from tbe mass appraisal system. The department may not charge a fee for information provided from this data base te a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property. All fees received by the department under

this subsection must be deposited in a stata special revenue fund as provided in 15-1-521.

~~(5)~~*(4)* For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

~~(5)~~*(5)* This section does not authorize the release of electronic security codes giving access te private information."

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved January 23, 1995

CHAPTER NO. 5

[SB 14]

AN ACT CHANGING THE FUND TYPE USED TO ACCOUNT FOR ESCHEAT PROPERTY FROM THE AGENCY FUND TO THE EXPENDABLE TRUST FUND, AS REQUIRED BY GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; INCREASING TO $100,000 THE MAXIMUM AMOUNT ALLOWED TO BE RETAINED FOR PAYMENT OF CLAIMS; AMENDING SECTIONS 17-8-303, 39-3-213, 70-9-309, 72-14-204, 72-14-205, 72-14-206, 72-14-207, 72-14-209, 72-14-210, AND 72-14-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-303, MCA, is amended to read:

"17-8-303. Warrants — presentation and cancellation. (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state auditor on the state treasury ~~shall~~ *must* be presented for payment within 6 months after the date ef ~~the~~ issue ~~thereof~~.

(b) Warrants issued for the department of social and rehabilitation services that are funded te any extent with federal money ~~shall~~ *must* be presented for payment within 180 days after the date of issue.

(2) ~~Should~~ *If* the payee or legal holder of any warrant ~~fail~~ *fails* to present it for payment within the time specified in subsection (1), the state auditer shall ~~enter~~ *record* the ~~same~~ *warrant* as canceled ~~on the books of his office~~ and the amount ~~shall~~ *must* be credited to a separate ~~agency~~ *expendable trust* fund account administered by the state auditer. ~~Should~~ *If* the payee or legal owner of ~~any~~ *a* canceled warrant ~~present~~ *presents* it for payment or ~~present~~ *presents* a claim for payment within 4 years from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant in lieu ~~thereof~~ *of the canceled warrant.*

(3) Three years and 6 months after cancellation, the warrant ~~shall~~ *must* be classed as unclaimed property subject te the provisions of Title 70, chapter 9, parts 1 through 3. ~~Should~~ *If* the payee or legal owner of ~~any~~ *a* canceled warrant ~~present~~ *presents* it for payment or ~~present~~ *presents* a claim for payment, ~~such~~ *the* presentation ~~shall~~ *must* be te the department of revenue as provided in 70-9-310."

Section 2. Section 39-3-213, MCA, is amended to read:

"**39-3-213. Disposition of wages.** (1) The commissioner of labor and industry shall deposit wages collected ~~by him~~ under parts 2 and 4 of this chapter into the ~~agency~~ *expendable trust* fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the ~~agency~~ *expendable trust* fund ~~are~~ *do* not *bear* interest ~~bearing~~. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) ~~which~~ *that* remain unclaimed for more than 1 year from the date of issuance ~~shall~~ *must* be returned te the state auditor for cancellation in accordance with 17-8-303."

Section 3. Section 70-9-309, MCA, is amended to read:

"**70-9-309. Deposit of money — record — deduction of costs.** (1) Except for patronage refunds retained under 35-18-316, all money received under parts 1 through 3, including the proceeds from the sale of abandoned property under 70-9-308, must be immediately deposited by the department of revenue with the state treasurer for credit to the public school nonexpendable trust fund of the state, except that the state treasurer shall retain in the ~~agency~~ *expendable trust* fund an amount not exceeding ~~$25,000~~ *$100,000* from which the treasurer shall make prompt payment of claims allowed by the department as provided in this section.

(2) *(a)* Before making the deposit, the department shall record*:*

(i) the name and last-known address of each person appearing from the holders' reports to be entitled to the abandoned property*;* and ~~of~~

(ii) the name and last-known address of each insured person or annuitant and, with respect te each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due.

(b) The record must be available for public inspection at all reasonable business hours.

(3) Before making any deposit to the credit of the public school nonexpendable trust fund, the department may deduct:

(a) any costs in connection with sale of abandoned property;

(b) any costs of mailing and publication in connection with any abandoned property; and

(c) reasonable service charges."

Section 4. Section 72-14-204, MCA, is amended to read:

"72-14-204. Order directing sale of property upon final settlement of estate. At the final settlement of ~~any~~ *an* estate, if there ~~be~~ *are* no heirs or other claimants ~~thereof~~, the district judge shall ~~make an~~ order ~~directing~~ the puhlic administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer~~,~~. ~~who~~ *The county treasurer* shall keep an account ~~with such estate~~ of ~~all moneys~~ *the money* received *from each estate* and paid to ~~him, and~~ the county treasurer *and* shall ~~forthwith~~ remit ~~all of said~~ *the* money to the department of revenue with a statement ~~as to the estates~~ *of thc estate* to which the money belongs. The department shall immediately deliver ~~such~~ *the* money to the state treasurer ~~who shall thereupon~~ *for* deposit ~~such money so received by him~~ in the ~~agency~~ *expendable trust* fund ~~of the state of Montana~~."

Section 5. Section 72-14-205, MCA, is amended to read:

"72-14-205. Unsold intangible personal property — how disposed of — auction sale. (1) If the intangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate ~~as by law provided~~, then ~~it shall be the duty of~~ the personal representative to *shall* deliver all of such *the* property to the department of revenue with a statement setting forth the name of the estate to which it belongs~~, and the~~. *The* department ~~must~~ *shall,* within 1 year of the receipt of ~~such~~ *the* property, ~~cause the same to be sold~~ *sell the property* to the highest bidder at a public auction sale at the department's office in Helena, Montana.

(2) The department shall give notice of ~~such~~ *the* sale by publication in a *Helena* newspaper ~~published in the city of Helena, Montana,~~ once a week for 2 successive weeks. ~~making in all two publications, the~~ *The* last publication ~~to~~ *must* be at least 20 days prior to the date of ~~such~~ *the* sale. ~~Such~~ *The* notice ~~shall~~ *must* give the time and place of such *the* sale and ~~shall~~ *must* contain a list and description of the stocks, bonds, securities, or other intangible personal property to be sold.

(3) All of the expenses of ~~such~~ *the* sale ~~shall~~ *must* be deducted from the proceeds ~~thereof~~ *of the sale* by the department, and the balance of ~~such~~ *the* proceeds ~~shall~~ *must* be delivered by the department to the stato treasurer for deposit in the ~~agency~~ *expendable trust* fund ~~of the state of Montana~~."

Scction 6. Section 72-14-206, MCA, is amended to read:

"72-14-206. Unsold real property — how disposed of — auction sale. (1) If the real property was not sold by the personal representative at the final settlement of the estate ~~as by law provided~~, then ~~it shall be the duty of~~ the personal representative ~~to~~ *shall* make and execute to the state of Montana a deed and ~~to~~ deliver the ~~same~~ *deed* to the county clerk and recorder of the county ~~wherein such~~ *in which the* real property is situated~~,~~. ~~and it shall then become the duty of the~~ *The* county clerk and recorder to *shall* file and record ~~said~~ *the* deed~~,~~ without charge~~,~~ and ~~after being so recorded the county clerk and recorder~~ shall mail the deed to the department of revenue~~, which~~. *The department of revenue* shall ~~make a~~ record ~~thereof~~ *the deed* and deliver ~~the deed~~ *it* to the board of land commissioners.

(2) Within 1 year after the receipt of ~~such~~ *the* recorded deed, the board shall ~~cause such~~ *sell the* property ~~to be sold~~ to the highest bidder at *a* public auction

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sale to be held at the courthouse in the county where ~~such~~ *the* real property or any part ~~thereof~~ *of the property* is situated.

(3) The board shall give notice of ~~such~~ *the* sale by publication *once a week for 2 weeks* in a newspaper published in the county ~~wherein such~~ *in which the* real estate or any part ~~thereof~~ *of the real estate* is situated ~~once a week for 2 weeks, making in all two publications, the~~. *The* last publication ~~to~~ *must* be at least 20 days prior to the date of ~~such~~ *the* sale. ~~Such~~ *The* notice ~~shall~~ *must* give the time and place of ~~such~~ *the* sale and contain a description of the real property to be sold.

(4) All expenses of ~~such~~ *the* sale ~~shall~~ *must* be deducted by the board from the proceeds ~~thereof~~ *of the sale*, and the balance of ~~such~~ *the* proceeds ~~shall~~ *must* be turned over to the state treasurer ~~who shall~~ *for* deposit ~~the same~~ in the ~~agency~~ *expendable trust* fund ~~of the state of Montana~~. The board shall provide the department with a statement indicating the sale price, expenses, and net proceeds resulting from each ~~such~~ sale."

Section 7. Section 72-14-207, MCA, is amended to read:

"72-14-207. Unsold tangible personal property — how disposed of — auction sale. (1) If the tangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate ~~as provided by law, it is the duty of~~ the personal representative ~~to~~ *shall* deliver ~~such~~ *the* property to the county treasurer. The county treasurer ~~must~~ *shall*, within 1 year of the receipt of ~~such~~ *the* property, ~~cause it to be sold~~ *sell it* to the highest bidder at a public auction sale at the county seat of the county of administration of the estate.

(2) The county treasurer shall give notice of ~~such~~ *the* sale by publication *once a week for 2 successive weeks* in a newspaper published in the county of administration ~~once a week for 2 successive weeks making in all two publications, the~~. *The* last publication to *must* be at least 20 days prior to the date of ~~such~~ *the* sale. The notice shall give the time and place of such sale and contain a description of the property to be sold.

(3) All expenses of ~~such~~ *the* sale ~~shall~~ *must* be deducted from the proceeds ~~thereof~~ *of the sale* by the county treasurer, and the balance of ~~such~~ *the* proceeds ~~shall~~ *must* be delivered by the county treasurer to the department of revenue for deposit in the ~~agency~~ *expendable trust* fund ~~of the state of Montana~~."

Section 8. Section 72-14-209, MCA, is amended to read:

"72-14-209. Deposit of all sums escheated — ~~agency~~ *expendable trust* fund. All sums escheated under the provisions of parts 1 through 3 of this chapter ~~shall~~ *must* be delivered by the department of revenue to the state treasurer and deposited by the treasurer in the ~~agency~~ *expendable trust* fund."

Section 9. Section 72-14-210, MCA, is amended to read:

"72-14-210. ~~Agency~~ *Expendable trust* fund ~~moneys~~ *money* to be held in trust — deposit in public school nonexpendable trust fund. ~~Moneys and properties~~ *Money and property* placed in the ~~agency~~ *expendable trust* fund ~~shall~~ *must* be held in trust for a period of 5 years prior to deposit in the public school nonexpendable trust fund by the state treasurer~~; such~~. *The expendable*

trust ~~being~~ *is* for the benefit of persons ~~claiming~~ *who claim* property pursuant to part 3 of this chapter. ~~Such a~~ *A* claim may be brought for an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the ~~same~~ *property* to the possession of the state."

Section 10. Section 72-14-403, MCA, is amended te read:

"72-14-403. Deposit of unclaimed property in state treasury — escheat. (1) All money or other property distributed in the administration of an estate of a decedent or as the subject of a trust and deposited before or after July 1, 1947, with the county treasurer to the credit of the distributee or beneficiary and any money remaining on deposit te the credit of an estate after final distribution must, *within 1 year of receipt by the county treasurer,* he delivered inte the state treasury for deposit in the ~~agency~~ *expendable trust* fund by the county treasurer ~~upon the expiration of 1 year from the day of such deposit~~.

(2) ~~Money~~ *If money* or other property ~~so~~ deposited in the state treasury~~, if~~ *is* not claimed by the person or persons entitled ~~thereto~~ *to the property* by bringing an action as provided in part 3 of this chapter, ~~shall escheat~~ *the money or property escheats* to the state ~~of Montana~~ and *must* be placed in the public school nonexpendable trust fund ~~as provided therein~~."

Section 11. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to July 1, 1994.

Section 12. Effective date. [This act] is effective on passage and approval.

Approved January 26, 1995

CHAPTER NO. 6

[SB 16]

AN ACT ELIMINATING REVIEW BY A SPECIAL LEGISLATIVE COMMITTEE OF THE STATE JOB TRAINING PLAN REQUIRED BY THE FEDERAL JOB TRAINING PARTNERSHIP ACT; AMENDING SECTION 53-2-1110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-1110, MCA, is amended te read:

"53-2-1110. Review of job training plans. At least 120 days before the beginning of the first of the 2 program years covered by the job training plan, the governor shall submit the proposed job training plan for review and comment te an appropriate standing committee of each house of the legislature, as required by 29 U.S.C. 1515, or, if the legislature is not in session, *the governor shall submit one copy of the proposed job training plan* te ~~an appropriate interim committee designated by~~ the speaker of tbe house of representatives, ~~and~~ *one copy to* the president of the senate, *and one copy to the legislative council.*"

Section 2. Coordination instruction. [This act] is void if House Bill No. 2 is passed and approved and contains provisions allocating to the legislative

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council for the activities of the interim committee described in 53-2-1110 funds appropriated to the department of labor and industry from federal special revenue from the Job Training Partnership Act.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved January 26, 1995

CHAPTER NO. 7

[SB 10]

AN ACT GRANTING THE STATE THE RIGHT TO A JURY TRIAL IN ALL FELONY AND MISDEMEANOR CASES IN ALL COURTS; AND AMENDING SECTIONS 46-16-110 AND 46-17-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-16-110, MCA, is amended to read:

"46-16-110. Right to jury trial — waiver. (1) ~~Defendants~~ *The parties* in ~~all~~ *a* felony ~~cases shall~~ *case* have a right to trial by a jury of 12 persons.

(2) The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than that to which they are entitled.

(3) Upon written consent of the ~~defendant~~ *parties*, a trial by jury may be waived."

Section 2. Section 46-17-201, MCA, is amended to read:

"46-17-201. Juries in misdemeanor cases. (1) The ~~defendant~~ *parties* in a misdemeanor case is *are* entitled to a jury of six qualified persons~~,~~ but ~~the parties~~ may agree to a number less than six at any time before the verdict.

(2) Upon consent of the ~~defendant~~ *parties*, a trial by jury may be waived."

Approved January 27, 1995

CHAPTER NO. 8

[SB 26]

AN ACT ALLOWING THE BOARD OF CRIME CONTROL TO AWARD A GRANT FOR YOUTH DETENTION SERVICES TO AN ELIGIBLE COUNTY IN A CASE OF EXTREME HARDSHIP; PROVIDING THAT THE GRANT BE IN AN AMOUNT NOT TO EXCEED 75 PERCENT OF THE ACTUAL COSTS OF SECURE DETENTION; AMENDING SECTION 41-5-1004, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-1004, MCA, is amended to read:

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"41-5-1004. Distribution of grants — limitation of funding — restrictions on use. (1) The board shall award grants on an equitable basis, giving preference to services that will be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care must be paid as provided by law.

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Based on funding available after the board has funded block grants under subsection (2), the board shall, in cases of extreme hardehip in which the transfer of youth court cases to the adult system has placed considerable financial strain on a county's resources, award grants to eligible counties to fund up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be addressed at the end of the fiscal year and will be awardsd by the board based upon a consideration of the applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular case or cases that created the hardship expenditure for which the hardship grant is requested.

~~(3)~~*(4)* Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in 41-5-523."

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved January 27, 1995

CHAPTER NO. 9

[SB 54]

AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE MAKE RECOMMENDATIONS FOR IMPROVEMENTS IN THE STATE'S SYSTEM OF TAXATION AND FOR ALTERNATIVE TAX MEASURES IN ITS BIENNIAL REPORTS; AND AMENDING SECTION 15-1-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-205, MCA, is amended te read:

"15-1-205. Bienniai report — contents. (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value~~, in tabulated form, with recommendations for improvements in the system of taxation, together with~~

~~alternative measures as may be formulated for the consideration of the legislature~~. The department shall follow the provisions of 5-11-210 in preparing the report.

(2) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separatsly;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the stato or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(3) The data described in subsection (2), if reported, must be related te the income and age of the taxpayer whenever the information is available.

(4) (a) When reporting the data described in subsection (2)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(5) In reporting the data described in subsection (2), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(6) The department shall identify in a separato section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(7) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(8) The department shall include the inheritance tax information required by 72-16-202 in a separato section of the report."

Approved January 27, 1995

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CHAPTER NO. 10

[HB 38]

AN ACT CLARIFYING THE RESOURCE INDEMNITY TRUST TAX ON TALC, COAL, VERMICULITE, AND LIMESTONE; AMENDING SECTIONS 15-38-103 AND 15-38-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-103, MCA, is amended to read:

"**15-38-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Department" means *the* department of revenue.

(2) "Gross value of product" means, except as provided in 15-38-125 through 15-38-128, the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, *talc, vermiculite, limestone,* or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens."

Section 2. Section 15-38-104, MCA, is amended to read:

"**15-38-104. Tax on mineral production.** (1) Except as provided in subsections (2) through (4), the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing a mineral is $25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rato of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing:

(a) talc is $25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this stato during the calendar year immediately preceding at the rato of 4% *of the gross value of product in excess of $625*; and

(b) coal is $25 plus an additional amount computed on the gross value of product for coal produced in Montana during the calendar year immediately preceding at the rato of 0.4% *of the gross value of product in excess of $6,250.*

(3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing vermiculite is $25 plus an additional amount computed on the gross value of product for vermiculite derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 2% *of the gross value of product in excess of $1,250.*

(4) The annual tax te be paid by a person engaged in or carrying on the business of mining, extracting, or producing limestone for the production of quicklime is $25 plus an additional amount computed on the gross value of product for limestone derived from the business work or operation within this state during the calendar year immediately preceding at the rato of 10% *of the gross value of product in excess of $250.*"

Section 3. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Approved January 27, 1995

CHAPTER NO. 11

[HB 95]

AN ACT REVISING CERTAIN PROVISIONS REGARDING THE SALE OF LIVESTOCK; ALLOWING THE POSTING OF A BOND EQUIVALENT AS A CONDITION OF APPROVAL FOR NONMARKET SALES AND FOR LICENSURE AS A LIVESTOCK DEALER; REQUIRING THE DEPARTMENT OF LIVESTOCK TO CONDUCT A PERIODIC AUDIT OF LIVESTOCK MARKETS AND DEALERS; REQUIRING THAT A NOTICE OF SECURITY AGREEMENT BE SIGNED BY THE AFFECTED DEBTOR OR PROPER LEGAL AUTHORITY; AND AMENDING SECTIONS 81-8-214, 81-8-231, 81-8-271, AND 81-8-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-8-214, MCA, is amended to read:

"**81-8-214. Regulation of certain nonmarket sales.** (1) A person not a livestock market operator authorized under this part conducting the sale of livestock in a breed sale, a breed association sale, or at a test station sale, except when all of the livestock are ~~his~~ *owned by that person* and are being sold from ~~his~~ *that person's* own place, shall obtain approval from the department before conducting the sale.

(2) The department, as conditions te granting approval, may require:

(a) the names and addresses of those conducting the sale;

(b) the dato and time when and the place where the sale will be conducted;

(c) a detailed statement of the assets and liabilities of the persons conducting the sale;

(d) the establishment of a custodial account into which all money received for the sale of livestock must be deposited;

(e) the posting of a reasonable bond *or its equivalent* in an amount determined by the department;

(f) the commissions or charges proposed to be imposed on the owners of livestock for services associated with the sale;

(g) a guarantee to pay all consignors in full within a reasonable time as set by the department; *and*

(h) ~~such~~ other information ~~as~~ *that* the department considers necessary."

Section 2. Section 81-8-231, MCA, is amended to read:

"**81-8-231. Duties of department.** The department shall:

(1) supervise and regulate livestock markets and livestock dealers in this state *and periodically audit the records of those markets and dealers*;

(2) regulate the properties, facilities, operations, services, and practices of all livestock markets and livestock dealers;

(3) supervise and regulate livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the livestock market and purchasers of livestock;

(4) prescribe, by general order or otherwise, rules in conformity with this part applicable to all livestock markets or livestock dealers and not in conflict with the laws of the United States or regulations of the United States department of agriculture or other federal agencies;

(5) enforce this part and adopt rules necessary to carry out this part."

Section 3. Section 81-8-271, MCA, is amended te read:

"**81-8-271. License to operate as livestock dealer — application.** (1) A person may not operate as a livestock dealer without a license. A person who wishes to operate as a livestock dealer shall file with the department an application for a license to transact ~~such~~ business on a form prescribed by the department, stating the type of license sought and the following information:

(a) the names of the persons applying for the license, together with their permanent addresses and, if the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the post-office address and principal place of business of the applicant;

(c) if the applicant is a foreigu corporation, its principal place of business outside the state, the name of the stato in which it is incorporatod, and a statoment sbowing that it has complied with the laws of this state relating to foreigu corporations and its right to do business in this state; *and*

(d) proof of acquisition of a bond *or its equivalent* from the packers and steckyards administration of the United States department of agriculture.

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(2) An application fee of $50 must be submitted with each application for a livestock dealer's license. The fee ~~shall be~~ *is* the first annual fee if the license is granted.

(3) A person who purports to act as an agent for a livestock dealer in the purchase or sale of livestock may not engage in ~~such~~ *those* business activities without a livestock dealer's license."

Section 4. Section 81-8-302, MCA, is amended te read:

"81-8-302. **Contents of notices.** The notices ~~shall~~ *must* consist of a statement showing the date of security agreement~~,~~*;* the names and addresses of the debtors and secured parties or holders and owners ~~thereof~~ *of the security agreement;* a description of the livestock covered by the security agreement~~,~~ ~~and~~*;* in *the* case of *a* notice of renewal, the date of renewal*;* ~~and,~~ in the case of a notice of assignment of a security interest, the date of the assignment, ~~and~~ a description of tbe security agreement te which the assignment is made, and the parties to the assignment*;* and any additional information ~~which~~ *that* is required by the department ~~of livestock~~. *The notice of security agreement must be signed by the affected debtor or proper legal authority.*"

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved January 27, 1995

CHAPTER NO. 12

[HB 40]

AN ACT REPEALING THE CONTINGENT TERMINATION OF THE VOLUNTARY INCOME TAX CHECKOFF FOR THE AGRICULTURE IN MONTANA SCHOOLS PROGRAM; AMENDING SECTION 12, CHAPTER 581, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 12, Chapter 581, Laws of 1993, is amended to read:

"Section 12. **Contingent termination.** A voluntary income tax checkoff created in 15-30-150~~, 15-30-152,~~ or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than $20,000 in each of those 2 tax years."

Section 2. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, te tax years beginning after December 31, 1994.

Section 3. Effective date. [This act] is effective on passage and appreval.

Approved January 27, 1995

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CHAPTER NO. 13

[HB 14]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF STATE LANDS FOR THE FISCAL YEAR ENDING JUNE 30, 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriation contained in [section 2] is intended to provide only necessary and ordinary fire suppression expenditures for the fiscal year ending Juno 30, 1995. The unspent balance of the appropriation must revert to the general fund.

Section 2. Appropriation. The amount of $5 million is appropriated from the general fund to the department of state lands, subject to the torms and conditions of [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved January 27, 1995

CHAPTER NO. 14

[HB 56]

AN ACT REVISING CERTAIN LAWS REGARDING THE RECORDING OF LIVESTOCK BRANDS; DELETING THE REQUIREMENT THAT THE DEPARTMENT OF LIVESTOCK DEVELOP A STAGGERED BRAND RECORDING AND RERECORDING SYSTEM; CLARIFYING THAT MORE THAN 10 PERCENT OF THE NET RERECORDING FEES MAY BE EXPENDED IN ANY 1 YEAR IN CASE OF AN EMERGENCY DECLARED BY THE BOARD OF LIVESTOCK; CLARIFYING THE METHOD OF DEPOSIT OF RERECORDING FEES; AND AMENDING SECTIONS 81-3-104 AND 81-3-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-104, MCA, is amended to read:

"**81-3-104. Designation of years for rerecording brands.** ~~(1) Until a system is developed under subsection (2), each~~ *Each* 10th year after 1921 is the year for rerecording artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock. Subject to the provisions of 81-3-102(3), the department shall, on tho application of a person or the transferee of the person made in a year that is a year for rerecording marks and brands, rerecord a mark or brand that at tho time of the application ~~stands of record in~~ *is recorded with* the department in the name of the person. A mark or brand that was not originally recorded or rerecorded in the name of the person during the rerecording year last preceding the date when the application is filed or *that was not* originally recorded in tho name of the person or the person's predecessor or predecessors in interest between the time of the application and

the rerecording year last preceding the application is not of record in the department.

~~(2) The department shall develop a system for the staggered recording and rerecording of marks and brands.~~"

Section 2. Section 81-3-107, MCA, is amended to read:

"**81-3-107. Fees for department — *deposit requirements.*** *(1)* The department shall establish, charge, and collect a fee for recording a new mark or brand, for recording a mark or brand transfer, or for rerecording a mark or brand. The department shall establish and charge a fee for providing a certified copy of a record and a duplicate certificate. The department may upon request research mark or brand histories and may charge a fee of up to $50 ~~per~~ *for each* mark or brand, based on time involved in research. All fees collected ~~shall~~ *must* be paid into the state special revenue fund for the use of the department. However, not more than 10% of the net rerecording fees after all expenses of rerecording are paid may be expended in any ~~one~~ *1* year except in case of an emergency declared by the governor *or the board.*

(2) Money collected as fees under subsection (1) is not subject to the deposit requirements of 17-6-105 but must be deposited by the department within a reasonable time after receipt."

Approved January 27, 1995

CHAPTER NO. 15

[SB 6]

AN ACT MAKING PERMANENT THE PROVISION SETTING THE NUMBER OF ASSOCIATE JUSTICES ON THE MONTANA SUPREME COURT AT SIX; REPEALING SECTION 5, CHAPTER 683, LAWS OF 1979, AND SECTION 1, CHAPTER 362, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 5, Chapter 683, Laws of 1979, and section 1, Chapter 362, Laws of 1987, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved January 27, 1995

CHAPTER NO. 16

[SB 7]

AN ACT CLARIFYING THE TOLLING OF APPLICABLE STATUTES OF LIMITATIONS RELATED TO MEDICAL MALPRACTICE CLAIMS; AND AMENDING SECTIONS 27-2-205 AND 27-6-702, MCA.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-2-205, MCA, is amended to read:

"27-2-205. Actions for medical malpractice. (1) Action in tort or contract for injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, ostoopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory tochnologist, pharmacist, veterinarian, a licensed hospital or long-torm care facility, or licensed medical professional corporation, based upon alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, ~~shall~~ *must*, except as provided in subsection (2), be commenced within 3 years after the dato of injury or *within* 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may ~~such~~ *an* action be commenced after 5 years from the date of injury. However, this time limitation ~~shall be~~ *is* tolled for any period during which there has been a failure to disclose any act, error, or omission upon wbich ~~such~~ *an* action is based and ~~which~~ *that* is known to the ~~plaintiff~~*defendant* or through the use of reasonable diligence subsequent to ~~said~~ *the* act, error, or omission would have been known to ~~him~~ *the defendant*.

(2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the dato of ~~his~~ *the minor's* injury, the period of limitations in subsection (1) begins to run when the minor reaches ~~his~~ *the minor's* eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian."

Section 2. Section 27-6-702, MCA, is amended to read:

"27-6-702. Tolling of statute of limitations. The running of the applicable limitation period ~~in~~ *related to* a malpractice claim is tolled upon receipt by the director of the application for review as to all health care providers named in the application as parties to the panel proceeding and as to all other persons or entities named in the application as necessary or proper parties for any court action ~~which~~ *that* might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period ~~in a malpractice claim~~ does not begin again until 30 days after either an order of dismissal, with or without prejudice against refiling, is issued from the panel chairman, or from the director upon the consent of the parties to the claim, or *after* the panel's final decision, whichever occurs first, is entered in the permanent files of the panel and a copy is served upon the complainant or ~~his~~ *the complainant's* attorney if ~~he is~~ represented by counsel, by certified mail."

Approved January 27, 1995

CHAPTER NO. 17

[HB 126]

AN ACT PROVIDING FOR DISPOSAL OF ARTICLES NOT REDEEMED FROM RETAIL LAUNDERERS OR DRY CLEANERS WITHIN 180 DAYS;

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REQUIRING THE RETAIL LAUNDERER OR DRY CLEANER TO POST A NOTICE AND TO MAINTAIN RECORDS; REQUIRING ANY BALANCE FROM THE SALE OF AN ARTICLE TO BE DEPOSITED IN THE COUNTY GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disposal of property unclaimed within 180 days — notice — maintenance of records. (1) A retail launderer or dry cleaner may dispose of an article, garment, or piece of clothing left with the launderer or dry cleaner for cleaning, laundering, repairing, or other service that is not redeemed by the customer within 180 days. A retail launderer or dry cleaner is not responsible or liable for an article, garment, or piece of clothing disposed of pursuant to this section.

(2) A retail launderer or dry cleaner subject to this section shall post a notice describing the provisions of this section in a conspicuous place on the premises of the retail launderer or dry cleaner. The notice must be substantially the same as the following language: "As provided in [this section], an article, garment, or piece of clothing accepted for cleaning, laundering, repairing, or other service by a launderer or dry cleaner must be claimed within 180 days after the date the item was received for service. If an article is not claimed within 180 days, the item may be disposed of by the launderer or dry cleaner."

(3) For any item that is disposed of as provided in this section, the retail launderer or dry cleaner sball maintain copies of all service tickets or other records showing the date the item was received and the dato and manner of disposition. The records must be maintained for 1 year following disposal.

(4) Any balance in excess of the charges for cleaning, laundering, repairing, or other service arising from the sale of an item unclaimed by the owner must be paid to the general fund of the county in which the sale took place.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 9, and the provisions of Title 70, chapter 9, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 2, 1995

CHAPTER NO. 18

[SB 1]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 54TH LEGISLATURE; AMENDING SECTIONS 1-2-201, 1-11-302, 2-2-102, 3-5-403, 3-10-601, 7-8-2218, 7-14-102, 7-14-301, 13-37-226, 15-1-501, 15-31-702, 15-35-108, 15-36-112, 15-37-117, 15-51-103, 15-53-114, 15-59-108, 15-59-208, 15-60-210, 15-65-121, 15-70-101, 15-71-104, 16-1-306, 16-1-401, 16-1-404, 16-1-408, 16-1-410, 16-1-411, 16-11-119, 16-11-206, 17-1-503, 17-6-201, 17-7-502, 20-7-436, 20-9-104, 20-9-115, 20-9-314, 20-9-370,

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20-9-466, 23-5-610, 26-1-602, 32-3-704, 32-3-801, 37-17-102, 39-51-304, 39-71-532, 39-71-2504, 40-4-215, 41-5-311, 45-2-101, 45-5-206, 46-11-111, 46-18-248, 46-18-250, 46-18-304, 52-2-101, 52-2-505, 52-3-813, 53-1-301, 53-9-109, 53-24-302, 53-30-101, 61-2-107, 61-10-214, 70-24-103, 72-2-113, 72-2-116, 72-33-108, 75-10-513, 75-10-919, 85-1-102, AND 87-1-605, MCA; REPEALING SECTIONS 1-5-205, 2-17-127, 15-25-101, 15-25-102, 15-25-111, 15-25-112, 15-25-113, 15-25-114, 15-25-115, 15-25-121, 15-25-122, 15-25-123, 19-15-101, 19-15-102, 50-49-108, AND 77-1-222, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-2-201, MCA, is amended to read:

"**1-2-201. Statutes — effective date.** (1) (a) Except as provided in subsection (1)(b) or (1)(c), every statuto adoptod after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed ~~therein~~ *in the enacting legislation.*

(b) Every statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed ~~therein~~ *in the enacting legislation.*

(c) Every statute providing for *the* taxation *of* or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed ~~therein~~ *in the enacting legislation.*

(2) "Passage", as used in subsection (1), means the enactment into law of a bill, which has passed the legislature, either with or without the approval of the governor, as provided in the constitution."

Section 2. Section 1-11-302, MCA, is amended to read:

"**1-11-302. Updates of Montana Code Annotated.** ~~(1)~~ The publication of updates to the Montana Code Annotatsd may he as a cumulative supplement or replacement volume or in any other format approved hy the legislative council.

~~(2) The supplements or replacements shall be certified, published, copyrighted, and deposited with the secretary of state. The supplements and replacements become effective on the date deposited with and certified to the secretary of state.~~"

Section 3. Section 2-2-102, MCA, is amended te read:

"**2-2-102. Definitions.** As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a husiress, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by ~~himself~~ *the person* or another.

(3) "Employee" means any temporary or permanent employee of the state or any subdivision ~~thereof~~ *of the state* or *a* member of the judiciary, including a member of a board, commission, or committee, except a legislator and an employee under contract to the state.

(4) "Financial interest" means an interest held by an individual~~, his~~ *or the individual's* spouse~~,~~ or minor children ~~which~~ *that* is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real or personal property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, ~~which~~ *that* involves the use of discretionary authority.

(6) "Public officer" includes any state officer except a legislator or member of the judiciary. ~~or any~~ *The term includes an* elected officer of any subdivision of the state.

(7) "State agency" includes the state; the legislature and its committees; all executive departments, boards, commissions, committees, bureaus, and offices; the university system; and all independent commissions and other establishments of the state government except the courts.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

Section 4. Section 3-5-403, MCA, is amended to read:

"**3-5-403. Terms and departments in multijudge districts.** (1) In each judicial district ~~which~~ *that* has ~~now or may hereafter have~~ more than one judge, as many terms or sessions of court may be held at the same time as there are judges in the district~~, either elected or appointed to, called into, or assigned to the performance of the duties of holding court therein~~.

(2) The judges elected or appointed to hold office in each judicial district having more than one judge ~~must~~ *shall* divide the court into departments, prescribe the order of business, and make rules for the government of ~~such~~ *the* court. Each department ~~shall~~ *must* be numbered, and each judge ~~shall~~ *must* be assigned to one of ~~such~~ *the* numbered departments.

(3) The judges ~~must~~ *shall* apportion the business of the court among themselves as equally as ~~may be~~ *possible*. In case of their failure for any cause to make ~~such~~ *the* apportionment or to assign each judge to a numbered department, the supreme court, upon application of any interested person, shall make an order apportioning ~~such~~ *the* business and assigning each judge to a

numbered department and cause the ~~same~~ *order* to be entered upon the minute book of the district court in each county in ~~such~~ *the* district. ~~Such~~ *The* order ~~shall remain~~ *remains* in full force and effect until modified or repealed by the authority making it. The failure or refusal of any district judge to carry out the terms of ~~such~~ *the* order ~~shall constitute~~ *constitutes* a contempt of the supreme court.

~~(4) The principal office of the judgeship in the 4th district created by Chapter 542, L. 1979, shall be in Lake County. The chief judge of the district shall have authority to assign a judge to such office.~~"

Section 5. Section 3-10-601, MCA, is amended to read:

"**3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that ~~this code requires~~ *are required* to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer; and

(b) 50% to the county general fund.

(4) The state treasurer shall distribute money received under subsection (3) as follows:

(a) 44.81% to the state general fund;

(b) 9.09% to the fish and game account in the state special revenue fund;

(c) 11.76% to the state highway account in the state special revenue fund;

(d) 16.93% to the traffic education account in the state special revenue fund;

(e) 0.57% to the department of livestock account in the state special revenue fund;

(f) 15.9% to the crime victims compensation *and assistance* account in the state special revenue fund; and

(g) 0.94% to the department of family services special revenue account for the battered spouses and domestic violence grant program."

Section 6. Section 7-8-2218, MCA, is amended to read:

"**7-8-2218. Procedure if property not sold at public auction.** ~~If~~ *After notice and appraisal are given as provided in 7-8-2212 and 7-8-2214, if* no bid

or offer is made for any property offered for sale at puhlic auction, ~~after notice and appraisal given as provided in 7-8-2212 and 7-8-2214,~~ the board of county commissioners may, at any timo ~~thereafter~~ *after the auction*, sell ~~such~~ *the* property at private sale and may ~~on such~~ *at the* private sale accept as tho purchase price ~~therefor~~ an amount not less than 70% of the appraised value ~~thereof~~ *of the property*."

Section 7. Section 7-14-102, MCA, is amended te read:

"**7-14-102. Allocation of state funds for public transportation.** (1) (a) The department of transportation shall allocate each year one-half of the funds appropriated for the purposes of this section among the cities and urban transportation districts of the state that operate or contract for the operation of general public transportation systems.

(b) (i) A city or urban transportation district is eligible for an allocation based upon the ratio of its local financial support for puhlic transportation to the total local financial support for all general public transportation systems in the state. Local financial support must be determined hy dividing the city's or district's expenditure of local revenue for public transportation operations during the fiscal year by the mill value of the city or urban transportation district. Each applicant city and urban transportation district shall compute its expenditure of local revenue for public transportation operations for a fiscal year immediately following the end of the fiscal year and shall apply allocations received against that deficit.

(ii) A city or urban transportation district may not receive more than 50% of any year's expenditure of local revenue for public transportation operations as an allocation under this section.

(2) One-half of the funds appropriated for the purposes of this section must be paid hy the department of transportation te the counties of the state in tbe manner provided in 15-70-101~~(1)(b)~~*(2)(b)*. Money distributed te counties under this section must be used by the counties for highway or other transportation purposes.

(3) The department of transportation may adopt rules for the keeping of accounts for and otherwise implementing this section."

Section 8. Section 7-14-301, MCA, is amended to read:

"**7-14-301. Local option motor fuel excise tax authorized.** (1) A motor fuel excise tax~~, in increments of 1 cent per gallon, not to exceed 2 cents per gallon upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads~~ may be imposed *within a county*:

(a) by the people of the county by initiative; or

(b) by the board of county commissioners by adoption of a resolution and referral to the people.

(2) The motor fuel excise tax must be imposed in increments of 1 cent per gallon and may not exceed 2 cents per gallon. The tax must be imposed upon gasoline

sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads.

~~(2)~~*(3)* The initiative or referendum must specify *that* the tax is to be collected by the department of transportation.

~~(3)~~*(4)* ~~Such a~~ *The* motor fuel excise tax may not be assessed sooner than 90 days from the dato of passage of ~~such an~~ *the* initiative or referendum.

~~(4)~~*(5)* ~~Every distributor shall pay the motor fuel excise tax to the agency specified in the initiative or referendum as provided in subsection (1). When the tax is collected by the department of transportation, each~~ *Each* distributor shall render a monthly statement to the department *of transportation* of all gasoline distributed during the preceding calendar month in the county in which it is sold to the ultimate consumer and ~~such~~ other information ~~as~~ *that* the department ~~may reasonably require~~ *requires* in order to administer the motor fuel excise tax.

~~(5)~~*(6)* The information, recordkeeping, and examination of records provisions of Title 15, chapter 70, apply to this part.

~~(6)~~*(7)* The department of transportation ~~collecting the tax authorized under subsection (1)~~ shall establish procedures to provide a refund to a person who has paid the ~~excise~~ tax but who can substantiate that the moter fuel was purchased for a use other than on public highways, streets, and roads.

~~(7)~~*(8)* In this part, the terms "distributer", "gasoline", ~~"import",~~ "motor vehicle", "person", and "use" have tbe meanings ascribed to them in 15-70-201."

Section 9. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statowide candidato shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days preceding the dato on which an election is held and within 24 hours after receiving a contribution of $500 or more if received between the 10th day before *the election* and the day of the election;

(c) not more than 20 days after the dato of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statowide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, heginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue subject to a referendum is or is expected to be on the hallot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held and within 24 hours after receiving a contribution of $100 or more if received between the 17th day before *the election* and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized te support or oppose a particular local issue shall file the reports specified in subsection (3) only if the tetal amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) ~~a closing report at the close of each calendar year,~~ on a date to be prescribed by the commissioner *for a closing report at the close of each calendar year.*

(6) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in ~~13-37-225(2)~~ *13-37-228(2)* and this section."

Section 10. Section 15-1-501, MCA, is amended te read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection ~~(6)~~*(5)* all money received from the collection of:

(a) fees from driver's licenses, motercycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chaptsr 30 of tbis title must, in accordance with the provisions of subsection ~~(6)~~*(5)*, be deposited as follows:

(a) 91.3% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes te the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection ~~(6)~~*(5)*, be deposited as follows:

(a) 89.5% of the taxes to tbe credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(4) The department of revenue shall also deposit to the credit of the stato general fund all money received from the collection of license taxes~~,~~ *and* fees~~,~~ and all net ~~revenues~~ *revenue* and receipts froni all other sources under the operation of the Montana Alcoholic Beverage Code.

~~(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.~~

~~(6)~~*(5)* Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally accepted accounting principles.

~~(7)~~*(6)* All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 11. Section 15-31-702, MCA, is amended to read:

"15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations. (1) All corporation license taxes, interest, and penalties collected from banks and savings and loan associations must, in accordance with the provisions of 15-1-501~~(6)~~, be distributod in the following manner:

(a) 20% must be allocated as provided in 15-1-501(3); and

(b) 80% is statutorily appropriated, as provided in 17-7-502, for allocation to the various taxing jurisdictions within the county in which the bank or savings and loan association is located.

(2) The corporation license taxes, interest, and penalties distributed under subsection (1)(b) must be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located.

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law te levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions."

Section 12. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated as follows:

(1) ~~To~~ *Fifty percent of total coal severance tax collections is allocated to* the trust fund created by Article IX, section 5, of the Montana constitution~~, 50% of total coal severance tax collections~~. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

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(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections ~~are~~ *is* allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid te public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of tbe state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1¼% to the credit of the renewable resource development bond fund;

(e) 0% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing hasic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1¼% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitel and for other cultural and aesthetic projects. Income from this trust fund ~~shall~~ *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) beginning July 1, 1993, and ending June 30, 1995, 3 1/3% to a special revenue account to be used by tbe department of fish, wildlife, and parks for the stabilization and preservation of bistoric and cultural sites within the state park system;

(l) all other ~~revenues~~ *revenue* from severance taxes collected under the provisions of this chapter to tbe credit of the general fund of the stato. (Terminates June 30, 1995—sec. 4, Ch. 536, L. 1993.)

15-35-108. (Effective July 1, 1995) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated as follows:

(1) ~~To~~ *Fifty percent of total coal severance tax collections is allocated to* the trust fund created by Article IX, section 5, of the Montana constitution~~, 50% of total coal severance tax collections~~. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections ~~are~~ *is* allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after allocation te the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1¼% to the credit of the renewable resource ~~development bond~~ *loan debt service* fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1¼% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund ~~shall~~ *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other ~~revenues~~ *revenue* from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. (Terminates July 1, 2003—sec. 4, Ch. 191, L. 1991.)

15-35-108. (Effective July 1, 2003) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated as follows:

(1) ~~To~~ *Fifty percent of total coal severance tax collections is allocated to* the trust fund created by Article IX, section 5, of tbo Montana constitution~~, 50% of total coal severance tax collections~~. Tbe trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of tbe state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to tbe credit of the county land planning account;

(d) 1¼% to the credit of the renewable resource ~~development bond~~ *loan debt service* fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the stato library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(b) 1¼% to the debt service fund type to the credit of tbe renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for tbe purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund ~~shall~~ *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all otber ~~revenues~~ *revenue* from severance taxes collected under the provisions of tbis chapter to the credit of tbe general fund of tbe state."

Section 13. Section 15-36-112, MCA, is amended to read:

"15-36-112. Disposition of oil and gas state and local government severance taxes — calculation of unit value for local government severance tax. (1) Each year, the department of revenue shall determine the amount of tax collected under this chapter from within each taxing unit.

(2) For purposes of the distribution of local government severance taxes collected under this chapter, the department shall determine the unit value of oil and gas for each taxing unit as follows:

(a) The unit value for petroleum and other mineral or crude oil for each taxing unit is the quotient ohtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that taxing unit during 1988, excluding new and interim production.

(b) The unit value for natural gas is the quotient obtained hy dividing the net proceeds taxes calculated on natural gas produced in that taxing unit in calendar year 1988 by the numher of cubic feet of natural gas produced in that taxing unit during 1988, excluding new and interim production.

(3) The state and local government severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), he allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4).

(b) The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes ~~bears~~ *bear* to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

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(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) Except as provided in subsection (6), the county treasurer shall distribute the money received under subsection (4) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(6) The board of county commissioners of a county may direct the county treasurer to reallocato the distribution of local government severance tax money that would have gone to a taxing unit, as provided in subsection (5), to another taxing unit or taxing units, other than an elementary school or high school *district*, within the county under the following conditions:

(a) The county treasurer shall first allocate the local government severance taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the local government severance taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the local government severance taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocato the excess to any budgeted fund of the school district."

Section 14. Section 15-37-117, MCA, is amended to read:

"**15-37-117. Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated as follows:

(a) to the credit of the general fund of the stato, 58% of total collections each year;

(b) to the state special revenue fund te the credit of a bard-rock mining impact trust account, 1.5% of tetal collections each year;

(c) to the state resource indemnity trust fund, 15.5% of total collections each year;

(d) te the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government coste, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion te the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, te the county in which the mine is locatsd, 25% of tetal collections each year, to be allocatod by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocatsd under subsection (1)(d) in a manner similar te that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return te the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502."

Section 15. Section 15-51-103, MCA, is amended to read:

"**15-51-103. Disposition of revenue — interest on delinquency.** The department of revenue shall, in accordance with the provisions of 15-1-501~~(6)~~, promptly remit the collected taxes to the state treasurer. Taxes not paid on the due date are delinquent, and a penalty of 10% plus interest at the rate of 1% per month or fraction of a month computed on the total of tax and penalty must be charged."

Section 16. Section 15-53-114, MCA, is amended te read:

"**15-53-114. Disposal of license taxes.** License taxes collectsd under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be credited to the general fund of the state."

Section 17. Section 15-59-108, MCA, is amended to read:

"15-59-108. **Deposit of taxes.** All license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited to the credit of the general fund of the state."

Section 18. Section 15-59-208, MCA, is amended to read:

"15-59-208. **Deposit of license taxes.** All license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited to the credit of the general fund of the state."

Section 19. Section 15-60-210, MCA, is amended to read:

"15-60-210. **Disposition of fee — nursing facility account.** (1) All proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited in the nursing facility state special revenue account established in subsection (2).

(2) There is a nursing facility account in the state special revenue fund. The purpose of the account is to provide a continuing source of revenue for nursing facility reimbursements as appropriated by the legislature."

Section 20. Section 15-65-121, MCA, is amended te read:

"15-65-121. **Distribution of tax proceeds — general fund loan autbority.** (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501~~(6)~~ and as provided in subsections (1)(a) through (1)(d) *of this section*, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the general fund. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the general fund is statuterily appropriated, as provided in 17-7-502, and must be transferred te an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, te the Montana historical society, to the university system, and te the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside histerical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintonance of facilities in state parks that have both resident and nonresident use, subject to 23-1-131; and

(d) the balance of the proceeds as follows:

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(i) 75% to be used directly by the department of commerce;

(ii) except as provided in subsection (1)(d)(iii), 25% to be distributod by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(iii) if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visiters bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The department of commerce may use general fund loans for efficient implementation of this section."

Section 21. Section 15-70-101, MCA, is amended to read:

"**15-70-101. Disposition of funds.** *(1)* All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501~~(6)~~, be placed in the stato special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must, in accordance with the provisions of 15-1-501~~(6)~~, be paid by the department of transportation from the state special revenue fund te the cities, towns, and counties.

~~(1)~~*(2) The amount of* $16,766,000 of the funds collected under this chapter, except those collected by a justice's court, is statuterily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis te the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections ~~(1)(a)~~*(2)(a)* through ~~(1)(c)~~*(2)(c)*:

(a) *The amount of* $54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;.

(b) *The amount of* $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the totel rural population in the stato outside incorporated cities and tewns;

(iii) 20% in the ratio that the land area of each county bears to tbe total land area of the state;.

(c) *The amount of* $10,389,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limite of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and tewns in Montana.

~~(2)~~*(3)* All funds allocated by this section to counties, cities, and towns must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets tbat are part of the federal-aid primary or secondary highway system or urban extensions to those systems, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocatod to that tewn or third-class city for the purchase of capital equipment and supplies to be used for tbe maintenance and repair of town or third-class city streets and alleys.

~~(3)~~*(4)* All funds allocated by this section to counties, cities, and towns must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

~~(4)~~*(5)* For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined by the last preceding official federal census.

~~(5)~~*(6)* For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, tewns, and counties to furnish te the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicahle to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

~~(5)~~*(7)* Except by a town or third-class city as provided in subsection ~~(2)~~*(3)*, the funds authorized by this section may not be used for the purchase of capital equipment.

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~~(7)~~*(8)* Funds authorized by this section must be used for construction and maintenance programs ~~only~~."

Section 22. Section 15-71-104, MCA, is amended to read:

"15-71-104. Disposition of funds. All taxes collected under this chapter must, in accordance with the provisions of 15-1-501~~(6)~~, be placed in the state special revenue fund to the credit of the department of transportation."

Section 23. Section 16-1-306, MCA, is amended to read:

"16-1-306. Revenue to be paid to state treasurer. Except as provided in 16-1-404, 16-1-405, 16-1-408, 16-1-410, and 16-1-411, all fees, charges, taxes, and ~~revenues~~ *revenue* collectod by or under authority of the department must, in accordance with the provisions of 15-1-501~~(6)~~, he deposited to the credit of the state general fund."

Section 24. Section 16-1-401, MCA, is amended to read:

"16-1-401. Liquor excise tax. (1) The department shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of:

(a) 16% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 13.8% of the retail selling price on all liquor sold and delivered in the stato by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The department shall retain the amount of the excise tax received in a separate account and shall, in accordance with the provisions of 15-1-501~~(6)~~, deposit, to the credit of the general fund, the ~~sums~~ *amount* collected and received not later than the 10th day of each month."

Section 25. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the stato of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company tbat manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the stato by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

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(2) The license tax must be charged and collected on all liquor hrought into the state and taxed by the department. The retail selling price must be computed hy adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. Thirty percent of ~~these revenues are~~ *this revenue is* statutorily appropriated, as provided in 17-7-502, to the department and must, in accordance with the provisions of 15-1-501~~(6)~~, be allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporatod cities and towns, as provided in subsection (3). Four and one-half percent of ~~these revenues are~~ *the revenue is* statuterily appropriatod, as provided in 17-7-502, and must, in accordance with the provisions of 15-1-501~~(6)~~, be allocatod to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes. The remaining ~~revenues~~ *revenue* must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited in the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism. In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regnlations ~~as are~~ necessary to apportion that proportion of license tax so generated to the county where the licensed establisbment is located, for use as provided in 16-1-405. That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to the department, which shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501~~(6)~~, to be allocated to the incorporated cities and towns of the county.

(3) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must be distributod by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(4) The license tax proceeds that are allocated to the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism must be credited quarterly to the department of corrections and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder must be distributed as provided in 53-24-206."

Section 26. Section 16-1-408, MCA, is amended to read:

"**16-1-408. Additional tax.** An additional tax of $1.30 per barrel is levied and imposed as provided by 16-1-406. One dollar of the additional tax must, in accordance with the provisions of 15-1-501~~(6)~~, be depositod, notwithstanding 16-1-306 and 16-1-410 or any other provision, with the state treasurer to the credit of the department of corrections and human services each quarter for the treatment, rehabilitation, and prevention of alcoholism, as approved by the state, and 30 cents of the additional tax must be deposited in the general fund."

Section 27. Section 16-1-410, MCA, is amended to read:

"16-1-410. Tax revenue allocation. (1) All revenue received from taxes on beer under 16-1-406 and 16-1-408 over and above $1.50 per barrel of 31 gallons must, in accordance with the provisions of 15-1-501(~~6~~), be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, te the department of revenue ~~who~~, *which* shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporatos, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(2) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year."

Section 28. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine. (1) A tax of 27 cente per liter is imposed on table wine imported by a table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor must be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjecte the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department must be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) must, in accordance with the provisions of 15-1-501(~~6~~), be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) ~~8.34~~ *8 1/3* cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation te the counties, based on population, for the purpose established in 16-1-404; and

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(iii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, "based on population" means:

(a) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjustod by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-410(2); and

(b) for cities, the distribution described in 16-1-410."

Section 29. Section 16-11-119, MCA, is amended to read:

"**16-11-119. Disposition of taxes — retirement of bonds.** *(1)* The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be depositod in the state special revenue fund to the credit of the department of corrections and human services for tbe operation and maintonance of state veterans' nursing homes.

(2) All remaining revenue collected under the provisions of 16-11-111, less the expense of collecting the taxes, must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited as follows:

(a) ~~79.25%~~ *79.75%* in the long-range building program fund in the debt service fund type; and

(b) 20.25% in the long-range building program fund in the capital projects fund type."

Section 30. Section 16-11-206, MCA, is amended to read:

"**16-11-206. Wholesaler's discount — disposition of taxes.** The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a 5% defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited by the department in the long-range building program debt service fund. Refunds of the tax paid must be made as provided in 15-1-503 in cases ~~where~~ *in which* the tobacco products purchased become unsalable."

Section 31. Section 17-1-503, MCA, is amended to road:

"**17-1-503. Transfer of fund balances to general fund.** ~~On April 29, 1993, the~~ *The* balance remaining in each special revenue account terminated pursuant to legislative review must be deposited in the general fund."

Section 32. Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the ~~1972~~ Montana constitution te be provided for public funds must be administered by

the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like charactor with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in privato corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. ~~Except as provided in this chapter, another~~ *Another* agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to detormine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct tbe withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs te property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be hid, and the bid must be awarded in compliance with existing stato law and regulations. Emergency repairs may be made by the board without bid if approved by the stats architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administoring programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305."

Section 33. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically stato that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; ~~15-25-123;~~ 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; ~~19-15-101;~~ 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305;

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19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that bave been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 34. Section 20-7-436, MCA, is amended to read:

"**20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children *and youth* whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth ~~that have~~ *for whom* the treatment of chemical dependency ~~as~~ *is* the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age, ~~and~~ *who* is emotionally disturbed as defined in 20-7-401 ~~or 52-2-101~~, and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state tbat:

(i) provides services for children *or youth* with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to ~~persons~~ *individuals* under 21 years of age;

(iii) is licensed by the department of health and environmental sciences; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of health and environmental sciences pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth ~~who have~~ *for whom* the treatment of chemical dependency ~~as a~~ *is the* primary reason for treatment."

Section 35. Section 20-9-104, MCA, is amended to road:

"**20-9-104. General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353~~, except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, balance to the impact aid fund established in 20-9-514~~.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) ~~For fiscal year 1994 and subsequent fiscal years, the~~ *The* limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount received:

(a) in settlement of tax payments protested in a prior school fiscal year;

(b) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(c) in delinquent taxes from a prior school fiscal year.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less."

Section 36. Section 20-9-115, MCA, is amended te read:

"**20-9-115. Notice of preliminary budget filing and final budget meeting.** Between July 10 and July 20 of each year, the clerk of each district

shall publish *one* notice ~~one time~~, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in ~~his~~ *the clerk's* office and open to inspection by all taxpayers. The notice must also state the time and place that the trustees will meet on the fourth Monday in ~~July~~ *August* for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget."

Section 37. Section 20-9-314, MCA, is amended to read:

"**20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.** A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to May 10, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than May 10, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase that the estimated enrollment increase is over the current enrollment; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

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(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is the difference between the enrollment for the ensuing school fiscal year and 106% of the current enrollment. The amount determined is the maximum allowable increase added te the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement.

(6) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year. If the actual enrollment is less than the average number belonging used for BASE funding program and entitlement calculations, the superintondent of public instruction shall revise the total per-ANB entitlement calculations using the actual average number belonging. All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344~~(3)~~ *(4)*."

Section 38. Section 20-9-370, MCA, is amended to read:

"**20-9-370. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "School facility entitlement" means:

(a) $220 per ANB for an elementary school district;

(b) $330 per ANB for a high school district; or

(c) $270 per ANB for an approved and accreditod junior high school or middle school.

(2) "State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) is eligible for guaranteed tax base aid under the provisions of 20-9-366 through 20-9-369; and

(b) ~~(i) for the school fiscal years beginning July 1, 1993, and July 1, 1994, has outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991;~~

~~(ii)~~ for the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, has outstanding bonded indebtedness on bonds sold in [and payable from] the debt service fund of the district in any year.

(3) "Total school facility entitlement" means the school facility entitlement times the total ANB for the district."

Section 39. Section 20-9-466, MCA, is amended to read:

"**20-9-466. School district bonds — state loan — qualifications for state loan.** (1) The department of administration shall make a loan from the

coal severance tax school bond contingency loan fund, established in 17-5-703~~(1)(c)~~, to a school district in an amount equal to the principal and interest payment on qualifying bonds when due in accordance with the provisions contained in the bonds. In order to receive a loan, the school district must:

(a) have issued bonds between January 21, 1992, and January 1, 1993, pursuant to 20-9-421 and 20-9-464;

(b) be prevented from making principal and interest payments on the bonds because the debt service levy for the bonds:

(i) has been declared invalid or unenforceable under Article II, section 4, or Article X, section 1, of the Montana constitution by a final court order; or

(ii) is prevented by an injunction;

(c) have exhausted the debt service reserve for the bonds; and

(d) have complied with all the requirements for the bonds contained in 20-9-467 and this section.

(2) To qualify for the state loan described in subsection (1), a school district, before issuing its bonds, must have:

(a) received voter approval for bonds pursuant to 20-9-421;

(b) following voter approval, received a certificate of eligibility from the board of public education stating that after consultation with the superintendent of public instruction, the board has determined that a minimum of 75% of the principal amount of the proposed bonds will be used to:

(i) restore, rebuild, or replace a destroyed or severely damaged school building;

(ii) correct one or more building deficiencies that affect the health and safety of school children;

(iii) correct one or more deficiencies that prevent the school district from meeting current accreditation standards; or

(iv) address any combination of circumstances described under subsections (2)(b)(i) through (2)(b)(iii); and

(c) received a final certificate of allocation from the department of administration pursuant to subsection (5).

(3) The board of public education shall:

(a) maintain a record of the totsl principal amount of bonds for which certification has been issued; and

(b) immediately furnish to the department a copy of each certificate issued.

(4) Upon receipt of a copy of the certificato from the board of public education, the department shall temporarily allocate loan authority to the school district equal to the principal amount of bonds indicated in the board's

certificate. The principal amount of bonds for which final certification is issued may be less than the principal amount of bonds approved by the voters pursuant to subsection (2)(a).

(5) To obtain a final certificate of allocation, a school district shall provide the department, on a form provided by the department, the following information:

(a) the tentative date of sale of the school district's bonds;

(b) the principal amount of the bonds to be issued;

(c) the name and addresses of bond counsel and the financial advisor; and

(d) other information as requested by the department.

(6) Upon issuance of the bonds, a school district shall forward to the department a copy of the district's bond resolution, the final opinion of bond counsel on the bonds, and a schedule of principal and interest payments on the bonds to maturity. The bond resolution must include a covenant agreeing to:

(a) defend any lawsuit challenging the school district's authority to sell and issue the bonds and to levy a tax for payment of the principal of and interest on the bonds;

(b) provide to the department before August 1 of each year a report of the school district's outstanding principal balance as of the preceding June 30 on the bonds secured by state loans;

(c) refund the bonds on any normal call date if, during the term of the bonds, the school district can refund its bonds without the state loan security and without increasing its total debt service costs on the bonds; and

(d) enter into a contract with the department estahlishing a schedule to repay the stato if the state loans the school district money to make payments on district bonds. Notwithstanding other provisions of law, the loan must be repaid by the school district at a rate equivalent to the average yield of the pooled investment fund established in 17-6-203(3), commonly known as the short-term investment pool, for the period of the loan. Repayment must begin no later than January 1, 1994, and the loan must be repaid in full within 10 years from the date the first loan is issued te a school district. Repayment must be paid from the sources designated for repayment of the bonds or from any other revenue and assets of the school district, including state equalization funds currently distributed or which may be distributed to the district. Loan repayments received by the department must be deposited in tbe coal severance tax school bond contingency loan fund.

(7) The department shall maintain a record of the total principal amount of bonds secured by state loans.

(8) A school district issuing bonds suhject to 20-9-467 and this section may apply to the attorney general for a determination as to whether its bonds are affected by a court order declaring that the bonds of another district are invalid or unenforceahle.

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(9) A school district whose authority to levy a property tax to pay principal of and interest on bonds has been challenged shall, upon notification of the challenge, immediately notify the attorney general and tbe department."

Section 40. Section 23-5-610, MCA, is amended to read:

"23-5-610. Video gambling machine gross income tax — records — distribution — quarterly statement and payment. (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operater may deduct from the gross income amounts equal to amounts stelen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in the form the department ~~may require~~ *requires*. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after tbe end of each quarter, complete and deliver to the department a statement showing the tetal gross income from each video gambling machine licensed to the operator, together with the total amount due the stata as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information ~~as~~ *that* the department ~~may require~~ *requires*.

(4) (a) The department sball, in accordance with the provisions of 15-1-501~~(6)~~, forward one-third of the tax collected under subsection (3) to the general fund.

(b) The department shall, in accordance with the provisions of 15-1-501~~(6)~~, forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit te the county or municipal treasury. Counties are not entitled te proceeds from taxes on income from video gambling machines located in incorporated cities and tewns. The two-thirds local government portion of tax collected under subsection (3) is statuterily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury."

Section 41. Section 26-1-602, MCA, is amended to read:

"26-1-602. Disputable presumptions. All other presumptions are "disputable presumptions" and may be controverted by other evidence. The following are of that kind:

(1) A person is innocent of crime or wrong.

(2) An unlawful act was done with an unlawful intent.

(3) A person intends the ordinary consequence of ~~his~~ *the person's* voluntary act.

(4) A person takes ordinary care of ~~his~~ *the person's* own concerns.

(5) Evidence willfully suppressed would he adverse if produced.

(6) More satisfactory evidence would be adverse if weaker and less satisfactory evidence is offered and it is within the power of ~~the~~ party to offer more satisfactory evidence.

(7) Money paid by one to another was due the latter.

(8) A thing delivered by one to another belonged to the latter.

(9) When the instrument evidencing an obligation has been delivered to the debtor, the obligation has been paid.

(10) Prior rent or installments have been paid when a receipt for lator rent or installments is produced.

(11) Things ~~which~~ *that* a person possesses are owned by ~~him~~ *the person*.

(12) A person is the owner of property if ~~he~~ *the person* exercises acts of ownership over it or there is common reputation of ~~his~~ *the person's* ownership.

(13) A person in possession of an order on ~~himself~~ *the person* for the payment of money or the delivery of a thing has paid the money or delivered the thing accordingly.

(14) A person acting in a public office was regularly appointed to it.

(15) Official duty has been regularly performed.

(16) A court or judge acting as such, whether in this stato or any other state or country, was acting in the lawful exercise of ~~its~~ *the court's* or ~~his~~ *judge's* jurisdiction.

(17) A judicial record, when not conclusive, does still correctly detormine or set forth the rights of the parties.

(18) All matters within an issue were laid before tho jury and passed upon by them, and in like manner, all matters within a submission to arbitration were laid before the arbitrators and passed upon by them.

(19) Privato transactions have been fair and regular.

(20) The ordinary course of business has been followed.

(21) A promissory note or bill of exchange was given or endorsed for a sufficient consideration.

(22) An endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the noto or bill.

(23) A writing is truly dated.

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(24) A letter duly directed and mailed was received in the regular course of the mail.

(25) There is an identity of persons when there is an identity of names.

(26) A person not heard from in ~~7~~ *5* years is dead.

(27) Acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact.

(28) Things have happened according to the ordinary course of nature and the ordinary habits of life.

(29) Persons acting as partners have entered into a contract of partnership.

(30) A man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.

(31) A child born in lawful wedlock~~, there being no divorce from bed and board,~~ is legitimate.

(32) A thing once proved to exist continues as long as is usual with things of that nature.

(33) The law has been obeyed.

(34) A printed and published book purporting to be printed or published by public authority was so printed or published.

(35) A printed and published hook purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases.

(36) A trustee or other person whose duty it was to convey real property to a particular person has actually conveyed *the property* to ~~him~~ *the particular person*. This presumption applies when it is necessary to perfect the title of ~~such~~ *the* person or ~~his~~ *the person's* successor in interest.

(37) When there has been uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of ~~his~~ rights, ~~he~~ *the owner* intended to dedicate it to the public for that purpose.

(38) There was a geod and sufficient consideration for a writton contract."

Section 42. Section 32-3-704, MCA, is amended to read:

"**32-3-704. Risk assets defined.** For the purpose of establishing the reserves required, all assets except the following are considered risk assets:

(1) cash on hand;

(2) deposits and shares in federal or state banks, savings and lean associations, and credit unions;

(3) assets that are insured, fully guaranteed as to principal and interest, or due from the United States government~~,~~ *or* its agencies, the federal national mortgage association, or the government national mortgage association;

(4) loans to other credit unions;

(5) loans to students insured under the ~~provision~~ *provisions* of Titlo IV, part B, of the Higher Education Act of 1965, or similar state insurance programs;

(6) loans insured under Title I of the National Housing Act hy the federal housing administration;

(7) shares in ~~central~~ *corporate* credit unions organized under this chapter or of any other state law or of the Federal Credit Union Act;

(8) common trust investments that deal in investments authorized by this chapter;

(9) prepaid expenses;

(10) accrued interest on nonrisk investments;

(11) loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

(12) furniture and equipment; and

(13) land and buildings."

Section 43. Section 32-3-801, MCA, is amended to read:

"**32-3-801. Organization.** A corporato credit union may be organized and operated under this chapter and is suhject to all provisions not inconsistont with this ~~chapter~~ *part*. The credit union shall use the torm "corporato" in its official name."

Section 44. Section 37-17-102, MCA, is amended to read:

"**37-17-102. Definitions.** Unless tbe contoxt requires otherwise, in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by tbe regional accrediting association for institutions of higber learning, such as the northwest association of ~~secondary and higher schools~~ *schools and colleges*.

(2) "Board" means the board of psycbologists provided for in 2-15-1851.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental healtb.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal charactoristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback,

and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents ~~himself to be~~ *to the public that the person is* a "psychologist" when ~~he holds himself out to the public by~~ *the person uses* a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (4) to individuals, groups, corporations, or the public, whether or not ~~he~~ *the person* does so for compensation or fee."

Section 45. Section 39-51-304, MCA, is amended to read:

"**39-51-304. Personnel.** The department shall hire personnel to administer this chapter in accordance with ~~merit system~~ principles adopted by the department of administration."

Section 46. Section 39-71-532, MCA, is amended to read:

"**39-71-532. Penalties and remedies for underinsuring.** (1) (a) The department may require that an underinsured employer pay to the department a penalty of up to double the premium that the employer would have paid if the employer had properly classified the employee or $200, whichever is greater. In determining the amount for the calculation of the penalty under this subsection (a), the department shall make an assessment on how much premium would have been paid on the employer's *payroll for the* past ~~3-year-payroll~~ *3 years* for periods within the 3 years when the employer was underinsured. The department shall determine the amount of the penalty based upon the gravity of the violation and the clarity of the relevant classification codes. The determination by the department is subject to the provisions in 39-71-204.

(b) The penalty provided in subsection (1)(a) may be assessed against the employer for each employee not properly classified.

(c) The fund must receive from an underinsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the underinsured employer. However, the ~~uninsured~~ *underinsured* employer's liability under this subsection (c) may not exceed $50,000.

(2) When the department discovers an underinsured employer, it may order the employer to cease operations until the employer's employees are properly classified and the correct premium rates are being paid to the insurer.

(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may bring a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) The department may institute and maintain in the name of the state, through the attorney general or the county attorney, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

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(5) This section does not limit a private insurer's civil remedies to collect premiums owed by tho employer for paying insufficient premiums due to misclassification of employees."

Section 47. Section 39-71-2504, MCA, is amended to read:

"**39-71-2504. Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation bond repayment account.

(2) All collections of the tax imposed under 39-71-2503, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must, in accordance with the provisions of 15-1-501~~(6)~~, be deposited in the workers' compensation tax account. All money deposited in the workers' compensation tax account must be credited to the workers' compensation bond repayment account to the extent necessary to pay tho principal of and redemption premium and interest due on workers' compensation bonds issued under 39-71-2354 and 39-71-2355 and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation bond repayment account must bo credited to the tax account within tho workers' compensation tax account and is statutorily appropriated, as previded in 17-7-502, to the state fund to be used to reduce the unfunded liability in tbe state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 48. Section 40-4-215, MCA, is amended to read:

"**40-4-215. Investigations and reports.** (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custedian requests, the court may order an investigation and report concerning custodial arrangements for the child. The department of family services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, ~~[or general relief benefits]~~ *or public assistance* and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. Tbe department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order.

(2) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of 16 unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

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(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing."

Section 49. Section 41-5-311, MCA, is amended to read:

"**41-5-311. Youth not to be detained in jail — exceptions — time limitations.** (1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this section.

(2) A youth who has allegedly committed an offense that~~,~~ if committed by an adult~~,~~ would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not te exceed:

(a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or

(b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-303.

(3) The exception provided for in subsection (2)(b) applies only if:

(a) the court having jurisdiction over the youth is outside a ~~standard~~ metrepolitan statistical area;

(b) alternative facilities are not available or alternative facilities do not provide adequate security; and

(c) the youth is kept in an area that provides physical~~,~~ as well as sight and sound~~,~~ separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding."

Section 50. Section 45-2-101, MCA, is amended to read:

"**45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of votors as a consequence of public measures tbat a candidato engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of tbe same offense or that affects the same person or the same persons or the property of tbe same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipula'ion of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remoto terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited te computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

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(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentonce for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not helieve to he true;

(b) fail te correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend te perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its husiness or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

~~(a)~~*(i)* permanently;

~~(b)~~*(ii)* for such a period as to appropriate a portion of its value; *or*

~~(c)~~*(iii)* with the purpose to restore it only upon payment of reward or other compensation; or

~~(d)~~*(b)* to dispose of the property *of another* and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony that involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected person is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under tbe control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less tban 1/2 of 1% of alcohol by volume.

(31) An "involuntary act" means any act tbat is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from bypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or babitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law te impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or tbat the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

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(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense ~~in~~ *for* which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or ~~in~~ *for* which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(39) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separatoly secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

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(44) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision of government.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

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(f) things growing on, affixed to, or found on land and things that are part of or affixed to any building;

(g) electricity, gas, and wator;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, protetypes, or models thereof;

(j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions, photographs, protetypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible itom of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrater, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(59) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ; or

(iii) at the time of injury, can reasonably be expected te result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

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(b) The term includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of tbe sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means tbe state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by tbeft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person te remain in the peace officer's presence.

(67) "Tamper" means to interfere with sometbing improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, te:

(a) inflict pbysical harm on the person threatened or any otber person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or otber similar collective action if the person making the threat demands or receives property tbat is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69)(a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtodness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $500 by the standards set forth in subsection (69)(a), its value is considered to be an amount less than $500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 51. Section 45-5-206, MCA, is amended to read:

"**45-5-206. Domestic abuse.** (1) A person commits the offense of domestic abuse if the person:

(a) purposely or knowingly causes bodily injury to a family member or partner;

(b) negligently causes bodily injury to a family member or partner with a weapon during or in connection with a quarrel, fight, or abusive behavior; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or partner. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused must be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or partner, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of 46-6-311 and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) A person convicted of domestic abuse for the first or second time shall be fined *an amount* not to exceed $1,000 or be imprisoned in the county jail *for a term* not to exceed 1 year, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not less than $500 and not more than $50,000 and be imprisoned ~~in the county jail or in the state prison~~ for a term not less than 10 days and not more than 5 years~~, or both~~. *If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.*

(4) (a) A person convicted of domestic abuse shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours:

(i) with a person licensed under Title 37, chapter 3, 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the convicted person. Subsection (4)(a) does not prohibit the placement of the convicted person in other appropriate treatment if the court determines *that* there is no available treatment program directed to the violent conduct of the convicted person.

(c) Upon completion of the minimum counseling requirements, the counselor shall notify the court that the defendant has completed the minimum counseling requirements and sball provide the court with a recommendation as to whether or not the defendant requires additional counseling. Upon recommendation of the counselor and direction of the court, the defendant may be required to pay for and complete additional counseling or *additional* treatment, such as chemical dependency treatment, or both.

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(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court."

Section 52. Section 46-11-111, MCA, is amended to read:

"**46-11-111. Amending complaint.** A court may allow a complaint to be amended under the same circumstances and in the same manner as an information as provided in ~~46-11-103~~ *46-11-205*."

Section 53. Section 46-18-248, MCA, is amended to read:

"**46-18-248. Rights of crime ~~victims'~~ *victims* compensation *and assistance* account.** (1) Whenever a victim is paid from the crime ~~victims'~~ *victims* compensation *and assistance* account established in 53-9-109 for loss arising out of a criminal act, the account is subrogated, to the extent of the account's payment to the victim, to the rights of the victim to any restitution ordered by the court.

(2) The rights of the crime ~~victims'~~ *victims* compensation *and assistance* account are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction ~~which~~ *that* is part of the same continuous scheme of criminal activity of an offender."

Section 54. Section 46-18-250, MCA, is amended to read:

"**46-18-250. Victim's location unknown — payments to restitution fund — use of restitution fund.** (1) If the location of a victim on whose behalf restitution is being paid is unknown, the court may order that restitution payments made on that victim's behalf be deposited in a fund known as the county restitution fund. Subject te the availability of money in the fund, if the whereabouts of a victim whose restitution payments were deposited in the county restitution fund become known, the county shall refund to the victim payments that were deposited in the fund.

(2) Money in the restitution fund may be used to provide payments on behalf of offenders who are ordered to pay restitution but, due to circumstances beyond their control, are unable to obtain employment or are unable to obtain employment sufficient to make restitution payments and sustain themselves and their dependents. The offender may perform community service, and for each hour of community service performed, the victim shall receive an amount equal to the minimum hourly wage from the county restitution fund. A judge may order an offender to perform community service work for restitution payments upon a finding that the offender would not otherwise be able to make restitution payments and that there are funds available in the county restitution fund for payments to the victim.

(3) ~~Moneys~~ *Money* in the county restitution fund that ~~are~~ *is* due to a victim under this part must be paid to the crime victims compensation *and assistance* account, ~~as defined~~ *established* in 53-9-109, if payments have been made to or on behalf of the victim from the account. Payment from the county restitution fund to the crime victims compensation *and assistance* account may be made only from ~~moneys~~ *money* paid by the offender who caused the injury or death that resulted in the payment from the account."

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Section 55. Section 46-18-304, MCA, is amended to read:

"46-18-304. Mitigating circumstances. *(1)* Mitigating circumstances are any of the following:

~~(1)~~*(a)* The defendant has no significant history of prior criminal activity.

~~(2)~~*(b)* The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

~~(3)~~*(c)* The defendant actod under extreme duress or under the substantial domination of another person.

~~(4)~~*(d)* The capacity of the defendant to appreciate the criminality of ~~his~~ *the defendant's* conduct or to conform ~~his~~ *the defendant's* conduct to the requirements of law was substantially impaired.

~~(5)~~*(e)* The victim was a participant in the defendant's conduct or consented to the act.

~~(6)~~*(f)* The defendant was an accomplice in an offense committod by another person, and ~~his~~ *the defendant's* participation was relatively minor.

~~(7)~~*(g)* The defendant, at the time of the commission of the crime, was less than 18 years of age.

~~(8)~~*(2)* ~~Any~~ *The court may consider any* other fact that exists in mitigation of the penalty."

Section 56. Section 52-2-101, MCA, is amended to read:

"52-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of abused, dependent, or neglected children.

(2) "Department" means the department of family services provided for in 2-15-2401.

~~(3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist, licensed social worker, or special education child study team (established under rules adopted by the superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:~~

~~(i) an identifiable mental health problem as identified in a nationally recognized classification system or as defined in 20-7-401(8); and~~

~~(ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a dysfunction in any of the following areas:~~

~~(A) relationships;~~

~~(B) behavior;~~

~~(C) cognition; or~~

~~(D) education.~~

~~(b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one recognized by rules established by the department.~~

~~(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.~~"

Section 57. Section 52-2-505, MCA, is amended to read:

"**52-2-505. Records to be confidential.** All records regarding subsidized adoption ~~shall be~~ *are* confidential and may be disclosed only in accordance with the provisions of ~~40-8-122~~ *40-8-126*."

Section 58. Section 52-3-813, MCA, is amended to read:

"**52-3-813. Confidentiality.** (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a developmentally disabled person who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled person if the identity of the person who made the report is protected and the legal guardian or conservater is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the developmentally disabled person who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, *sexually abused,* neglected, or exploited older person or developmentally disabled person, if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case; or

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(ii) disclosure to the provider is detormined by the department to be necessary to protoct an interest of a person alleged to be an abused, *sexually abused,* neglected, or exploited older person or developmentally disabled person;

(g) an employee of the department or the department of social and rehabilitation services if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, *sexually abused,* neglected, or exploited older person or developmentally disabled person; and

(h) an authorized representative of a guardianship program approved by the department if the department detormines that disclosure to tho program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, *sexually abused,* neglected, or exploited older person or developmentally disabled person.

(3) The records and reports required to be kept confidential hy subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court ~~which~~ *that* has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploitod an older person or a developmentally disabled person is the holder of a license, permit, or certificato issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 59. Section 53-1-301, MCA, is amended to read:

"53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates. (1) Except as provided in subsection (4), the department may:

(a) establish industries in institutions that will result in the production or manufacture of products and the rendering of services as may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markots for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

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(d) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured at institutions. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require institutions to purchase needed goods from other institutions;

(g) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(h) provide for construction projects, up to the aggregate sum of $25,000 per project, performed by residents of institutions, except when the construction work is covered by a collective bargaining agreement;

(i) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(j) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(k) sell manufactured or agricultural products and livestock on the open market;

(l) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(m) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate or resident is working;

(n) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and

(o) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) (a) Except as provided for in subsection (2)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must he determined by the appropriation established for each program, except that ~~inmates~~ *an inmate* employed in a

federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(3) Premiums for workers' compensation and occupational disease coverage must be paid by the prison industries program or by the department of ~~institutions~~. If the department pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department by the private company contracting with the federally certified prison industries program for services and products.

(4) Except as provided in subsection (5), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(5) Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4."

Section 60. Section 53-9-109, MCA, is amended to read:

"**53-9-109. Crime victims compensation *and assistance* account.** (1) There is a crime victims compensation and assistance account in the state special revenue fund. There must be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. Except as provided in ~~subsections~~ *subsection* (2) ~~and (3)~~, the money in the account must be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the division.

(2) The fund balance in the account as of March 31 of each year is limited to $500,000. Whenever the fund balance on March 31 exceeds $500,000, the amount of the fund balance in excess of $500,000 must be deposited in the general fund.

~~(3) On or before March 31, 1994, the division shall transfer $250,000 or the fund balance in excess of $500,000, whichever is greater, from the crime victims compensation and assistance account to the general fund.~~"

Section 61. Section 53-24-302, MCA, is amended to read:

"**53-24-302. Involuntary commitment of alcoholics.** (1) A person may be committed to the custody of the department by the district court upon the petition of ~~his~~ *the person's* spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition ~~shall~~ *must* allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that ~~he~~ *the person* has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition ~~shall~~ *must* be accompanied by a certificate of a licensed physician who has examined the person within 2 days

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before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal ~~shall~~ *must* be alleged in the petition. The certificato ~~shall~~ *must* set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court ~~shall~~ fix a date for a hearing no lator than 10 days after the date tbe petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, ~~shall~~ *must* be served on the petitioner, the person whose commitment is sought, ~~his~~ *the person's* next of kin other than the petitioner, a parent or ~~his~~ *the person's* legal guardian if ~~he~~ *the person* is a minor, the administrator in charge of the approved public treatment facility to which ~~he~~ *the person* has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate ~~shall~~ *must* be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person ~~shall have~~ *has* a right to have a licensed physician of his *the person's* own choosing ~~examine him~~ *conduct an examination* and testify on ~~his~~ *the person's* behalf. If ~~he~~ *the person* has no funds with which to pay ~~such~~ *the* physician, the reasonable costs of one ~~such~~ examination and testimony ~~shall~~ *must* be paid by the county. The person ~~shall~~ *must* be present unless the court believes that his *the person's* presence is likely to be injurious to ~~him~~ *the person*. ~~He shall~~ *The person must* be advised of ~~his~~ *the* right to counsel, and if ~~he~~ *the person* is unable to hire ~~his own~~ counsel, the court shall appoint an attorney to represent ~~him~~ *the person* at the expense of the county. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If ~~he~~ *the person* refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of tbe petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing ~~him~~ *the person* to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diaguostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. ~~It~~ *The court* may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for ~~him~~ *the person* and *that* the treatment is likely to be beneficial.

(5) A person committed under this section ~~shall~~ *must* remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, ~~he shall~~ *the person must* automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for ~~his~~ *the person's* recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because ~~he~~ *the person* is an alcoholic likely to inflict physical harm on another, the

department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period ~~shall~~ *must* he discbarged at the expiration of that period unless before expiration of tbe period tbe department obtains a court order from the district court of the committing district on tbe grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because ~~he~~ *the person* is an alcobolic likely to inflict pbysical harm on anotber, the department shall apply for recommitment if after examination it is determined tbat the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon tbe filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including tbe date fixed by the court, ~~shall~~ *must* be served on the petitioner, the person whose commitment is sought, ~~his~~ *the person's* next of kin other tban the petitioner, the original petitioner under subsection (1) if different from tbe petitioner for recommitment, one of ~~his~~ *the person's* parents or ~~his~~ *the person's* legal guardian if ~~he~~ *the person* is a minor, and any other person the court believes advisable. At the hearing, the court sball proceed as provided in subsection (3).

(8) A person committed to the custody of tbe department for treatment ~~shall~~ *must* be discbarged at any time before the end of the period for which ~~he~~ *the person* has been committed if either of tbe following conditions is met:

(a) in case of an alcobolic committed on the grounds of likelihood of infliction of physical harm upon another, that ~~he~~ *the person* is no longer in need of treatment or tbe likelihood no longer exists; or

(b) in case of an alcoholic committed on tbe grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court sball inform the person whose commitment or recommitment is sought of ~~his~~ *the person's* right te contest the application, be represented by counsel at every stage of any proceedings relating to ~~his~~ *the person's* commitment and recommitment, and have counsel appointed by the court or provided by the court if ~~he~~ *the person* wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, hy appointment if necessary, counsel for ~~him~~ *the person* regardless of ~~his~~ *the person's* wishes. The person whose commitment or recommitment is sought ~~shall~~ *must* be informed of ~~his~~ *the* rigbt to be examined hy a licensed physician of ~~his~~ *the person's* choice. If tbe person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees witb the request of a competent patient or ~~his~~ *the patient's* parent, sibling, adult child, or guardian to accept tbe patient for treatment, the department may transfer ~~him~~ *the patient* to the private treatment facility.

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(11) A person committed under this section may at any time seek to be discharged from commitment by writ of haheas corpus or other appropriato means.

(12) The venue for proceedings under this section is the place in which *the* person to be committed resides or is present."

Section 62. Section 53-30-101, MCA, is amended to read:

"**53-30-101. Location and function of prison and women's correctional center.** (1) The institution at Deer Lodge is the state prison and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult male criminal offenders.

(2) The institution located in ~~accordance with sections 1 through 7, Chapter 651, Laws of 1991,~~ *Billings* is the women's correctional center and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult female criminal offenders. ~~The department of corrections and human services may continue to operate the women's correctional center in a temporary location during the 1994-95 biennium. If the authorized institution does not require the level of services provided for in Chapter 651, Laws of 1991, an alternate site in the Billings area may be identified by department officials, city of Billings officials, and Yellowstone County officials as the site of the women's correctional facility.~~"

Section 63. Section 61-2-107, MCA, is amended to read:

"**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of $100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) ~~(a)~~ The department shall deposit the fees collected under subsection (1) in the general fund. One-half of the fees must be appropriated and used for funding county drinking and driving prevention programs as provided in 61-2-108. For each fiscal year, an amount up to $50,000 of the money from the fees remaining in the general fund after appropriation for those programs is statutorily appropriated, as provided in 17-7-502, to the department te purchase and maintain equipment used to analyze breath for the presence of alcohol.

~~(b) On or before June 30, 1994, the department shall transfer to the general fund the balance of the driver's license reinstatement fee state special revenue account.~~"

Section 64. Section 61-10-214, MCA, is amended to read:

"**61-10-214. Exemptions.** (1) Moter vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from ~~such~~ *the* limits are exempt from this part.

(2) Moter vehicles brought or driven into Montana by a nonresident, migratery, bona fide agricultural worker temporarily employed in agricultural

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work in this state ~~where~~ *when* those moter vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a licensed dealer's or wholesaler's plate as provided in 61-4-103 are exempt from this part *for a period not to exceed 7 days* when moving te or from a dealer's or wholesaler's place of business when unloaded or loaded with dealer's or wholesaler's property only or while being demonstrated in the course of the dealer's or wholesaler's business~~, for a period not to exceed 7 days~~. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer or wholesaler.

(4) Vehicles exempt from property tax under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(o), ~~and~~ (1)(q), *and (1)(v)* are exempt from this part. The department of transportation may require documentation of tax-exempt status from the department of revenue before granting this exemption."

Section 65. Section 70-24-103, MCA, is amended to read:

"**70-24-103. General definitions.** Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, seteff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" ~~is~~ *means* an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening evente in which the tenant has reasonable apprehension of immediate danger te the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. ~~"Dwelling unit"~~ *Dwelling unit*, in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(5) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(6) "Landlord" means:

(a) the owner, lessor, or sublessor of:

~~(a)~~*(i)* the dwelling unit or the building of which it is a part; *or*

~~(b)~~*(ii)* a mobile home park; or

~~(c)~~*(b)* a manager of the premises who fails to disclose the managerial position.

(7) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile bome park.

(8) "Mobile home park" means a trailer court as defined in ~~50-52-102~~ *50-52-101*.

(9) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estato, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(10) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(11) "Person" includes an individual or organization.

(12) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(13) "Rent" means all payments te be made to the landlord under the rental agreement.

(14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 emhodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(15) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of ~~these facilities~~ *which* are used in common by occupants in the structure.

(16) "Single-family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(17) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Section 66. Section 72-2-113, MCA, is amended te read:

"72-2-113. Share of heirs other than surviving spouse. *(1)* Any part of the intestate estate not passing te the decedent's surviving spouse under 72-2-112, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

~~(1)~~*(a)* to the decedent's descendants by representation;

~~(2)~~*(b)* if there is no surviving descendant, to the decedent's parents equally if both survive or to the surviving parent;

~~(2)~~*(c)* if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

~~(4)~~*(d)* if there is no surviving descendant, parent, or descendant of a parent and the decedent is:

~~(a)~~*(i)* survived by one or more grandparents or descendants of grandparents:

~~(i)~~*(A)* one-half to:

~~(A)~~*(I)* the decedent's paternal grandparents equally if both survive;

~~(B)~~*(II)* the surviving paternal grandparent; or

~~(C)~~*(III)* the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

~~(ii)~~*(B)* the other one-half to the decedent's maternal relatives in the same manner; or

~~(b)~~*(ii)* not survived hy a grandparent or descendant of a grandparent on either the patornal or the maternal side, the entire estato to the decedent's relatives on the other side in the same manner as the half;

~~(5)(a)~~*(e)* if there is no surviving descendant, grandparent, or descendant of a grandparent, to the person of the closest degree of kinship with the decedent. Except as provided in subsection ~~(5)(b)~~*(2)*, if more than one person is of that closest degree, those persons share equally.

~~(b)~~*(2)* If more than one person is of the closest degree as provided in subsection ~~(5)(a)~~*(1)(e)* but they claim through different ancestors, those who claim through the nearer ancestor ~~shall~~ *must* receive to the exclusion of those claiming through a more remote ancestor."

Section 67. Section 72-2-116, MCA, is amended to read:

"72-2-116. Reprcsentation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1)*(a)*, a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estato or part of the estate is divided into decedent's descendants and the estate or part of the estato is divided into as many equal shares as there are:

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(i) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) (a) If, under 72-2-113~~(3)~~*(1)(c)* or ~~(4)~~*(1)(d)*, a decedent's intestate estate or a part of the intestate estate passes by representation to the descendante of the decedent's deceased parents or either of them or te the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided inte as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

Section 68. Section 72-33-108, MCA, is amended to read:

"**72-33-108. Definitions.** As used in chapters 33 through 36, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled te enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust", when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust and, unless otherwise provided in the trust instrument, a trust established in connection with bonds issued under Title 90, chapters ~~2 and~~ 4 through 7. The term does not include conservatorships, personal representatives, custodial arrangements pursuant te chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common

trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trust company" means an entity ~~which~~ *that* has qualified to engage in and conduct a trust business in this state.

(6) "Trust property" means the property held in trust.

(7) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(8) "Trustor" means the person who creates a trust."

Section 69. Section 75-10-513, MCA, is amended to read:

"**75-10-513. Disposal of junk vehicles — fees and records.** (1) When a motor vehicle wrecking facility submite a junk vehicle to the disposal program, it shall pay a disposal fee of $2 for each vehicle submitted, and the vehicle is then the property of the state.

(2) Quarterly, each *motor vehicle* wrecking facility shall mail to the department of justice ~~a list~~, on a form approved by the department of justice, *a list* of all junk vehicles received *by the motor vehicle wrecking facility* during the quarter, stating the year, make, and ~~the~~ complete identification number of each vehicle. ~~Any~~ *If a* certificato of ownership *is* received for *a* junk ~~vehicles~~ *vehicle on the list, that certificate of ownership* must accompany ~~each~~ *the* list. The department of justice shall issue a receipt ~~of~~ [for] the certificato of ownership if requested by the licensed facility, and ~~such~~ *the* receipt may serve as an instrument for reclaiming the certificato of ownership if the vehicle is rebuilt.

(3) A motor vehicle graveyard shall submit te the department the records, documents, and other information concerning junk vehicles received by it that are required by rules of the department."

Section 70. Section 75-10-919, MCA, is amended te read:

"**75-10-919. Supplemental material — amendments.** (1) An application for an amendment of an application or a certificate must be in a form and contain information as the board by rule or the department by order prescribes. Notice of an amendment must be given as provided in 75-10-918(3) ~~and (4)~~.

(2) An application may be amended by an applicant any time prior to the report made by the department under 75-10-922. If the proposed amendment prevents the department from carrying out its duties and responsibilities under 75-10-901 through 75-10-945, the department may require additional filing fees as the department determines necessary or may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide details with respect to an item described in the original application. This supplemental material may be submitted without filing an application for an amendment. The department's determination as to whether

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information is supplemental or whether an application for amendment is required is conclusive."

Section 71. Section 85-1-102, MCA, is amended to read:

"85-1-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative coste.

(4) "Cost of works" means:

(a) the cost of construction, including any rehabilitation or alteration of the project;

(b) the cost of all lands, property, rights, easements, and franchises acquired ~~which~~ *that* are ~~deemed~~ *considered* necessary for the construction;

(c) the cost of all water rights acquired or exercised by the department in connection with ~~those~~ *the* works;

(d) the cost of all machinery and equipment, financing charges, *and* interest prior to and during construction and for a period not exceeding 3 years after the completion of construction;

(e) the cost of engineering and legal ~~expenses~~ *services*, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;

(f) administrative expense; and

(g) other expenses ~~as may be~~ *that are* necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations ~~having~~ *that have* any title or interest in any properties, rights, easements, or franchises to be acquired.

(7) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity *that is* not eligible for loans and grants under 85-1-605 but does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency thereof, or any other governmental entity.

(8) "Project" means any one of the works defined in this section or any combination of works ~~which~~ *that* are physically connected or jointly managed and operated as a single unit.

(9) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, wator quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(10) "Renewable resource grant and loan program stato special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the ~~water development~~ *renewable resource grant and loan* program as set forth in 85-1-604.

(11) "Renewable resource loan debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury to be used as provided in 85-1-619.

(12) "Renewable resource loan proceeds account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, *to* private persons, and *to* any other eligible recipients and to purchase liens and operato property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

(13) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation ~~of~~ *in* rivers and streams, and ~~providing~~ *the provision of* greater local and state control of ~~Montana~~ *Montana's* water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

(14) "Water development project" means a project as defined in subsection (8), except that water development projects:

(a) are not limited to projects owned or operated by the department; and

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

(15) "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works and includes all means of conserving and distributing water, including~~, without limiting the generality of the foregoing,~~ *but not limited to* reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems, and includes all works for the conservation, development, storage, distribution, and utilization of water, including ~~without limiting the generality of the foregoing,~~ *but not limited to* works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, *and* supplying ~~of~~ water for public, domestic, industrial, or other uses and for fire protection."

Section 72. Section 87-1-605, MCA, is amended to read:

"**87-1-605. Fees used to purchase recreational facilities.** (1) One dollar of the fee for *a* Class A resident fishing license, $1 of the fee for *a* Class B-4 nonresident ~~5-day~~ fishing license, and $5 of the fee for ~~the~~ *a* Class B nonresident fishing license ~~shall~~ *must* be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land ~~deemed~~ *considered* necessary to provide recreational use ~~thereof~~ *of fishing accesses and stream, river, and lake frontages.*

(2) The amount of funds used for operation, development, and maintenance may not exceed 25% of the ~~moneys~~ *money* set aside each year under this section. The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses~~,~~ *or* stream, river, or lake frontages and the land ~~deemed~~ *considered* necessary to provide recreational use ~~thereof~~ *of fishing accesses and stream, river, and lake frontages* but ~~serve~~ *are* in addition to those funds. The ~~moneys~~ *funds* used for operation, development, and maintenance may be used only for these purposes on lands acquired witb funds under this section after April 30, 1974."

Section 73. Code commissioner instruction. The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 54th legislature.

Section 74. Repealer. Sections 1-5-205, 2-17-127, 15-25-101, 15-25-102, 15-25-111, 15-25-112, 15-25-113, 15-25-114, 15-25-115, 15-25-121, 15-25-122, 15-25-123, 19-15-101, 19-15-102, 50-49-108, and 77-1-222, MCA, are repealed.

Section 75. Effective dates. (1) [Section 12] is effective July 1, 1995.

(2) [Section 73] and this section are effective on passage and approval.

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(3) [Sections 1 through 11, 13 through 72, and 74] are effective October 1, 1995.

Approved February 2, 1995

CHAPTER NO. 19

[HB 28]

AN ACT ALLOWING THE STATE LOTTERY COMMISSION TO PROVIDE FOR THE PAYMENT OF A PRIZE BY A TICKET OR CHANCE SALES AGENT WHO DID NOT SELL THE TICKET OR CHANCE; AND AMENDING SECTION 23-7-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-7-311, MCA, is amended to read:

"23-7-311. Drawings for and payment of prizes — unclaimed prizes. (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings must be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff and a professional staff employee of the legislative auditor's office prior to and after each public drawing.

(2) The commission may *by rule* provide for the ~~immediate~~ payment of prizes by ~~the~~ ticket or chance sales ~~agent who~~ *agents, whether or not the paying agent* sold the winning ticket or chance, whenever the amount of the prize is less than an amount set by commission rule. Payment may not be made directly by a machine or device or by a computer terminal.

(3) (a) Except as provided in subsection (3)(b), prizes over $100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 20 years and in yearly installment payments of not less than $20,000.

(b) If the commission enters into an agreement under the provisions of 23-7-202(8) to participate in a game for prizes of over $100,000 that requires payment periods of more than 20 years or yearly installment payments of less than $20,000 as a condition of participation, the commission may adopt the installment payment amounts and time periods necessary to comply with the conditions of the game.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order."

Approved February 2, 1995

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CHAPTER NO. 20

[HB 102]

AN ACT PROVIDING THAT THE PAYMENT OF A UNIFORM ALLOWANCE TO OFFICERS OF THE MONTANA NATIONAL GUARD IS DISCRETIONARY; ELIMINATING THE REQUIREMENT THAT OFFICERS PROVIDE THEIR OWN UNIFORMS AND EQUIPMENT; AND AMENDING SECTION 10-1-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-207, MCA, is amended to read:

"10-1-207. Uniform allowance for officers. ~~(1) Every officer of the organized militia shall, within 60 days from the date of the order whereby he is appointed, provide himself, at his own expense, with the uniforms and equipment prescribed by the department for his rank and assignment.~~

~~(2)~~ There ~~shall~~ *may* be paid annually on April 1 a uniform allowance to each properly uniformed and equipped officer of the organized militia."

Approved February 2, 1995

CHAPTER NO. 21

[HB 107]

AN ACT ELIMINATING THE MONTANA PORK RESEARCH AND MARKETING COMMITTEE; REPEALING THE MONTANA PORK RESEARCH AND MARKETING ACT; AND REPEALING SECTIONS 2-15-3103, 81-8-601, 81-8-602, 81-8-603, 81-8-604, 81-8-605, 81-8-606, 81-8-607, 81-8-608, 81-8-609, 81-8-610, 81-8-611, AND 81-8-612, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 2-15-3103, 81-8-601, 81-8-602, 81-8-603, 81-8-604, 81-8-605, 81-8-606, 81-8-607, 81-8-608, 81-8-609, 81-8-610, 81-8-611, and 81-8-612, MCA, are repealed.

Approved February 2, 1995

CHAPTER NO. 22

[HB 139]

AN ACT REVISING THE LAWS GOVERNING PORT AUTHORITIES; AUTHORIZING PORT AUTHORITIES TO PLEDGE AND MORTGAGE PROPERTY TO SECURE BONDS; AMENDING SECTIONS 7-14-1104, 7-14-1126, AND 7-14-1133, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 7-14-1104, MCA, is amended to read:

"7-14-1104. Purpose — public and governmental functions. (1) The purposes of a port authority are to:

(a) promote, stimulate, develop, and advance the general welfare, commerce, economic development, and prosperity of its jurisdiction and of the state and its citizens;

(b) endeavor to increase the volume of commerce within the jurisdiction of the port authority and the state through planning, advertising, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of transportation, storage, or other facilities that promote the safe, efficient, and economical handling of commerce;

(c) cooperate and act in conjunction with other organizations, public or private, in the development of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, tourism, health care, and other economic activity in the state;

(d) support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state and otherwise stimulate, assist in, and support the growth of all kinds of economic activity that will tend to promote commerce and business development, maintain the economic stability and prosperity of its jurisdiction and of the state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of the state.

(2) The acquisition of any land or interest in land pursuant to this part, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of port authority facilities, and the exercise of any powers granted te port authorities and other public agencies to be severally or jointly exercised are public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency, as provided in this part, must be used for public and governmental purposes and as a matter of public necessity. *A port authority may pledge, lease, sell, or mortgage all or any part of its facilities to secure bonds under this part as provided in 7-14-1133.*"

Section 2. Section 7-14-1126, MCA, is amended to read:

"7-14-1126. Port property — disposal. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 7-14-1136, an authority may sell, lease, or otherwise dispose of any transportation, storage, or other facility or other property or portion ~~thereof~~ *of* or interest ~~therein~~ *in the facility or property* acquired pursuant to this part. ~~Such~~ *The* disposal by sale, lease, or otherwise must be in accordance with the laws of this state governing tbe disposition of otber public property, *unless a sale, lease, mortgage, or other disposition is made under 7-14-1133 to secure bonds of the authority.*"

Section 3. Section 7-14-1133, MCA, is amended to read:

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"7-14-1133. **Bonds and obligations.** (1) Except for providing financial support to a private development organization, including a corporation organized under Title 32, chapter 4, whose purpose is to advance the economic development of its jurisdiction and of the state and its citizens, an authority may borrow money for any of its corporate purposes and issue bonds ~~therefor~~, including refunding bonds, *for any of its corporate purposes. The bonds may be* in ~~such~~ *the* form and upon ~~such~~ terms as it determines, payable out of any ~~revenues~~ *revenue* of the authority, including ~~revenues~~ *revenue* derived from:

(a) any port or transportation and storage facility;

(b) taxes levied pursuant te 7-14-1131 or 67-10-402;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that ~~no~~ honds may *not* be issued at any time if the total amount of principal and interest to become due in any year on ~~such~~ *the* bonds and on any then outstanding bonds for which ~~revenues~~ *revenue* from the same source ~~are~~ *is* pledged exceeds the amount of ~~such~~ ~~revenues~~ *revenue* to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the ~~revenues~~ *revenue* from the pledged source in such year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or privato sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this part, any bonds issued pursuant to this part by an authority may be payable as to principal and interest solely from ~~revenues~~ *revenue* of the authority ~~and shall~~ *or from particular port, transportation, storage, or other facilities of the authority. The bonds must* state on their face the applicable limitations or restrictions regarding the source from which ~~such~~ principal and interest are payable.

(4) Bonds issued by an authority, county, or municipality pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) *(a)* For the security of ~~any such~~ bonds, the authority, county, or municipality may by resolution make and enter inte any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any ~~revenues~~ *revenue* referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities.

(b) As further security for the bonds, the authority, with the approval of the governing body of the county or municipality that created the authority, may pledge, lease, sell, mortgage, or grant a security interest in all or any portion of its port, transportation, storage, or other facilities, whether or not the facilities

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are financed by the bonds. The instrument effecting the pledge, lease, sale, mortgage, or security interest may contain any agreements and provisions customarily contained in instruments securing bonds, as the commissioners of the authority consider advisable. The provisions must be consistent with this part and are subject to and must be in accordance with the laws of this state governing mortgages, trust indentures, security agreements, or instruments. The instrument may provide that in the event of a default in the payment of principal or interest on the bonds or in the performance of any agreement contained in the proceedings authorizing the bonds or instrument, the payment or performance may be enforced by mandamus or by the appointment of a receiver in equity. The receiver may collect charges, rental, or fees and may apply the revenue from the mortgaged property or collateral in accordance with the proceedings or the provisions of the instrument.

(6) Nothing in this section or 7-14-1134 may be construed to limit the use of port authority ~~revenues~~ *revenue*, including federal and state money as described in 7-14-1136, to make grants and loans or to otherwise provide financial and other support to private development organizations, including corporations organized under the provisions of the development corporation act in Title 32, chapter 4. ~~Under no circumstances may the~~ *The* credit of the stato, county, or municipal governments or their agencies or authorities *may not* be pledged to provide financial su pport to ~~such~~ *the* development organizations."

Section 4. Effective dat . [This act] is effective on passage and approval.

Approved February 2, 1995

CHAPTER NO. 23

[HB 140]

AN ACT OFFERING LEGISLATORS THE OPTION OF PURCHASING THE MONTANA CODE ANNOTATED ON CD-ROM AT A REDUCED COST IN ADDITION TO THE PRINTED MONTANA CODE ANNOTATED; AMENDING SECTION 5-11-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-209, MCA, is amended to read:

"**5-11-209. Codes — availability to legislators — reserved for use by legislative committees.** (1) ~~Immediately after~~ *When it becomes available after each regular legislative session, each legislator is entitled to purchase for $10 each one set of* the *printed and bound* Montana Code Annotated statute text and histories ~~are bound following each legislative session, the legislative council shall make available one set of these volumes to each member of the legislature at a charge of $10.~~ *and one Montana Code Annotated that is produced for sale to the public on computer-readable media, such as CD-ROM.*

(2) The legislative council shall reserve 50 sets of the *printed versions of* Montana Code Annotated statute text and histories for the use of the standing and select committees of the legislature.

(3) Costs associated with providing code sets as required by this section ~~shall~~ *must* be paid out of the state special revenue fund account established under 1-11-301."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 2, 1995

CHAPTER NO. 24

[SB 32]

AN ACT GRANTING THE BOARD OF CRIME CONTROL AUTHORITY TO ADOPT RULES ESTABLISHING STANDARDS AND PROCEDURES FOR BASIC AND ADVANCED CORONER EDUCATION; EXTENDING THE 2-YEAR STATUTORY TIME LIMIT FOR COMPLETION OF AN ADVANCED COURSE IN CASES OF EXIGENT CIRCUMSTANCES; AND AMENDING SECTION 7-4-2905, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because 7-4-2905 grants rulemaking authority to the board of crime control. The rules should provide for:

(1) essential training of coroners;

(2) a basic training course or its equivalent;

(3) continued training courses and education crucial to the professional standards of coroners and deputy coroners;

(4) board review of training schools other than those operated by the state to determine whether they meet board requirements for training; and

(5) board review of exigent circumstances that might allow a waiver of the 2-year time period for training.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2905, MCA, is amended to read:

"7-4-2905. Coroner education and continuing education. (1) Coroner education must be conducted by the board of crime control. *The board may adopt rules establishing standards and procedures for basic and advanced education.* The cost of conducting the education must be borne by the department of justice from money appropriated for the education. The county shall pay the salary, mileage, and per diem of each coroner-elect, coroner, and deputy coroner attending from that county.

(2) (a) The board shall conduct a 40-hour basic coroner course of study after each general election. The course, or an equivalent course approved by the board, must be completed before the first Monday in January following the election. The board may conduct other basic coroner courses at times it considers appropriate.

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(b) The board sball annually conduct a 16-hour advanced coroner course. ~~Failure~~ *Unless there are exigent circumstances, failure* of any coroner or deputy coroner to satisfactorily complete the advanced coroner course, or an equivalent course approved by the board, at least once every 2 years results in forfeiture of office. *The board may adopt rules providing a procedure to extend the 2-year period due to exigent circumstances.*"

Approved February 2, 1995

CHAPTER NO. 25

[SB 3]

AN ACT ADDING THE COMMISSIONER OF LABOR AND INDUSTRY AS A MEMBER OF THE INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS; AMENDING SECTION 2-15-225, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-225, MCA, is amended to read:

"**2-15-225. Interagency coordinating council for state prevention programs.** (1) There is an interagency coordinating council for state prevention programs consisting of the following ~~10~~ *11* members:

(a) the director of the department of family services provided for in 2-15-2401;

(b) the director of the department of health and environmental sciences provided for in 2-15-2101;

(c) the director of the department of corrections and human services provided for in 2-15-2301;

(d) the attorney general provided for in 2-15-501;

(e) the director of the department of social and rehahilitation services provided for in 2-15-2201;

(f) the superintendent of public instruction provided for in 2-15-701;

(g) the presiding officer of the Montana children's trust fund board;

(h) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services; ~~and~~

(i) the administrator of the board of crime control provided for in 2-15-2006*; and*

(j) the commissioner of labor and industry provided for in 2-15-1701.

(2) The coordinating council shall perform the following duties:

(a) develop through interagency planning efforts a comprehensive and coordinated prevention program delivery system that will strengthen the

healthy development, well-being, and safety of children, families, individuals, and communities;

(b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;

(c) study various financing options for prevention programs and services;

(d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs; and

(e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs.

(3) The coordinating council shall cooperato with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist in providing staff and budgetary, administrative, and clerical services to the council as the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved Februrary 2, 1995

CHAPTER NO. 26

[SB 21]

AN ACT CORRECTING AN ENROLLING ERROR BY CLARIFYING THAT THE USE OF CLASSIFICATIONS OF EMPLOYMENT ADOPTED BY THE NATIONAL COUNCIL ON COMPENSATION INSURANCE BY THE STATE FUND IS PERMISSIVE; AMENDING SECTION 39-71-2316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of ~~the~~ state fund. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state. The state fund

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may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(4) collect and disburse money received;

(5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After ~~such~~ *the* rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund must belong to the national council on compensation insurance and ~~shall~~ *may* use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(6) pay the amounts determined due under a policy of insurance issued by the state fund;

(7) hire personnel;

(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(9) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 2, 1995

CHAPTER NO. 27

[SB 33]

AN ACT ELIMINATING THE REQUIREMENT THAT A SOLE PROPRIETOR, A SUBCHAPTER S. CORPORATION SHAREHOLDER, A PARTNER OF A PARTNERSHIP, OR A MEMBER OR MANAGER OF A LIMITED LIABILITY COMPANY PAY THE $25 MINIMUM OLD FUND LIABILITY TAX; AMENDING SECTION 39-71-2505, MCA; AND PROVIDING

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AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2505, MCA, is amended to read:

"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before July 1, 1990. (1) ~~Beginning July 1, 1993, the~~ *The* state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the state fund determines and *that* the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claims for the ensuing year.

(2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsection (1)~~, except that for fiscal year 1994, the information on the amount to be borrowed by the state fund must be forwarded to the budget director no later than 45 days prior to the start of the fiscal year~~. In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.

(b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided in 39-71-2503. ~~For fiscal year 1994, the~~ *The* employer old fund liability tax is an amount equal to 0.5% of the employer's payroll in the preceding calendar quarter.

(ii) ~~For fiscal year 1994, the~~ *The* employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the preceding calendar quarter.

(iii) ~~For the tax year beginning after December 31, 1992, the~~ *The* old fund liability tax is an amount equal to ~~0.1%~~ *0.2%* on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company. ~~For tax years beginning after December 31, 1993, the old fund liability tax rate is increased from 0.1% to 0.2%. Every person subject to taxation under this subsection (2)(b)(iii) shall pay a minimum tax of not less than $25 per entity.~~

(iv) The rate of the employer old fund liability tax determined by this section includes the 0.28% employer old fund liability tax provided for in 39-71-2503.

(v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in 39-71-2503 terminates at the end of fiscal year 2007.

(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

(vi) The old fund liability tax described in this section must be collected and deposited as provided in 39-71-2503 and 39-71-2504.

(3) If in any January the cumulative projected amount to be borrowed by the state fund from reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1, 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, not including any outstanding bonds as of May 13, 1993, exceeds $80 million for the following fiscal year, the tax rato on the persons subject to the old fund liability tax must be increased by 0.05% for the following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance for the current fiscal year exceeds $25 million, the tax rate on the persons subject to the old fund liability tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

(4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

(5) The budget director shall certify the cash flow projections of the state fund required by this section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected pursuant te this section."

Section 2. Effective date — retroactive applicability date. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Approved February 2, 1995

CHAPTER NO. 28

[HB 75]

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ESTABLISH AND ENFORCE STANDARDS FOR THE MANAGEMENT OF USED OIL; AMENDING SECTIONS 75-10-402, 75-10-403, 75-10-405, 75-10-410, 75-10-415, 75-10-416, 75-10-418, 75-10-422, AND 75-10-424, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of health and environmental sciences in promulgating rules. It is the intent of the legislature that the department of health and environmental sciences adopt rules governing the management of used oil that are consistent with the standards adopted by the U.S. environmental protection agency under section 3014 of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6935), as amended.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-402, MCA, is amended to read:

"**75-10-402. Findings and purpose.** (1) The legislature finds that the safe and proper management of hazardous wastes *and used oil*, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly he addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of this part and it is the policy of this state to protect the puhlic health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes *and used oil*; te establish a program of regulation over *used oil and* the generation, storage, transportation, treatment, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes *and used oil* within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 - 6987), as amended.

(3) The legislature also finds that petroleum products and hazardous substances stored in underground tanks are a separate category of substances that are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under the Montana Hazardous Waste and Underground Storage Tank Act. It is the purpose of this part to authorize the department te establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in 75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of underground storage tank requirements established under this part."

Section 2. Section 75-10-403, MCA, is amended to read:

"**75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulatod substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged inte any waters, including ground water.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

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(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste te become subject to regulation under this part.

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(10) "Manifest" means the shipping document *that is* originated and signed by the generator and ~~which~~ *that* is used to identify the hazardous waste~~,~~ *and* its quantity, origin, and destination during its transportation.

(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, tewn, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(12) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction ~~thereof~~ *of crude oil*, ~~which~~ *that* is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a bazardous waste under this part.

(13) "Storage" means the actual or intended containment of regulated substances, bazardous wastes, or botb, either on a temporary basis or for a period of years.

(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(17) "Underground storage tank":

(a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):

(i) any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or

(C) state law comparable to the provisions of law referred to in subsection (17)(b)(ii)(A) or (17)(b)(ii)(B), if the facility is intrastate;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastowater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)(vi).

(18) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities."

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Section 3. Section 75-10-405, MCA, is amended to read:

"**75-10-405. Administrative rules.** (1) The department may adopt, amend, or repeal rules governing hazardous waste *and used oil*, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel, ~~and~~ for financial assurance of facility owners and operators, and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) establishing a schedule of fees and procedures for the collection of fees for:

(i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

(ii) hazardous waste management as provided in 75-10-433;

(iii) the reissuance and modification of hazardous wasto management facility permits; and

(iv) the registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes;

(l) procedures for the assessment of administrative penalties as authorized by 75-10-424; ~~and~~

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(m) identification and classification of used oil that is subject to regulation and used oil that is not subject to regulation;

(n) requirements for the proper management of used oil; and

~~(m)~~*(o)* other rules ~~which~~ *that* are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require *hazardous waste* generators and *hazardous waste management* facilities to report on an annual rather than on a biennial basis;

(c) may adopt requirements for the prevention and correction of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and corrective action;

(iv) standards for design, construction, installation, and closure;

(v) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program;

(vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-10-423; and

(vii) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(d) may adopt regulatory requirements for hazardous waste transfer facilities;

(e) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

(f) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations."

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Section 4. Section 75-10-410, MCA, is amended to read:

"75-10-410. Inspections — sampling. (1) (a) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which:

(i) regulated substances are or have been stored in underground storage tanks if the department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part;

(ii) hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation; ~~or~~

(iii) used oil is or has been generated, stored, treated, disposed of, or loaded for transportation; or

~~(iii)~~*(iv)* records pertinent to the regulated substances, *used oil,* or hazardous waste activities are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to the regulated substances, *used oil,* or hazardous wastes for the purposes of developing rules under this part or enforcing the provisions of this part, rules adopted under this part, or a permit or an order issued under this part.

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any substances, *used oil,* or wastes, including samples from any soil or ground water or from any vehicle in which *used oil or* wastes are transported, or samples of any containers or labeling for the substances, *used oil,* or wastes. If the employee or agent of the department takes a sample of any *used oil,* hazardous waste, or suspected hazardous waste, he *the employee or agent* shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each ~~such~~ sample equal in volume or weight to the portion retained. If any analysis is made of ~~such~~ *the* samples, a copy of the results of ~~such~~ *the* analysis must be furnished to the owner, operator, or agent in charge."

Section 5. Section 75-10-415, MCA, is amended to read:

"75-10-415. Imminent hazard. Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any regulated substance, *used oil,* or hazardous waste may present an imminent and substantial danger te public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person (including any past or present generator, past or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who has contributed to or who is contributing to ~~such~~ *the* handling, storage, treatment, transportation, or disposal from engaging in ~~such~~ *these* activities or order the person to take other action as may be necessary, or both. The department may also take appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect public health and the environment."

Section 6. Section 75-10-416, MCA, is amended to read:

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"**75-10-416. Cleanup orders.** The department may issue a cleanup order to any person who has discharged, deposited, or spilled any regulated substance, *used oil,* or hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance, *used oil,* or hazardous waste. The order ~~shall~~ *must* direct the person to clean up and remove the regulated substance, *used oil,* or hazardous waste, *to* treat the regulated substance, *used oil,* or hazardous wasto so as to render it nonhazardous, or to take ~~such~~ other actions as may be considered reasonable by the department."

Section 7. Section 75-10-418, MCA, is amended to read:

"**75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if ~~he~~ *the person* knowingly:

(a) transports any hazardous waste to an unpermitted facility;

(b) treats, steres, or disposes of hazardous waste subject to regulation under this part or the rules adopted under this part without a permit or contrary to a material permit condition;

(c) omits material information or makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

(d) generates, stores, treats, transports, disposes of, or otherwise handles any *used oil or* hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or

(e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.

(2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than $25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation constitutos a separate violation.

(3) A person who knowingly violatos any requirement of this part or any rule or material permit condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to $5,000 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(4) Upon a second conviction for a violation of this section, the maximum penalties specified in this section must be doubled.

(5) Action under tbis section does not bar enforcement of this part, rules made under this part, orders of tbe department or the board, or permits by injunction or other appropriate remedy.

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(6) Money collected under this section, except money collected in a justice's court, must be deposited in the state general fund."

Section 8. Section 75-10-422, MCA, is amended to read:

"**75-10-422. Unlawful disposal.** It is unlawful to dispose of *used oil or* hazardous waste, as defined in this part or by rule, without a permit or, if ~~no~~ *a* permit is *not* required under this part or rules adopted under this part, by any other means not authorized by law."

Section 9. Section 75-10-424, MCA, is amended to read:

"**75-10-424. Administrative penalty.** (1) The department may assess a person who violates a *used oil or* hazardous waste provision of this part, or a *used oil or* hazardous waste rule adopted under this part, an administrative penalty, not to exceed $10,000 per violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed $100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and opportunity for a hearing before the hoard pursuant to Title 2, chapter 4, part 6.

(3) In determining the appropriate amount of an administrative penalty, the department shall consider:

(a) the gravity and the number of violations;

(b) the degree of care exercised by the alleged violator;

(c) whether significant harm resulted to public health or the environment; and

(d) the degree of potential significant harm to public health or the environment.

(4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any portion of the administrative penalty as determined by the department, the department may seek to recover the amount in an appropriate district court.

(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund."

Section 10. Effective date. [This act] is effective on passage and approval.

Approved February 6, 1995

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CHAPTER NO. 29

[HB 171]

AN ACT CREATING THE EXCESS TAX REFUND AGREEMENT (EXTRA); PROVIDING FOR THE ADMINISTRATION OF THE EXCESS TAX REFUND AGREEMENT; STATUTORILY APPROPRIATING MONEY FOR TAX REFUNDS AND THE ADMINISTRATION OF REFUNDS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Excess tax refund agreement (EXTRA). [Sections 1 through 3] may be referred to as the "Excess Tax Refund Agreement" or "EXTRA".

Section 2. Refund of excess revenue in state general fund and state school equalization aid account — process — requirements — limitations. (1) On or before October 15, 1995, the department of administration shall determine and certify to the governor the combined total of the unreserved ending fund balances in the general fund, described in 17-2-102(1)(a)(i), and the school equalization aid account, described in 20-9-343, for the fiscal year ending June 30, 1995.

(2) If the amount of the unreserved ending fund balances described in subsection (1) exceeds $24.4 million, the amount in excess of $24.4 million, subject to the limitation provided in subsection (8), is the amount available for refund under this section.

(3) The amount determined under subsection (2) to be available for refund must be refunded on a pro rata basis to each taxpayer who filed a state income tax return, pursuant to 15-30-103, for tax year 1994.

(4) For the purposes of this section:

(a) the term "taxpayer" does not include a fiduciary or a beneficiary of an estate or trust who was required to file an income tax return pursuant to 15-30-135 unless a 1994 return was filed on behalf of a decedent;

(b) a return filed using the filing status married filing jointly is considered to have been filed by a single taxpayer; and

(c) the 1994 tax year is the 12-month period beginning January 1, 1994, and ending December 31, 1994, except that for fiscal year taxpayers, the 1994 tax year is a 12-month period ending between January 1, 1994, and December 31, 1994.

(5) (a) The pro rata distribution of the amount available for refund must be calculated by the department by dividing the amount available for refund described in subsection (2) by the total individual income tax liability as determined by the department from all 1994 tax year returns that were filed by October 15, 1995.

(b) The percentage determined in subsection (5)(a), adjusted to take into account the limitations contained in subsection (7), must be used as the adjusted

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percentage multiplier described in subsection (5)(c) to determine the amount of each taxpayer's refund. The department may not alter or change the adjusted percentage multiplier.

(c) The department shall calculate the amount of each taxpayer's refund by multiplying the amount of tax shown on the taxpayer's return on line 40 of the 1994 Montana Individual Income Tax Return, Form 2, or line 27 of the 1994 Montana Individual Income Tax Return, Short Form 2S, depending on the form used by the taxpayer for tax year 1994, by the adjusted percentage multiplier determined in subsection (5)(b).

(6) (a) The department shall calculate the amount of each taxpayer's refund based on the taxpayer's 1994 tax year return on file with the department hy Octoher 15, 1995. A taxpayer filing a delinquent return for the 1994 tax year after October 15, 1995, is not eligible for a refund under this section.

(b) (i) If a taxpayer files an amended return or if the department reviews a taxpayer's return and recalculates the tax due to the state, the department shall recalculate the refund due to the taxpayer under this section.

(ii) If the department's recalculation determines that the taxpayer has an increased tax liability for tax year 1994 and should receive an additional refund under this section as a result of increased 1994 liability, the department shall credit the additional amount of refund under this section to the amount of additional tax due from the taxpayer.

(iii) If the amount of the recalculated refund due to the taxpayer exceeds the amount of additional tax due from the taxpayer, the department shall pay the excess amount to the taxpayer, but only if the amount of the refund exceeds $10.

(iv) If, as the result of the taxpayer filing an amended return or of a review by the department, a taxpayer's original 1994 tax liability is decreased, any overpayment of the refund calculated by the department based on the original tax liability must be credited against any refund due to the taxpayer.

(7) A refund paid to a taxpayer pursuant to this section may not exceed $1,000. The department may not issue a refund under this section if the amount of the refund is $10 or less.

(8) Refunds may not be made under this section if the total amount available for refund as determined in subsection (2) is less than $10 million.

(9) Beginning in November 1995, the department shall calculate and issue refunds due to taxpayers under this section.

(10) (a) Notwithstanding the provisions of 15-1-211, any objection concerning the determination of the amount of refund or any other issue relating to the refunds provided in this section must be raised by the taxpayer with the department no later than 30 days after the refund is mailed to the taxpayer.

(b) A district court has no jurisdiction to entertain or consider any issue relating to the determination or payment of a refund made under this section unless the issue was first presented to the department and the taxpayer exhausted all administrative remedies.

Section 3. Section 17-7-502, MCA, is amended to read:

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"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-403; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; ~~and~~ 90-14-107*; and [section 4]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 4. Appropriation. The amount determined to he available for refund as provided in [section 2(2)], limited as provided in [section 2(8)], for the Excess Tax Refund Agreement and such additional funds required to do any subsequently required acts necessary as a result of the approval of [this act], including the filing of amended returns or audit adjusted returns, is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of revenue.

Section 5. Appropriation. (1) There is appropriated $300,000 from the general fund to the department of revenue for fiscal year 1995 to administer the provisions of [this act].

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(2) Notwithstanding the provisions of 17-7-302 through 17-7-304, any unexpended amount of appropriation described in subsection (1) is reappropriated to the department of revenue as a biennial appropriation for fiscal years 1996 and 1997.

Section 6. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 2].

Section 7. Effective dates — termination. (1) [Sections 1 through 4] are effective July 1, 1995.

(2) [Sections 5 and 6] and this section are effective on passage and approval.

(3) [This act] terminates July 1, 2001.

Approved February 6, 1995

CHAPTER NO. 30

[SB 57]

AN ACT EXTENDING THE TIME FOR REQUESTING AN ASSESSMENT REVIEW OR FOR FILING AN APPLICATION FOR REDUCTION IN THE VALUATION OF PROPERTY FROM 15 DAYS TO 30 DAYS AFTER RECEIPT OF NOTICE; AMENDING SECTIONS 15-7-102 AND 15-15-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-15-102, MCA, is amended to read:

"**15-15-102. Application for reduction in valuation.** The valuation of property may not be reduced by the county tax appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board. The application must be filed on or before the first Monday in June or ~~15~~ *30* days after receiving either a notice of classification and appraisal or determination after review under 15-7-102(3) from the department, whichever is later. If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the applicant, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made."

Section 2. Section 15-7-102, MCA, is amended to read:

"**15-7-102. Notice of classification and appraisal to owners — appeals.** (1) The department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more

of the following changes pertaining to the land or improvements have been made since tho last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) (a) The department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) Tbe notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within ~~15~~ *30* days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of tbe review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to tbe taxpayer of the time and place of the review. After the review, the department shall determine the true and correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

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(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must he filed within ~~15~~ *30* days after notice of the department's determination is mailed to the taxpayer. A county tax appeal hoard or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 6, 1995

CHAPTER NO. 31

[SB 46]

AN ACT ALLOCATING A PORTION OF THE METALLIFEROUS MINES LICENSE TAX TO BE DEPOSITED IN THE GROUND WATER ASSESSMENT ACCOUNT; AMENDING SECTIONS 15-37-117 AND 85-2-905, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-37-117, MCA, is amended to read:

"**15-37-117. Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the state resource indemnity trust fund, ~~15.5%~~ *13.3%* of total collections each year;

(d) to the ground water assessment account established in 85-2-905, 2.2% of total collections each year;

~~(d)~~*(e)* to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan, or, if an impact plan has not been prepared, to the county

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in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection ~~(1)(d)(i)~~ *(1)(e)(i)* to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection ~~(1)(d)~~ *(1)(e)* in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection ~~(1)(d)~~ *(1)(e)*. The allocation to the county described by subsection ~~(1)(d)~~ *(1)(e)* is a statutory appropriation pursuant to 17-7-502."

Section 2. Section 85-2-905, MCA, is amended to read:

"**85-2-905. Ground water assessment account.** (1) There is a ground water assessment account within the state special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) ~~on July 1, 1993, and~~ at the beginning of each ~~succeeding~~ fiscal year, 14.1% of the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, *and 2.2% of the proceeds from the metalliferous mines license taxes, as authorized by 15-37-117*, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds $666,000, in which case no allocation will be made and the funds must be deposited in the resource indemnity trust fund established by 15-38-201; or

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(ii) is less than $666,000, in which case an amount equal to the difference between the unohligated cash balance and $666,000 must be allocated to the ground water assessment account and any remaining amount must he deposited in the resource indemnity trust fund established hy 15-38-201;

(b) funds provided by federal or state government agencies and hy local governments to carry out the purposes of this part; and

(c) funds provided by any other public or privato sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part."

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all metalliferous mines taxes collected after December 31, 1994.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved February 6, 1995

CHAPTER NO. 32

[SB 70]

AN ACT REQUIRING PURCHASE OF A MIGRATORY BIRD STAMP FOR THE HUNTING OF ALL MIGRATORY GAME BIRDS; AMENDING SECTIONS 87-2-401, 87-2-402, 87-2-411, AND 87-2-412, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-401, MCA, is amended to read:

"87-2-401. **Class A-1—resident upland game bird license.** Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older may, upon payment of a fee of $6, receive a Class A-1 license ~~which will entitle~~ *that entitles* the holder to pursue, hunt, shoot, and kill upland game birds~~, cranes, rails, snipes, and mourning doves~~ and possess the carcasses of upland game birds~~, cranes, rails, snipes, and mourning doves~~ as authorized by department rules."

Section 2. Section 87-2-402, MCA, is amended to read:

"87-2-402. **Class B-1—nonresident upland game bird license.** Except as otherwise provided in this chapter, a person *who is* not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $55 may receive a Class B-1 license ~~which shall entitle~~ *that entitles* the holder ~~thereof~~ to pursue, hunt, shoot, and kill upland game birds~~, cranes, rails, snipes, and mourning doves~~ and possess the carcasses of upland game birds~~, cranes, rails, snipes, and mourning doves~~ as authorized by department rules."

Section 3. Section 87-2-411, MCA, is amended te read:

"87-2-411. **Stamp required to bunt ~~waterfowl~~ *migratory game birds.*** ~~(1)~~ It is unlawful for any person 15 years of age or older to pursue, hunt, shoot,

or kill ~~waterfowl~~ *migratory game birds* without first having obtained a valid ~~waterfowl~~ *migratory bird* stamp from the department. The fee for ~~such~~ *the* stamp is $5.

~~(2) For the purpose of this section, the term "waterfowl" means wild ducks, wild geese, brant, and swans.~~"

Section 4. Section 87-2-412, MCA, is amended to read:

"**87-2-412. Procurement and sale of artwork for ~~waterfowl~~ *migratory bird* stamp — disposition of proceeds.** (1) The department shall contract with an art puhlisher for the selection, by contest or other method, of a design for the annual ~~waterfowl~~ *migratory bird* stamp required by 87-2-411 and for the production of the stamp and relatod artwork. The contract must provide that only designs submitted by Montana artists may be selected. The department shall provide for the sale of stamps exclusively by the department or its license agents, but may make ~~such~~ other arrangements for the sale of related artwork as *that* it determines appropriate. The procurement and sale of the stamps and artwork are exempt from the provisions of Title 18, chapter 4, part 3.

(2) Money received from the sale of stamps and related artwork must be deposited in the state special revenue fund for the use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana."

Section 5. Effective date. [This act] is effective March 1, 1996.

Approved February 6, 1995

CHAPTER NO. 33

[SB 45]

AN ACT CLARIFYING THE TAX RATE THAT APPLIES TO OIL PRODUCTION FROM HORIZONTALLY COMPLETED WELLS; MAKING THE WITHHOLDING OF TAXES FROM ROYALTY INTERESTS MANDATORY; AMENDING SECTIONS 15-16-102, 15-16-121, AND 15-23-607, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-102, MCA, is amended to read:

"**15-16-102. Time for payment — penalty for delinquency.** Except as provided in 15-16-802 and 15-16-803 and unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 and assessments made on ~~interim production and~~ new production, *production from horizontally completed wells, or incremental production* as provided in Title 15, chapter 23, part 6, and payable under 15-16-121, ~~shall be~~ *are* payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half *are payable* on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, ~~then~~ the amount ~~so~~ payable ~~shall become~~ *is* delinquent and ~~shall draw~~ *draws* interest at the rate of 5/6 of 1% per month from and after the delinquency until paid and 2% ~~shall~~ *must* be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year ~~shall be~~ *are* delinquent and ~~shall~~ draw interest at the rate of 5/6 of 1% per month from and after the delinquency until paid and 2% ~~shall~~ *must* be added te the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(5) A taxpayer may pay ~~his~~ current year taxes without paying delinquent taxes. The county treasurer ~~must~~ *shall* accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of *taxes for* the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer."

Section 2. Section 15-16-121, MCA, is amended to read:

"**15-16-121. Payment of ~~interim production and new production~~ *oil and gas net proceeds* taxes.** (1) Taxes levied and assessed on ~~interim production or~~ new production, *production from horizontally completed wells, or incremental production* under the provisions of Title 15, chapter 23, part 6, must be paid to the county treasurer in quarterly installments. The payments must be made on or before 5 p.m. on tbe last day of the months of November, February, May, and August.

(2) Unless one-quarter of ~~such~~ *the* taxes are paid on or before 5 p.m. on the last day of the months of November, February, May, and August of each year, ~~any~~ *the* amount ~~so~~ payable is delinquent.

(3) ~~All such delinquent~~ *Delinquent* taxes ~~must draw~~ *accrue* interest at the rate payable on delinquencies under 15-23-115.

(4) There must also be added to the delinquent taxes a penalty at the same rate as provided for delinquencies under 15-23-104."

Section 3. Section 15-23-607, MCA, is amended to read:

"**15-23-607. Department to compute taxes.** (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the department shall, subject to the provisions of 15-23-612, compute

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the taxes on net proceeds, as provided in subsections (2) and (3) of this section, and royalty assessments and shall transmit the computed taxes te the county treasurer on or before September 15. The county treasurer shall ~~proceed to~~ give full notice of the assessments to the operator and shall collect the taxes as provided by law.

(2) For new production, production from horizontally completed wells, and incremental production, ~~as those terms are defined in 15-23-601,~~ the department may not levy or assess any mills against the value of the new production, production from horizontally completed wells, or incremental production, but shall instead levy a tax as follows:

(a) *(i)* for new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(2); *or*

(ii) for production of petroleum or other mineral or crude oil from horizontally completed wells, 7% of net proceeds, as described in 15-23-603(2);

(b) for new production of natural gas, 12% of net proceeds, as described in 15-23-603(2); or

(c) ~~(i)~~ except as provided in subsection (4)~~;~~*;*

(i) for incremental production that is classified as secondary recovery from new enhanced recovery projects, as defined in 15-23-601, and for incremental production that is classified as secondary recovery from expanded enhanced recovery projects, as defined in 15-23-601, 5% of net proceeds, as described in 15-23-603(2); or

(ii) for incremental production that is classified as tertiary recovery from new enhanced recovery projects, as defined in 15-23-601, and for incremental production that is classified as tertiary recovery from expanded enhanced recovery projects, as defined in 15-23-601, 3.3% of net proceeds, as described in 15-23-603(2).

(3) For purposes of this section:

(a) incremental production from a new enhanced recovery project qualifies for the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if, before the project begins development, the board approves the project and designates the area to be affected by the project~~.~~*;*

(b) ~~the~~ incremental production from an expanded enhanced recovery project qualifies for the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if, before the expansion begins, the board approves the expansion and designates the area to be affected by the expansion.

(4) (a) Incremental production from a new enhanced recovery project is subject to the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a new enhanced recovery project is taxed as provided in subsection (2)(a)*(i)* for production occurring in that quarter.

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(h) Incremental production from an expanded enhanced recovery project is subject to the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intormediate crude oil during a calendar quarter is less than $30 a harrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from an expanded enhanced recovery project is taxed as provided in subsection (2)(a)*(i)* for production occurring in that quarter.

(5) For the purposes of subsections (4)(a) and (4)(b), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quartor by the number of days on which the price was reported in the quarter.

(6) The amount of tax levied in subsections (2)(a), (2)(b), and (2)(c), divided by the appropriate tax rate and multiplied by 60%, must be treated as taxable value for county bonding purposes.

(7) The operator or producer is liable for the payment of the taxes that, except as provided in 15-16-121, are payable by and must be collected from the operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines. However, the operater ~~may~~ *shall* withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by the operator upon the royalty or royalty interest. After the withholding, any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 4. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1993.

Approved February 7, 1995

CHAPTER NO. 34

[HB 30]

AN ACT CLARIFYING THE PORTION OF THE PERMANENT COAL TAX TRUST FUND AVAILABLE TO THE BOARD OF INVESTMENTS FOR THE IN-STATE INVESTMENT PROGRAM; AND AMENDING SECTION 17-6-305, MCA.

WHEREAS, state law authorizes the Board of Investments to invest up to 25% of the permanent coal tax trust fund established in section 17-6-203(6), MCA, in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises; and

WHEREAS, state law also authorizes the Montana Board of Science and Technology Development to invest $23.6 million of the permanent coal tax trust fund established in section 17-6-203(6), MCA, in seed capital project loans and in research and development project loans; and

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WHEREAS, the Legislature has estahlished in section 17-5-703(1), MCA, several funds within the permanent coal tax trust fund; and

WHEREAS, it is unclear whether the Legislature intonded these funds to be included in the total permanent coal tax trust fund for purposes of calculating the 25% available to the Board of Investments for the in-stato investment program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-305, MCA, is amended to read:

"17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy — report by board. (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. *For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of the permanent coal tax trust fund administered by the Montana board of science and technology development pursuant to 17-6-308(3) may not be included in the 25% of the trust fund allocated to the board for in-state investment under this section.*

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111."

Approved February 7, 1995

CHAPTER NO. 35

[HB 36]

AN ACT INCLUDING RESIDENTS OF THE MONTANA CHEMICAL DEPENDENCY TREATMENT CENTER IN THE ASSESSMENT AND COLLECTION OF RESIDENTIAL CARE CHARGES; CONFORMING TO EXISTING LAW THE DEBT COLLECTION FOR PER DIEM AND ANCILLARY CHARGES RELATED TO INSTITUTIONAL CARE; AND AMENDING SECTIONS 53-1-402, 53-1-409, 53-1-411, AND 53-1-413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents subject to per diem and ancillary charges. (1) The department shall assess and collect per diem and ancillary charges for the care of residents in the following institutions:

(a) Montana state hospital;

(b) Montana developmental center;

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(c) Montana veterans' home;

(d) eastern Montana veterans' home;

(e) Montana center for the aged;

(f) Eastmont human services center; *and*

(g) Montana chemical dependency treatment center.

(2) This section does not apply te the eastern Montana veterans' home if the department contracts with a private vendor to operate the facility as provided for in 10-2-416."

Section 2. Section 53-1-409, MCA, is amended to read:

"**53-1-409. Liability of resident or responsible person for assessed charges.** (1) The resident or financially responsible person is liable only for the per diem and ancillary charges ~~which~~ *that* the department has assessed and billed the resident or financially responsible person. If amounts assessed and billed are retroactively reduced because of a new determination of ability to pay, the resident or financially responsible person is liable only for the reduced amount for the period of time covered by the retroactive reduction.

(2) The natural or adoptive parents of long-term residents are liable only for the charges made by the department for care in an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the department.

(3) Natural or adoptive parents of a long-term resident are not liable for any charges made by the department for care of a long-term resident incurred or accrued subsequent to the resident attaining ~~age~~ 18 *years of age*.

(4) (a) ~~No~~ *A* resident or financially responsible person is *not* financially liable for care provided to a resident under any provision of a criminal statute.

(b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana ~~state hospital alcohol program~~ *chemical dependency treatment center*."

Section 3. Section 53-1-411, MCA, is amended to read:

"**53-1-411. Collections by ~~department of revenue~~ *state auditor*.** If a resident or financially responsible person liable for payment of per diem and ancillary charges due under this part refuses or fails to make the payment, it is collectible by the ~~department of revenue~~ *state auditor* in the manner set forth in Title 17, chapter 4, for the collection of debts owing to the state or by a civil suit brought by the ~~department of revenue~~ *state auditor* in the name of the state ~~of Montana~~."

Section 4. Section 53-1-413, MCA, is amended to read:

"**53-1-413. Deposit of payments.** (1) Except as provided in 90-7-220 and subsection (2) of this section, the department shall deposit payments of per diem and ancillary charges in the state treasury to the credit of the general fund.

(2) Payments from the Montana veterans' home ~~shall~~ *must* be deposited in the federal special revenue fund for the benefit of the home, and payments from

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the Montana ~~state hospital alcohol~~ *chemical dependency treatment center* program ~~shall~~ *must* be deposited to an alcohol state special revenue account."

Approved February 8, 1995

CHAPTER NO. 36

[HB 43]

AN ACT AUTHORIZING A BUDGET AMENDMENT FOR REVENUE RESULTING FROM THE SALE OF GOODS PRODUCED OR MANUFACTURED BY THE INDUSTRIES PROGRAM OF AN INSTITUTION WITHIN THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; AMENDING SECTION 17-7-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-402, MCA, is amended to read:

"**17-7-402. Budget amendment requirements.** (1) Except as provided in subsection (6), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue~~;~~*;*

(ii) additional tuition collected by the Montana university system~~;~~*;*

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies~~;~~*;*

(iv) Montana historical society enterprise revenue resulting from sales to the public~~;~~*;*

(v) additional revenue *that is* deposited in funds~~;~~ other than the general fund~~;~~ *and that is* from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91~~;~~*;*

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections and human services; or

(vii) a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter;

(b) by the approving authority~~, which~~ *if the budget amendment* contains any significant ascertainable commitment for any present or future increased general fund support;

(c) hy the approving authority~~;~~ for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure;

(d) by the approving authority~~;~~ unless it will provide additional services;

(e) by the approving authority, for any matter of which the requesting agency bad knowledge at a time when the proposal could have been presented te an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to tbat matter; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) All budget amendments must itemize planned expenditures by fiscal year.

(3) Each budget amendment must be submitted hy the approving authority te the budget directer and the office of the legislative fiscal analyst.

(4) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and tbat is restricted by law or hy the terms of a written agreement, such as a contract, trust agreement, or donation, is subject to the review process provided in 17-7-114 and is exempt from the requirements of this part.

(5) An appropriation that would usually be the subject of a budget amendment that is submitted to the legislature for approval during a legislative session may not include authority to spend money beyond the first fiscal year of the next biennium.

(6) A budget amendment to spend state funds, other tban from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 8, 1995

CHAPTER NO. 37

[HB 44]

AN ACT DEFINING "QUALIFIED ENERGY PROJECTS" FOR SCHOOL DISTRICTS; ALLOWING A SCHOOL DISTRICT 10 YEARS FOR REPAYMENT OF ANY DEBT SERVICE OBLIGATION FOR THE FINANCING OF A QUALIFIED ENERGY PROJECT; AMENDING SECTION 20-9-471, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-471, MCA, is amended to read:

"20-9-471. Issuance ef obligations — authorization — conditions. (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment;

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(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, and electrical systems;

(c) any other expenditure *that* the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and

(d) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation may not exceed 5 ~~full~~ fiscal years, *except that the term of the obligation for a qualified energy project may not exceed 10 fiscal years. For the purposes of this subsection, a "qualified energy project" means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of natural resources and conservation.*

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(4) The proceeds of the obligation may not be used to acquire real property or construct a facility.

(5) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(6) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

(7) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation estahlished in 20-9-406."

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved February 8, 1995

CHAPTER NO. 38

[HB 49]

AN ACT ALLOWING A COUNTY HIGH SCHOOL DISTRICT, WHETHER OR NOT THE COUNTY HIGH SCHOOL DISTRICT IS UNIFIED WITH AN ELEMENTARY DISTRICT, TO AUTHORIZE A LEVY OF NOT MORE THAN 2 MILLS ON THE DISTRICT; AMENDING SECTION 20-7-705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-705, MCA, is amended to read:

"**20-7-705. Adult education fund.** (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district ~~that is not~~ *may, whether or not the county high school district is* unified with an elementary district *under the provisions of 20-6-312,* ~~may~~ authorize a levy of not more than 2 mills on the district and a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than 3 mills on the district, for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by the levy. The trustees shall obtain the approval of the superintendent of public instruction before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for the approval.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program that has been approved by the superintendent of puhlic instruction is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the fourth Monday of August and a levy on the district must be made by the county commissioners in accordance with 20-9-142."

Section 2. Applicability. [This act] does not apply to a unification of a county high school district with an elementary district that was effective prior to the school fiscal year beginning July 1, 1994.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 8, 1995

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CHAPTER NO. 39

[HB 51]

AN ACT INCREASING THE BID LIMIT ON THE ESTIMATED COST OF A SCHOOL DISTRICT'S NONEMERGENCY BUILDING, FURNISHING, OR REPAIR WORK OR ON THE PURCHASE OF SUPPLIES THAT IS SUBJECT TO A CONTRACT; AMENDING SECTION 20-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for ~~any~~ *a* trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by ~~him in his~~ *the trustee while acting in that* official capacity or by the board of trustees of which ~~he~~ *the trustee* is a member; or

(b) be employed in any capacity by the *trustee's own* school district ~~of which he is trustee~~.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Except for district needs that must be met due to an unforeseen emergency as defined in 20-3-322(5), whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of ~~$7,500~~ *$15,000*, the work done or the purchase made must be by contract. Each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void.

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(4) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any ~~or all~~ bids.

(5) Nothing in this section requires the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related te the routine performance of maintenance for the district."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 8, 1995

CHAPTER NO. 40

[HB 67]

AN ACT REVISING THE RATE OF INTEREST PAID ON REGISTERED WARRANTS; AUTHORIZING THE BOARD OF INVESTMENTS TO ESTABLISH THE RATE OF INTEREST ON WARRANTS PURCHASED BY THE BOARD; AND AMENDING SECTIONS 17-6-212 AND 17-8-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-212, MCA, is amended to read:

"**17-6-212. State purchase of general fund warrants.** (1) The state ~~hereby~~ reserves ~~to itself~~ a preference right, prior to the right of any person, company, or corporation, to purchase stato general fund warrants issued with funds under the control of tlie board of investments and subject to investment.

(2) When tbe board of investments has under its control any funds subject to investment ~~which~~ *that* in its judgment it would be advantageous to ~~have invested~~ *invest* in state general fund warrants and there are not sufficient funds in tbe state general fund to pay warrants issued against the fund at the time *that* they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, desiguating the fund or funds to be ~~so~~ invested and fixing the amount or amounts *to be invested.* It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amounts *to be invested. State general fund warrants registered by the state treasurer pursuant to 17-8-304(1) and purchased by the board of investments must bear interest at a rate determined by the board. When determining the interest rate, the board shall consider:*

(a) the duration of the investment by estimating the time at which the warrants will be redeemed pursuant to 17-8-304(1); and

(b) the interest rate of the investments liquidated to provide the funds to purehase the warrants.

(3) The auditor shall attach to or stamp, write, or print upon each general fund warrant ~~thereafter~~ issued *after the receipt of notice,* until warrants totaling

the amounts ~~so~~ designated have been issued, a notice that the state will exercise its preference right to purchase the warrant.

(4) The state treasurer shall, ~~thereafter~~ when the *marked* warrant is presented, ~~to him~~ pay it out of the proper fund as designated by the board, and the warrant ~~so~~ purchased ~~shall~~ *must* be registered as other state warrants and *must* bear interest as provided by law.

(5) When the designated amounts have been invested, the state treasurer shall notify the board of investments, which shall ~~thereupon~~ issue orders upon the proper funds addressed to the state auditor for warrants to be issued in favor of the treasurer."

Section 2. Section 17-8-304, MCA, is amended to read:

"**17-8-304. Payment, registry, and interest.** (1) The state treasurer shall, on the presentation of state warrants regularly issued, pay the ~~same~~ *warrants* out of any funds available for ~~such~~ *the* payments, and in the event *that* there are no funds available for ~~such~~ *the* payment, ~~he must~~ *the treasurer shall* register each warrant in a book or register to be kept for that purpose, entering the date of issue, date of registration, name in whose favor *the* warrant is drawn, and the number and amount ~~thereof~~ *of the warrant* and endorse on each warrant ~~so~~ registered, on its face, "presented for payment and not paid for want of funds and registered in this office this .... day of ....", inserting the date of registration~~, and he~~. *The treasurer* shall ~~affix his signature as such treasurer thereto~~ *sign the book or register*. ~~All warrants so registered and endorsed on and after March 1, 1927, shall bear interest at the rate of 4% a year until called for payment, after date of which call interest shall cease.~~ All warrants ~~shall~~ *must* be redeemed and paid in the order of their registration.

(2) ~~Nothing herein contained shall be construed to~~ *This section does not* apply to any warrants issued on account of any land grant fund or by virtue of any special act authorizing the issuance ~~thereof~~ *of warrants*."

Approved February 8, 1995

CHAPTER NO. 41

[HB 210]

AN ACT PROVIDING FOR A PROCEDURE TO APPOINT A CORPORATE TRUSTEE OF THE PERMANENT TRUST FUND FOR THE CARE, MAINTENANCE, AND IMPROVEMENT OF THE FIRST SPECIAL SERVICE FORCE MEMORIAL MONUMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3] may be cited as the "First Special Service Force Memorial Monument Permanent Trust Act".

Section 2. Procedure for appointment of corporate trustee — term of office — annual reporting requirement — discharge for good cause. (1) Upon receipt of the articles of dissolution or a decree of dissolution of the nonprofit corporation that has established a permanent care and improvement

trust fund for the care, maintenance, and improvement of the first special service force memorial monument, located in Helena, Montana, the secretary of state shall notify the first judicial district court that the appointment of a corporate trusteo is necessary.

(2) The remaining trustees of the dissolved corporation shall make an accounting of the trust fund and present it to the district court judge.

(3) The remaining trustees of the dissolved corporation may nominate a trust company authorized to do business in Montana to he the corporate trustee of the trust fund.

(4) The district court judge may accept applications for corporate trustee from interested persons.

(5) The district court judge shall order appointment of a corporate trustee after consideration of the remaining trustees' nomination and the applications of any interested persons.

(6) The term of office for a corporate trustoe is 5 years unless the corporate trustee leaves the state of Montana or is permanently removed from office by the district court judge for good cause shown.

(7) The corporate trustee shall annually, by September 1, or more often upon order of the district court, file in the office of the clerk of the district court of Lewis and Clark County a verified, detailed financial statement of:

(a) the principal assets;

(b) the income derived from investments;

(c) the amount of money expended and to whom for the care, maintenance, and improvement of the monument and related costs; and

(d) the amount of the corporate trustee's compensation during the preceding year.

(8) An interested party may apply to the district court for an order requiring the corporate trustee to make an accounting at any time.

(9) Upon receipt of the financial statement required in subsection (7), the district court judge may discharge the corporate trustee for good cause and may appoint another corporate trustee.

Section 3. Principal of trust fund inviolate — investment — use of income — corporate trustee compensation — surplus. (1) The principal of the trust fund must remain intact and inviolate.

(2) The principal of the trust fund must be invested in a manner in which public employees' retirement funds are permitted to be invested in the state of Montana as prescribed by 17-6-201. Investment is subject to the approval of the district court judge.

(3) The income received from investment of the principal must be used for the care, maintenance, and improvement of the memorial monument and for compensation of the corporate trustee.

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(4) The corporate trustee of the trust fund shall receive compensation as determined hy the district court judge.

(5) In the event that the income from the trust fund is not needed in its entirety for the purposes in subsection (3), the surplus must be added to the principal of the trust fund.

Section 4. Codification instruction. [Sections 1 through 3] are intended to he codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 3].

Approved February 9, 1995

CHAPTER NO. 42

[SB 47]

AN ACT ALLOWING FOR STAGGERED REGISTRATION OF CERTAIN FLEET INTERSTATE COMMERCIAL VEHICLES; CLARIFYING PROVISIONS RELATED TO THE STAGGERED REGISTRATION OF CERTAIN VEHICLES; DEFINING ANNUAL REGISTRATION PERIODS APPLICABLE TO THE REGISTRATION OF CERTAIN VEHICLE FLEETS; CLARIFYING CERTAIN FEES FOR REGISTRATION AND IDENTIFICATION OF PROPORTIONALLY REGISTERED VEHICLES; AMENDING SECTIONS 61-3-311, 61-3-312, 61-3-313, 61-3-716, 61-3-721, 61-3-722, 61-3-724, AND 61-3-725, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-311, MCA, is amended to read:

"61-3-311. Time for making application. Registration must be renewed annually, and license fees *must be* paid annually. Except as provided in 61-3-313 through 61-3-316, and *61-3-318,* 61-3-526, *and 61-3-721,* all registrations expire on Decemher 31 of the year in which they are issued and application for registration~~,~~ or reregistration~~,~~ must be filed with the county treasurer not later than February 15 of each year. If the ownership of a motor vehicle is transferred during the registration year, the motor vehicle must be reregistered and relicensed as provided by statute."

Section 2. Section 61-3-312, MCA, is amended to read:

"61-3-312. Renewal of registration — *exceptions — grace period.* (1) Except as provided in 61-3-314, ~~and~~ *61-3-318,* 61-3-526, *and 61-3-721,* ~~every~~ *a* vehicle registration under this chapter ~~shall expire~~ *expires* on Decemher 31 of each year and must be renewed annually upon application and payment of license fees as provided in 61-3-303 and 61-3-321. The renewal takes effect on January 1 of each year. The certificate of registration is valid only during the registration year for which *it is* issued.

(2) The owner of a vehicle registered under the provisions of this section ~~is entitled to~~ *may* operate the vehicle between January 1 and February 15 without displaying the registration certificate of the current year~~, on condition that~~ *if,*

during the period, the owner ~~shall, during the period, display~~ *displays* upon the vehicle the number plates or plate assigned for the previous year."

Section 3. Section 61-3-313, MCA, is amended to read:

"**61-3-313. Vehicles subject to staggered registration.** For purposes of 61-3-313 through 61-3-316, "vehicle" means ~~any~~ *a* motor vehicle, as defined in 61-1-102, *that is* subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States~~, of~~ *or by* the state of Montana~~,~~ or ~~its~~ *a* political ~~subdivisions~~ *subdivision of the state*;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 61-3-332(10)(c)(i)(A), 61-3-411, or 61-3-421;

(4) trucks exceeding a licensed gross vebicle weight of 10,000 pounds;

(5) trailers, semitrailers, tracters, buses, motorcycles, quadricycles, and motor-driven cycles;

(6) special mobile equipment as defined in 61-1-104;

(7) motor vehicles registered as part of a fleet under 61-3-318*; and*

(8) apportionable vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733."

Section 4. Section 61-3-716, MCA, is amended to read:

"**61-3-716. Proportional registration of fleet vehicles.** *(1)* If a jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes, or other fixed fees on those vehicles on an apportionment basis commensurate with and determined by the miles traveled on and the use made of the jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in any other jurisdiction under this apportionment basis from the requirements of full payment of its own registration, license fees, taxes, or other fixed fees, then the department may, by agreement, adopt ~~such exemption~~ *exemptions* with respect to vehicles of these fleets, whether owned by residents or nonresidents of tbis state and regardless of where based. An agreement, under the terms, conditions, or restrictions *that* the department considers proper, may provide that owners of vehicles operated in interstate or combined intorstate and intrastate commerce in this state be permitted to pay registration, license fees, taxes, or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this stato as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. This agreement may not authorize or be construed to authorize a vehicle so registered to be operated in intrastate commerce in this state unless tbe owner of the vehicle bas been grantod intrastate authority or rights by the public service commission~~,~~ if a grant is otherwise required by law.

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(2) The department of transportation may adopt rules *that* it considers necessary to carry out and administer this section, and the registration of fleet vehicles under 61-3-711 through 61-3-733 is subject to the rights, terms, and conditions granted by or contained in any applicable agreement, arrangement, or declaration made by the department. *The department of transportation shall adopt rules providing for a change of registration period for a fleet in a case in which the owner of the fleet requests that the registration period be changed to coincide with the registration period of one or more other fleets in the same ownership."*

Section 5. Section 61-3-721, MCA, is amended to read:

"61-3-721. Proportional registration of fleet vehicles, *annual registration periods,* application, fee formula, and payment. (1) An owner ~~engaged in operating~~ *of* one or more fleets may~~, instead of registration of vehicles under other sections of this title,~~ register and license each fleet for operation in this state by filing an application with the department ~~which shall contain~~ *of transportation. The application must contain* the information pertinent to vehicle registration that is required by the department *of transportation.*

(2) Each fleet subject to the provisions of 61-3-711 through 61-3-733 must, except as provided in 61-3-318(1), be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, "calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

(a) January 1 through March 31	*1st period*
(b) April 1 through June 30	*2nd period*
(c) July 1 through September 30	*3rd period*
(d) October 1 through December 31	*4th period*

(4) Registration of a fleet of apportionable vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period, unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of apportionable vehicles in common ownership.

~~(2)~~*(5)* The application for each fleet may be accompanied by a fee payment computed ~~as follows~~ *by*:

(a) ~~divide~~ *dividing* in-state miles by total fleet miles as defined in the applicable agreement entered into pursuant te 61-3-711 through 61-3-733;

(b) ~~determine~~ *determining* the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and ~~part 2 of~~ chapter 10, *part 2,* and the property taxes ~~which~~ *that* are due on the fleet;

(c) ~~multiply~~ *multiplying* the sum obtained under subsection ~~(2)(b)~~ *(5)(b)* by the fraction obtained under subsection ~~(2)(a)~~ *(5)(a).*

~~(3)~~*(6)* Applications submitted with fees may be recomputed by the department ~~and~~. *The department shall furnish* a statement ~~furnished~~ showing the overpayment or balance due.

~~(4)~~*(7)* Applications submitted without fees ~~shall~~ *must* be computed by the department ~~and~~. *The department shall furnish* a statement ~~furnished~~ showing the amount of fees due."

Section 6. Section 61-3-722, MCA, is amended to read:

"**61-3-722. Registration and identification of proportionally registered vehicles — *fees* — effect of registration.** (1) The department shall register each proportionally registered vehicle and issue a license plate or plates, a distinctive sticker, or other suitable identification device for each vehicle described in the application upon payment of the appropriate fees and property taxes, as provided by law, for the application and for the license plates, stickers, or devices issued. A fee of $2 must be paid for each license plate, *each* sticker, ~~or~~ *and each* device issued for each proportionally registered vehicle. A fee of $5 must be paid for each vehicle receiving temporary registration as authorized by section 704 of the international registration plan of the American association of motor vehicle administrators, adopted *in* April 1988. A registration card must be issued for each proportionally registered vehicle. The registration card must, in addition to other information required by chapter 3, show the number of the license, sticker, or other device issued for the proportionally registered vehicle and must be carried in the vehicle at all times.

(2) Fleet vehicles registered and identified as fleet vehicles are considered fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the vehicle may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the vehicle is being operated in conformity with that authority."

Section 7. Section 61-3-724, MCA, is amended to read:

"**61-3-724. Registration of additional fleet vehicles.** Vehicles acquired by the owner after the commencement of the registration ~~year~~ *period* and subsequently added to a proportionally registered fleet ~~shall~~ *must* be proportionally registered by applying the mileage percentage used in the original application for ~~such~~ *the* fleet for ~~such~~ *the* registration period to the regular registration fees due with respect to ~~such~~ *the* vehicle for the remainder of the registration ~~year~~ *period*."

Section 8. Section 61-3-725, MCA, is amended to read:

"**61-3-725. Withdrawal of fleet vehicles — procedure, credits, and accounting.** (1) If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the owner of the fleet shall notify the department of transportation of that fact on forms prescribed by the department. The department may require the owner to surrender proportional registration cards and other identification devices ~~which~~ *that* have been issued with respect to that vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise

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completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to that vehicle ~~shall~~ *must* be credited to the proportional registration account of the owner. This unused portion ~~shall equal~~ *equals* the amount paid with respect to the vehicle when it was first proportionally registered in the registration ~~year~~ *period*, reduced by one-twelfth of the total annual gross vehicle weight fee of the vehicle for each calendar month and fraction ~~thereof~~ *of a month* elapsing between the first day of the month of the current ~~year~~ *period* in which the vehicle was registered and the date the notice of withdrawal is received by the department. This credit ~~shall~~ *must* be applied against liability for additional fees due during the registration ~~year~~ *period* or for additional fees due upon audit under 61-3-728. If a credit is less than $5, it may not he made or entered. In no event may the amount be credited against fees other than those for the registration ~~year~~ *period*, nor may any amount be subject to refund.

(2) If the owner replaces a vehicle withdrawn from the fleet at the same time as the withdrawal and the replacement vehicle is of the same or of a lesser weight category than the one withdrawn, the gross vehicle weight fees are transferable to the replacement vehicle. If the transfer is to a smaller vehicle, ~~there may be no~~ credit *may not be* given or entered."

Section 9. Effective date. [This act] is effective January 1, 1996.

Approved February 9, 1995

CHAPTER NO. 43

[SB 53]

AN ACT REVISING THE DEFINITION OF "SPECIAL FUEL" AND OF "SPECIAL FUEL USER"; ELIMINATING CERTAIN LICENSING AND REPORTING REQUIREMENTS FOR VEHICLES OVER 26,000 POUNDS OPERATING INTRASTATE ONLY; MAKING THE TEMPORARY CASH COMPLIANCE BOND FOR A TEMPORARY OPERATING PERMIT AVAILABLE ONLY FOR VEHICLES OPERATING SOLELY INTRASTATE; CLARIFYING THAT CERTAIN DYED SPECIAL FUEL IS SUBJECT TO THE TAX ON SPECIAL FUEL; MAKING THE SELLER OF SPECIAL FUEL THAT IS SUBJECT TO TAX JOINTLY AND SEVERALLY LIABLE FOR THE TAX AND SUBJECT TO CIVIL PENALTIES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 15-70-301, 15-70-302, 15-70-308, 15-70-321, AND 15-70-330, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-301, MCA, is amended to read:

"**15-70-301. Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person whose major endeavor is *the business of farming or ranching* and *whose* primary source of earned income is from the business of farming or ranching.

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(2) "Bond" means:

(a) a hond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, *and* conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions *that* the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in sterage or containers. The term does not mean special fuel delivered into the supply tank of a moter vehicle.

(4) "Cardtrol" or "keylock" means any unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distrihuted" means, at the time *that* special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline torminal, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed te assume the Montana state special fuel tax liability; and

(d) an exporter ~~as defined in this section~~.

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(8) "Export" means to transport out of Montana, hy any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or te first receive any special fuel shipped or transported into this state from a point of origin outside ef this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distrihution.

(12) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(13) "Person" includes any person, firm, association, joint-steck company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescrihing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(14) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the stato;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

(15) "Special fuel" means those combustihle gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. *The term special fuel includes all other types of additives when the additive is mixed or blended into speeial fuel, regardless of the additive's classifications or uses.*

(16) "Special fuel dealer" means:

(a) any person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) any person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) any person who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(17) "Special fuel user" means any person other than *the U.S. government, a state, or* a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(18) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

Section 2. Section 15-70-302, MCA, is amended to read:

"**15-70-302. Special fuel user's permits required — exceptions.** (1) *(a)* A special fuel user shall obtain a special fuel user's permit annually from the department, prior to the use of special fuel:

(i) for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight *used in an interstate operation;*

(ii) by a special fuel user awarded a contract in accordance with 15-70-321; or

(iii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

(b) Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require a user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit, as required by subsection (1), if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement, as authorized by 15-70-121, and the vehicle displays a license or decal issued pursuant to the agreement."

Section 3. Section 15-70-308, MCA, is amended to read:

"**15-70-308. Temporary cash compliance bond.** (1) A special fuel user subject to the licensing requirements of this part may obtain a temporary 30-day

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operating permit by posting a $100 cash compliance bond on each vehicle at any weigh station~~,~~ or with any person authorized by the department to issue a cash compliance bond.

(2) If the user files the bond required by 15-70-304, files a special fuel tax return for the 30-day period, and otherwise complies with the requirements of this part, the $100 payment received for the temporary permit must be returned to the user. If the user fails to file the bond required by 15-70-304 or the special fuel tax return for the 30-day period or fails to comply with the requirements of this part, the $100 payment is forfeited to the state.

(3) The temporary permit is issued:

(a) subject to the same restrictions and requirements as the annual permit*; and*

(b) for intrastate operations only."

Section 4. Section 15-70-321, MCA, is amended to read:

"**15-70-321. Tax on diesel *special* fuel and volatile liquids.** (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed ~~diesel~~ *special* fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public *roads and* highways ~~or streets within the~~ *of this* state; ~~and~~

(b) for each gallon of diesel *special* fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions*; and*

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) The tax imposed in subsection (1) is:

~~(a) 24 cents per gallon beginning July 1, 1993;~~

~~(b) 24 3/4 cents per gallon beginning January 1, 1994; and~~

~~(c)~~ 27 3/4 cents per gallon beginning ~~July 1, 1994~~."

Section 5. Section 15-70-330, MCA, is amended to read:

"**15-70-330. Special fuel penalties.** (1) In the case of a special fuel user who refuses or fails to file a return required by this part within the time

prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues~~; provided, however, that~~. *However,* if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, ~~there must be added to the amount due and unpaid~~ interest at the rato of 1% per month or fraction of a month from the dato *on which* the tax was due to the date of payment in full *must be added to the amount due and unpaid.*

(3) (a) A special fuel user may not use dyed special fuel to operato a motor vehicle upon the public *roads and* highways ~~or streets within the~~ *of this* state unless the fuel is subject to taxation under 15-70-321(1)(b) or the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful or knowing use of dyed special fuel in a moter vehicle operating upon the public *roads and* highways ~~or streets within the~~ *of this* stato in violation of this subsection is a misdemeanor punishable hy a fine not to exceed $500 upon conviction for the first offense, not te exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction. Each use is a separate offense.

(b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on public highways, puhlic roads, or streets when using dyed fuel or nontaxed fuel.

(3) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has reason to know that the fuel will be used for a taxable purpose."

Section 6. Effective date — retroactive applicability. [This act] is effective on passage and approval, and [sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to January 1, 1995.

Approved February 9, 1995

CHAPTER NO. 44

[HB 16]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF JUSTICE FOR THE FISCAL YEAR ENDING JUNE 30, 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriation contained in [section 2] is intended to provide only the amount paid by the department of justice to

property taxpayers in Cascade County in final settlement of the Woith v. Cascade County case for the fiscal year ending June 30, 1995.

Section 2. Appropriation. The amount of $1 million is appropriated from the general fund to the department of justice, subject to the terms and conditions of [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 9, 1995

CHAPTER NO. 45

[HB 20]

AN ACT INCREASING THE ALLOWANCE FOR THE SHIPPING AND RAISING OF THE HEADSTONES PROVIDED BY CONGRESS FOR VETERANS; APPROPRIATING MONEY TO THE DEPARTMENT OF ADMINISTRATION FOR THIS COST; AMENDING SECTION 10-2-501, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-501, MCA, is amended to read:

"**10-2-501. Burial allowance for military.** (1) The board of commissioners of each county in this state shall designate a person in the county, preferably a veteran, as veterans' burial supervisor.

(2) The veterans' burial supervisor shall cause to be decently interred the body of any veteran who was a resident of the state of Montana at the time of death. In performing this duty, the veterans' burial supervisor shall ensure that the desires of the veteran's personal representative or heirs are not violated.

(3) The burial may not be made in any burial grounds or cemetery or in any portion of any burial grounds or cemetery used exclusively for the burial of pauper dead.

(4) A sum not to exceed $250 to defer burial expenses must be paid by the county commissioners of the county in which the veteran was a bona fide resident at the time of death.

(5) The burial benefits are not available in the case of any veteran whose personal representative or heirs waive the benefits.

(6) Whenever burial is of a resident of ~~the~~ *a* Montana veterans' home, a sum not to exceed $250 to defer burial expenses must be paid by the county commissioners of the county in which the veteran resided prior to admittance to ~~the~~ *a* Montana veterans' home.

(7) If a veteran dies while temporarily absent from the stato or county of residence, the provisions of this section apply and the burial expenses not exceeding the amount specified in this section must be paid in the same manner as provided in this section.

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(8) Whenever a veteran dies at any public institution of the state of Montana, other than ~~the~~ *a* Montana veterans' home, and burial for any cause is not made in the county of the former residence of the veteran, the officers of the state institution shall provide the proper burial prescribed in this section. The reimbursement for the expense of each burial may not exceed $250. The expense must be paid by the county in which the veteran resided at the time of entry into the institution.

(9) A burial may not be covered by any special or standing contract whereby the cost of burial is reduced below the maximum amount fixed in this section, to the disparagement of proper interment.

(10) The veterans' burial supervisor shall, upon request of the deceased veteran's next of kin or guardian, assist in applying to the proper authority for a suitable headstone, as provided by act of congress, and in placing the headstone on the veteran's grave. A sum not exceeding ~~$30~~ *$70* for the shipping and raising of the headstene must be paid by the county commissioners of the county in which the veteran was a resident at the time of death. The expense must be audited and paid as provided in this section for burial expenses.

(11) The county treasurer may withhold an amount of the county total monthly remittance to the state treasurer equal to the actual cost paid, up to $40, for the shipping and raising of each headstone."

Section 2. Appropriation. The following money is appropriated from the general fund to the department of administration to allow counties to withhold their costs for payment for the shipping and raising of the headstones provided by congress for veterans from the county treasurers' monthly remittances to the state treasurer:

Fiscal year 1996	$48,000
Fiscal year 1997	48,000

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved February 9, 1995

CHAPTER NO. 46

[HB 37]

AN ACT REMOVING THE STATUTE OF LIMITATIONS EXTENSION FOR A PERSON INCARCERATED ON A CRIMINAL CHARGE OR UNDER A SENTENCE FOR A TERM LESS THAN LIFE; AMENDING SECTION 27-2-401, MCA; AND PROVIDING FOR RETROACTIVE APPLICABILITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-2-401, MCA, is amended to read:

"27-2-401. When person entitled to bring action is under a disability. (1) If a person entitled to bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either a minor~~;~~ *or* seriously mentally ill, ~~or imprisoned on a criminal charge or under a sentence for a term less than for life,~~ the time of ~~such~~ *the* disability is not a part of the time ~~limited~~ *limit* for

commencing the action. However, the time ~~so limited~~ *limit* cannot he extended more than 5 years hy ~~any such~~ *the* disability ~~except minority~~ *of serious mental illness.*

(2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of the transaction upon which the action might have been founded was under one of the disabilities mentioned in subsection (1) may, within 5 years after the cessation of ~~such~~ *the* disability, maintain an action te recover damages. In ~~such~~ *the* action, ~~he~~ *the person* may recover ~~such~~ *the* sum or the value of ~~such~~ *the* property ~~as he~~ *that the person* would have received upon the final distribution of the estate if an action had been seasonably commenced by the personal representative.

(3) ~~No~~ *A* person may *not* ~~avail himself of~~ *claim* a disability unless it existed when ~~his~~ *the* right of action or entry accrued.

(4) When ~~two or more~~ *both* disabilities *referred to in subsection (1)* coexist at the time the right of action or entry accrues, the limitation does not attach until ~~all~~ *both* are removed."

Section 2. Applicability — retroactive effect. [Section 1] applies retroactively, within the meaning of 1-2-109, as provided in this section. If a cause of action accrued before [the effective date of this act] to a person incarcerated on a criminal charge or under a sentence for a term less than life, the person must bring an action by the earlier of the following dates:

(1) the last day on which the action could have been brought under 27-2-401 as that section read prior to [the effective date of this act]; or

(2) the last day on which an action can be brought under 27-2-401, as amended by [section 1], for a cause of action that accrued on [the effective date of this act].

Approved February 10, 1995

CHAPTER NO. 47

[HB 76]

AN ACT PROVIDING A MECHANISM FOR THE PROMPT PAYMENT OF TAX AND REVENUE ANTICIPATION NOTES IF THERE IS INSUFFICIENT REVENUE IN THE GENERAL FUND; ALLOWING THE STATE TREASURER TO TEMPORARILY BORROW FROM ANY STATE FUND OTHER THAN PENSION TRUST FUNDS TO MEET GENERAL FUND CASH DEFICIENCIES AND TO PAY INTEREST ON CERTAIN LOANS; AMENDING SECTIONS 17-1-204 AND 17-2-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-204, MCA, is amended to read:

"17-1-204. Payment — pledge of taxes and revenue — costs of issuance. (1) The notes and interest on the notes must be paid from taxes and revenues not later than the end of the fiscal year in which issued.

(2) The full faith and credit and taxing power of the state ~~shall be~~ *is* pledged for the payment of all notes issued under this part. *In furtherance of this pledge, if there are insufficient funds in the general fund to pay the notes and interest on the notes when due, the department shall transfer available funds from any fund of the state, except pension trust funds, to the general fund to pay the notes and interest. The transfer is considered a loan to the general fund subject to the provisions of 17-2-105.*

(3) The department may pay all costs of issuance of notes issued under this part, including without limitation interest, rating agency fees, printing costs, legal fees, bank or trust company fees, costs te employ persons or firms te assist in the sale of the notes, line of credit fees and charges, and all other amounts related to the costs of issuing the notes. Payment of costs must be made from amounts available ~~therefor~~ from the proceeds of the notes upon deposit in the general fund."

Section 2. Section 17-2-105, MCA, is amended to read:

"17-2-105. Maintenance of fund and account records and interfund loans. (1) The state treasurer shall record receipts and disbursements for treasury funds and shall maintain fund records in ~~such~~ a manner ~~as to reflect~~ *that reflects* the total cash and invested balance of each fund. The state treasurer shall also maintain records of individual funds within the debt service, agency, capital projects, and trust fund types in ~~such~~ a manner ~~as to reflect~~ *that reflects* the total cash and invested balance of each fund. When necessary to meet federal or other requirements that ~~moneys~~ *money* be segregated in the treasury, the state treasurer may establish accounts, funds, or subfunds within any fund type listed in 17-2-102.

(2) *(a)* For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, *excluding pension trust funds,* providing that the loan is recorded in the state accounting records. ~~Such~~ *Except as provided in subsection (2)(b), the* loan ~~shall~~ *does not* bear ~~no~~ interest~~;~~. ~~and no~~ *A* fund ~~shall~~ *may not* be so impaired that all proper demands ~~thereon~~ *on the fund* cannot be met.

(b) If a loan is made from a fund that retains its own interest, the department shall repay the loan with interest at a rate established by the state treasurer based on the estimated interest rate the funds would have earned if the funds had not been borrowed."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 9, 1995

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CHAPTER NO. 48

[HB 98]

AN ACT REVISING STATE LABOR LAWS TO EXCLUDE FROM MINIMUM WAGE, OVERTIME, UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION REQUIREMENTS A DIRECT SELLER AS DEFINED BY FEDERAL LAW; AMENDING SECTIONS 39-3-406, 39-51-204, AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, *and* cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in tbe food distribution industry for a food broker, wholesaler, or association;

(n) a direct seller as defined in 26 U.S.C. 3508.

(2) Tbe provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States ~~Secretary~~ *secretary* of ~~Transportation~~ *transportation* bas power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of tho Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purcbasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for tbe employment on the basis of trip rates or other delivery payment plan if the commissioner finds tbat the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and tbat are used exclusively for supply and storing of water for agricultural purposes;

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(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1½ times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours ~~per~~ *a* day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1½ times the hourly wage rate for the employee.

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(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant te 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1½ times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services."

Section 2. Section 39-51-204, MCA, is amended to read:

"**39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate hooks and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed hy an individual in tbe employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except

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that national banks organized under the national banking law may not be entitled to exemption under this subsection and are subject to this chapter the same as state banks, provided that the service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department shall enter into agreements with the proper agencies under an act of congress, which agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if the service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university or by the spouse of a student if the spouse is advised, at the time *that* the spouse commences to perform the service, that the employment of the spouse to perform tbe service is provided under a program to provide financial assistance to the student by the school, college, or university and *that* the employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or puhlic educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if tbe service is an integral part of tbe program and the institution bas certified that fact to the employer, except that this subsection does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if the service is performed by a patient of the hospital;

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(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for services from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors or working members of a partnership;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails te perform the contract obligations;

(B) states *that* the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.;

(p) employment of a direct seller as defined in 26 U.S.C. 3508.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by ~~a duly~~ *an* ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

(4) An individual found to be an independent contracter by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contracter is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(5) This section does not apply to a state or local governmental entity or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment as defined in the Federal Unemployment Tax Act."

Section 3. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller ~~engaged in the sale of consumer products, primarily in the customer's home~~ *as defined in 26 U.S.C. 3508*;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(I);

(m) a person who is employed by an enrolled tribal member who operates solely within the exterior boundaries of an Indian reservation.

(3) (a) A sole proprietor or a working member of a partnership who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

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(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status as an independent contractor until the independent contractor notifies the department of any change in status and provides a description of present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules *that* the department promulgates and subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter hy giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected te be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and to the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, to the department, and to the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if the officer elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice required by subsection (4)(a) under oath or affirmation and is subject te the penalties for false swearing under 45-7-202 if the officer falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the

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department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved February 9, 1995

CHAPTER NO. 49

[HB 106]

AN ACT PROVIDING A TERMINATION INCENTIVE TO CERTAIN STATE EMPLOYEES IN THE TEACHERS' RETIREMENT SYSTEM WHO ARE ELIGIBLE TO RETIRE AND WHO TERMINATE EMPLOYMENT WITHIN A PRESCRIBED WINDOW OF ELIGIBILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Termination incentives for teachers' retirement system members — exceptions. (1) Except as provided in subsection (5), a person who is a full-time, active member of the teachers' retirement system on February 1, 1995, and who is employed by the state is entitled to the voluntary termination incentive provided in subsection (2) if:

(a) the employee is eligible for retirement under 19-20-801 or 19-20-802; and

(b) the employee:

(i) voluntarily terminates on or after June 25, 1995, but on or before July 5, 1996; or

(ii) is involuntarily terminated because of a reduction in force on or after [the effective date of this act] but before June 25, 1995.

(2) The termination incentive paid to a terminating eligible employee must be an amount equal to 1 year of the combined member and employer contributions established in 19-20-602 and 19-20-605 for each 5 years of creditable service within the teachers' retirement system, not to exceed the amount of combined contributions for 3 years. An employer shall use the employee's final year contract or salary to calculate the incentive amount.

(3) A member who terminates employment under the provisions of subsection (1) and who returns to employment in a position in the teachers' retirement system, except as provided in 19-20-804, shall refund the voluntary termination incentive to the terminating state agency.

(4) To qualify for the termination incentive authorized in this section, the participant shall notify the state in writing of an intent to terminate employment no later than 30 days prior to termination or December 31, 1995, whichever is earlier.

(5) An employee of the university system or of the commissioner of higher education is excluded from [section 2] and this section.

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Section 2. Use of termination incentive — installment payments authorized. (1) If the eligible employee elects to use the termination incentive paid under [section 1], in whole or in part, to enhance retirement benefits, the employer contributions to the teachers' retirement system required under 19-20-101(5)(d) are included in the total amount of termination incentive paid to the employee.

(2) The provisions of this section apply only to a termination incentive and do not relieve an employer from making any contributions defined in 19-20-101(5)(d).

(3) The termination incentive may be paid, upon request of the employee, in 12 equal installments as long as the final installment payment occurs on or before June 30, 1997.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 18, part 3, and the provisions of Title 2, chapter 18, part 3, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Termination. [This act] terminates July 6, 1996.

Approved February 9, 1995

CHAPTER NO. 50

[HB 108]

AN ACT REQUIRING A PERSON CONVICTED OF A DANGEROUS DRUG MISDEMEANOR TO ATTEND A DANGEROUS DRUG INFORMATION COURSE; AND ALLOWING A JUDGE TO REQUIRE CHEMICAL DEPENDENCY TREATMENT IN CERTAIN CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Mandatory dangerous drug information course. A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of corrections and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a certified chemical dependency counselor working with the person recommends treatment.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 9, part 2, and as an integral part of Title 45, chapter 10, and the provisions of Title 45 apply to [section 1].

Approved February 9, 1995

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CHAPTER NO. 51

[HB 178]

AN ACT REVISING LAWS RELATING TO BID SECURITY; SPECIFYING THE FORM OF SECURITY TO ACCOMPANY A BID FOR THE PURCHASE OR SALE OF PUBLIC BONDS; AMENDING SECTIONS 18-1-202 AND 18-1-203, MCA; REPEALING SECTION 17-5-806, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-202, MCA, is amended to read:

"**18-1-202. Advertisement for bid to specify required security.** (1) The advertisement, request, or solicitation for bids or offers ~~shall~~ *must* distinctly specify that all bidders, offerors, tenderers, or contractors shall:

(a) ~~in any case where~~ *whenever* bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder ~~shall be~~ *is* awarded the contract, the bidder will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond te secure the performance of the terms and conditions of the contract~~; otherwise,~~. *If a bond is not provided,* the bidder ~~will~~ *shall* pay ~~unto~~ the public authority the difference in money between the amount of the bid of the bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities, or services, as the case may be, if the latter amount ~~be~~ *is* in excess of the former~~; or~~.

(b) ~~in any case where~~ *whenever* the bids are solicited for the purchase and sale of any forms of indebtedness of ~~such~~ *the* public authority, expressly covenant that the ~~money or bank instrument~~ *security* accompanying the bid in the ~~sum~~ *amount* specified by the public authority ~~shall~~ *must* be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of ~~such~~ *the* forms of indebtedness ~~as~~ *that* may be awarded on acceptance of bid and in compliance with the terms ~~thereof~~ *of the bid.*

(2) The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to he paid by ~~any~~ *a* bidder failing or refusing as aforesaid ~~in any case where such sum or sums are~~ *whenever the amount of the bid security is* fixed by statute~~. for bid security; otherwise, it shall in all cases specify the sum~~ *Otherwise, the public authority shall specify the amount,* ~~but in no case~~ *which may not be* less than 2% of the principal amount of the indebtedness for a bid for the purchase of indebtedness and 10% of the bid price for any other bid, ~~which it may deem~~ *that it considers* reasonably necessary to protect and indemnify the public authority against the failure or refusal of the bidder to enter into the contract or consummate the purchase of indebtedness, as the case may be.

(3) The advertisement, request, or other solicitation for bids or offers ~~shall~~ *must* distinctly specify that ~~lawful moneys of the United States or a cashier's check, certified check, bank money order, or bank draft, in any case drawn and~~

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~~issued by banks as herein specified, payable as aforesaid, or bid bond in any case appropriate therefor shall constitute~~ *a bid bond or other form of security specified in 18-1-203 constitutes* compliance with the requirement for bid security."

Section 2. Section 18-1-203, MCA, is amended to read:

"**18-1-203. Form of security.** (1) ~~Except as provided in subsection (4), in~~ *In* all cases under 18-1-202(1)~~(a)~~, the bidder, offeror, or tenderer shall accompany any bid with either:

(a) lawful ~~moneys~~ *money* of the United States;

(b) a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a ~~national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana~~ *federally chartered or state-chartered bank insured by the federal deposit insurance corporation*; or

(c) a bid bond ~~or bonds~~, *guaranty bond, or surety bond* executed by a surety corporation authorized to do business in the state of Montana. *If a financial guaranty bond or surety bond is provided to secure the purchase of indebtedness, the long-term indebtedness of the company executing the financial guaranty bond or surety bond must carry an investment grade rating of one or more nationally recognized independent rating agencies.*

(2) ~~Except as provided in subsection (4), in all cases under 18-1-202(1)(b) the bidder shall accompany the bid with the security described in (1)(a) or (1)(b) above.~~

~~(3)~~ The ~~moneys~~ *money* or, in lieu of ~~moneys~~ *money*, ~~any of such~~ *the* bank instruments or bid bonds, *financial guaranty bonds, or surety bonds* ~~shall~~ *must* be payable directly to the public authority soliciting or advertising for bids.

~~(4) The provisions of this section do not apply to bonds issued under Title 17, chapter 5, part 8.~~"

Section 3. Repealer. Section 17-5-806, MCA, is repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved February 9, 1995

CHAPTER NO. 52

[SB 4]

AN ACT REALLOCATING THE OFFICE OF STATE COORDINATOR OF INDIAN AFFAIRS FROM THE DEPARTMENT OF COMMERCE TO THE GOVERNOR'S OFFICE; REQUIRING THAT TRIBAL GOVERNMENTS BE NOTIFIED OF THE REALLOCATION; AMENDING SECTION 2-15-1813, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 2-15-1813, MCA, is amended to read:

"2-15-1813. Office of state coordinator of Indian affairs. (1) There is an office of state coordinator of Indian affairs. The office is allocated to the ~~department of commerce~~ *governor's office* for administrative purposes only as prescribed in 2-15-121.

(2) The coordinator ~~shall~~ *must* be appointed by the governor from a list of five qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state ~~and~~. *The coordinator* shall serve at the pleasure of the governor."

Section 2. Code commissioner instruction. The code commissioner shall recodify 2-15-1813 in Title 2, chapter 15, part 2, and change affected references accordingly.

Section 3. Notification of tribal governments. The secretary of state shall send a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal chairperson of the Little Shell tribe.

Section 4. Effective date. [This act] is effective July 1, 1995.

Approved February 9, 1995

CHAPTER NO. 53

[SB 34]

AN ACT GENERALLY REVISING LAWS PERTAINING TO COMMERCIAL MOTOR VEHICLES; REVISING DEFINITIONS; CREATING A THIRD-PARTY COMMERCIAL DRIVER TESTING PROGRAM; WAIVING DRIVING TESTS FOR A QUALIFIED APPLICANT WORKING IN A FARM-RELATED SERVICE INDUSTRY AND MEETING THE REQUIREMENTS FOR A SEASONAL COMMERCIAL DRIVER'S LICENSE; REQUIRING COMMERCIAL DRIVERS HAVING ANY MEASURABLE OR DETECTABLE ALCOHOL CONCENTRATION TO SUBMIT TO TESTING; CLARIFYING THE STATUS OF CERTAIN FERTILIZER SPREADER TRUCKS AND SPREADER TRAILERS AS COMMERCIAL MOTOR VEHICLES; AMENDING SECTIONS 61-1-134, 61-1-502, 61-5-104, 61-5-110, 61-5-117, 61-8-806, AND 61-8-808, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidelines for the adoption of rules under 61-5-117 by which the department of justice may certify and monitor a third-party commercial driver testing program. The rules should set forth procedures to ensure that the testing is conducted according to uniform standards and by competent examiners. The rules may limit the number of participants or delay participation in a third-party testing program to ensure that it can be administered without having to add additional full-time employees to the department.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-134, MCA, is amended to read:

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"61-1-134. Commercial motor vehicle defined — exceptions. (1) ~~"Commercial~~ *Except as provided in subsection (2), "commercial* motor vehicle" means a motor vehicle used to transport passengers or property if the vehicle:

(a) has a gross vehicle weight *or manufacturer's rated capacity* of 26,001 pounds or more;

(b) is designed to transport more than 15 passengers, including the driver;

(c) is a school bus as defined in 20-10-101; or

(d) is used to transport hazardous material.

(2) ~~Commercial~~ *The following vehicles are not commercial* motor vehicles ~~under this section do not include vehicles operated within the state of Montana that are~~:

(a) ~~registered as paying the 35% gross weight fee under 61-10-206;~~

~~(b)~~ *a vehicle exempt from taxation,* used for firefighting, and ~~that are~~ bearing Montana tax-exempt plates; ~~or~~

~~(c)~~*(b) a* police emergency response ~~and safety education units.~~ *vehicle; or*

(c) a vehicle:

(i) controlled and

~~(3) Vehicles that are~~ operated ~~within the state of Montana~~ by ~~farmers or persons~~ *a farmer or person* employed by ~~farmers who are transporting~~ *a farmer;*

(ii) used to transport farm products, *farm machinery,* or farm supplies ~~and that are operated~~ within *Montana or within* 150 miles of the farm headquarters ~~are not considered commercial motor vehicles under this section;~~ *and*

(iii) not used to transport goods for compensation or hire.

(3) For purposes of this section, "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person."

Section 2. Section 61-1-502, MCA, is amended to read:

"61-1-502. Gross *vehicle* weight. "Gross *vehicle* weight" means the weight of a vehicle without load plus the weight of any load ~~thereon~~ *on the vehicle."*

Section 3. Section 61-5-104, MCA, is amended to read:

"61-5-104. Exemptions. (1) The following persons are exempt from ~~license~~ *licensure* under this chapter:

(a) a person who is a member of the armed forces of the United Statos while operating a motor vehicle owned by or leased to tbe United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and

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the spouse of ~~such a~~ *the* person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces; ~~if~~. *If* a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming ~~so~~ employed;.

(c) a person on active duty in the armed forces of the United States ~~who has~~ *and* in ~~his~~ immediate possession *of* a valid license issued *to that person* in a foreign country by the armed forces of the United States, for a period of 45 days from the date of ~~his~~ *the person's* return te the United States;

(d) a person while driving or operating any road machine, farm tracter, or implement of husbandry temporarily operated or moved on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or higbway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(2) A nonresident who is at least 15 years of age and who ~~has~~ *is* in ~~his~~ immediate possession *of* a valid operator's license issued to ~~him in his~~ *the nonresident by the nonresident's* home stete or country may operate a motor vehicle, *except a commercial motor vehicle,* in this state ~~only as an operator~~.

(3) A nonresident ~~who is at least 18 years of age~~ *not otherwise exempt from the licensing requirements of 49 CFR, part 391,* and ~~who has~~ in ~~his~~ immediate possession *of* a valid commercial ~~operator's~~ *driver's* license issued to ~~him in his~~ *the nonresident by the nonresident's* home state or country may operate a ~~motor vehicle or~~ commercial motor vehicle in this state ~~subject to the age limits applicable to commercial vehicle operators in this state~~.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operaters, may operate a motor vehicle as an operator only, for a period of not more tban 90 days in any calendar year, if the motor vehicle ~~so operated~~ is ~~duly~~ registered in the home state or country of ~~such~~ *the* nonresident.

(5) A driver's license issued under this chapter to any person who enters the United States armed forces, if valid and in ~~force and~~ effect at the time *that* the person enters the service, continues in ~~full force and~~ effect so long as the service continues, unless the license is sooner suspended, revoked, or canceled for a cause as provided by law, and for not to exceed 30 days following the date on which ~~holder of the driver's license~~ *the licensee* is honorably separated from the service. During the 30-day period, tbe license is valid only wben ~~in the immediate possession of the licensee while driving and the licensee has his~~ *the licensc and the licensee's* discharge, separation, leave, or furlough papers *are* in ~~his~~ *the licensee's* immediate possession."

Section 4. Section 61-5-110, MCA, is amended to read:

"**61-5-110.** ***(Temporary)*** **Examination of applicants.** (1) The department shall examine ~~every~~ *each* applicant for a driver's license or

motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, *a knowledge test examining* the applicant's ability to read and understand highway signs, ~~regulating, warning, and directing traffic, the applicant's~~ *the applicant's* knowledge of the traffic laws of this state, and ~~must include an actual demonstration of~~, *except as provided in [section 6], a road test or a skills test demonstrating the applicant's* ability to exercise ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The examination for the commercial driver's license may include additional items. *The knowledge test and the road test or the skills test must be waived for an applicant who works in a farm-related service industry and who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title and rules adopted by the department.*

(2) ~~Within 90 days of receipt of an application for a commercial driver's license, the department shall give an examination to the applicant in the county where the applicant resides.~~

~~(3)~~ Except as otherwise provided by law, a resident who has a valid driver's license issued by another state may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees. A resident who obtains a Montana driver's license in this manner is exempt from the ~~written examination and actual demonstration of the operation of a motor vehicle~~ *knowledge test and the road test or the skills test* provided for in subsection (1) but is not exempt from the eyesight test or, in the case of commercial drivers, any examination required by federal regulations."

Section 5. Section 61-5-110, MCA, is amended to read:

"61-5-110. *(Effective October 1, 1999)* **Examination of applicants.** (1) The department shall examine ~~every~~ *each* applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, *a knowledge test examining* the applicant's ability to read and understand highway signs, ~~regulating, warning, and directing traffic, the applicant's~~ *the applicant's* knowledge of the traffic laws of this state, and ~~must include an actual demonstration of~~ *a road test or a skills test demonstrating the applicant's* ability to exercise ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The examination for the commercial driver's license may include additional items. *The knowledge test and the road test or the skills test must be waived for an applicant who works in a farm-related service industry and who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title and rules adopted by the department.*

(2) ~~Within 90 days of receipt of an application for a commercial driver's license, the department shall give an examination to the applicant in the county where the applicant resides.~~

~~(3)~~ Except as otherwise provided by law, a resident who has a valid driver's license issued by another state may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees. A resident who obtains a Montana driver's license in this manner is exempt from the ~~written examination and actual demonstration of the operation of a motor vehicle~~ *knowledge test and the road test or the skills test* provided for in

subsection (1) but is not exempt from the eyesight test or, in the case of commercial drivers, any examination required by federal regulations."

Section 6. (Temporary) Third-party commercial driver testing program — test waiver. (1) The department may certify as a third-party commercial driver testing program any company that:

(a) in the course of its commercial enterprise, customarily transports or hauls any goods, including agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal regulations;

(b) regularly and continuously employs a minimum number of drivers. The department shall determine the minimum number of drivers and whether they are regularly and continuously employed by the company.

(c) bas a permanent Montana mailing address and maintains a place of business in this state that includes at least one permanent, regularly occupied structure with facilities and equipment to conduct offstreet skills testing;

(d) employs at least one examiner with qualifications required by rules of the department; and

(e) complies with rules adopted by tbe department under 61-5-117.

(2) The road test or the skills test required by 61-5-110 may be waived by the department for a commercial driver's license applicant upon certification of the applicant's successful completion of the road test or the skills test by a certified third-party commercial driver tosting program.

(3) An examiner for a certified third-party commercial driver testing program may administer a road test or a skills test only to a company employee who has applied to the department for a commercial driver's license and who has passed the knowledge test required by 61-5-110 and by department or federal rules.

Section 7. Section 61-5-117, MCA, is amended to read:

"**61-5-117. Rulemaking authority.** The department may adopt rules to implement the issuance and enforcement of classified commercial driver's licenses *and shall adopt rules implementing [section 6]*."

Section 8. Section 61-8-806, MCA, is amended to read:

"**61-8-806. Blood, breath, or urine tests of commercial vehicle operators — procedure — suspension.** (1) A person who operatos a commercial motor vehicle upon the ways of this stato open to the public is considered to have given consent, subject to the provisions of 61-8-401 and 61-8-805, to a test of the operator's blood, breath, or urine for the purpose of determining any measured *or detected* amount of alcohol in the operator's body if the operator is requested to submit to the tost by a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while ~~the person's blood~~ *having any measurable or detectable* alcohol concentration ~~was 0.04 or more~~. The peace officer may designate a blood, breath, or urine test to be administored.

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(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request of a peace officer to submit to a test designated by the officer as provided in subsection (1), the test may not be given. On behalf of the department, the officer sball immediately seize the person's commercial driver's license and forward the license to the department, along with a sworn report that the officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having ~~an~~ *any measurable or detectable* alcohol concentration ~~of 0.04 or more~~ and tbat the person had refused te submit to the test upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a resident's commercial driver's license, the peace officer shall issue, on behalf of the department, a temporary noncommercial driving permit. The temporary driving permit is valid for 72 hours after issuance.

(5) If a commercial motor vehicle operator refuses to submit to a tost as provided in subsection (3), the department shall suspend the operator's commercial driver's license:

(a) upon first refusal, for 1 year, witb no provision for a restricted probationary license or endorsement, except that if tbe offense occurred in a commercial motor vehicle transporting bazardous materials, the suspension for a first refusal must be for 3 years;

(b) upon a second or subsequent refusal at any time as determined from the records of the department, for life, with no provision for a restricted probationary license or endorsement unless allowed by federal rules governing commercial drivers.

(6) A nonresident commercial motor vebicle operator who refuses to submit to a test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be given a temporary driving permit as provided in subsection (4)."

Section 9. Section 61-8-808, MCA, is amended to read:

"61-8-808. **Right of appeal ~~of~~ *to* court.** The department sball immediately notify in writing any person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the person may, within 30 days after receipt of notification, file a petition for a hearing on the matter in the district court in the county where the person resides or in the district court in the county where the finding of refusal was made. The court has jurisdiction and sball set the matter for hearing upon 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether a peace officer had reasonable grounds to believe *that* the person had been driving or was in actual physical control of a commercial motor vebicle upon ways of this state open to the public while the person had ~~a blood~~ *any measurable or detectable* alcohol concentration ~~of 0.04 or more~~, whether the person was ordered to submit to a

test, and whether the person refused to submit to the test. The court shall determine whether the petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this part."

Section 10. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61 apply to [section 6].

Section 11. Effective dates. (1) [Sections 1 through 3 and 7 through 10 and this section] are effective on passage and approval.

(2) [Sections 4, 6, and 12] are effective October 1, 1995.

(3) [Section 5] is effective Octeber 1, 1999.

Section 12. Termination. [Sections 4 and 6] terminate September 30, 1999.

Approved February 9, 1995

CHAPTER NO. 54

[SB 35]

AN ACT ELIMINATING THE REQUIREMENT THAT A CORPORATION APPLY FOR AN AUTOMATIC EXTENSION OF TIME FOR FILING A CORPORATION LICENSE TAX OR INCOME TAX RETURN; REQUIRING THAT INTEREST MUST BE ADDED TO THE TAX DUE WHEN THE RETURN IS FILED DURING THE PERIOD OF EXTENSION; AMENDING SECTIONS 15-31-111 AND 15-31-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-111, MCA, is amended to read:

"**15-31-111. Returu to be filed.** (1) ~~Every~~ *Each* corporation subject to the license ~~fee~~ *tax* imposed under this chapter shall for each ~~taxable~~ *tax* period ~~render~~ *file* a true and accurate return of its net income for the ~~taxable~~ *tax* period in the manner and form ~~to be~~ prescribed by the department of revenue. ~~and containing such~~ *The return must contain all of the* facts, data, and information ~~as~~ *that* are appropriate and in the opinion of the department necessary to determine the correctness of the net income returned and to carry out the provisions of this chapter. The return ~~shall~~ *must* be signed by ~~one of the following:~~ the president, the ~~vice president~~ *vice president*, the treasurer, the assistant treasurer, or *the* chief accounting officer.

(2) If the corporation is reporting on a calendar year basis, the return ~~shall~~ *must* be filed with the department on or before May 15 following the close of the calendar year~~, and if~~. *If the corporation is* reporting on a fiscal year basis, the return ~~shall~~ *must* be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year.

(3) (a) ~~Upon application, a~~ *A* corporation ~~shall be~~ *is* allowed an automatic extension of time for filing its return of ~~1 to~~ *up to* 6 months following the date prescribed for filing of its tax return. ~~The application is to be made on such forms as the department shall prescribe.~~ *The tax and interest must be paid when the return is filed. Interest must be added to the tax due as provided in 15-31-510(3).*

~~(3)~~*(b)* The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) ~~In cases wherein receivers~~ *Receivers*, trustees in bankruptcy, or assignees ~~are~~ operating the property or business of a corporation subject to the license ~~fee~~ *tax* imposed by this chapter~~, such receiver, trustee, or assignee~~ shall make the return in the same manner and form as ~~such~~ *the* corporation is ~~hereinbefore~~ required to make *the* return~~;~~. ~~and any~~ *Any* license ~~fee~~ *tax* due on the basis of ~~such returns~~ *the return* ~~made by the receiver, trustee, or assignee shall be~~ *is* assessed and collected in the same manner as if assessed directly against the corporation of whose business or property ~~they have~~ *the receiver, trustee, or assignee has* custody and control. ~~and shall be paid by such~~ *The* receiver, trustee, or assignee *shall pay the tax* out of the property of the ~~company in his hands~~ *corporation*, prior to the claims of creditors or stockholders."

Section 2. Section 15-31-510, MCA, is amended to read:

"15-31-510. Estimated payments — interest penalty — tax returns — penalty — interest. (1) For corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there is assessed a 20% ~~per~~ *a* year underpayment interest penalty calculated as follows:

(a) ~~For purposes of this subsection (a), the~~ *The* amount of underpayment is the amount of the required installment set forth in 15-31-502 that exceeds the amount, if any, of the installment paid on or before the last date prescribed for payment.

(b) Notwithstanding the provisions of subsection (1)(a), the interest penalty with respect to an underpayment of any installment may not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax were an amount equal to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:

(i) for the first 3 months of the taxable year in the case of the installment required to be paid in the 4th month;

(ii) for the first 3 months or for the first 5 months of the taxable year in the case of the installment required to be paid in the 6th month;

(iii) for the first 6 months or for the first 8 months of the taxable year in the case of the installment required to be paid in the 9th month; and

(iv) for the first 9 months or for the first 11 months of the taxable year in the case of the installment required to be paid in the 12th month of the taxable year.

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(c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis by:

(i) multiplying by 12 the taxable income referred to in subsection (1)(b); and

(ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subsection (1)(b).

(d) Notwithstanding *the provisions of* subsections (1)(a) through (1)(c), the interest penalty with respect to an underpayment of any installment may not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds 80% of the amount determined under subsection (1)(e).

(e) To determine the amount ~~under this subsection (e)~~ for any installment:

(i) take the taxable income for all months during the taxable year preceding the filing month;

(ii) divide the amount by the base period percentage for all months during the taxable year preceding the filing month;

(iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

(iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(f) For purposes of this subsection (1):

(i) the base period percentage for any period of months is the average percentage that the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income of the 3 preceding years;

(ii) the term "filing month" means the month in which the installment is required to be paid;

(iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70%; and

(iv) the department of revenue may by rule provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(2) If the tax for any corporation is not paid on or before the due date of the return as provided in 15-31-111(2) *or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3)*, there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was due to reasonable cause and not to neglect.

(3) If any tax due under this ~~section~~ *chapter* is not paid when due *under 15-31-111(2)*, by reason of extension ~~granted~~ or otherwise, interest is added to the tax due at the rate of 12% a year from the due date until paid."

Section 3. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Approved February 9, 1995

CHAPTER NO. 55

[SB 71]

AN ACT MODIFYING THE TIME WITHIN WHICH CLAIMS FOR REIMBURSEMENT MUST BE FILED TO BE CONSIDERED ELIGIBLE FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND; REVISING THE MAKEUP OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD TO POTENTIALLY INCLUDE A REPRESENTATIVE OF THE PETROLEUM RELEASE REMEDIATION CONSULTANT INDUSTRY; AMENDING SECTIONS 2-15-2108 AND 75-11-307, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2108, MCA, is amended to read:

"**2-15-2108. Petroleum tank release compensation board.** (1) There is a petroleum tank release compensation board.

(2) The board consists of seven members appointed by the governor as follows:

(a) the director of the department of health and environmental sciences or ~~his~~ *the director's* representative;

(b) a representative of the state fire prevention and investigation program of the department of justice;

(c) a representative of the petroleum services industry *or a representative of the petroleum release remediation consultant industry*;

(d) a representative of independent petroleum marketers and chain retailers;

(e) a representative of the general public;

(f) a representative of service station dealers; and

(g) a representative of the insurance industry.

(3) The board shall elect a ~~chairman~~ *presiding officer*.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503."

Section 2. Section 75-11-307, MCA, is amended to read:

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"**75-11-307. Reimbursement for expenses caused by a release.** (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and *who* complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs; and

(b) compensation paid to third parties for bodily injury or property damage.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, *the* operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or *for* a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4)*; and*

(h) expenses for work completed by or on behalf of the owner or operator more than 2 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage.

(3) An owner or operator may designate a person as an agent to receive the reimbursement, provided that the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Suhject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, from

a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to Octeber 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and

(b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 3. Effective dates. (1) [Section 1 and this section] are effective on passage and approval.

(2) [Section 2] is effective September 30, 1995.

Approved February 9, 1995

CHAPTER NO. 56

[SB 106]

AN ACT REVISING THE TIME AND NOTICE REQUIREMENTS APPLICABLE TO AGRICULTURAL LIENS FOR CROP DUSTING OR

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SPRAYING GRAINS OR CROPS; AMENDING SECTION 71-3-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-902, MCA, is amended to read:

"**71-3-902. How lien obtained.** *(1)* Any person, firm, corporation, or partnership ~~who~~ *that* is entitled to a lien under this part shall, within ~~60~~ *90* days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops, file in the office of the secretary of stato a statement of agricultural lien as provided in 71-3-125.

(2) A person, firm, corporation, or partnership that is entitled to a lien and that intends to file a lien under this part shall give 30 days' notice, by certified mail, of intent to file to the person, firm, corporation, or partnership for which labor or service was performed or materials furnished."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 10, 1995

CHAPTER NO. 57

[SB 108]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ALFALFA LEAF-CUTTING BEES; ELIMINATING THE REQUIREMENT THAT IMPORTED BEES AND BEES FOR SALE BE CERTIFIED; ELIMINATING THE REQUIREMENT FOR ANNUAL REGISTRATION BY BEE GROWERS; REMOVING RESTRICTIONS ON THE MOVEMENT OF BEES BY CUSTOM POLLINATORS; ELIMINATING THE REQUIREMENT THAT A BEE GROWER IDENTIFY EACH BEE SHELTER; REMOVING RESTRICTIONS ON THE ESTABLISHMENT OF AN UNRESTRICTED AREA; AMENDING SECTIONS 80-6-1102, 80-6-1107, 80-6-1108, AND 80-6-1111, MCA; REPEALING SECTIONS 80-6-1113, 80-6-1114, AND 80-6-1115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-6-1102, MCA, is amended to read:

"**80-6-1102. Definitions.** As used in this part, the following definitions apply:

(1) "Bee" means any stage in the life cycle of a bee of the species Megachile rotundata (F), commonly known as the alfalfa leaf-cutting bee.

(2) "Certification" means the process of analyzing bees and equipment by the committee to determine whether they meet required standards.

(3) "Chalkbrood" means a fungal disease that attacks larvae of the alfalfa leaf-cutting bee.

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(4) "Committee" means the alfalfa leaf-cutting bee committee established in 2-15-3005.

~~(5) "Custom pollinator" means a registered bee grower who for the purpose of pollination moves bees onto property not owned or leased by him.~~

~~(6)~~*(5)* "Department" means the department of agriculture estahlished in 2-15-3001.

~~(7) "Emergency situation" means a situation that requires the untimely movement of bees to a new food source. A situation may include drought, flood, hail damage, and other similar situations as defined by committee rule.~~

~~(8)~~*(6)* "Equipment" means sbelters, trays, incubators, cell removers, tumhlers, and other apparatus, except nesting materials, used in rearing hees.

~~(9)~~*(7)* "Nest destroyer" means any organism that competes witb tbe bee larvae for nest provisions.

~~(10)~~*(8)* "Nesting materials" means laminates, drilled hoards, and other apparatus used in nesting bees.

~~(11)~~*(9)* "Parasite" means an organism living in or on any stage of tbe alfalfa leaf-cutting bee obtaining nutriment from the body of the bee.

~~(12)~~*(10)* "Pathogen" means an organism that causes disease in the alfalfa leaf-cutting bee.

~~(13)~~*(11)* "Person" means an individual, association, partnersbip, or corporation.

~~(14)~~*(12)* "Predator" means any organism or insect ~~which~~ *that* preys on, devours, or destroys bees or nests.

~~(15) "Unrestricted area" means an area where a person may use new or used drilled boards, imported used laminates, or any similar material in the rearing of bees.~~

~~(13)~~*(13)* "Wild trap" means to intontionally trap bees on property not owned or leased by the trapper."

Section 2. Section 80-6-1107, MCA, is amended to read:

"**80-6-1107. Restrictions on importing bees.** ~~(1) All bees to be imported shall meet importation, quarantine, and certification requirements established under 80-6-1103 and must be registered in accordance with 80-6-1111.~~

~~(2) Prior to the importation of any bee, the importer shall file a completed application form as required in 80-6-1105(2) and arrange an approximate date and time for official sampling.~~

~~(3)~~ Bees may not be imported except in loose cells or as adults. Bees may not be imported in a drilled board, soda straw, or otber equipment that prevents adequate sampling of the bees.

~~(4) A representative sample of the population of bees imported shall be the basis for certification.~~

~~(5) A bee may not be certified unless all other requirements for certification provided in 80-6-1105 are met.~~"

Section 3. Section 80-6-1108, MCA, is amended to read:

"**80-6-1108. Restrictions on ~~the~~ rearing, moving, ~~selling,~~ and trapping of bees and ~~the~~ movement of ~~used nesting material~~ *equipment*.** (1) A person may not ~~rear any bee in a drilled board or a nesting material from which samples of loose larval cells cannot readily be obtained, except in an unrestricted area~~ *wild trap within 1 mile of registered bees without the written permission of the registrant*.

(2) A person may not move any quarantined bee or equipment except by special permit issued by the committee.

(3) A person may not wild trap or attempt to wild trap bees unless that person has been issued a permit for ~~such~~ *that* activity in accordance with rules adopted by the committee. The committee shall by rule establish the permit fee.

~~(4) A person may not sell bees for use in Montana unless the bees are officially certified in accordance with 80-6-1103 and 80-6-1105.~~

~~(5) Any purchase of used nesting material in the state must be reported to the committee.~~"

Section 4. Section 80-6-1111, MCA, is amended to read:

"**80-6-1111. Alfalfa leaf-cutting bees — registration.** (1) A person may not possess or control alfalfa leaf-cutting bees in this state unless the bees are registered ~~annually~~ as provided in this section.

(2) To register bees, a person ~~must~~ *shall* file a completed application form provided by the department, together with the registration fee set by rule. The applicant ~~must~~ *shall* provide the following:

(a) *the* name and place of residence;

(b) the general location of bees to be registered; and

(c) other relevant information as may be required by committee rule.

(3) ~~The committee shall by rule specify the date by which any applicant must apply for reregistration each year. Applications for reregistration received after the date specified must be assessed a penalty equal to 50% of the applicable registration fee~~ *A registration is continuous until the registrant notifies the committee of cancellation*."

Section 5. Repealer. Sections 80-6-1113, 80-6-1114, and 80-6-1115, MCA, are repealed.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved February 10, 1995

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CHAPTER NO. 58

[HB 25]

AN ACT SUBSTITUTING JANUARY 1 FOR MARCH 1 AS THE DATE THAT A TEACHER OR SPECIALIST MAY BEGIN APPLYING FOR CERTIFICATION; AMENDING SECTION 20-4-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-108, MCA, is amended to read:

"**20-4-108. Term of teacher and specialist certificates — renewal.** (1) ~~Any~~ *A* teacher or specialist certificate issued by the superintendent of public instruction ~~shall~~ *must* bear the dates of issue and validity and ~~shall be~~ *is* valid for a term of 5 school fiscal years, except that *a* class 5 provisional ~~certificates shall be~~ *certificate is* valid for the number of years, up to a maximum of 5 years, provided by the policies of the board of public education. The period of validity for any certificate ~~shall begin~~ *begins* on July 1 immediately preceding the date of issue, except that a teacher or specialist who applies for certification after ~~March 1~~ *January 1* may, upon request, have the period of validity of the certificate begin on July 1 following the date of application.

(2) Teacher and specialist certificates ~~shall~~ *must* be renewed for similar periods of time on the basis of the board of public education policies for teacher and specialist certification renewal."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 13, 1995

CHAPTER NO. 59

[HB 26]

AN ACT REVISING THE MONTANA MEDICAL LEGAL PANEL ACT; REQUIRING THAT, UPON REQUEST, THE PANEL ARTICULATE THE REASONING AND BASIS FOR A DECISION; REQUIRING, AT THE REQUEST OF A PARTY, MANDATORY, NONBINDING MEDIATION FOR AN AFFIRMATIVE PANEL DECISION; AND AMENDING SECTIONS 27-6-604, 27-6-606, AND 27-6-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-6-604, MCA, is amended to read:

"**27-6-604. Form and content of decision.** The decision ~~shall~~ *must* in every case be signed for the panel by the chairman ~~and shall~~, *must* contain only the conclusions reached by a majority of its members, and ~~shall~~ *must* list the number of members, if any, dissenting ~~therefrom~~ *from the opinion*. ~~The~~ *Upon request of any party, the* majority ~~may~~ *shall* briefly explain the reasoning and ~~the~~ basis for ~~their~~ *the* decision; and the dissenters ~~may likewise~~ *shall* explain

the ~~reason~~ *reasoning and basis* for disagreement. *Each party must be informed by the panel of the right to nonbinding mediation under 27-6-606.*"

Section 2. Section 27-6-606, MCA, is amended to read:

"**27-6-606. Decision not binding — settlement agreements — *nonbinding mediation.*** *(1)* The panel's decision is without administrative or judicial authority and is not binding upon any party.

(2) The panel may recommend an award, approve settlement agreements, and discuss the ~~same~~ *settlement agreements*, all in a manner ~~not inconsistent~~ *consistent* with this part~~, and all such~~. *All* approved settlement agreements are binding on the parties.

(3) If the panel decides both questions required by 27-6-602 in the affirmative, the court in which the complaint is filed shall, at the request of a party, require the parties to participate in court-supervised, nonbinding mediation prior to proceeding."

Section 3. Section 27-6-704, MCA, is amended to read:

"**27-6-704. Panel proceedings and decision privileged from disclosure in court actions.** (1) ~~No~~ *A* panel member may *not* be called to testify in ~~any~~ *a* proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) The decision *and the reasoning and basis for the decision* of the ~~medical review~~ panel ~~is~~ *are* not admissible as evidence in ~~any~~ *an* action subsequently brought in ~~any~~ *a* court of law."

Approved February 10, 1995

CHAPTER NO. 60

[SB 29]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD SUPPORT ENFORCEMENT TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; CLARIFYING TIME LIMITS FOR LIENS, WRITS OF EXECUTION, AND COMMENCEMENT OF ACTIONS FOR CHILD SUPPORT COLLECTION; ALLOWING AN OBLIGEE TO RETAIN AMOUNTS WITHHELD FROM AN OBLIGOR'S INCOME WHEN THE AMOUNT WITHHELD IS A RESULT OF ANNUALIZED WITHHOLDING; EXPANDING THE DEFINITION OF "SUPPORT ORDER"; ALLOWING THE DEPARTMENT TO ENFORCE ORDERS FOR PERIODIC PAYMENTS FOR HEALTH OR MEDICAL NEEDS OR FOR ENROLLMENT IN A HEALTH BENEFIT OR MEDICAL INSURANCE PLAN; PROVIDING FOR AMOUNTS TO BE DEDUCTED FROM INCOME IF WITHHOLDING IS ANNUALIZED; CLARIFYING AN OBLIGOR'S RIGHT TO CONTEST MODIFICATION OF AN EXISTING INCOME WITHHOLDING ORDER; PROVIDING FOR CREDITING OF PAYMENTS PAID PURSUANT TO OTHER SUPPORT ORDERS; AND AMENDING SECTIONS 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201,

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27-2-211, 40-4-204, 40-5-201, 40-5-208, 40-5-255, 40-5-309, 40-5-414, 40-5-416, AND 53-2-613, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-9-301, MCA, is amended to read:

"25-9-301. Docketing of judgment — lien — expiration. (1) Immediately after the entry of the judgment in the judgment book, the clerk ~~must~~ *shall* make ~~the proper~~ entries of the judgment under appropriate heads in the docket kept by the clerk.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor *that is* not exempt from execution in the county~~;~~ *and that is either* owned by the judgment debtor at the time or ~~which~~ *afterward acquired by* the judgment debtor ~~may afterward acquire until~~ *before* the lien ceases. Except as provided in subsection (3), the lien continues for 6 years unless the judgment is previously satisfied.

(3) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation *or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later,* unless the judgment is previously satisfied."

Section 2. Section 25-9-302, MCA, is amended to read:

"25-9-302. Filing of transcript of docket in another county — lien — expiration. (1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county~~; and from~~. *From* the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor~~;~~ *that is* not exempt from execution~~;~~ in that county~~;~~ *and that is either* owned by the judgment debtor at the time or ~~which~~ *afterward acquired by* the judgment debter ~~may afterward and~~ before the lien expires ~~acquire~~. Except as provided in subsection (2), the lien continues for 6 years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation *or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later,* unless tbe judgment is previously satisfied."

Section 3. Section 25-9-303, MCA, is amended to read:

"25-9-303. Filing of transcript of docket of federal court — lien — expiration. (1) A transcript of the original docket of ~~any~~ *a* judgment *that is* rendered in the circuit or district court of the United Statos, ninth circuit, district of Montana, *and that is* certified by the clerk of court~~;~~ may be filed with the district court clerk of any county~~; and from~~. *From* the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor~~;~~ *that is* not exempt from execution~~;~~ in the county~~;~~ *and that is either* owned by the judgment debtor at the time or ~~which~~ *afterward acquired by* the judgment debtor ~~may afterward and~~ before the lien expires ~~acquire~~. Except as provided in subsection (2), the lien continues for 6 years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation *or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later,* unless the judgment is previously satisfied."

Section 4. Section 25-13-101, MCA, is amended to read:

"**25-13-101. Time limit for issuing execution.** (1) Except as provided in subsection (2), the party in whose favor the judgment is given may, at any time within 6 years after the entry ~~thereof~~ *of the judgment*, have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation *or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later*, have a writ of execution issued for its enforcement."

Section 5. Section 27-2-201, MCA, is amended to read:

"**27-2-201. Actions upon judgments.** (1) Except as provided in subsection (3), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation *or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later.*"

Section 6. Section 27-2-211, MCA, is amended to read:

"**27-2-211. Actions to enforce penalty or forfeiture or other statutory liability.** (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty te the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; or

(ii) a statutory debt created by the payment of public assistance.

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(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

(4) Unless fraud is involved or unless a support obligation has been entered, an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud. If a support obligation has been entered, an action must be brought within 10 years of the termination of the support obligation *or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later.*"

Section 7. Section 40-4-204, MCA, is amended to read:

"40-4-204. **Child support — orders to address health insurance — withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living *that* the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be

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used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for *that* finding ~~that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case~~. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party ~~must~~ *shall*, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chaptor 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment

arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may he subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may he annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. *When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.*

(6) For the purposes of income withholding under subsection (5), ~~every~~ *each* district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) If the department of social and rehahilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustedial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(8) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(9) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

(b) A judgment, decree, or order that omits the provision required by subsection (9)(a) is subject to the requirements of subsection (9)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."

Section 8. Section 40-5-201, MCA, is amended to read:

"**40-5-201. Definitions.** As used in this part, the following definitions apply:

(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;; any person under 19 years of age and still in high school;; or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) Child may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of social and rehabilitation services.

(4) "Director" means the director of the department of social and rehabilitation services or the director's authorized representative.

(5) "Guidelines" means the child support gnidelines adopted pursuant to 40-5-209.

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(6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide *for the* support ~~to~~ *needs of* a child under the laws of this or any other state or *under* a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order, *whether temporary or final,* ~~providing a determinable amount for temporary or final periodic payment of funds for the support of a child,~~ that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child; and

(b) is issued by:

~~(a)~~*(i)* a district court of this state;

~~(b)~~*(ii)* a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

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~~(c)~~*(iii)* an administrative agency pursuant to proceedings under this part; or

~~(d)~~*(iv)* an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar te those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated ~~thereunder~~ *under the act.*"

Section 9. Section 40-5-208, MCA, is amended to read:

"40-5-208. Medical support — obligation enforcement — sanctions. (1) (a) In ~~any~~ *a* proceeding initiated pursuant te this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require the obligor to obtain and maintain health insurance coverage for each child if health insurance coverage is available through the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure te do so may result in the imposition of sanctions under this section.

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

(i) an order requiring the obligee to maintain health insurance coverage;

(ii) an agreement that the obligee will maintain health insurance coverage; or

(iii) a failure or omission of the court order or modification of an order to require health insurance coverage.

(2) ~~(a) If~~ *Whenever* the department is providing ~~child support enforcement~~ *IV-D* services ~~and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage~~ for a child, the department shall also enforce ~~the health insurance obligation~~ *any order issued by a court or administrative agency of competent jurisdiction that:*

(a) requires the obligor to make periodic payments of an amount expressed in dollars for the health or medical needs of the child. The department shall apply the same enforcement remedies as are available for the enforcement of child support as if those remedies expressly applied to medical or health obligations.

(b) requires the obligor to enroll a child in a health benefit or medical insurance plan.

~~(b)~~*(3)* To ensure that health insurance coverage is available for the child, the obligor, upon written request by the department, shall provide the name of the insurance carrier, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

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~~(3)~~*(4)* (a) The department may issue a notice commanding the obligor to appear at a hearing held by the department and show cause why a sum of not more than $100 *per month per child* should not be assessed for each month health insurance coverage is not secured or maintained if the department determines an obligor has failed to:

(i) obtain or maintain health insurance coverage as required under this section; or

(ii) provide information required under this section.

(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage has not been obtained or maintained or that the obligor has failed to provide the information required, the department may assess against the obligor not more than $100 *per month per child* for each month health insurance coverage has not been obtained or maintained or for each month information has not been provided. The amounts may be enforced by any administrative remedy available to the department for the enforcement of child support obligations, including warrant for distraint provided for in 40-5-247 and income withholding provided for in Title 40, chapter 5, part 4.

~~(4)~~*(5)* The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

~~(5)~~*(6)* Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid."

Section 10. Section 40-5-255, MCA, is amended to read:

"**40-5-255. Charging off child support debts as uncollectible.** (1) Any support debt due the department from an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable te a suspense account and cease to be accounted as an asset. If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after 10 years from the date of termination of the support obligation *or after 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later*, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. A proceeding or action under the provisions of this part may not be begun after expiration of the 10-year period to institute collection of a support debt. This part may not be construed to render invalid or nonactionable a warrant for distraint issued by the department prior to the expiration of the 10-year period or an assignment of earnings executed prior to the expiration of the 10-year period."

Section 11. Section 40-5-309, MCA, is amended to read:

"**40-5-309. Amount to be deducted from income.** (1) *(a)* The amount of money to be deducted each pay period from the obligor's income ~~shall be~~ *is*:

~~(a) (i)~~*(i) (A)* the amount of money necessary to pay current installments of child support as they become due and payable; plus

~~(ii)~~*(B)* the amount of money ~~which~~ *that*, when deducted in equal amounts each ~~payday~~ *pay period*, will pay off all outstanding child support payments delinquent within 2 years; or

~~(b)~~*(ii)* not less than 25% of the obligor's disposable earnings.

(b) If withholding is annualized, when deducted in equal amounts, the amount withheld each pay period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

(2) The district court may allow a fee of not to exceed $5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering the deduction.

(3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(4) Except as provided in 40-5-315, the child support income deduction ~~shall~~ *must* cease when there is no past-due child support owing, unless the district court orders continued income deductions for payment of child support installments as they become due and payable."

Section 12. Section 40-5-414, MCA, is amended to read:

"**40-5-414. Hearing.** (1) To contost the withholding of income initiated under 40-5-412 because of a delinquency *or the modification of an existing order to withhold*, an obligor may within 10 days of being served with notice of intent to withhold income under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(3) The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the ~~hearing~~ *hearings* examiner.

(4) If the obligor requests a hearing within the 10-day period:

(a) the *initiation of* delinquency income withholding by the department *and the modification of an existing withholding order* must be stayed until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the scheduled hearing. ~~If~~ *However, in a proceeding to initiate income withholding, if* the obligor is only contesting an arrearage amount and is not contesting withholding for current support, income withholding for current support is not stayed. *In a proceeding to modify an existing order, income withholding under the existing order to withhold is not stayed.*

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(b) the department shall, within 45 days of the service of the notice of intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place.

(5) The department shall issue an order to withhold income *or a modified order to withhold* in accordance with 40-5-415 if:

(a) the obligor fails to file a written request for hearing with the department within the specified 10-day period;

(b) the obligor fails to appear at a scheduled hearing;

(c) the ~~hearing officer~~ *hearings examiner* determines from the evidence that the obligor owes unpaid support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and adjudged to be a fixed and certain sum; ~~or~~

(d) there is an existing order to withhold and if the hearings examiner determines from the evidence that the obligor owes new or additional amounts in arrears; or

~~(d)~~*(e)* in cases in which income withholding is being initiated at the request of an obligee without regard to whether there is an arrearage, the ~~hearing~~ *hearings* examiner determines from the evidence that the obligor did not meet the terms of the alternative arrangement.

(6) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date *on which* the obligor was served with the notice of intent to withhold income. When the department is enforcing a current support obligation, payment of the arrearage after service of the notice is not a basis for not initiating income withholding.

(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

(8) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the ~~hearing~~ *hearings* examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation *or determines that a modification of an existing order is proper*, the department shall proceed with the intended action in accordance with 40-5-415."

Section 13. Section 40-5-416, MCA, is amended to read:

"40-5-416. Determination of amount of income to be withheld. (1) (a) Subject to the limitations provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be the amount of money necessary to pay current installments of support as they become due and payable.

(b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must include the greater of:

(i) the amount of money that, when deducted in equal amounts each month, will pay all outstanding support arrearages and interest, if any, within 2 years; or

(ii) 25% of the ohligor's income.

(c) If income is being withheld under this part, the department may allow a fee not to exceed $5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.

(d) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. If withholding is annualized, when deducted in equal amounts, the amount withheld each pay period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

(2) The maximum amounts withheld from the obligor's wages or salaries, including fees, may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(3) At any time, if the ohligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support arrearages."

Section 14. Section 53-2-613, MCA, is amended to read:

"**53-2-613. Application for assistance — assignment of support rights.** (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to tbe county department of public welfare in the county in which the person is residing. The application must be submitted, in the manner and form prescribed by the department of social and rehabilitation services, and must contain information required by the department of social and rehabilitation services.

(2) A person by signing an application for public assistance assigns to the state, *to* the department of social and rehabilitation services, and to the county welfare department all rights *that* the applicant may have to support and medical payments from any otber person in the applicant's own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

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(4) Whenever a *child support or spousal* support obligation is assigned to the department of social and rehabilitation services pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse puhlic assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover *or enforce* a delinquent support obligation ~~without notifying the department's child support enforcement division. The department may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.~~ *or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.*

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice ~~and an opportunity to participate~~ *under the provisions of 40-5-202.* Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county welfare department."

Section 15. Credit for payments. An amount collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amount accruing or accrued for the same period under a support order issued for the same obligation by a tribunal of this state.

Section 16. Codification instruction. [Section 15] is intended to be codified as an integral part of Title 40, chapter 5, part 1, and the provisions of Title 40, chapter 5, part 1, apply to [section 15].

Section 17. Coordination instruction. If both [this act] and ____ Bill No. ____ [LC 365] are passed and approved and if ____ Bill No. ____ [LC 365] includes a section that amends 40-5-208, then [section 9 of this act], amending 40-5-208, is void.

Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Approved February 13, 1995

CHAPTER NO. 61

[HB 12]

AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 1996 AND 1997; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; REAPPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND; REVISING THE PROCEDURES AND REQUIREMENTS FOR THE ENERGY CONSERVATION PROGRAM; AMENDING SECTION 90-4-605, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Stripper-well payments — reappropriation — definition — priority. (1) There is reappropriated from the stripper-well payments contained in the federal special revenue fund to the department of natural resources and conservation $100,000 to fulfill duties authorized by 90-4-605 and 90-4-607. The original appropriation was contained in section 9, Chapter 597, Laws of 1989. The reappropriation is a biennial appropriation.

(2) (a) "Stripper-well payments" means the oil overcharge payments made to the United States treasury for distribution to the state of Montana as the result of the final settlement agreement in Cause No. M.D.L. 378, United States district court for the district of Kansas, and any interest accrued on the payments.

(b) The term does not include stripper-well payments that have been expended or legally obligated or have been incorporated into any of the existing federal energy programs as the result of prior appropriations by the legislature.

(3) The stripper-well payments reappropriated in this section have a higher priority than any other appropriation of stripper-well payments for fiscal years 1996 and 1997.

Section 2. Appropriation of bond proceeds. There is appropriated from bond proceeds authorized by Chapter 571, Laws of 1991, Chapter 350, Laws of 1993, and [section 4] $625,000 to the department of natural resources and conservation to fulfill duties under 90-4-605 and 90-4-607. This appropriation is a biennial appropriation.

Section 3. Approval of energy conservation projects — definition. (1) Pursuant to Title 90, chapter 4, part 6, the legislature approves the following energy conservation projects for fiscal years 1996 and 1997:

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FACILITIES

Montana Tech of the University of Montana
Mining Geology Building
Heating Plant Building

Montana State University at Billings
College of Technology Building
Physical Education Building

University of Montana at Missoula
College of Technology Building

Department of Corrections and Human Services
Veterans' Home, Columbia Falls

Department of Military Affairs
Kalispell National Guard Armory
Helena National Guard Headquarters

Department of Administration
Scott Hart Building
State Capitol
Office of Public Instruction Building
Mitchell Building Heating System
Montana State University-Northern

(2) In addition to the energy conservation projects listed in subsection (1), the department of natural resources and conservation may expend funds appropriated under [section 4] to respond to lost energy saving opportunities.

(3) For purposes of this section, a "lost energy saving opportunity" means an opportunity to improve energy use that would provide significant energy and cost savings to the state and that will be technically infeasible or uneconomical if the department is delayed in providing the necessary funds until specific legislative approval can be obtained.

(4) If the costs of the projects authorized in subsections (1) and (2) are substantially below the bond amount authorized in [section 4], the department of natural resources and conservation may fund projects that otherwise would be proposed as part of the state building energy conservation package for fiscal years 1998 and 1999.

(5) The retrofit of Montana state university-northern must be conducted as a pilot project, using performance contracting. Montana state university-northern shall use state general obligation bonds authorized under [section 4] to fund energy efficiency improvements in campus buildings used for instructional purposes. Montana state university-northern may provide financing other than state general obligation bonds for energy efficiency improvements in buildings supported by student fees and revenue. Whenever state general obligation bonds are used, resulting energy cost savings must be transferred to the energy conservation program account as provided in 90-4-614. If funding other than state general obligation bonds is used for improvements in buildings supported by student fees and revenue, a performance contract must be developed jointly by Montana state university-northern, the

department of natural resources and conservation, and the department of administration and any resulting energy cost savings in these buildings in excess of debt service and program costs must remain with the auxiliary services at Montana state university-northern.

Section 4. Bond authorization — appropriation of bond proceeds. (1) The board of examiners may, pursuant to 90-4-611, issue and sell bonds of the state in an aggregate principal amount not to exceed $5.5 million for fiscal years 1996 and 1997 for the projects approved in [section 3] and to fulfill duties authorized hy 90-4-605 and 90-4-607 as provided in [section 2]. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account established by 90-4-612. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the energy conservation program account may be used to pay the costs of issuing the bonds, to fulfill duties authorized by 90-4-605 and 90-4-607, and to fund the projects approved in [section 3]. For purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. The bond proceeds must be available to the department of natural resources and conservation and may be used for the purposes authorized in this section without further budgetary authorization.

Section 5. Section 90-4-605, MCA, is amended to read:

"90-4-605. Preparation of energy conservation program. (1) Before June 30 of each odd-numbered year, ~~state agencies shall submit to~~ the department~~, on forms provided by the department, a list of any facilities operated by that agency~~ *shall inform, in writing, each state agency of the energy conservation program and request agencies interested in participating in the program to contact the department. The department shall work with these agencies to identify buildings* that have a potential for energy savings, based on age, energy use, function, and condition of the building. ~~Agencies may request assistance from the department to identify these facilities.~~

(2) Based on the criteria in subsection (1) *and on the feasibility of leveraging other funds, such as federal and utility energy conservation program money,* the department shall select certain facilities for in-depth energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

(3) During the energy analyses, the department shall consult with the utilities that serve the selected facilities to discuss potential impacts on the utilities and their customers of making energy conservation improvements to these facilities.

(4) Upon completion of the energy analyses, the department shall submit to the governor its findings and a ~~prioritized~~ list of projects recommended for funding under the energy conservation program. The department shall ~~rank projects in terms of cost-effectiveness~~ *identify estimated costs and savings* to the state *based on these analyses.*

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(5) The department shall compile a report that must include the following:

(a) a listing of ~~all requests submitted by~~ *contacts between the department and other* state agencies;

(b) a summary of the department's review of agency requests *and a selection of projects for in-depth analysis*;

(c) a summary of the energy analyses conducted by the department, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project;

(d) a description of measures taken by the department to address the issues that were raised in the consultation with the affected utilities; and

(e) if a fuel switching measure is proposed, an analysis of the costs to the affected utility and its customers and of the benefits to the state ~~of the fuel switching measure~~.

(6) If a fuel switching measure is proposed, the department shall demonstrate through the analysis required by subsection (5)(e) that the benefits to the state exceed the costs to the utility and its customers.

(7) The department shall suhmit the report required by subsection (5) to the governor before Septemher 1 of each even-numbered year."

Section 6. Requirements for approval of state debt. Because [section 4] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 4].

Section 7. Effective date. [This act] is effective July 1, 1995.

Approved February 14, 1995

CHAPTER NO. 62

[SB 68]

AN ACT REVISING THE LAWS RELATING TO GROSS VEHICLE WEIGHT LIMITATIONS; INCREASING THE PERCENTAGE AMOUNT OF TOLERANCE BY WHICH VEHICLES MAY EXCEED WEIGHT LIMITATIONS WITHOUT INCURRING PENALTIES FROM 5 PERCENT TO 7 PERCENT FOR ALL VEHICLES; AND AMENDING SECTION 61-10-144, MCA.

Be it cnacted by the Legislature of the State of Montana:

Section 1. Section 61-10-144, MCA, is amended to read:

"61-10-144. Violation of standards — tolerance. (1) It is a misdemeanor for a person, firm, or corporation to violato any provision of 61-10-101 through 61-10-110.

(2) However, the operator of a vehicle or combination of vehicles may move over the highways to the first open stato scale, permanent or portable, without

incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by more than ~~5%, or~~ 7% ~~if the vehicle or combination of vehicles is transporting livestock,~~ and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than ~~5%, or~~ 7% ~~if the vehicle or combination of vehicles is transporting livestock~~. In the event *that* the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than ~~5%, or~~ 7% ~~if the vehicle or combination of vehicles is transporting livestock~~, the department may issue a single trip permit for the fee of $10 for allowing the vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of ~~5%, or~~ 7% ~~if the vehicle or combination of vehicles is transporting livestock,~~ are subject to the fines provided in 61-10-145, and all loads in excess of ~~5%~~ 7% of the total gross or axle weight limitations~~, or 7% if the vehicle or combination of vehicles is transporting livestock~~:

(a) may be required to be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing; or

(b) may be issued a permit as authorized by 61-10-141.

(3) An operator of a vehicle or combination of vehicles subject to the provisions of 61-10-107(4) may move over a highway, except any highway that is part of the federal-aid interstate system, within a 50-mile radius of the harvested field to the point of first unloading without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% per axle, but the maximum load per inch of tire width may not exceed 670 pounds. The vehicle or combination of vehicles may not exceed 40 miles ~~per~~ *an* hour. A single trip permit, as required in subsection (2), is not applicable to the vehicle or combination of vehicles. When a vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed applies to that portion of the load above the legal limit."

Approved February 14, 1995

CHAPTER NO. 63

[HB 10]

AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Policy. [Sections 1 through 10] implement the policy stated in 90-4-210.

Section 2. Definitions. As used in [sections 1 through 10], the following definitions apply:

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(1) "Amoco payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the decision and order of the U.S. department of energy in Case No. HQF-0588 and includes any interest accrued on the payments.

(2) "Carryover" means unspent oil overcharge funds previously appropriated and incorporated into an approved program plan for one of the federal energy conservation programs, but not included in unspent project funds as defined in subsection (9).

(3) "Cities service payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the consent agreement between cities service oil and gas and the U.S. department of energy, as affirmed by the federal energy regulatory commission, and includes any interest accrued on the payments.

(4) "Diamond shamrock payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the southern district of Ohio eastern division in Civil Action No. C2-84-1432 and includes any interest accrued on the payments.

(5) "Exxon payments" means the oil overcharge payments made by the exxon corporation to the U.S. treasury for distribution to the state of Montana pursuant to the order of the U.S. district court for the District of Columbia in Civil Action No. 78-1035 and includes any interest accrued on the payments.

(6) "Getty oil payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the order of disbursement issued in Civil Action No. 77-347 (MMS) in the U.S. district court for the district of Delaware and includes any interest accrued on the payments.

(7) "Stripper well payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the district of Kansas, Cause No. M.D.L. 378, and includes any interest accrued on the payments. The term also includes but is not limited to cities service payments, as defined in subsection (3), Getty oil payments, as defined in subsection (6), texaco payments, as defined in subsection (8), and any unspent project funds, as defined in subsection (9).

(8) "Texaco payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the texaco final consent order, 53 Fed. Reg. 32929, August 29, 1988, and includes any interest accrued on the payments.

(9) "Unspent project funds" means stripper well payments that were not expended or otherwise legally obligated during the 1995 biennium but that were appropriated for the 1995 biennium in Chapter 496, Laws of 1993, in:

(a) section 5 (1);

(b) section 6;

(c) section 7;

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(d) section 8; and

(e) section 9.

(10) "Warner payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the Warner amendment (section 155 of P.L. 97-377) and includes any interest accrued on the payments.

Section 3. Deposit of oil overcharge revenue. All funds from stripper well, amoco, Warner, and exxon payments must be deposited by the state treasurer in the federal special revenue fund. All interest earned on any of these funds or payments must also be deposited in the federal special revenue fund.

Section 4. Matching funds for low-income energy assistance — appropriation. (1) There is appropriated $50,000 from the stripper well payments contained in the federal special revenue fund to the department of social and rehabilitation services for the purpose described in subsection (2).

(2) The department of social and rehabilitation services shall match private contributions to energy share, inc., to be used to assist persons not eligible for federal low-income energy assistance whose income is less than 150% of the federal poverty threshold published by the U.S. bureau of the census in the most recent edition of its publication, *Poverty in the United States*. All of the funds appropriated te the department for this purpose under subsection (1) must be used for clients' fuel bills or other energy needs.

Section 5. Petroleum substitutes from agricultural products — appropriation. There is appropriated $10,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation to foster expanded use of alternative transportation fuels derived from agricultural products that may reduce petroleum consumption, produce environmental benefits te Montana, and result in potential new cash crops for Montana farmers. Money expended under this appropriation must be matched at least dollar for dollar with private or federal revenue, or both.

Section 6. Institutional conservation program — appropriation. There is appropriated $200,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation to fund the institutional conservation program for schools and hospitals administered by the department pursuant to 10 CFR 455.

Section 7. Northern Montana college tractor resource center — appropriation. There is appropriated $125,000 from the stripper well payments contained in the federal special revenue fund to northern Montana college to support the ongoing activities of the northern Montana college tractor resource center.

Section 8. Carryover — reappropriations. (1) There is reappropriated $20,000 from the stripper well payments, $5,000 from the exxon payments, $60,000 from the diamond shamrock payments, and $1,500 from the amoco payments contained in the federal special revenue fund to the department of natural resources and conservation to fund the state energy conservation program administered by the department pursuant to 10 CFR 420.

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(2) There is reappropriated $100,000 from the stripper well payments, $5,000 from the exxon payments, and $800 from the Warner payments contained in the federal special revenue fund to the department of natural resources and conservation to fund the institutional conservation program for schools and hospitals administered by the department pursuant to 10 CFR 455.

Section 9. Conditions applied to appropriations. The appropriations made in [sections 4 through 8] are biennial appropriations.

(1) One-half of the total amount appropriated to each program in [sections 4 through 7] is appropriated in fiscal year 1996, and the remainder is appropriated in fiscal year 1997. As biennial appropriations, the unexpended funds appropriated in fiscal year 1996 may be carried forward within each program to fiscal year 1997.

(2) The appropriations in [section 8] are limited to available funds. Expenditures of carryover funds may not exceed the actual amount of unspent funds available.

Section 10. Appropriations prioritized. (1) The appropriations in [sections 4 through 7] are approved in order of priority as they appear in [sections 4 through 7]. If the U.S. department of energy does not approve one or more of the programs that are funded by [sections 4 through 7], any stripper well payments that are not used to fund the higher priority program must be provided to the lower ranked program up to the amounts appropriated in [sections 4 through 7].

(2) If stripper well payments are insufficient to fully fund the appropriations made in [sections 4 through 7], allocations to the lowest ranking program must be reduced until the deficiency is eliminated. If the deficiency is in excess of the appropriation to the lowest ranking program, the next lowest ranking program must have its appropriation reduced until the deficiency is eliminated. These priorities must be applied to one-half of the total amount appropriated in [sections 4 through 7] for fiscal year 1996 and to the remaining appropriation for fiscal year 1997.

(3) In order to provide continuity for the programs when establishing the appropriations for each fiscal year of the 1997 biennium, anticipated stripper well payments that will be received under terms of the stripper well agreements during the biennium may be considered as available to fund the activities.

(4) The expenditure of money appropriated by [sections 4 through 7] may not exceed the amount of the stripper well payments available in the biennium.

Section 11. Coordination instruction. If House Bill No. 12 is passed and approved, the stripper well payments appropriated in House Bill No. 12 have a higher priority than any appropriation of stripper well payments in [sections 4 through 7].

Section 12. Effective date. [This act] is effective July 1, 1995.

Approved February 14, 1995

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CHAPTER NO. 64

[HB 118]

AN ACT REMOVING THE REQUIREMENT THAT BANK CALL REPORTS BE PUBLISHED; PROVIDING FOR CONTINGENT TERMINATION TO CONFORM TO CHANGES IN FEDERAL BANKING LAWS; AND AMENDING SECTION 32-1-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-231, MCA, is amended to read:

"**32-1-231. Reports to department of commerce.** (1) The department shall call for the reports specified in this section at least three times each year.

(2) A bank shall make to the department regular call reports according to the form ~~which~~ *that* may be prescribed by the department, verified by oath or affirmation of the president, ~~vice-president~~ *vice president*, or cashier of the bank and attested by the signature of at least two of the directors other than the subscribing officer.

(3) Each report ~~shall~~ *must* exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day specified by the department. The "past day specified" by the department, under the provisions of this section, ~~shall~~ *must* be ~~on~~ the day designated by the comptroller of currency of the United States for reports of national banking associations.

(4) The report ~~shall~~ *must* be transmitted to the department within 30 days after the receipt of a request or requisition for it and *must be* in a form *that* the department may require. ~~It shall be published as soon as possible at the expense of the bank in a newspaper published in the place where the bank is established or, if there be no newspaper in the place, then in one published nearest to that place in the same county. Proof of the publication shall be furnished at the times and in the manner as may be required by the department.~~"

Section 2. Contingent termination. [This act] terminates on the date that the commissioner of financial institutions certifies to the governor that federal banking laws require that a nationally chartered bank publish its call report in a newspaper published in the place where the bank is located.

Approved February 14, 1995

CHAPTER NO. 65

[HB 193]

AN ACT ADDING TWO MEMBERS OF THE PUBLIC TO THE BOARDS OF DIRECTORS OF THE MONTANA INSURANCE GUARANTY ASSOCIATION AND THE MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION; AND AMENDING SECTIONS 33-10-104 AND 33-10-204, MCA.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-10-104, MCA, is amended to read:

"33-10-104. Board of directors — commissioner approval — compensation. (1) The board of directors of the association ~~shall consist~~ *consists* of not less than ~~five~~ *seven* or more than nine persons serving terms as established in the plan of operation. *Two of the members must be appointed from the public at large by the commissioner.* The *other* members of the board ~~shall~~ *must* be selected by member insurers subject to the approval of the commissioner. Vacancies on the board ~~shall~~ *must* be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors."

Section 2. Section 33-10-204, MCA, is amended to read:

"33-10-204. Board of directors — commissioner approval — compensation. (1) The board of directors of the association ~~shall consist~~ *consists* of ~~five~~ *seven* members serving terms as established in the plan of operation. *Two of the members must be appointed from the public at large by the commissioner.* The *other* members of the board ~~shall~~ *must* be selected by member insurers subject to the approval of the commissioner. Vacancies on the board ~~shall~~ *must* be filled for the remaining period of the term in the manner described in the plan of operation. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(2) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board may not otherwise be compensated by the association for their services. However, any designated representatives of members of the board who are not full-time employees of the member insurers that designated them may receive reasonable compensation for their services on the board of directors upon annual approval by the members of the association."

Approved February 14, 1995

CHAPTER NO. 66

[SB 52]

AN ACT CLARIFYING ANNEXATION LAW BY SUBSTITUTING REAL PROPERTY OWNERS FOR FREEHOLDERS AND, WITH RESPECT TO MUNICIPAL ANNEXATION WITH THE PROVISION OF SERVICES LAWS, BY SUBSTITUTING REAL PROPERTY OWNERS FOR RESIDENT FREEHOLDERS; AMENDING SECTIONS 7-2-4205, 7-2-4305, 7-2-4313, 7-2-4314, 7-2-4323, 7-2-4324, 7-2-4409, 7-2-4502, 7-2-4506, 7-2-4601, 7-2-4606, 7-2-4610, 7-2-4704, 7-2-4705, 7-2-4710, 7-2-4741, AND 7-2-4751, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4205, MCA, is amended to read:

"**7-2-4205. Provision of services.** In all cases of annexation under current Montana law, services ~~will~~ *must* be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities~~, where~~ *when* otherwise mutually agreed upon by the municipality and the ~~freeholders~~ *real property owners* of the area to be annexed."

Section 2. Section 7-2-4305, MCA, is amended to read:

"**7-2-4305. Provision of services.** In all cases of annexation under current Montana law, services ~~will~~ *must* be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities~~, where~~ *when* otherwise mutually agreed upon by the municipality and the ~~freeholders~~ *real property owners* of the area to be annexed."

Section 3. Section 7-2-4313, MCA, is amended to read:

"**7-2-4313. Contents of notice — protest period.** The notice ~~shall~~ *must* ~~be to the effect~~ *state* that:

(1) ~~such~~ *the* resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of ~~such~~ *the* notice, ~~such~~ *the* city clerk ~~will receive expressions, in writing, of approval or disapproval of~~ *shall accept written comments approving or disapproving* the proposed extensions of the boundaries of ~~such~~ *the* city of the first class from ~~freeholders~~ *real property owners* of the ~~territory~~ *area* proposed to be ~~embraced therein~~ *annexed*."

Section 4. Section 7-2-4314, MCA, is amended to read:

"**7-2-4314. Hearing on question of annexation — resolution of annexation.** (1) The clerk shall, at the next regular meeting of the city council of ~~such~~ *a* city of the first class after the expiration of ~~said 20 days~~ *the 20-day period*, ~~lay before the same all communications in writing so~~ *forward all written communication* received by ~~him~~ *the clerk* for ~~its~~ *the city council's* consideration. Except as provided in subsection (2), if after considering ~~the same such~~ *any written communication the city* council ~~shall duly and regularly pass and adopt~~ *adopts* a resolution ~~to that effect~~ *approving the annexation*, the boundaries of ~~such~~ *the* city ~~of the first class shall~~ *must* be extended ~~so as~~ to ~~embrace and~~ include ~~such~~ *the* platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed~~;~~. ~~the time when the same shall go into effect to be fixed by such resolution~~ *The resolution must state the date on which the annexation takes effect.*

(2) ~~Such~~ *The* resolution ~~shall~~ *may* not be adopted by ~~such~~ *the city* council if disapproved in writing by a majority of the ~~resident freeholders of the territory~~ *real property owners of the area* proposed te be ~~embraced~~ *annexed*, and ~~no~~ further

resolutions relating to the annexation of ~~said territory~~ *the area* or any portion ~~thereof~~ *of the area* may *not* be considered or acted upon by the council on its own initiative, ~~and~~ without petition, for a period of 1 year from the date of disapproval."

Section 5. Section 7-2-4323, MCA, is amended to read:

"**7-2-4323. Contents of notice — protest period.** The notice ~~shall~~ *must* ~~be to the effect~~ *state* that:

(1) ~~such~~ *the* resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of ~~such~~ *the* notice, ~~such~~ *the* city or town clerk ~~will receive expressions in writing of approval or disapproval of~~ *shall accept written comments approving or disapproving* the proposed extonsions of the boundaries of ~~such~~ *the* city or town from ~~freeholders~~ *real property owners* of the ~~territory~~ *area* proposed to be ~~embraced therein~~ *annexed*."

Section 6. Section 7-2-4324, MCA, is amended to read:

"**7-2-4324. Hearing on question of annexation — resolution of annexation.** (1) The clerk shall, at the next regular meeting of the city or town council after the expiration of ~~said 20 days~~ *the 20-day period*, ~~lay before the same all communications in writing so~~ *forward all written communication* received by ~~him~~ *the clerk* for, ~~its~~ *the council's* consideration. Except as provided in subsection (2), if after considering ~~the same such~~ *any written communication the* council ~~shall duly and regularly pass and adopt~~ *adopts* a resolution ~~to that effect~~ *approving the annexation*, the boundaries of ~~such~~ *the* city or town ~~of the second or third class shall~~ *must* be extended ~~so as~~ to ~~embrace and~~ include ~~such~~ *the* tracts or parcels of land~~;~~. ~~the time when the same shall go into effect to be fixed by such resolution~~ *The resolution must state the date on which the annexation takes effect.*

(2) ~~Such~~ *The* resolution ~~shall~~ *may* not be adopted by ~~such~~ *the* council if disapproved in writing by a majority of the ~~freeholders~~ *real property owners* of the ~~territory~~ *area* proposed to be ~~embraced~~ *annexed*."

Section 7. Section 7-2-4409, MCA, is amended to read:

"**7-2-4409. Provision of services.** In all cases of annexation under current Montana law, services ~~will~~ *must* be provided as specified in Title 7, chapter 2, part 47, except ~~where~~ *when* mutually agreed upon by the municipality and the ~~freeholders~~ *real property owners* of the area te be annexed."

Section 8. Section 7-2-4502, MCA, is amended to read:

"**7-2-4502. Protest not available.** ~~Such~~ *The* land ~~shall be~~ *is* annexed, if so resolved, whether or not a majority of the ~~resident freeholders~~ *real property owners* of the ~~land~~ *area* to be annexed object."

Section 9. Section 7-2-4506, MCA, is amended to read:

"**7-2-4506. Provision of services.** In all cases of annexation under current Montana law, services ~~will~~ *must* be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, ~~where~~ *when* otherwise mutually agreed upon by the municipality and the ~~freeholders~~ *real property owners* of the area to be annexed."

Section 10. Section 7-2-4601, MCA, is amended to read:

"**7-2-4601. Annexation by petition.** (1) The boundaries of any incorporatod city or town~~, whether heretofore or hereafter formed,~~ may be altered and new ~~territory or territories~~ *areas* annexed ~~thereto, incorporated and included therein, and made a part thereof upon proceedings being had and taken~~ as provided in this part.

(2) The council or other legislative body of ~~any such~~ *a* municipal corporation, upon receiving a written petition ~~therefor~~ *for annexation* containing a description of the ~~new territory or territories asked~~ *area* to be annexed ~~to the corporation~~ and signed by not less than 33 1/3% of the registered electors of the ~~territory~~ *area* proposed to be annexed, ~~must~~ *shall* without delay submit to the electors of the municipal corporation and to the registered electors residing in the ~~territory or territories~~ *area* proposed by the petition to be annexed ~~to the corporation,~~ the question *of* whether the ~~new territory or territories shall~~ *area should* be ~~annexed to, incorporated in, and~~ made a part of the municipal corporation.

(3) (a) The governing body of a municipality need not submit the question of annexation to tbe qualified electors as provided in subsection (2) if it has received a written petition containing a description of ~~territory~~ *the area* requested to be annexed and signed by:

(i) more than 50% of the resident ~~freeholder~~ electors *owning real property in* ~~of~~ the ~~territory~~ *area* to be annexed; or

(ii) the owner or ~~all the~~ owners of ~~each parcel~~ *50%* of *the real* property in the ~~territory~~ *area* to be annexed.

(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) upon its merits. When the governing body approves tbe petition, it shall pass a resolution providing for the annexation."

Section 11. Section 7-2-4606, MCA, is amended to read:

"**7-2-4606. Resolution of annexation.** (1) (a) If it is found that a majority of votos were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days ~~thereafter~~ *of the election*, pass and adopt a resolution providing for ~~such~~ *the* annexation.

(b) ~~Such~~ *The* resolution ~~shall~~ *must* ~~recite~~ *state* that a petition has been filed with the said council or otber legislative body with ~~a sufficient number of~~ *the* signatures of 33 1/3% of the resident ~~freeholder~~ electors *owning real property in* ~~of~~ tbe ~~territory~~ *area* proposed to be annexed; a description of tbe boundaries of the ~~territory or territories~~ *area* to be annexed; a copy of the resolution ordering a general or special election ~~thereof, as the case may be~~; a copy of the notice of ~~such~~ *the* election; the time and result of the canvass of the votes received in favor

of annexation and the number ~~thereof~~ *of votes* cast against annexation; and that the boundaries of ~~such~~ *the* city or town~~, by such resolution, shall~~ *will* be extended ~~so as~~ to ~~embrace and~~ include ~~such territory or territories as the same are~~ *the area* described in the petition for annexation~~, which said~~. *The* resolution ~~shall~~ *must* be incorporated in the minutes of ~~said~~ *the* council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident ~~freeholder~~ electors *owning real property* or the owners of ~~all~~ *50%* of the ~~territory~~ *area* to be annexed; a description of the boundaries of the ~~territory~~ *area* to be annexed; and a statement that the boundaries of the municipality are to be extended to include the ~~territory~~ *area* described in the petition for annexation. The resolution ~~shall~~ *must* be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607."

Section 12. Section 7-2-4610, MCA, is amended to read:

"**7-2-4610. Provision of services.** In all cases of annexation under current Montana law, services ~~will~~ *must* be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, ~~where~~ *when* otherwise mutually agreed upon by the municipality and the ~~freeholders~~ *real property owners* of the area to be annexed."

Section 13. Section 7-2-4704, MCA, is amended to read:

"**7-2-4764. Definitions.** The following terms ~~where~~ *when* used in this part have the following meanings except ~~where~~ *when* the context clearly indicates a different meaning:

(1) "Contiguous" means any area ~~which~~ *that*, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any *incorporated* city or town ~~under Montana law~~.

~~(3) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed in the office of the county clerk and recorder.~~

(3) "Real property owner" means a person who holds an estate of life or inheritance in real property or who is the purchaser of an estate of life or inheritance in real property under a contract for deed, some memorandum of which has been filed in the office of the county clerk."

Section 14. Section 7-2-4705, MCA, is amended to read:

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"7-2-4705. **Annexation by municipalities providing services.** (1) The governing body of any municipality may extend the corporate limits of ~~such~~ *the* municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the ~~resident freeholders~~ *owners of real property* situated outside the corporate boundaries of any municipality, but contiguous ~~thereto~~ *to the municipality*, desire to have real estate annexed to the municipality, they ~~may~~ *shall* file with the governing body of the municipality a petition bearing the signatures of 51% of the ~~resident freeholders~~ *real property owners* ~~in~~ *of* the ~~territory~~ *area* sought to be annexed; *and* requesting a resolution stating ~~the intent of~~ *that* the municipality *intends* to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(2)."

Section 15. Section 7-2-4710, MCA, is amended to read:

"7-2-4710. **Protest.** (1) For a period of 45 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall ~~receive expressions, in writing, of~~ *accept written comments approving or disapproving* ~~approval or disapproval of~~ the proposed annexation from ~~freeholders of the territory~~ *real property owners of the area* proposed to be annexed.

(2) If a majority of the ~~said freeholders~~ *real property owners* ~~in writing~~ disapprove *of* the proposed annexation *in writing*, ~~no~~ further proceedings under this part ~~shall be had~~ relating to the ~~territory~~ *area or any part of the area* proposed to be annexed ~~or any part thereof~~ *may not be considered or acted upon by the governing body on its own initiative, without petition,* for a period of 1 year from the date of ~~such~~ disapproval."

Section 16. Section 7-2-4741, MCA, is amended to read:

"7-2-4741. **Right to court review when area annexed.** (1) Within 30 days following the passage of an annexation ordinance under authority of this part, either a majority of the ~~resident freeholders~~ *real property owners* ~~in~~ *of* the ~~territory~~ *area to be annexed* or the owners of more than 75% in assessed valuation of the real estate in the ~~territory~~ *area* who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the ~~procedure~~ *procedures* set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as ~~they apply~~ *applied* to their property, may file a petition in the district court of the district in which the municipality is located seeking review of the action of the governing ~~board and serve a copy of the petition on the municipality in the manner of service of civil process~~ *body*.

(2) If two or more petitions for review are submitted to the court, the court may consolidate ~~all such~~ *the* petitions for review at a single hearing."

Section 17. Section 7-2-4751, MCA, is amended to read:

"7-2-4751. **Right to court review when area not annexed.** (1) ~~After the resident freeholders have properly petitioned~~ *If within 60 days of receiving a valid petition* the governing body ~~of the municipality and the body has failed~~ *fails* to pass a resolution of intent to annex ~~within 60 days~~, the petitioners may

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file a ~~complaint and a duplicate copy of the~~ petition in the district court of the ~~proper jurisdiction~~ *district in which the municipality is located* ~~stating the reason why the proposed annexation should take place~~.

(2) The municipality ~~shall~~ *must* be designated ~~party~~ *as the* defendant in the cause and ~~shall be~~ *is* required to appear and answer as in other cases."

Section 18. Effective date. [This act] is effective on passage and approval.

Approved February 16, 1995

CHAPTER NO. 67

[HB 73]

AN ACT ESTABLISHING A PORTION OF MONTANA STATE HIGHWAY 78, FROM COLUMBUS THROUGH ABSAROKEE AND ROSCOE TO RED LODGE, AS THE DONALD J. RUHL MEDAL OF HONOR HIGHWAY.

WHEREAS, Donald Jack Ruhl was born in Columbus, Montana, on July 2, 1923, and graduated from high school in Joliet, Montana, in 1942; and

WHEREAS, Donald J. Ruhl was known and admired by employers, friends, and family as a hard-working, responsible, and dedicated youth; and

WHEREAS, Donald J. Ruhl enlisted in the Marine Corps Reserves on September 12, 1942, entered active duty on the same day, and began military service in San Diego, California; and

WHEREAS, Donald J. Ruhl, as a Marine recruit, demonstrated physical abilities as a sharpshooter, combat swimmer, boxer, all-around athlete, and model Marine; and

WHEREAS, Donald J. Ruhl was promoted to Private First Class on December 19, 1942, and, within 5 weeks, had completed training and was certified as a qualified parachutist with Company "C", Third Parachute Battalion, Third Marine Division; and

WHEREAS, PFC Ruhl sailed aboard the USS Mount Vernon on March 12, 1943, as a mortar crewman, en route to New Caledonia; and

WHEREAS, in September 1943, PFC Ruhl, as a member of the renamed Company "L", Third Parachute Battalion, First Marine Parachute Regiment, First Marine Amphibious Corps, sailed for the island of Guadalcanal aboard the USS American Legion, the first of several voyages in campaigns throughout the Pacific theater; and

WHEREAS, PFC Ruhl began a last series of voyages in January 1945, sailing from Hilo, Hawaii, through the Hawaiian Islands, to Saipan and eventually to the shores of Iwo Jima, where, on February 19, 1945, D-Day on Iwo Jima, PFC Donald J. Ruhl and the Marines landed and joined the battle; and

WHEREAS, within 24 hours of landing on Iwo Jima, PFC Donald J. Ruhl, ever valiant, single-handedly seized a blockhouse by routing the enemy and,

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subsequently, rescued a wounded, fellow Marine from enemy mortar and machine gun fire, thereby saving the Marine's life; and

WHEREAS, following that heroic effort, PFC Donald J. Ruhl returned to the unit, volunteered to investigate an enemy gun emplacement, and occupied the position through the night; and

WHEREAS, on the morning of Fehruary 21, 1945, PFC Donald J. Ruhl, with a platoon guide, assisted an advance of "E" Company, Twenty-Eighth Marines, against enemy fortifications at the base of Mount Suribachi where, under heavy fire, the two Marines were targeted with an enemy grenade; and

WHEREAS, PFC Donald J. Ruhl, the selfless soldier, instantly called a warning to the other Marine, dived upon the deadly missile, absorbed the full charge of the exploding grenade, and saved the life of a friend and the lives of other nearby Marines; and

WHEREAS, 2 days later, "E" Company raised the American flag atop Mount Suribachi, an event that was made possible in part by the heroic action and death of PFC Donald J. Ruhl; and

WHEREAS, PFC Donald J. Ruhl was posthumously awarded the Congressional Medal of Honor for bravery and heroism, which award was presented to PFC Donald J. Ruhl's parents on January 12, 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Donald J. Ruhl medal of honor highway. The portion of Montana state highway 78, from Columbus through Absarokee and Roscoe to Red Lodge, is established as the Donald J. Ruhl medal of honor highway.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Approved February 22, 1995

CHAPTER NO. 68

[HB 54]

AN ACT CLARIFYING THAT INSURANCE POOLS ESTABLISHED JOINTLY BY POLITICAL SUBDIVISIONS MAY OBTAIN EXCESS INSURANCE WITHOUT PROCEEDING UNDER THE PROVISIONS OF SECTION 33-2-302(2) THROUGH (4) OF THE SURPLUS LINES INSURANCE LAW; AMENDING SECTION 2-9-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-211, MCA, is amended to read:

"**2-9-211. Political subdivision insurance.** (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. *Political subdivisions that elect to procure insurance jointly (pooled fund) under*

this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2) through (4). Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2) through (4) only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyds of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures ~~shall~~ *must* be invested, and all proceeds of the investment *must be* credited te the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident ~~thereto~~ *to the reserve fund* in an amount not exceeding 3% of the taxable value of the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain ~~such~~ other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement te exercise their respective borrowing powers ~~hereunder~~ *under this section* jointly and may authorize a joint board created pursuant to ~~such~~ *the* agreement to exercise ~~such~~ powers on their behalf."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 22, 1995

CHAPTER NO. 69

[SB 37]

AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ELIMINATE THE OFFICE OF SECRETARY OF STATE AND ASSIGNING THE DUTIES OF THAT OFFICE TO THE LIEUTENANT GOVERNOR; AMENDING ARTICLE III, SECTIONS 4 AND 5, ARTICLE IV, SECTION 8, ARTICLE V, SECTION 14, ARTICLE VI, SECTIONS 1, 2, 3, 4, 6, 7, AND 10, ARTICLE X, SECTION 4, AND ARTICLE XIV, SECTIONS 2 AND

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9, OF THE MONTANA CONSTITUTION; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article III, section 4, of The Constitution of the State of Montana is amended to read:

"**Section 4. Initiative.** (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the ~~secretary of state~~ *lieutenant governor* at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held."

Section 2. Article III, section 5, of The Constitution of the State of Montana is amended to read:

"**Section 5. Referendum.** (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the ~~secretary of state~~ *lieutenant governor* no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law."

Section 3. Article IV, section 8, of The Constitution of the Stato of Montana is amended to read:

"**Section 8. Limitation on terms of office.** (1) The ~~secretary of state~~ *lieutenant governor* or other authorized official shall not certify a candidate's nomination or election to, or print or cause to be printod on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he *the candidate* not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, ~~lieutenant governor, secretary of state~~ *lieutenant governor*, state auditor, attorney general, or superintendent of public instruction;

(b) 8 or more years in any 16-year period as a state representative;

(c) 8 or more years in any 16-year period as a state senator;

(d) 6 or more years in any 12-year period as a member of the U.S. house of representatives; and

(e) 12 or more years in any 24-year period as a member of the U.S. senate.

(2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.

(3) Notbing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate."

Section 4. Article V, section 14, of The Constitution of the State of Montana is amended to read:

"**Section 14. Districting and apportionment.** (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senato district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative districts and a plan for redistricting the stato into congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as ~~chairman~~ *presiding officer* of the commission. If the four members fail te select the fifth member witbin the time prescribed, a majority of the supreme court shall select ~~him~~ *the presiding officer*.

(3) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the ~~secretary of state~~ *lieutenant governor* and it shall become law.

(4) The commission shall submit its plan for legislative districts to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan for legislative districts with the ~~secretary of state~~ *lieutenant governor* and it shall become law.

(5) Upon filing both plans, the commission is then dissolved."

Section 5. Article VI, section 1, of The Constitution of the State of Montana is amended to read:

"**Section 1. Officers.** (1) The executive branch includes a governor, ~~lieutenant governor, secretary of state~~ *lieutenant governor*, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of ~~his~~ *each* office, and perform such other duties as are provided in this constitution and by law."

Section 6. Article VI, section 2, of The Constitution of the State of Montana is amended to read:

"**Section 2. Election.** (1) The governor, ~~lieutenant governor~~, ~~secretary of state~~ *lieutenant governor*, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections."

Section 7. Article VI, section 3, of The Constitution of the State of Montana is amended te read:

"**Section 3. Qualifications.** (1) No person shall be eligible to the office of governor, ~~lieutenant governor, secretary of state~~ *lieutenant governor*, attorney general, superintendent of public instruction, or auditor unless ~~he~~ *the person* is 25 years of age or older at the time of ~~his~~ election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding ~~his~~ *the person's* election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law."

Section 8. Article VI, section 4, of The Constitution of the State of Montana is amended te read:

"**Section 4. Duties.** (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. ~~He~~ *The governor* shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated ~~to him~~ by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The ~~secretary of state~~ *lieutenant governor* shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. ~~He~~ *The lieutenant governor* shall keep the great seal of the state of Montana and perform any other duties provided by law.

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(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law."

Section 9. Article VI, section 6, of The Constitution of the State of Montana is amended to read:

"**Section 6. Vacancy in office.** (1) If the office of lieutenant governor becomes vacant by ~~his~~ *the lieutenant governor's* succession to the office of governor, or by ~~his~~ death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of ~~secretary of state,~~ attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which ~~his~~ *the person's* predecessor was elected."

Section 10. Article VI, section 7, of The Constitution of the State of Montana is amended to read:

"**Section 7. 20 departments.** All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, ~~lieutenant governor, secretary of state~~ *lieutenant governor*, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department."

Section 11. Article VI, section 10, of The Constitution of the State of Montana is amended to read:

"**Section 10. Veto power.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for ~~his~~ signature. If ~~he~~ *the governor* does not sign or veto the bill within five days after its delivery to ~~him~~ *the governor* if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of ~~his~~ *the* reasons therefor.

(2) The governor may return any bill to the legislature with ~~his~~ *a* recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the

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governor for ~~his~~ reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) (a) If the legislature is not in session when the governor vetoes a bill approved by two-thirds of the members present, ~~he~~ *the governor* shall return the bill with ~~his~~ *the* reasons therefor to the ~~secretary of state~~ *attorney general*. The ~~secretary of state~~ *attorney general* shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(b) The legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill."

Section 12. Article X, section 4, of The Constitution of the State of Montana is amended to read:

"**Section 4. Board of land commissioners.** *(1)* The governor, superintendent of public instruction, auditor, ~~secretary of state, and~~ attorney general, *and a member chosen by the other members* constitute the board of land commissioners. *If the four members are unable to agree on the fifth member, the four members shall submit the names of three to five persons to the chief justice, who shall appoint the fifth member from the three to five persons on this list.*

(2) It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law."

Section 13. Article XIV, section 2, of The Constitution of the State of Montana is amended to read:

"**Section 2. Initiative for constitutional convention.** (1) The people may by initiative petition direct the ~~secretary of state~~ *lieutenant governor* to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The ~~secretary of state~~ *lieutenant governor* shall certify the filing of the petition in ~~his~~ *the lieutenant governor's* office and cause the question to be submitted at the next general election."

Section 14. Article XIV, section 9, of The Constitution of the State of Montana is amended to read:

"**Section 9. Amendment by initiative.** (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified

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electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the ~~secretary of state~~ *lieutenant governor*. If the petitions are found to have been signed by the required number of electors, the ~~secretary of state~~ *lieutenant governor* shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise."

Section 15. Effective date. If approved by the electorate, this act is effective January 1, 2001.

Section 16. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1996 by printing on the ballot the full title of this act and the following:

☐ FOR eliminating the office of the secretary of state and transferring the functions of that office to the lieutenant governor.

☐ AGAINST eliminating the office of the secretary of state and transferring the functions of that office te the lieutenant governor.

CHAPTER NO. 70

[SB 36]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE ESTABLISHMENT OF PATERNITY OF A CHILD; AMENDING SECTIONS 40-5-232, 40-5-233, 40-5-234, 40-5-236, 40-5-237, 40-6-102, 40-6-105, 40-6-115, 40-6-117, 40-6-118, AND 50-15-210, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-232, MCA, is amended to read:

"40-5-232. Establishment of paternity — notice of paternity determination — contonts. (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contestod case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

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(3) In any proceeding under 40-5-231 through 40-5-237, if a ~~man~~ *person* acknowledges paternity of a child in writing and the acknowledgment is filed with the department, the department may enter an order establishing legal paternity. *As a part of a voluntary acknowledgment, the department shall provide information to the parents regarding the rights and responsibilities of acknowledging paternity.* An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

(4) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

~~(4)~~(5) The department shall commence proceedings te establish paternity by serving on an alleged father a notice of paternity determination. The department r ay not serve the notice unless it has:

(a) a sworn statement from the child's mother claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

~~(5)~~*(6)* Service on the alleged father of the notice of patornity determination must be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if tbe alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against the alleged father without furtber notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) the alleged father is subject to compulsory *paternity* blood testing;

(ii) a *paternity* blood test may result in a presumption of paternity; and

(iii) upon receipt of the *paternity* blood test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.

~~(6)~~*(7)* The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

~~(7)~~*(8)* When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child."

Section 2. Section 40-5-233, MCA, is amended to read:

"**40-5-233. Establishment of paternity — administrative hearing — subpoena — compulsory blood testing.** (1) When the department receives a timely written denial of paternity, it may order the alleged father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods. If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged father had sexual intercourse with the child's mother during the probable time of the child's conception or if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of sexual intercourse during the possible time of conception may be established by affidavit of the child's mother.

(2) When there is reasonable cause to suggest that a blood test sample of a person submitting to a blood test was not the sample of the alleged father, mother, or child, an additional hearing may be held. The scope of the hearing is limited to questions involving the blood drawing or the chain of custody at the blood drawing site. The hearing officer may order retesting of any party.

~~(2)~~*(3)* If the department does not receive a timely written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity blood testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

~~(3)~~*(4)* If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order compelling the alleged father to submit to a paternity blood test. As provided in subsection (1), reasonable cause may be established by affidavit of the child's mother."

Section 3. Section 40-5-234, MCA, is amended to read:

"**40-5-234. Paternity blood tests — use of expert's affidavit — effect of test results — *records — presumption.*** (1) The department shall appoint an expert who is qualified in examining genetic markers to conduct any paternity blood test required by 40-5-233. ~~If the issue of paternity is referred~~

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~~to the district court under 40-5-236, the expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources.~~

(2) An affidavit documenting the chain of custody of any blood specimen is admissible to establish ~~such~~ *the* chain of custody.

(3) If the scientific evidence resulting from a *paternity* blood test:

(a) conclusively shows that the alleged father could not have been the natural father, the question of paternity ~~shall~~ *must* be resolved accordingly. A finding under this subsection is sufficient to overcome a presumption created by 40-6-105.

(b) shows a 95% or higher statistical probability of paternity, the alleged father is presumed to be the natural father of the child. This presumption may be rebutted in an appropriate action in district court by a preponderance of the evidence.

(c) does not exclude the alleged father and shows less than a 95% statistical probability of paternity, the test results may be weigbed in conjunction with other evidence to establish paternity.

(4) The department may enter an order of nonpaternity based on a blood test exclusion and may order the department of health and environmental sciences to prepare an amended or substitute birth certificate.

(5) The department may enter in the support order registry established in 40-5-271 a written finding of any paternity presumption created by paternity blood test results.

(6) A presumption of paternity established under this section is a sufficient basis for establishing a support order."

Section 4. Section 40-5-236, MCA, is amended to read:

"40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees. (1) If the scientific evidence resulting from a *paternity* blood test does not exclude the alleged father and ~~he~~ *the alleged father* continues to deny paternity, *the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results. Upon receipt of the written objection,* the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court ~~shall~~ *must* be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of paternity determination and the return of service ~~thereof~~ *of the notice*;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that ~~such~~ an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

Section 5. Section 40-5-237, MCA, is amended to read:

"40-5-237. District court paternity proceedings — objection to tests — additional tests — *expert's report* — *admissibility of evidence*. (1) ~~If~~ *In a matter referred to the district court, if* an alleged father objects to the procedures for or the results of a paternity blood test, ~~he~~ *the alleged father* shall file a written objection with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an additional paternity blood test if a written objection is *timely* filed or at the request of the department. An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

(2) If an objection to the paternity blood test is not timely filed, the paternity blood test expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional foundation testimony or other proof of authenticity and accuracy if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources. This subsection does not limit the right of a party to contest the identity of persons submitting to testing.

~~(2)~~*(3)* In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from

consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence.

~~(3)~~*(4)* When a paternity blood test excludes an alleged father from possible paternity, the test ~~shall be~~ *is* conclusive evidence of nonpaternity of the alleged father for all purposes in the district court."

Section 6. Section 40-6-102, MCA, is amended te read:

"**40-6-102. ~~Parent and child relationship defined~~ *Definitions*.** As used in this part, *the following definitions apply:*

(1) "Blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. A blood test may include but is not limited to the human leukocyte antigen test and DNA probe technology.

(2) "~~parent~~ *"Parent* and child relationship" means the legal relationship existing between a child and ~~his~~ *the child's* natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

(3) "Support judgment" or "support order" means an order, whether temporary or final, that provides for the periodic payment of an amount of money expressed in dollars for the support of a child, including medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child."

Section 7. Section 40-6-105, MCA, is amended to read:

"**40-6-105. Presumption of paternity.** (1) A ~~man~~ *person* is presumed to be the natural father of a child if *any of the following occur*:

(a) ~~he~~ *the person* and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, ~~he~~ *the person* and the child's natural motber have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, ~~he~~ *the person* and the child's natural mother bave married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

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(i) ~~he has acknowledged~~ *the child's mother and the child's alleged father have acknowledged the alleged father's* ~~his~~ paternity of the child in writing *in accordance with subsection (1)(e) and the acknowledgment is* filed with the department of health and environmental sciences or with the district court for the county where ~~he~~ *the person* resides *or for any county where the child support enforcement division of the department of social and rehabilitation services maintains a regional office*; ~~or~~

(ii) with ~~his~~ *the person's* consent, ~~he~~ *the person* is named as the child's father on the child's birth certificate; or

(iii) ~~he~~ *the person* is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, ~~he~~ *the person* receives the child into ~~his~~ *the person's* home and openly ~~holds out~~ *represents* the child *to be* ~~as his~~ *the person's* natural child; ~~or~~

(e) ~~he acknowledges~~ *the child's mother and the child's alleged father acknowledge the alleged father's* ~~his~~ paternity of the child in a ~~writing~~ *paternity acknowledgment form that is provided by the department of social and rehabilitation services and* filed with the department of health and environmental sciences or with the district court of the county where ~~he~~ *the person* resides~~, which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed~~ *or for any county where the child support enforcement division of the department of social and rehabilitation services maintains a regional office. The department of health and environmental sciences or the district court shall accept and file the completed form. As a part of a voluntary acknowledgment process, the department of social and rehabilitation services shall provide information to the parents regarding the rights and responsibilities of acknowledging paternity.* If another ~~man~~ *person* is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(f) the scientific evidence resulting from a blood test, whether ordered by a court or administrative agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability of paternity.

(2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

~~(2)~~*(3)* A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence.

(4) A presumption of paternity established under this section is a sufficient basis for establishing a support order."

Section 8. Section 40-6-115, MCA, is amended to read:

"40-6-115. Civil action. (1) An action under this part is a civil action governed by the rules of civil procedure. The mother of the child and the alleged

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father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified ~~man~~ *person* at any time or by an identified ~~man~~ *person* at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by ~~him~~ *the alleged father* with respect to a ~~man~~ *person* who is not subject to the jurisdiction of the court concerning ~~his~~ sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the possibility of ~~his~~ *the alleged father's* paternity of the child. A ~~man~~ *person* who is identified and is subject to the jurisdiction of the court ~~shall~~ *must* be made a defendant in the action.

(4) If a blood test has been initially ordered under this part and a party objects to the blood test results, the objection must be filed within 20 days after service of the blood test results. If an objection is filed, the court shall order an additional blood test. If no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. This subsection does not limit the right of a party to contest the identity of persons submitting to testing.

(5) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled blood test, the district court shall enter an order declaring the alleged father the legal father of the child. The district court may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of blood testing."

Section 9. Section 40-6-117, MCA, is amended to read:

"40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

~~(2)~~*(3)* Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

~~(3)~~*(4)* (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

(b) A judgment, decree, or order that omits the provision required by subsection ~~(3)(a)~~ *(4)(a)* is subject to the requirements of subsection ~~(3)(a)~~ *(4)(a)* without need for an amendment to the judgment, decree, or order or for any further action by the court."

Section 10. Section 40-6-118, MCA, is amended to read:

"**40-6-118. Modification of judgment or order.** The court has continuing jurisdiction to modify or revoke a judgment or order:

(1) for future education and support; and

(2) with respect to matters listed in 40-6-116(3), 40-6-116(4), and 40-6-117~~(2)~~*(3)*, except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under 40-6-116(4) may specify that the judgment or order may not be modified or revoked."

Section 11. Section 50-15-210, MCA, is amended to read:

"**50-15-210. Paternity acknowledgment.** (1) Upon the birth of a child to a ~~woman~~ *mother* unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of ~~parentage~~ *paternity* pursuant to 40-6-105;

(b) provide written information, furnished by the department *of social and rehabilitation services*, describing the rights and responsibilities of ~~parentage~~ *paternity*, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department *of social and rehabilitation services* shall establish ~~by rule~~ the amount of reasonable costs, not to exceed the amount for which federal financial participation is available, and the procedures for claiming reimbursement.

(3) Hospitals, institutions, and midwives shall use forms prescribed by the department for the acknowledgment of paternity."

Section 12. Effective date. [This act] is effective July 1, 1995.

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Approved March 2, 1995

CHAPTER NO. 71

[SB 91]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO CONTRACTS WITH PRIVATE PARTIES TO ACT AS AGENTS OF THE DEPARTMENT IN ISSUING PERMITS FOR EXCESS SIZE AND WEIGHT OF VEHICLES; PROVIDING ANNUAL PERMITS AND FEES FOR OVERWEIGHT VEHICLES; AND AMENDING SECTIONS 61-10-121 AND 61-10-125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-121, MCA, is amended to read:

"61-10-121. Permits for excess size and weight — *agents*. (1) Upon application and with good cause shown, the department of transportation, *or its agent under subsection (3),* and local authorities in their respective jurisdictions may issue telephonically or in writing a special permit authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department may issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-110. This permit must be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period greater than the period for which the GVW license is valid, including grace periods, as provided in this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. The department may issue to dealers in implements of husbandry and self-propelled machinery oversize permits, which may be transferred from unit to unit by the dealer, for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday and expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

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(3) The department may enter into a contract with a private party to act as an agent of the department for the purpose of issuing, in writing, a special permit allowed under this section."

Section 2. Section 61-10-125, MCA, is amended to read:

"61-10-125. Other fees. (1) There is charged for a single trip permit for a load that is over the gross allowable load provided for by the formula in 61-10-107(1) but that does not exceed axle limits set forth in 61-10-107(1):

(a) $10 for distances to and including 100 miles;

(b) $30 for distances from 101 to 199 miles; and

(c) $50 for distances over 200 miles traveled.

(2) *(a)* There is charged a fee of:

(i) $200 for a term permit for a load that is in excess of the limite set forth in 61-10-107(1) but that does not exceed a total of 5,000 pounds in excess axle weight.;

(ii) $500 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 10,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight;

(iii) $750 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 15,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight;

(iv) $1,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 20,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight and no tandem axle exceeding 15,000 pounds in excess axle weight.

(b) The fees provided in subsection (2)(a) are annual fees but may be prorated on a quarterly basis and may be paid quarterly, semiannually, or annually. However, if the fee is paid other than annually, there is an additional fee of $10 each time a fee is paid.

(c) A permit issued under this subsection (2) is valid for a period of no less than 1 calendar quarter and no more than 1 calendar year.

(d) The department or its agent may not issue a term permit for loads that exceed 10,000 pounds in excess axle weight unless the person applying for the term permit has obtained approval from the department, through a weight analysis, for the configuration of the vehicle.

(3) There is charged for a permit to move a load that exceeds the single axle, tandem axle, or axle group limits set forth in 61-10-107(1) the following fee based upon the sum of excess in axle or axle group weights:

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Total Excess Axle Weight (pounds)	Calculated Cost of 25 Miles of Travel (dollars)
5,000	3.50
10,000	7.00
15,000	10.50
20,000	14.00
25,000	17.50
30,000	21.00
35,000	24.50
40,000	28.00
45,000	31.50
50,000	35.00
55,000	38.50
60,000	42.00
65,000	45.50
70,000	49.00
75,000	52.50
80,000	56.00
85,000	59.50
90,000	63.00
95,000	66.50
100,000	70.00
over 100,000	70.00 + 3.50 per 5,000 lbs. or part of 5,000 lbs. in excess of 100,000 lbs.

(4) For purposes of subsection (3):

(a) mileage must be rounded off in units of 25 miles and mileage in excess of a 25-mile increment must be assessed at the next higher 25-mile increment; and

(b) weight must be rounded off in 5,000-pound increments and weight in excess of a 5,000-pound increment must be assessed at the next higher 5,000-pound increment.

(5) A vehicle must be licensed to the maximum allowable weight authorized under 61-10-107 before an overweight permit may be issued."

Approved March 6, 1995

CHAPTER NO. 72

[SB 95]

AN ACT REVISING THE REQUIREMENTS FOR OBTAINING A HEARING AID TRAINEE LICENSE; ESTABLISHING THE BOARD'S POWER TO INITIATE COMPLAINTS, CONDUCT INVESTIGATIONS, AND SUSPEND OR REVOKE LICENSES; CHANGING THE TRAINING PERIOD FROM 12 MONTHS TO 180 DAYS; REDUCING THE NUMBER OF TRAINEE LICENSE RENEWALS FOLLOWING FAILURE TO PASS EXAMINATIONS FROM TWO TO ONE; INCREASING THE CONTINUING EDUCATION

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REQUIREMENTS FOR LICENSE RENEWAL APPLICANTS; AND AMENDING SECTIONS 37-16-202, 37-16-401, 37-16-403, 37-16-404, 37-16-405, 37-16-406, 37-16-407, AND 37-16-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-16-202, MCA, is amended to read:

"**37-16-202. Powers and duties.** The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to *initiate or* receive, investigate, and mediato complaints from any source concerning the activities of persons licensed under this chaptor or their agents, whether licensed or not;

(3) suspend or revoke licenses under this chaptor;

(4) designate the time and place for examining applicants for license and supervise and administer the examination;

(5) adopt rules necessary to carry out this chapter;

(6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

(7) prepare examinations required by the chapter;

(8) initiate legal action to enjoin from operation a person or corporation engaged in the sale, dispensing, or fitting of hearing aids in this state who is not licensed under this chapter;

(9) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, 37-16-411, and 37-16-414. Rules adopted by the board may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, 37-16-411, and 37-16-414."

Section 2. Section 37-16-401, MCA, is amended to read:

"**37-16-401. License required.** A person may not engage in selling, dispensing, or fitting hearing aids or display a sign or in any other way advertise ~~or hold himself out as a person who practices~~ the selling, dispensing, or fitting of hearing aids in Montana unless ~~he~~ *the person* holds a current ~~regular or temporary~~ license issued by the department."

Section 3. Section 37-16-403, MCA, is amended to read:

"**37-16-403. ~~Examination~~ *Examinations* — time and place — number of failures allowed.** (1) An applicant for a license who is notified by the department that ~~he~~ *the applicant* has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to ~~be examined by~~ *take*

written and practical ~~tests~~ *examinations* in order to demonstrate that ~~he~~ *the applicant* is qualified to practice the fitting of hearing aids and related devices.

(2) An applicant who fails two successive practical examinations is eligible for reexamination after ~~a period of~~ 2 years *have elapsed since the date of the applicant's last examination* and *after* the ~~completion of~~ *the applicant has completed* additional training or education recognized by the board."

Section 4. Section 37-16-404, MCA, is amended to read:

"37-16-404. **~~Examination~~** ***Examinations*** **— subject areas.** The ~~examination~~ *examinations* provided in 37-16-403 ~~shall~~ *must* consist of a test of knowledge and practical teste of proficiency, ~~where~~ *when* they apply, in the following areas as they pertain to tbe fitting of hearing aids:

(1) acoustics:

(a) general principles;

(b) the decibel;

(c) hearing and speech;

(2) the human ear:

(a) external;

(b) middle;

(c) inner;

(3) the hearing process;

(4) disorders of hearing:

(a) conductive;

(b) sensorineural;

(c) central;

(d) psychogenic;

(5) audiometry:

(a) pure tone;

(b) theory;

(c) procedures;

(d) speech;

(6) the hearing analysis:

(a) audiogram;

(b) auditory area;

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(7) hearing aids:

(a) history;

(b) characteristics;

(c) components;

(8) practical use of the otoscope:

(a) earmold;

(b) impression;

(9) fittings:

(a) hearing aid;

(b) earmold;

(10) delivery and checkup; or

(11) any change ~~as deemed~~ *considered* necessary by the board."

Section 5. Section 37-16-405, MCA, is amended to read:

"**37-16-405. Trainee license.** (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the practical examination under 37-16-403 may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and commensurato witb tbe cost of administering the license and related functions of the board and verification that tbe applicant has passed the written portion of the examination with a score of at least 70%, the board shall issue a trainee license that entitles the applicant to engage in a ~~12-month~~ *180-day* training period during which ~~he~~ *the applicant* ~~shall~~:

(a) *is required to* pass the practical examination administored by the board before ~~he may be~~ *being* issued a hearing aid dispenser's license; *and*

(b) *shall* work ~~for the first 90 days~~ under the direct supervision of the sponsoring licensed hearing aid dispenser. ~~during which~~ *During this* time ~~he~~ *the applicant* may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and ~~his~~ *the* supervisor.

~~(c) work for the balance of the training period during which he may engage in all activities allowed a licensed hearing aid dispenser, under the general supervision of a licensed hearing aid dispenser.~~

(3) The training period must consist of a continuous ~~12-month~~ *180-day* term. Any break in training requires application for another trainee license under ~~such~~ rules ~~as~~ *that* the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder must submit a ~~quarterly~~ report *every 90 days* of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate ~~his~~ *any* responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) (a) If a person who holds a trainee license takes and fails to pass the practical examination ~~given within his~~ *during the* training period, the board may authorize the department to renew the trainee license for a period ~~ending 30~~ *of 180* days ~~after the next examination~~, *during which the provisions of subsection (2)(b) apply.* In no event may more than ~~two renewals~~ *one renewal* be permitted.

(b) The fee for renewal ~~shall~~ *must* be set by the board commensurate with the cost of administering the license and related functions of the board.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, *or a person practicing pursuant to 37-15-305* is exempt from the ~~12-month~~ *180-day* training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section:

~~(a)~~, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available ~~in the same place of business~~ *at the same location* for prompt consultation and treatment~~; and~~

~~(b) "general supervision" means oversight by a licensed hearing aid dispenser of those tasks and procedures that do not require the physical presence of the licensed dispenser on the business premises. However, the trainee remains under the licensed hearing aid dispenser's direction, control, responsibility, and evaluation.~~"

Section 6. Section 37-16-406, MCA, is amended to read:

"**37-16-406. Admission of licensees from other states.** When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the practice of dispensing, fitting, and selling hearing aids and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this chapter are qualified to sell, dispense, and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended, and unrevoked licenses to fit, dispense, and sell hearing aids in the other state or jurisdiction. ~~No such applicants~~ *An applicant* for a license under this section ~~are~~ *is not* required to ~~submit to or undergo~~ *take* ~~a qualifying~~ *the practical or written* examination ~~or the like, other than the payment of fees, if the person complies~~ *but is required to:*

(1) pay the fee provided for in 37-16-402;

(2) take a test of the applicant's knowledge of the provisions of Title 37, chapter 16, and applicable rules; and

(3) comply with all other requirements of this chapter."

Section 7. Section 37-16-407, MCA, is amended to read:

"**37-16-407. Renewal of license — fee — inactive status.** (1) A person who practices the fitting of hearing aids and related devices shall annually pay to the department a fee as set by the board for a renewal of ~~his~~ *the person's* license. The fee must be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The fee must be increased 10% for each month or major portion ~~thereof~~ *of a month* that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal may not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is required to submit to the examinations described in 37-16-403 as a condition of renewal for a 3-year period after suspension.

(2) Each applicant for license renewal shall submit evidence showing completion of 4 *10* hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule.

(3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

(b) An inactive licensee may be reinstated to active practice if ~~he~~ *the inactive licensee*:

(i) applies for reinstatement;

(ii) pays a fee set by the board; and

(iii) produces proof satisfactory to the board of completion of the continuing education requirements established by the board."

Section 8. Section 37-16-411, MCA, is amended to read:

"**37-16-411. Revocation or suspension of license — *investigations* — fines.** *(1) The board may, at its discretion or upon written complaint of an aggrieved person, investigate an alleged violation of this chapter by a licensee or applicant for licensure. If the investigation discloses a probable violation of this chapter, the board may, pursuant to the provisions of 37-1-136, suspend or revoke the accused person's license or suspend or deny the person's application for a fixed period to be determined by the board.*

(2) A person licensed under this chapter may have ~~his~~ *the* license revoked or suspended for a fixed period to be determined by the board or be fined not te exceed $500 per incident for any of the following causes:

~~(1)~~*(a)* being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court *for the district* where the conviction occurred or certification by the judge of the court

is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension.

~~(2)~~*(b)* securing a license under this chapter through fraud, ~~or~~ deceit, or false statements;

~~(3)~~*(c)* the personal use of a false name or alias in ~~the practice of his profession~~ *professional practice*;

~~(4)~~*(d)* violating any of the provisions of this chapter;

~~(5)~~*(e)* obtaining ~~any~~ *a* fee or making any sale by fraud or misrepresentation;

~~(6)~~*(f)* knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

~~(7)~~*(g)* using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, ~~which~~ *that* is improbable, misleading, deceptive, or untruthful;

~~(8)~~*(h)* representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids and related devices if that is not true or using the terms "docter", "clinic", "hearing clinic", "state registered", or other ~~like~~ *similar* words, abbreviations, or symbols ~~which~~ *that* tend to connote the medical profession when that use is not accurate;

~~(9)~~*(i)* permitting another te use ~~his~~ *the* license or certificate;

~~(10)~~*(j)* defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, *or* questionable credit standing~~,~~ or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

~~(11)~~*(k)* using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;

~~(12)~~*(l)* obtaining information concerning the business of a competitor by bribery of an employee or agent of ~~such~~ *that* competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;

~~(13)~~*(m)* directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

~~(14)~~*(n)* unethical conduct or gross incompetence or negligence in the performance of ~~his~~ *professional* duties, including repeated failure to make indicated medical referrals of ~~his~~ customers;

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~~(15)~~*(o)* selling a hearing aid or related device to a person who has not been given tests ~~utilizing~~ *using* appropriate established procedures and instrumentation in fitting of hearing aids or related devices, except for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale;

~~(16)~~*(p)* falsifying hearing test or evaluation results or any associated client records;

~~(17)~~*(q)* refusing to cooperate with an investigation by the board by:

~~(a)~~*(i)* failing to furnish requested records or documents;

~~(b)~~*(ii)* failing to furnish a complete explanation of matters referred to in the complaint;

~~(c)~~*(iii)* failing to respond to a subpoena issued by the board;

~~(d)~~*(iv)* willfully misrepresenting any relevant fact to a board investigator; or

~~(e)~~*(v)* attempting to discourage a potential witness from cooperating with a board investigator or from testifying by using threats, harassment, extortion, or bribery."

Approved March 3, 1995

CHAPTER NO. 73

[SB 96]

AN ACT REVISING THE LAWS RELATING TO TRAFFIC SPEED ZONES; PROHIBITING THE STATE HIGHWAY COMMISSION FROM INCREASING A SPEED LIMIT UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 61-8-309, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-309, MCA, is amended to read:

"**61-8-309. Establishment of special speed zones.** (1) *(a)* If the department of transportation determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, dangerous location, or any other part of a highway under its jurisdiction, the commission may set a reasonable and safe special speed limit at that ~~part~~ *location*.

(b) If a local authority requests the department of transportation to conduct an engineering and traffic investigation based on the belief that a speed limit on a highway under the department's jurisdiction is greater than is reasonable or safe, the commission may not increase the speed limit under consideration as a result of the investigation.

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(2) The department *of transportation* shall erect and maintain appropriate signs giving notice of these special limits. When they are erected, the limits are effective at that part at all times~~,~~ or at other times *that* the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a ~~state-wide~~ *statewide* speed limit."

Section 2. Retroactive applicability. [Section 1] applies retroactively, within the meaning of 1-2-109, to all engineering and traffic investigations conducted on or after January 1, 1991.

Approved March 6, 1995

CHAPTER NO. 74

[SB 99]

AN ACT ALLOWING THE BOARD OF COUNTY COMMISSIONERS TO DETERMINE THE SITE FOR THE AUCTION SALE OF REAL OR PERSONAL PROPERTY VALUED IN EXCESS OF $2,500; AND AMENDING SECTION 7-8-2212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2212, MCA, is amended to read:

"7-8-2212. Notice of sale and public auction required for certain sales. Unless otherwise provided, if ~~the~~ real or personal property ~~sought~~ to be sold is reasonably of a value in excess of $2,500, the sale ~~shall~~ *must* be at public auction at ~~the courthouse door~~ *a site determined by the board of county commissioners* after ~~previous~~ notice ~~given~~ by publication as provided in 7-1-2121."

Approved March 6, 1995

CHAPTER NO. 75

[SB 104]

AN ACT CHANGING THE NAME OF THE HIGHWAY COMMISSION TO THE TRANSPORTATION COMMISSION; CLARIFYING CERTAIN RESPONSIBILITIES AND AUTHORITY OF THE COMMISSION AND THE DEPARTMENT OF TRANSPORTATION RELATED TO RAIL AND TRANSIT PROGRAMS AND TO INTERMODAL TRANSPORTATION; CLARIFYING THE RESPONSIBILITIES AND AUTHORITY OF THE COMMISSION AND THE DEPARTMENT RELATED TO THE ALLOCATION AND ADMINISTRATION OF CERTAIN APPROPRIATED FUNDS; AMENDING SECTIONS 2-15-2502, 60-1-103, 60-2-110, 60-2-129, AND 60-3-219, MCA; AND PROVIDING AN EFFECTIVE DATE.

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STATEMENT OF INTENT

A statement of intent is required for this bill because the department of transportation is required in 60-2-110 to adopt rules te administer statutory provisions that require the transportation commission to establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways; to establish and determine priorities and projects for rail and transit programs; and, to the extent possible, coordinate intermodal transportation within the stato. The legislature contemplates that rules promulgated under 60-2-110 address, at a minimum, the criteria and procedures to be followed in establishing priorities and selecting projects.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2502, MCA, is amended to read:

"**2-15-2502. Highway *Transportation* commission.** (1) ~~The highway commission consists~~ *There is a transportation commission composed* of five members. One member must be a resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Powell;

(b) District 2. Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Broadwater, Jefferson, Park;

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Lewis and Clark;

(d) District 4. Carter, Powder River, Fallon, Custer, Rosebud, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sberidan;

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Judith Basin, Fergns, Petroleum, Treasure, Wheatland, Sweet Grass.

(2) Two members may not be residents of the same district at the time of appointment or during their respective terms of office.

(3) Not more than three members may at the time of appointment or during their respective terms be members of the same political party.

(4) An elective state official or state officer, during the term of office to which elected or appointed, or a state employee may not be a member of the commission.

(5) A resolution, motion, or other decision of the commission may not be adopted or passed without the favorable vote of at least three members.

(6) The commission is allocated to the department of transportation for administrative purposes only as prescribed in 2-15-121.

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(7) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission.

(8) The commission may adopt rules necessary for its government.

(9) The ~~administrator of the highway division~~ *director of transportation or the director's designee* shall act as liaison between the ~~highway~~ commission and tbe department ~~of transportation~~."

Section 2. Section 60-1-103, MCA, is amended to read:

"**60-1-103. General definitions.** Subject to additional definitions contained in tbis title ~~which~~ *that* are applicable to specific chapters or sections and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment" means cessation of use of right-of-way *or an* ~~(easement)~~ or *cessation of* activity ~~thereon~~ *on the right-of-way or easement* with no intention to reclaim or use again. ~~(~~*Abandonment is* sometimes called vacation~~)~~.

(2) "Bridge" means any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, *and* replacements~~,~~ and tbe approaches ~~thereto~~ *to the bridge*, lands used ~~therefor~~ *in connection with the bridge*, and improvements ~~thereon~~ *incidental or integral to the bridge*.

(3) "Commission" means the ~~highway~~ *transportation* commission provided for in 2-15-2502.

(4) "Condemnation" means taking by exercise of the right of eminent domain.

(5) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings.

(6) "Control of access" means the condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(7) "County road" means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(8) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(9) "Director" means the director of transportation, a position provided for in 2-15-2501.

(10) "Easement" means a right acquired by public authority to use or control property for a designated purpose.

(11) "Eminent domain" means the right of the state to take privato property for public use.

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(12) "Federal-aid highway" means ~~any~~ *a* public highway ~~which~~ *that* is a portion of any of the federal-aid highway systems.

(13) "Federal-aid highway systems" means all of the systems named ~~hereafter~~ *as part of the systems* and their urban extensions.

(14) "Federal-aid interstate system" means that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(15) "Federal-aid primary system" means that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(16) "Federal-aid secondary system" means that system of public highways not in the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(17) "Fee simple" means an absolute estate or ownership in property, including unlimited power of alienation.

(18) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(19) "Highway", "road", and "street", whether ~~they~~ *the terms* appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and include the entire area within the right-of-way.

(20) "Highway authority" means the entity at any level of government authorized by law to construct and maintain highways.

(21) "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and ~~such~~ traffic-control devices ~~as~~ *that* are necessary for ~~its~~ *the* safe and efficient ~~utilization~~ *use of the highway*.

(22) "Public highways" means all streets, roads, highways, bridges, and related structures ~~which have been or shall be~~:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision ~~thereof~~ *of the state*;

(b) dedicated to public use;

(c) acquired by eminent domain; *or*

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision ~~thereof~~ *of the state*.

(23) "Right-of-way" is a general term denoting land, property, or any interest ~~therein~~ *in land or property*, usually in a strip, acquired for or devoted to highway purposes.

(24) "State highway" means any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department."

Section 3. Section 60-2-110, MCA, is amended to read:

"**60-2-110. Setting priorities and selecting projects.** (1) The commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways.

(2) The commission shall consult with the board of county commissioners of the county in which a highway is located when establishing priorities and when selecting and designating segments on the secondary highway system for construction and reconstruction.

(3) The commission shall consult with the appropriate local government authorities when establishing priorities and selecting and designating segments on the urban highway system for construction and reconstruction.

(4) The commission sball use information gathered or discovered by and documents prepared by the department, and department officials and employees shall provide assistance and advice.

(5) The commission shall establish and determine priorities and projects for rail and transit programs and, to the extent possible, coordinate intermodal transportation within the state.

(6) In carrying out the requirements of this section, the department shall:

(a) make recommendations to the commission;

(b) establish the requirements and procedures for administering this section; and

(c) take all reasonable steps to ensure the integrity and viability of agricultural and rural transportation and related needs."

Section 4. Section 60-2-129, MCA, is amended to read:

"**60-2-129. Allocation of funds.** *(1)* The commission may allocate federal-aid highway funds for projects or programs in which all or a portion of the work is on highways that are not located on the highway systems defined in 60-2-125. The allocations must be made without regard to the financial district in which the project or program is located.

(2) Within the programs under its jurisdiction, the commission shall allocate all federal transit administration funds, freight assistance funde, or any funds or grants available by legislative appropriation for the study, design, construction, repair, or improvement of rail or transit intermodal transportation systems.

(3) The commission may authorize the transfer of federal funds between qualified programs, including highway and transit programs.

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(4) The commission may delegate the functions and responsibilities under this section to the department."

Section 5. Section 60-3-219, MCA, is amended to read:

"60-3-219. Allocation of funds — apportionment. The federal-aid highway funds allocated to the primary highway system for construction purposes must be apportioned among the five financial districts, corresponding to and congruent with the ~~highway~~ *transportation* commission districts established in 2-15-2502."

Section 6. Codification instruction. (1) The code commissioner is instructed to change any reference to the highway commission to the transportation commission in legislation enacted by the 54th legislature.

(2) The code commissioner is instructed to change to the transportation commission each reference to the highway commission in the Montana Code Annotated.

Section 7. Effective date. [This act] is effective July 1, 1995.

Approved March 6, 1995

CHAPTER NO. 76

[SB 111]

AN ACT CREATING A COUNTY PREDATORY ANIMAL CONTROL PROGRAM TO PROTECT CATTLE; AND PROVIDING FOR FUNDING OF THE PROGRAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition. As used in [sections 1 through 5], the word "owners" or "persons" includes natural persons, partnerships, corporations, trusts, and estates.

Section 2. County commissioners authorized to establish predatory animal control program for protection of cattle. Upon the recommendation of an organized association of cattle producers in the county, the board of county commissioners may, either alone or in conjunction with the county commissioners of other counties, establish a predatory animal control program for the protection of cattle in the county or counties.

Section 3. County commissioners permitted to levy per capita license fee on cattle. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of any cattle 9 months old or older in the county on the regular assessment date of each year to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of cattle 9 months old or older coming into the county after the regular assessment date and subject to taxation under the provisions of 15-24-301 are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee upon the property tax record

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of the county by the department of revenue. The license fee is payable to the county treasurer. When levied, tho fee is a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) Tbe fees must be placed in a predatory animal control fund separate from the fund provided for in 81-7-303. The money in the predatory animal control fund may be expended by the board of county commissioners only for the predatory animal control program.

Section 4. Proceeds of skins taken. All furs, skins, and otber portions of predatory animals taken through the expenditure of license fees must be sold and tbe proceeds of the sale deposited in the predatory animal control fund for use in carrying out the purpose of [sections 1 through 5].

Section 5. Duty of county commissioners — petition of cattle owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for a program made by an organized association of cattle producers in the county. Upon petition of tbe resident owners of at least 51% of the cattle in the county, as shown by the property tax record of the last preceding assessment, which petition must be filed with the board of county commissioners on or before the first Monday in December in any year, the board shall establish the predatory animal control program and issue licenses and collect fees for the following year in an amount that will defray the cost of administering the program. The license fee set by the board must remain in effect from year to year without change unless there is filed with the board a petition signed by the resident owners of at least 51% of tbe cattle in the county, as shown by the property tax record of the last assessment preceding the filing of the petition, for termination of the program and elimination of the license fee. Upon the filing of the petition, the board of county commissioners shall terminate the program and cease levying the license fee.

(2) If the resident owners of at least 51% of the cattle in the county file a petition with the board of county commissioners either for an increase in the license fee or for a decrease in the license fee then in force, the board of county commissioners shall set a new license fee to continue from year to year.

Section 6. Codification instruction. [Sections 1 tbrough 5] are intended to be codified as an integral part of Title 81, chaptor 7, and the provisions of Title 81, chapter 7, apply to [sections 1 through 5].

Approved March 3, 1995

CHAPTER NO. 77

[HB 114]

AN ACT CLARIFYING THAT MEMBERS OF THE ORGANIZED MILITIA ARE ENTITLED TO AN UNPAID LEAVE OF ABSENCE DURING ANY

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PERIOD OF STATE SERVICE DURING A STATE EMERGENCY AND ARE ENTITLED TO REEMPLOYMENT AFTER THE EMERGENCY; AMENDING SECTION 10-1-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-603, MCA, is amended to read:

"10-1-603. ~~Depriving~~ *Prohibition to deprive* members of organized militia of employment — *entitlement to unpaid leave of absence during state emergency.* (1) A person may not willfully deprive a member of the organized militia of ~~his~~ employment or prevent ~~his~~ *the member from* being employed or obstruct or annoy a member in respect to ~~his~~ *the member's* trade, business, or employment because ~~he is a member~~ of *membership in* the organized militia.

(2) A person who serves in active state service in the organized militia in time of a disaster or an emergency declared by the proper authority of the state and not pursuant to orders issued under Title 10 or 32 of the United States Code is entitled to a leave of absence from the person's civilian employment during the period of that service. Upon termination of service, the person is entitled to reemployment with the same seniority, status, pay, and vacation as the person would have had if the person had not been absent during the period of service. However, during the period of service, the person may or may not accrue vacation leave or other benefits offered by the employer, at the option of the employer. The leave of absence may not be deducted from any sick leave, vacation leave, or other leave, and reinstatement must be in the same position as or a comparable position to the position that the person held prior to the period of service. This subsection does not entitle a public employee given leave and reinstatement pursuant to this subsection to any pay from the person's civilian employment pursuant to 10-1-604 or other law during the period of service. Nothing in this subsection may be construed to prevent an employee from voluntarily using accrued vacation leave or other already earned benefits during the leave of absence.

~~(2)~~*(3)* A person may not dissuade any person from enlisting in the organized militia by threatening to injure or injuring ~~his~~ *the person's* business, employment, or trade."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 6, 1995

CHAPTER NO. 78

[SB 160]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH SPEED LIMITS ON HIGHWAYS BEING SURVEYED OR UNDER CONSTRUCTION OR REPAIR; AND AMENDING SECTION 61-8-303, MCA.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 61-8-303, MCA, is amended to read:

"61-8-303. Speed restrictions — basic rule. (1) A person operating or driving a vehicle of any character on a public highway of this state shall drive ~~it~~ *the vehicle* in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to *the* view ahead~~, and he~~. *The person operating or driving the vehicle* shall drive ~~it~~ *the vehicle* so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

(2) ~~Where~~ *When* no special hazard exists that requires lower speed for compliance with subsection (1) ~~of this section~~, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in 61-8-309, 61-8-310, 61-8-311, and 61-8-313 is lawful, but a speed in excess of ~~those~~ *the following* limits is unlawful:

(a) 25 miles per hour in an urban district;

(b) 35 miles per hour on a highway under construction or repair or on a highway being surveyed, *unless the department establishes and posts a different limit due to traffic conditions or the condition of the construction, repair, or survey project*;

(c) 55 miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is 65 miles per hour.

(3) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(4) The speed limits set forth in this section may be altered by the highway commission as authorized in 61-8-309, 61-8-310, and 61-8-313.

(5) The driver of a vehicle shall, consistent with subsection (1), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approacbing and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition."

Approved March 6, 1995

CHAPTER NO. 79

[SB 196]

AN ACT REPEALING THE MONTANA RATEMAKING ACT; REPEALING SECTIONS 33-16-231, 33-16-232, 33-16-233, 33-16-234, 33-16-235, AND 33-16-236; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Repealer. Sections 33-16-231, 33-16-232, 33-16-233, 33-16-234, 33-16-235, and 33-16-236, MCA, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 3, 1995

CHAPTER NO. 80

[HB 48]

AN ACT REQUIRING PASSENGER TRANSPORT VEHICLES TO COMPLY WITH MOTOR CARRIER SAFETY RULES, WHETHER OR NOT THE TRANSPORTATION IS FOR HIRE; AMENDING SECTION 44-1-1005, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-1005, MCA, is amended to read:

"**44-1-1005. Motor carriers safety — enforcement — violations.** (1) The department of justice shall:

(a) adopt, by rule, standards for safety of operations of motor carriers, each of whom is considered to consent impliedly to reasonable safety inspections of its motor vehicles ~~utilized~~ *used* in furtherance of its business as a motor carrier;

(b) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles; and

(c) provide for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight ~~if they are used~~ *that are designed* to transport *more than 15* passengers ~~for hire~~, *including the driver*, or *that are used* to transport hazardous materials of a type or quantity that requires the vehicle to he marked or placarded in accordance with rules adopted by the department.

(2) Standards of safety adopted pursuant to subsections (1)(b) and (1)(c) must be the same as prescribed for motor carriers, and the same inspection standards and procedures apply.

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to subsection (1)(a). Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection sito, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to subsection (1)(a) is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section prohibits the inspection of a motor vehicle as provided for by subsection (1)(a) at a safe location on a public road.

(4) The department shall cooperato with the department of transportation to ~~assure~~ *ensure* minimum duplication and maximum coordination of enforcement effort.

(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of ~~chapters 5 and 9 of~~ Title 61, *chapters 5 and 9,* and any standards adopted pursuant to subsections (1) and (2) of this section. Each employee ~~so~~ designated as a peace officer may:

(a) issue citations and make arrests;

(b) issue summonses;

(c) accept bail;

(d) serve warrants of arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles; and

(g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of ~~such~~ *commercial motor* vehicles.

(6) Violations of the standards adopted pursuant to subsection (1) are punishable as provided in 61-9-512."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 7, 1995

CHAPTER NO. 81

[HB 96]

AN ACT EXEMPTING VEHICLES OWNED BY SPECIAL DISTRICTS FROM VEHICLE REGISTRATION FEES, THE WEED CONTROL FEE, AND THE NEW CAR SALES TAX; ALLOWING VEHICLES OWNED BY SPECIAL DISTRICTS TO HAVE EXEMPT LICENSE PLATES; AMENDING SECTIONS 61-3-321, 61-3-332, 61-3-502, AND 61-3-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature has specifically exempted vehicles owned by special districts from various vehicle fees because it considers the use of taxpayer money to pay taxes to other tax entities to be counter to good government; and

WHEREAS, a private business that competes with governmental entities is required to pay fees that the governmental entity does not have to pay, yet when comparing costs of services provided by government and by private business, this consideration is often not factored into the equation.

THEREFORE, the Legislature recognizes the costs and consequences of this situation and encourages all parties, when comparing private versus government costs, to consider costs that are incurred by private business but not by government.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors ~~and/or~~ *or* trucks, $10;

(f) buses, *which* are classed as motortrucks, ~~and~~ licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for moter vehicles, trailers, and semitrailers *that are* not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except *a* passenger ~~cars~~ *car, that is* used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(5) An additional fee of $5.25 ~~per~~ *a* year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the stato treasurer for deposit in the general fund. The department shall distribute 25 cents from the motor vehicle registration fee for payment of supplemental benefits provided for in 19-6-709.

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(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, ~~or~~ semitrailers, or tractors owned or controlled by the United States of America or any state, county, ~~or~~ city, *or special district, as defined in 18-8-202.*

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335."

Section 2. Section 61-3-332, MCA, is amended to read:

"**61-3-332. Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned *to* the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on tho number plates assigned to the dealer, in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license platos in use.

(3) Subject te the provisions of this section, the department shall create a new design for number plates as provided in this section.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the platos. Registration plates must be treated with a reflecterized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned te the vehicle must appear on the plate

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preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, ~~irrigation districts~~ *and special districts, as defined in 18-8-202,* organized under the laws of Montana and not operating for profit, ~~and school districts~~ and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to moter vehicles of each of the counties in the state and those of the municipalities and ~~school~~ *special* districts ~~situated within each of the counties and those of the irrigation districts~~ that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only te a replacement passenger car, truck, trailer, or motercycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carhon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland,

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27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

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(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ten or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued te a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plato for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled vetoran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) Except as provided in subsection (10)(c), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license platos, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the Unitod States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the platos is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a ~~reinlistment~~ *reenlistment*, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsection (10)(c), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plato fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit tbe remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon writton application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person."

Section 3. Section 61-3-502, MCA, is amended to read:

"**61-3-502. Sales tax on new motor vehicles — exemptions.** (1) In consideration of tbe right to use the highways of the stato, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when the purchaser applies for an original Montana license through the county treasurer.

(2) Except as provided in subsections (4) and (5), the sales tax is:

(a) 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 1/8% of the list price during the second quarter of the year;

(c) 3/4 of 1% during the third quarter of the year;

(d) 3/8 of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

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(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.

(6) The proceeds from this tax must be remitted to the stato treasurer every 30 days for credit to the state highway account of the state special revenue fund. The county treasurer shall retain 5% of the taxes collected to pay for the cost of administration.

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) (a) The applicant for original registration of any new and unused motor vehicle, or a new moter vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) A motor vehicle may not be registered or licensed under the provisions of this subsection unless the application for registration is accompanied hy a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural ~~worker~~ *workers who are* temporarily employed in agricultural work in this stato, ~~where~~ *when* those motor vehicles are used exclusively for transportation of agricultural workers, are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving te or from a dealer's place of business when unloaded or loaded with dealer's property only; and, in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstratod in the course of the dealer's business.

(d) Motor vehicles owned or controlled by a special district, as defined in 18-8-202, are exempt from subsection (1)."

Section 4. Section 61-3-510, MCA, is amended to read:

"61-3-510. Weed control fee. (1) A special weed control fee of $1.50 must be assessed on the annual registration or reregistration of each motor vehicle subject to registration. The fee must be collected by the county treasurer.

(2) For purposes of this section, motor vehicle includes:

(a) *a* motor vehicle as defined in 61-1-102;

(b) *a* motorcycle as defined in 61-1-105;

(c) *a* motor-driven cycle as defined in 61-1-106; and

(d) *a* quadricycle as defined in 61-1-133.

(3) The following vehicles are exempt from the fee:

(a) vehicles owned or controlled by the United States or a state, county, ~~or~~ city, *or special district, as defined in 18-8-202*;

(b) vehicles exempt from payment of registration fees by 61-3-321(8); and

(c) vehicles or equipment ~~which~~ *that* is not self-propelled or ~~which~~ *that* requires towing when moved upon a highway of this state."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 6, 1995

CHAPTER NO. 82

[HB 138]

AN ACT REVISING THE DUE DATE OF ANNUAL REPORTS OF UTILITIES; AMENDING SECTION 69-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-203, MCA, is amended to read:

"69-3-203. Annual report to commission. (1) The accounts of all public utilities ~~shall~~ *must* be closed annually on either June 30 or December 31~~,~~. a *A* balance sheet *must be* taken promptly ~~therefrom,~~ *from the accounts,* and *a* full annual ~~reports~~ *report* of the business of such *the* utility *must be* made to the commission~~,~~ not later than ~~the first following September 15~~ *October 31* if ~~such~~ *the* accounts are closed on June 30 and not later than ~~March 15~~ *April 30* ~~of the first following year when such~~ *if the* accounts are closed on December 31.

(2) The reports ~~shall~~ *must* be in ~~such~~ *the* form as prescribed by the commission and ~~shall~~ *must* contain all the information ~~deemed by~~ *that* the commission *considers* necessary for the proper performance of its duties. The commission may at any time ~~call for desired~~ *request* information omitted from ~~such~~ *the* reports or not provided for ~~therein~~ *in the reports* whenever, in the judgment of the commission, ~~such~~ *the* information is necessary."

Section 2. Effective date. [This act] is effective on passage and approval.

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Approved March 6, 1995

CHAPTER NO. 83

[HB 152]

AN ACT REVISING SECURITY REQUIREMENTS FOR SELF-INSURED EMPLOYERS; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO REDUCE THE AMOUNT OF A SECURITY DEPOSIT IF CONCURRENCE IS REACHED WITH THE MONTANA SELF-INSURERS GUARANTY FUND FOR AN EMPLOYER ELECTING COVERAGE UNDER WORKERS' COMPENSATION PLAN NO. 1; AMENDING SECTION 39-71-2106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana.

Section 1. Section 39-71-2106, MCA, is amended to read:

"**39-71-2106. Requiring security of employer.** (1) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the department. All securities of the United States treasury must be in book-entry form. ~~Except as provided in subsection (1)(b), the~~ *The* security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and *the Montana self-insurers guaranty fund. For the first 3 years of operating as a self-insured employer, the employer's security deposit* must be the greater of:

(i) $250,000; or

(ii) an average of the workers' compensation liabilities incurred by the employer in Montana for the ~~past~~ *first* 3 *of the last 4 completed* calendar years.

(b) The department, with the concurrence of the Montana self-insurers guaranty fund, may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of ~~solvency and financial~~ ability to pay the ~~liabilities~~ *benefits* provided by this chapter.

(c) The department may, with the concurrence of the Montana self-insurers guaranty fund, reduce the amount of the security deposit if the evidence indicates that the full amount of the deposit is unnecessary.

(2) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, ~~shall~~ *may* require an employer to give security in addition to the security *deposit* described in subsection (1) if:

(i) the department, *with the concurrence of the Montana self-insurers guaranty fund,* determines that the employer lacks the ~~financial~~ ability to pay the ~~compensation~~ *benefits* that ~~is~~ *are* expected *to be paid by the employer* under *the terms and conditions of* this chapter ~~and~~ that ~~is~~ *are* chargeable to the employer during the year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is a group of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department, with the concurrence of the Montana self-insurers guaranty fund, finds reasonable and necessary to ~~meet all liabilities~~ *pay the benefits provided under the terms and conditions of this chapter* that the employer may accrue ~~under this chapter~~ during the ~~fiscal~~ year.

(3) (a) The security *deposit* provided for in subsection ~~(2)~~ *(1)* must he deposited with the department. The security *deposit* may consist of:

(i) a bond executed to the department ~~in the amount to be fixed by it~~ with a surety~~, which undertaking must be conditioned~~. *The security deposit must state* that the employer will pay or cause to be paid to employees ~~all sums and amounts~~ *the amount* for which the employer ~~becomes~~ *was given permission under 39-71-2103 and for which the employer is* liable under the terms *and conditions* of this chapter during the year;.

(ii) any *Montana* state, county, municipal, or school district bonds ~~or the bonds or evidence of indebtedness of any individuals or corporations~~ that the department ~~considers~~ *and the Montana self-insurers guaranty fund consider* solvent; or

(iii) other security deposits allowed in subsection (1)(a).

(b) ~~Every~~ *Each security* deposit and the character and amount of the ~~securities must at all times be~~ *security deposit are* subject te approval, revision, or change *considered necessary* by the department *and the Montana self-insurers guaranty fund* ~~as it may require~~.

(c) Upon proof of the final payment of the liability for which the ~~securities are~~ *security deposit is* given, the ~~securities~~ *security deposit* or any remainder of the ~~securities~~ *security deposit* must be returned to the depositor.

(4) The department is liable for the value and safekeeping of all *security* deposits ~~or securities~~ and shall, at any time, upon demand of ~~a bondsman or~~ the depositor, account for the *security* deposits ~~or securities and the earnings of the deposits or securities~~."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 7, 1995

CHAPTER NO. 84

[SB 25]

AN ACT AMENDING STATE PERSONNEL LAWS BY CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES TO IMPLEMENT THE LAWS AND BY SUBSTITUTING AN INTERNAL SERVICES FUND ACCOUNT FOR A STATE SPECIAL REVENUE FUND ACCOUNT AS THE ACCOUNT INTO WHICH FUNDS FROM CHARGES TO STATE AGENCIES FOR ADMINISTRATION OF THE

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STATE CENTRAL PAYROLL SYSTEM ARE DEPOSITED; AMENDING SECTIONS 2-18-102, 2-18-401, AND 2-18-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 2-18-102 requires the department of administration to adopt administrative rules containing personnel policies and 2-18-401 authorizes the department to adopt rules regarding the operation of the state central payroll system.

The legislature intends that rules containing personnel policies should address employee records, performance appraisals, grievances, discipline, reductions in force, recruitment, selection, and training.

The legislature intends that rules concerning payroll deductions should address the payroll deduction process and should set criteria for the kinds of payments that can be made through payroll deductions. Examples of types of payroll deductions that should be addressed by the rules are payment of insurance premiums, bank and credit union payments, charitable contributions, and wage garnishments.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-102, MCA, is amended to read:

"**2-18-102. Personnel administration — general policy setting.** (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for permanent, seasonal, temporary, and other types of positions and for the improvement of employee effectiveness, including training, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made ~~thereunder~~ *under those parts* and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ *under those parts* and perform any other lawful acts ~~which~~ *that* may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that ~~such~~ *the* agencies remain in

compliance with policies, procedures, timetables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state *and shall adopt rules to implement this part, except 2-18-111.* Adequate public notice ~~shall~~ *must* be given to all interested parties of proposed changes or additions te the personnel policies before the date *on which* they are te take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions te the personnel policies before the date *on which* they are te take effect."

Section 2. Section 2-18-401, MCA, is amended to read:

"**2-18-401. Central payroll system — department to provide for inclusion of agencies.** The department of administration shall install and operate a uniform state central payroll system for all state agencies, including units of the Montana university system and tbe vocational-technical centers. The department may provide for the orderly inclusion of state agencies inte the system and may make exceptions from the operation of the system for periods it determines necessary. *The department shall adopt rules to implement the state central payroll system.*"

Section 3. Section 2-18-403, MCA, is amended to read:

"**2-18-403. Service charges.** The department of administration may provide for a system of charges for services rendered by the state central payroll system te any department or agency of the state. Funds collected under this section must be deposited to the credit of ~~a state special revenue~~ *an internal services* fund account and expended for the purpose of paying the expenses incurred by the state central payroll system."

Section 4. Effective date. [This act] is effective July 1, 1995.

Approved March 7, 1995

CHAPTER NO. 85

[SB 48]

AN ACT REVISING AIR QUALITY LAWS TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO EXTEND THE TIME FOR NOTIFYING AN APPLICANT FOR A CONSTRUCTION PERMIT OF APPROVAL OR DENIAL OF AN APPLICATION; REVISING CERTAIN PROVISIONS OF THE AIR QUALITY LAWS TO CONFORM WITH FEDERAL CLEAN AIR ACT REQUIREMENTS; AND AMENDING SECTIONS 75-2-211, 75-2-403, AND 75-2-413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-211, MCA, is amended to read:

"**75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

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(2) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(6) The department shall require that applications for permits be accompanied by any plans, specifications, and other information *that* it considers necessary.

(7) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (6) *of this section*. If the

department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incompleto, the application is considered filed as of the date of the purported filing.

(8) (a) If an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (7), if the department prepares the environmental impact statement; or

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (7), of its approval or denial of the application. *The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant.* Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies te require the department to act in a timely manner.

(9) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(10) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 2. Section 75-2-403, MCA, is amended to read:

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"**75-2-403. Inspections.** (1) The department *or an authorized representative*, for the purpose of ascertaining the state of compliance with this chapter or ~~rules and permits~~ *a rule, order, or permit* in force under ~~it~~ *this chapter*, may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which:

(a) an air contaminant source is located or is being constructed or installed;

(b) an emissions-related activity is conducted, such as air contaminant emissions or ambient concentration sampling, testing, or monitoring, or an activity in which samples are gathered, processed, or stored; or

(c) records are kept as required under this chapter or a rule, order, or permit made or issued under this chapter, for the purpose of inspecting those records. The authority granted under this subsection (c) does not limit the department's right to inspect any property, premises, or place, except a private residence, under subsections (1)(a) and (1)(b) if records are also kept at those sites.

(2) A person may not refuse entry or access to an autborized representative of the department who presents appropriate credentials when the department requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) The department or an authorized representative must be provided access and must be allowed to copy, at reasonable times, any record that is required to be kept under this chapter or a rule, order, or permit made or issued under this chapter.

(4) The department or an authorized representative may inspect, at reasonable times, any facility, equipment, practices, or operations regulated or required under this chapter or a rule, order, or permit made or issued under this chapter.

(5) The department or an authorized representative must be allowed to sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the provisions of this chapter or a rule, ordsr, or permit made or issued under this chapter.

~~(3)~~(6) At ~~his~~ *the owner's or operator's* request, the owner or operator of the premises shall receive a report stating all facts found ~~which~~ *that* relate to compliance status.

(7) Inspections under this section must be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and with all source-specific facility workplace safety rules or requirements. The source shall inform the inspector of all applicable workplace safety rules or requirements at the time of the inspection."

Section 3. Section 75-2-413, MCA, is amended to read:

"**75-2-413. Civil penalties — out-of-state litigants — effect of action.** (1) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed $10,000 per violation. Each day of each violation constitutes a separate violation. The department may institute and maintain

in the name of the state any enforcement proceedings under this section. Upon request of the department, the ntterney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, *except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.*

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under ~~it~~ *this chapter* by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under ~~it~~ *this chapter* may be brought in the district court of any county where a violation occurs or is threatoned if the defendant cannot be located in Montana.

(3) Money collected under this section must be deposited in the state general fund. This subsection does not apply to money collected by an approved local air pollution control program."

Approved March 7, 1995

CHAPTER NO. 86

[HB 91]

AN ACT EXTENDING THE TIME IN WHICH A CANDIDATE FOR A STATE DISTRICT OFFICE MUST REPORT A CONTRIBUTION OF $100 OR MORE FROM 24 HOURS TO 48 HOURS; ALLOWING REPORTS TO BE FILED BY MAIL OR BY ELECTRONIC COMMUNICATION; AND AMENDING SECTION 13-37-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-226, MCA, is amended to read:

"**13-37-226. Time for filing reports.** (1) Candidates for a stato office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days preceding the date on which an election is held and within 24 hours after receiving a contribution of $500 or more if received between the 10th day before and the day of the election;

(c) not more than 20 days after the date of the election; and

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(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue subject to a referendum is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a stato district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular stato district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held and within 24 *48* hours after receiving a contribution of $100 or more if received between the 17th day before and the day of the election;. *The report under this subsection (3)(a) may be made by mail or by electronic communication to the clerk and recorder and the commissioner of political practices.*

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file ~~reports~~:

(a) *a report* on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) *a report* not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a closing report at the close of each calendar year, on a date to be prescribed by the commissioner.

(6) The commissioner may promulgate rules regarding the extent te which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-225(2) and this section."

Approved March 7, 1995

CHAPTER NO. 87

[HB 170]

AN ACT ALLOWING MEMBERS OF AN IRRIGATION DISTRICT, BY SPECIAL ELECTION OR PETITION, TO REQUIRE THE BOARD OF COMMISSIONERS OF THE IRRIGATION DISTRICT TO IMPOSE AN ACREAGE LIMITATION ON THE SIZE OF FARMS THAT WILL BE SERVICED BY THE IRRIGATION DISTRICT; ALLOWING A LANDOWNER OR LESSEE WHO IRRIGATES ACREAGE IN EXCESS OF THE LIMITATION TO CONTINUE OPERATIONS UNDER CERTAIN CONDITIONS; AND ALLOWING AN IRRIGATION DISTRICT THAT HAS IMPLEMENTED AN ACREAGE LIMITATION TO WITHHOLD WATER TO ACREAGE IN EXCESS OF THE LIMITATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Limitation on irrigable acreage — special election or petition. (1) The board of commissioners of an irrigation district shall, when authorized as provided in subsection (2), limit the amount of acreage within any farm operation in the district that may be serviced by the district.

(2) In determining whether to impose an acreage limitation on a particular farm operation:

(a) the board of commissioners may submit the question to the qualified electors of the district by special election as provided in 85-7-1712; or

(b) the limitation may be imposed based on a petition signed by not less than 60% of landowners representing not less than 60% of the irrigated land within the boundaries of the irrigation district.

(3) If a limitation is imposed by special election or petition, the minimum acreage limit that may be imposed is 960 acres of land owned or leased by any individual or legal entity.

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(4) An irrigation district that has imposed an acreage limitation may require certification of acreage and designation of excess acreage by the electors. Except as provided in subsection (5), the district may withhold water on all acres designated as excess acres.

(5) An individual or legal entity that owns or leases irrigated acreage in excess of the limitation at the time the process of imposing a limitation begins may continue operations without penalty and without having water withheld as long as the ownership or lease remains with that individual or legal entity.

(6) The board of commissioners may adopt regulations necessary to administer the provisions of this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 7, and the provisions of Title 85, chapter 7, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 7, 1995

CHAPTER NO. 88

[SB 49]

AN ACT EXEMPTING FROM PROPERTY TAXATION TRAILERS AND SEMITRAILERS THAT ARE REGISTERED THROUGH A PROPORTIONAL REGISTRATION AGREEMENT; REVISING REQUIREMENTS FOR INFORMATION ON APPLICATIONS FOR THE REGISTRATION OF CERTAIN TRUCKS AND TRAILERS; REQUIRING STAGGERED REGISTRATION FOR TRUCKS UP TO AND INCLUDING A 1 TON RATED CAPACITY; DEFINING THE TERM "DECLARED WEIGHT"; SUBSTITUTING THE TERM "DECLARED WEIGHT" FOR "MAXIMUM GROSS LOADED WEIGHT" AS APPLICABLE TO THE REGISTRATION OF CERTAIN TRUCKS, TRAILERS, AND SEMITRAILERS; REVISING LICENSE AND FEE REQUIREMENTS FOR CERTAIN FLEETS OF TRAILERS AND SEMITRAILERS; REVISING THE WEIGHT FEES ON CERTAIN TRUCKS, TRUCK TRACTORS, AND BUSES; REVISING CERTAIN FEES ON CERTAIN MOTORTRUCKS AND TRUCK TRACTORS FROM OTHER STATES; AMENDING SECTIONS 15-6-201, 61-3-303, 61-3-313, 61-3-321, 61-3-721, 61-10-201, AND 61-10-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state te tax property owned hy the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, owned hy a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that ~~meets the following conditions~~:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

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(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property *that is* owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101~~, which~~ *and that* is not operated for gain or profit~~,~~ and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill~~, which~~ *that* are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under tbe Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-beld and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) ~~beginning January 1, 1994,~~ timber as defined in 15-44-102; and

(v) all trailers and semitrailers ~~with~~ *that have* a licensed gross weight of 26,000 pounds or more *or that are registered through a proportional registration*

agreement under 61-3-721. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

(2) (a) The term "institutions of purely public charity" includes any organization tbat meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to puhlic performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment ~~made after January 1, 1979,~~ in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in tho case of a multifamily residential dwelling or a nonresidential structure."

Section 2. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) ~~Every~~ *Each* owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, filo or cause to be filed in the office of the county treasurer where the owner permanently

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resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned, an application for registration or reregistration upon a blank form to be prepared and furnished by the department. The application must contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxahle, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxahle;

(b) name and address of the holder of any security intorest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or lettor, gross weight, *declared weight on all trucks for which the rated capacity is 1 ton or less,* and type of body and, if a truck, rated capacity; ~~and~~

(d) declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733; and

~~(d)~~(e) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) unless it has been previously paid:

(i) the personal property taxes assessed against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department of revenue may not assess and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operatod on the highways of the stato, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department of revenue may make full and completo investigation of the tax status of the vehicle. Any applicant for registration or reregistration shall submit proof from the tax or other appropriate records of the proper county at the request of the department of revenue."

Section 3. Section 61-3-313, MCA, is amended to read:

"**61-3-313. Vehicles subject to staggered registration.** For purposes of 61-3-313 through 61-3-316, "vehicle" means any motor vehicle as defined in 61-1-102 subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States, of the state of Montana, or its political subdivisions;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 61-3-332(10)(c)(i)(A), 61-3-411, or 61-3-421;

(4) trucks exceeding a ~~licensed gross vehicle weight of 10,000 pounds~~ *1 ton rated capacity*;

(5) trailers, semitrailers, tractors, buses, motorcycles, quadricycles, and motor-driven cycles;

(6) special mobile equipment as defined in 61-1-104;

(7) motor vehicles registered as part of a fleet under 61-3-318."

Section 4. Section 61-3-321, MCA, is amended to read:

"**61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees must be paid upon registration or reregistration of moter vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motertrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors and/or trucks, $10;

(f) buses are classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds ~~maximum gross loaded weight~~ *declared weight* and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds ~~maximum gross loaded weight~~ *declared weight* (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds ~~maximum gross loaded weight~~ *declared weight*, $10, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

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(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except passenger cars, used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(5) An additional fee of $5.25 per year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department shall distribute 25 cents from the motor vehicle registration fee for payment of supplemental benefits provided for in 19-6-709.

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335."

Section 5. Section 61-3-721, MCA, is amended to read:

"61-3-721. **Proportional registration of fleet vehicles, application, fee formula, and payment.** (1) An owner engaged in operating one or more fleets may, instead of registration of vehicles under other sections of this title, register and license each fleet for operation in this state by filing an application with the department ~~which shall~~. *The application must* contain the information pertinent to vehicle registration that is required by the department.

(2) ~~The~~ *Except as provided in subsection (3), the* application for each fleet may be accompanied by a fee payment computed as follows:

(a) divide in-state miles by total fleet miles as defined in the applicable agreement entered into pursuant to 61-3-711 through 61-3-733;

(b) determine the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and part 2 of chapter 10, and the property taxes ~~which~~ *that* are due on the fleet;

(c) multiply the sum obtained under subsection (2)(b) by the fraction obtained under subsection (2)(a).

(3) Each trailer and semitrailer in the fleet for which registration is requested will be assessed annual license or registration fees as prescribed by 61-3-321.

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~~(3)~~*(4)* Applications submitted with fees may be recomputed by the department and a statement furnished showing the overpayment or balance due.

~~(4)~~*(5)* Applications submitted without fees ~~shall~~ *must* be computed by the department and a statement furnished showing the amount of fees due."

Section 6. Section 61-10-201, MCA, is amended to read:

"**61-10-201. ~~Gross weight~~ *Weight* fees on motortrucks, truck tractors, and buses.** In addition to other fees for the licensing of vehicles and except as provided in 61-10-203, there must be paid and collected annually for each truck, truck tractor, and bus, based upon *the manufacturer's rated capacity for trucks with a capacity of 1 ton or less and upon* the maximum gross loaded weight and the maximum gross weight of any towed unit of each truck and truck tractor as set by the licensee in the licensee's application, the following fees:

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~~Up to 6,000 lbs.~~	~~$ 7.50~~
~~6,001 through 8,000 lbs.~~	~~9.50~~
~~8,001 through 10,000 lbs.~~	~~13.25~~
~~10,001 through 12,000 lbs.~~	~~15.00~~
~~12,001 through 14,000 lbs.~~	~~17.00~~
Manufacturer's rated capacity up to 1/2 ton	*$ 7.00*
Manufacturer's rated capacity of 3/4 ton	*12.50*
Manufacturer's rated capacity of 1 ton	*17.50*
~~14,001 through~~ *Up to* 16,000 lbs.	21.00
16,001 through 18,000 lbs.	28.00
18,001 through 20,000 lbs.	37.50
20,001 through 22,000 lbs.	47.00
22,001 through 24,000 lbs.	70.00
24,001 through 26,000 lbs.	90.00
26,001 through 28,000 lbs.	110.00
28,001 through 30,000 lbs.	130.00
30,001 through 32,000 lbs.	150.00
32,001 through 34,000 lbs.	170.00
34,001 through 36,000 lbs.	190.00
36,001 through 38,000 lbs.	215.00
38,001 through 40,000 lbs.	235.00
40,001 through 42,000 lbs.	255.00
42,001 through 44,000 lbs.	275.00
44,001 through 46,000 lbs.	300.00
46,001 through 48,000 lbs.	320.00
48,001 through 50,000 lbs.	340.00
50,001 through 52,000 lbs.	360.00
52,001 through 54,000 lbs.	380.00
54,001 through 56,000 lbs.	400.00
56,001 through 58,000 lbs.	420.00
58,001 through 60,000 lbs.	440.00
60,001 through 62,000 lbs.	460.00
62,001 through 64,000 lbs.	482.50
64,001 through 66,000 lbs.	502.50
66,001 through 68,000 lbs.	522.50

68,001 through 70,000 lbs. 545.75
70,001 through 72,000 lbs. 566.50
72,001 through 74,000 lbs. 607.50
74,001 through 76,000 lbs. 655.00
76,001 through 78,000 lbs. 695.00
78,001 through 80,000 lbs. 750.00
Over 80,000 lbs. and within the weight limits
specified in 61-10-101 through 61-10-110 . . . . . 750.00
plus an additional 46.00
for each ton or fraction of a ton
in excess of 80,000 lbs."

Section 7. Section 61-10-211, MCA, is amended to read:

"**61-10-211. Fees on motortrucks, truck tractors, trailers, and semitrailers from other states.** (1) In lieu of other fees for the licensing of vehicles, there ~~shall~~ *must* be collected a fee for each motortruck~~,~~ *and* truck tractor~~, trailer, and semitrailer~~ already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee ~~shall~~ *provided in subsection (2) must* be collected upon each entrance of ~~such~~ *the* vehicle into the state~~,~~ and ~~shall~~ *must* be based upon the number of miles to be traveled in the state *and the registered gross vehicle weight of the motortruck or truck tractor* as shown in the application of the nonresident operator.

~~(2) The fee shall be collected for any single vehicle. When any combination of truck, truck tractor, semitrailer, or trailer totals more than 6,000 pounds gross weight, the fee shall be collected for each unit in the combination.~~

~~(3)~~*(2)* The fee ~~shall be~~ *for each trip in Montana is*:

~~(a) $10 for each trip of 200 miles or less;~~

~~(b) $15 for each trip of over 200 miles to 400 miles;~~

~~(c) $20 for each trip of over 400 miles.~~

	0-200 miles	*201-400 miles*	*over 400 miles*
Up to 46,000 lbs.	*$10*	*$15*	*$20*
46,001 through 80,000 lbs.	*20*	*30*	*40*
Over 80,001 lbs.	*30*	*45*	*60*
Triple combination	*40*	*60*	*80*

~~(4)~~(3) ~~Such~~ *The* fees ~~shall~~ *do* not apply to any trailer the principal use of which is as temporary or permanent living quarters, or te any vehicle of a carnival ~~which~~ *that* is under contract with a stato, county, or district fair association.

(4) A fee must be collected for each nonresident, unlicensed or unregistered trailer or semitrailer entering Montana. The fee for each trip in Montana is:

(a) $10 for each trip of 200 miles or less;

(b) $15 for each trip of over 200 miles to 400 miles; and

(c) $20 for each trip of over 400 miles."

Section 8. Declared weight. "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

Section 9. Codification instruction. [Section 8] is intended to be codified as an integral part of Title 61, chapter 1, part 5, and the provisions of Title 61 apply to [section 8].

Section 10. Effective date. [This act] is effective January 1, 1996.

Approved March 7, 1995

CHAPTER NO. 89

[HB 31]

AN ACT EXEMPTING A MINOR EMPLOYED AS AN OFFICIAL OR REFEREE FOR A NONPROFIT ATHLETIC ORGANIZATION FROM THE PROVISIONS OF THE MONTANA CHILD LABOR STANDARDS ACT; PROHIBITING A MINOR UNDER THE AGE OF 14 FROM OFFICIATING AT AN ADULT EVENT OR ACTIVITY; AMENDING SECTION 41-2-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-2-104, MCA, is amended to read:

"41-2-104. Exemptions. The provisions of this part do not apply to a minor who is employed:

(1) in an agricultural occupation not otherwise prohibited by this part and who has received written consent from the minor's parents or a person standing in place of the parent who works on a farm or ranch where the parent or person is also employed;

(2) in domestic service or an agricultural pursuit performed outside school hours in connection with a home or a farm owned or operated by the minor's parent or by a person standing in place of the parent;

(3) by the parent or a person standing in place of the parent;

(4) during periods of school vacations on a campsite of a nonprofit corporation engaged in citizenship training and character building;

(5) as an actor, model, or performer;

(6) outside school hours by a homeowner in casual work usual to the home of the homeowner and not in connection with the homeowner's business, trade, or profession;

(7) by the legislature as a legislative aide or page; ~~or~~

(8) in the distribution or sale of or in the collection for newspapers, periodicals, or circulars; *or*

(9) as an official or referee for a nonprofit athletic organization. A minor who is under the age of 14 may not officiate at adult events or activities."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 9, 1995

CHAPTER NO. 90

[HB 47]

AN ACT GENERALLY REVISING LAWS RELATING TO THE BOARD OF PERSONNEL APPEALS; ALLOWING SUBSTITUTE MANAGEMENT AND LABOR REPRESENTATIVES AT BOARD PROCEEDINGS; AUTHORIZING THE BOARD AND ITS HEARINGS OFFICERS TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR BY VIDEOCONFERENCE; REQUIRING THAT MONEY FORFEITED FOR FAILURE TO PAY STANDARD PREVAILING WAGES BE DEPOSITED IN THE EMPLOYMENT SECURITY ACCOUNT RATHER THAN IN THE UNEMPLOYMENT INSURANCE ADMINISTRATION ACCOUNT; CLARIFYING THAT DECISIONS BY THE BOARD AND BY A HEARINGS OFFICER THAT ARE REVIEWED AND AFFIRMED BY A DISTRICT COURT MAY BE REDUCED TO AN ENFORCEABLE ORDER OR JUDGMENT; CONFORMING RULEMAKING AUTHORITY OF THE COMMISSIONER OF LABOR AND INDUSTRY TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; ELIMINATING THE BOARD'S COST SHARING FOR FACTFINDING NOT INITIATED BY THE BOARD; REPEALING THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT; AMENDING SECTIONS 2-15-1705, 2-18-1002, 2-18-1012, 18-2-407, 39-3-212, 39-3-216, 39-3-217, 39-3-403, 39-31-105, AND 39-31-309, MCA; REPEALING SECTIONS 39-3-601, 39-3-602, 39-3-603, 39-3-604, 39-3-605, 39-3-606, 39-3-607, AND 39-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1705, MCA, is amended to read:

"2-15-1705. Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) (a) The board consists of five members appointed by the governor as follows:

(i) two members who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities;

(ii) two members who are full-time employees or elected officials of a labor union or an association recognized by the board; and

(iii) one other member having general labor-management experience, who ~~shall be~~ *is* the ~~chairperson~~ *presiding officer.*

(b) All members of the board shall serve as impartial decisionmakers and are not appointed te serve the interests of the organizations they represent.

(4) When the ~~chairperson~~ *presiding officer* is unable to participate in a proceeding before the board, the remaining members of the board shall select an individual~~,~~ who ~~shall be a person who~~ qualifies under subsection (3)(a)(iii)~~,~~ to serve in the place of the ~~chairperson~~ *presiding officer* in that proceeding. ~~and he~~ *The individual selected* shall participate in the ~~decision~~ *decisions* in that proceeding. There ~~shall~~ *may* be only one ~~additional chairperson~~ *presiding officer* replacement appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

(5) *When a board member other than the presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select a substitute member who possesses the qualifications described in subsection (3)(a)(i) or (3)(a)(ii), depending on the qualifications of the absent board member. The substitute member shall serve in place of the absent board member and participate in the decisions in that proceeding. A substitute board member is entitled to the same compensation and per diem that members of the board receive.*

(6) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

~~(6)~~*(7)* The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. Section 2-18-1002, MCA, is amended to read:

"**2-18-1002. Grievance procedure — hearing — order.** (1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances of personnel of the department of transportation.

(2) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the department of transportation ~~requiring such~~ *to require an* action ~~of~~ *by* the department ~~as will~~ *to* resolve the employee's grievance. In ~~any~~ *a* hearing, the board is not bound by statutory or common-law rules of evidence. *The hearing may be conducted by telephone or by videoconference.*"

Section 3. Section 2-18-1012, MCA, is amended to read:

"**2-18-1012. Grievance procedure.** If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate agency or agencies of state government ~~requiring such~~ *to require an* action ~~as will~~ *to* resolve the employee's grievance. In ~~any~~ *a* hearing, the board is not bound by statutery or common-law

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rules of evidence. *The hearing may be conducted by telephone or by videoconference.*"

Section 4. Section 18-2-407, MCA, is amended to read:

"**18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) Any contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the ~~unemployment insurance administration account, as provided in 39-51-406~~ *employment security account, as provided in 39-51-409*, and must be used for enforcement. A contracter, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor *and industry* that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor *and industry* may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor *and industry* on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly to district court rather than to the board of personnel appeals."

Section 5. Section 39-3-212, MCA, is amended to read:

"**39-3-212. Court enforcement of administrative decision.** *(1)* A department default order, a decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if judicial review is not sought, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision.

(2) If judicial review is sought, the district court may issue an order or a judgment enforcing the decision of the board in a wage claim proceeding. In a case involving failure to pay the standard prevailing rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment enforcing the decision of the hearings officer."

Section 6. Section 39-3-216, MCA, is amended to read:

"**39-3-216. Hearing.** (1) If the department determines that a wage claim ~~exists~~ *is valid* and the employer does not appeal the detormination, the department may entor a default order against the employer for the amount of wages due ~~and owing~~ *and for any penalty assessed pursuant to 39-3-206.* The department may enforce the default order pursuant to 39-3-212.

(2) When the department determines that a wage claim ~~exists~~ *is valid*, the department shall mail the determination to the parties at the last-known address of each party. If a party appeals the department's determination within 15 days after the determination is mailed by the department, a hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that service need not be made as prescribed for civil actions in the district court and the hearings officer is not bound hy statutory or common-law rules of evidence. *The hearing may be conducted by telephone or by videoconference.* The department shall by rule provide relief for a person who does not receive the determination by mail.

(3) The decision of the hearings officer is final unless further review is initiated pursuant to 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause."

Section 7. Section 39-3-217, MCA, is amended to read:

"**39-3-217. Appeal to board.** If a party is aggrieved by the decision of the hearings officer, ~~he~~ *the party* may appeal the decision to the board. The hearing before the board is for review only~~,~~ and ~~the~~ *may be conducted by telephone or by videoconference. The* submission of new or cumulative evidence is not allowed unless the board finds that good cause is shown for the failure to produce the evidence before the hearings officer. When a decision is rendered by the board, the board shall mail copies of the decision to each interested party at ~~his~~ *the party's* last-known address~~,~~ and to the department. The decision is final unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the dato of mailing of the board's decision."

Section 8. Section 39-3-403, MCA, is amended to read:

"**39-3-403. ~~Regulations~~ *Rulemaking authority.*** The commissioner shall ~~make~~ *adopt* and revise administrative ~~regulations~~ *rules* to carry out the purposes of this part. ~~Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall thereupon set such matter for hearing in the county of residence of such protestant within 30 days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.~~"

Section 9. Section 39-31-105, MCA, is amended to read:

"**30-31-105. Administrative procedure act applicable — *conduct of hearing*.** All hearings and appeals ~~shall~~ *must* be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. *Hearings and appeals may be conducted by telephone or by videoconference, with the consent of the necessary parties.*"

Section 10. Section 39-31-309, MCA, is amended to read:

"**39-31-309. Factfinding proceedings.** (1) The fact finder shall immediately establish dates and place of hearings.

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(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve ~~such~~ *the* findings on the public employer and the exclusive representative. The fact finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) ~~The~~ *When a party petitions the board to initiate factfinding, the* cost of factfinding proceedings must be equally borne by ~~the board and~~ the parties ~~concerned~~. *When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties.*

(6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which ~~he~~ *the fact finder* has been selected or appointed ~~as fact finder~~."

Section 11. Repealer. Sections 39-3-601, 39-3-602, 39-3-603, 39-3-604, 39-3-605, 39-3-606, 39-3-607, and 39-3-608, MCA, are repealed.

Section 12. Applicability. [Sections 2, 3, 6, 7, and 9] apply to hearings or appeals requested on or after [the effective date of this act].

Section 13. Effective date. [This act] is effective on passage and approval.

Approved March 9, 1995

CHAPTER NO. 91

[HB 119]

AN ACT AUTHORIZING THE ADJUTANT GENERAL TO ADOPT RULES GOVERNING THE ARMED FORCES OF THE STATE AND THE DEPARTMENT OF MILITARY AFFAIRS; AMENDING SECTION 10-1-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-105, MCA, is amended to read:

"**10-1-105. Rules by governor *and adjutant general.*** *(1)* The governor may prescribe rules to carry out ~~his~~ *the* functions and duties under this title and the constitution of this state. These rules must conform to any applicable federal laws and regulations.

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(2) The adjutant general may adopt rules governing the armed forces of the state and to carry out the duties of the adjutant general and the duties of the department. The rules must conform to applicable federal laws and regulations."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to regulations adoptod by the department of military affairs after July 1, 1974.

Approved March 9, 1995

CHAPTER NO. 92

[SB 44]

AN ACT INCREASING PENALTIES FOR ALLOWING MALE EQUINES AND CERTAIN CATTLE TO RUN AT LARGE, FOR TAKING OR RESCUING A TRESPASSING ANIMAL FROM THE POSSESSION OF A PERSON WHO LAWFULLY RETAINS THE ANIMAL, FOR UNLAWFUL POSSESSION OF AN ESTRAY, AND FOR WILLFULLY OR NEGLIGENTLY MOVING LIVESTOCK FROM THEIR OWNER'S CUSTOMARY RANGE; AND AMENDING SECTIONS 81-4-209, 81-4-213, 81-4-217, 81-4-621, AND 81-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-209, MCA, is amended to read:

"81-4-209. **Penalty for violations.** ~~Any~~ *An* owner, person, firm, corporation, or association violating any provisions of 81-4-203 through 81-4-209 shall be guilty of a misdemeanor ~~and upon conviction thereof shall be fined not less than $10 or more than $25~~ *punishable as provided in 46-18-212.*"

Section 2. Section 81-4-213, MCA, is amended to read:

"81-4-213. **Penalty.** Any person or persons, firm, company, or corporation violating any of the provisions of 81-4-210 through 81-4-213 shall be guilty of a misdemeanor ~~and~~ punishable ~~by a fine of not less than $25 or more than $250~~ *as provided in 46-18-212.*"

Section 3. Section 81-4-217, MCA, is amended to read:

"81-4-217. **Retention of trespassing stock.** (1) If an animal breaks into an enclosure surrounded by a legal fence or is wrongfully on the premises of another, the owner or occupant of tbe enclosure or premises may take into ~~his~~ possession the trespassing animal and keep the animal until all damages, together with reasonable charges for keeping and feeding the animal, are paid. The person who takes the animal into ~~his~~ possession shall, within 24 hours after ~~he takes~~ *taking* possession, give writton notice to the owner or person in charge of the animal, stating that ~~he has taken~~ the animal *has been taken.* The notice ~~shall~~ *must* also give the dato of the taking, the description of the animal taken, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the animal, and the description,

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either by legal subdivisions or other general description, of the location of the premises on which the animal is held.

(2) The notice ~~shall~~ *must* be given to the owner or person in charge only when the owner or person in charge of the animal is known to the person taking the animal and resides within 25 miles of the premises on which the animal was taken. If the owner or person in charge of the animal resides more than 25 miles from the place of the taking, the notice ~~shall~~ *must* be mailed ~~to him~~ *the owner.* In this case or if the owner is unknown, a similar notice ~~shall~~ *must* be mailed to the department of livestock and the sheriff of the county in which the animal has been taken. On receipt of the notice, the sheriff shall post a copy of the notice at the courthouse and shall send by certified mail a copy of it to the owner of the stock, if known ~~to him~~ *the sheriff.* If unknown ~~to him~~, the sheriff shall send a copy of the notice to the nearest state livestock inspector.

(3) If the parties within 5 days ~~thereafter~~ *after receipt of the notice* do not agree to the amount of damages, the claimant ~~must~~ *shall* within 10 days ~~thereafter~~ institute a civil action to collect ~~his~~ *the* claim in a court of competent jurisdiction. Pending the outcome of the suit, the person taking the stock may, at the expense of the owner, retain a sufficient number of animals to cover the amount of damages claimed by ~~him~~ *the person taking the stock.* The ~~defendant~~ *owner or person in charge of the animal* may, after the institution of the action, on filing a bond executed by two or more sureties and approved by the court in double the sum sued for, conditioned upon the payment to the ~~plaintiff~~ *claimant* of all sums, including costs that may be recovered by the ~~plaintiff~~ *claimant*, have all livestock returned ~~to him~~. The claimant is liable to the owner for any loss or injury to the stock occurring through ~~his~~ *the claimant's* fault or neglect. If the claimant fails to recover in the action a sum equal to that offered ~~him~~ by the owner of the stock, the claimant bears the expense of keeping and feeding the stock while in ~~his~~ *the claimant's* possession.

(4) A person who takes or rescues an animal from the possession of the person taking the animal, without ~~his~~ *the* consent *of the person taking the animal*, is guilty of a misdemeanor ~~and shall be fined not less than $100 or more than $500~~ *punishable as provided in 46-18-212.*"

Section 4. Section 81-4-621, MCA, is amended to read:

"**81-4-621. Penalties.** ~~Any~~ *A* person who ~~shall~~, for ~~his~~ *that person's* own use or benefit and without the owner's consent, ~~take~~ *takes* into ~~his~~ possession any estray shall be guilty of a misdemeanor ~~and shall be~~ punishable ~~by a fine of not less than $25 or more than $100 or by imprisonment in the county jail not exceeding 60 days or by both such fine and imprisonment~~ *as provided in 46-18-212.*"

Section 5. Section 81-5-101, MCA, is amended to read:

"**81-5-101. Moving livestock from customary range forbidden.** *(1)* ~~Every~~ *A* person who willfully moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, bison, or sheep from their *owner's* customary range without the permission of the owner ~~is punishable~~ *shall upon conviction be punished* by imprisonment in the county jail not exceeding ~~90 days~~ *6 months* or by *a* fine not exceeding ~~$100~~ *$500*, or both.

(2) A person who negligently moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by:

(a) a term of imprisonment in the county jail not to exceed 6 months;

(b) a fine not exceeding:

(i) $25 for a first offense;

(ii) $250 for a second offense; and

(iii) $500 for a third or subsequent offense; or

(c) both imprisonment and the appropriate fine.

(3) Prior to the imposition of the penalty provided for in subsection (1) or (2), the owner of the livestock shall file a complaint with the department. The department shall conduct an investigation to determine the circumstances under which the livestock were moved."

Approved March 9, 1995

CHAPTER NO. 93

[SB 60]

AN ACT EXTENDING TO DEPUTY SHERIFFS THE JOB TENURE RIGHTS GIVEN TO POLICE OFFICERS UPON THE CONSOLIDATION OF CITY AND COUNTY GOVERNMENTS; AND AMENDING SECTION 7-3-1344, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-1344, MCA, is amended to read:

"**7-3-1344. Prior rights of law enforcement officers.** (1) ~~Any~~ *A* police officer employed by any police department or departments estahlished as required by law in any city or town of the county *or a deputy sheriff employed by the county sheriff's department* prior to the election and qualification of a commission under ~~this part and~~ part 12 *and this part* has the same joh tenure rights as though ~~no such~~ *the* election and qualification had *not* taken place.

(2) ~~Any such~~ *A* police officer who has vested rights in a police retirement fund shall maintsin prior vested rights in the fund upon its transfer to a consolidated county municipality. Any police retirement fund established as required by law in any city or town of the county prior to the election and qualification of a commission under ~~this part and~~ part 12 ~~shall~~ *and this part must* be continued as ~~such~~ *a retirement fund* for the police department of the municipality, subject, however, to the prior vested rights of ~~any~~ *a* police officer employed by any police department or departments established as required by law in any city or town of the county prior to the election and qualification of a commission under ~~this part and~~ part 12 *and this part*. The board of trustees of ~~such police~~ *the police* retirement fund shall consist of the president, the director of finance, the director of law, and two members of the police department from

the active list of the police officers of the municipality who ~~shall~~ *must* be selected hy a majority vote of the members of the police department on the active list of the municipality. The selection ~~shall~~ *must* be made hetween May 1 and May 10 each year, and the active police officer members of the board shall serve overlapping 2-year terms. Except as provided in this section, the police retirement fund ~~shall~~ *must* be continued and administered in the manner prescribed by law for ~~such~~ *retirement* funds established in cities and tewns."

Approved March 9, 1995

CHAPTER NO. 94

[SB 120]

AN ACT REVISING THE NAME AND FUNCTION OF THE MONTANA CENTER FOR THE AGED; PROVIDING FOR ADMISSION AND TRANSFER OF PATIENTS TO THE CENTER; AMENDING SECTIONS 53-1-202, 53-1-402, 53-21-411, AND 53-21-413, MCA; AND REPEALING SECTION 53-21-412, MCA.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 53-1-202, MCA, is amended to read:

"53-1-202. Department of corrections and human services. (1) The following components are in the department of corrections and human services to carry out the purposes of ~~the~~ department:

(a) adult corrections services consisting of the following institutional components to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

(i) Montana state prison;

(ii) ~~the~~ Montana women's correctional center; and

(iii) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(A) in prerelease centers;

(B) under intensive supervision;

(C) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(D) in other appropriate programs;

(b) mental health services consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) Montana state hospital;

(ii) Montana *mental health nursing care* center ~~for the aged~~; and

(iii) a community services component consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 2;

(c) chemical dependency services consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(d) institutional and residential components of the developmental disabilities system for those developmentally disabled persons who require that care according to Title 53, chapter 20, consisting of:

(i) ~~the~~ Montana developmental center; and

(ii) Eastmont human services center; and

(e) veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

(i) Montana veterans' home; and

(ii) eastern Montana veterans' home at Glendive.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 2. Section 53-1-402, MCA, is amended to read:

"**53-1-402. Residents subject to per diem and ancillary charges.** (1) The department shall assess and collect per diem and ancillary charges for the care of residents in the following institutions:

(a) Montana state hospital;

(b) Montana developmental center;

(c) Montana veterans' home;

(d) eastern Montana veterans' home;

(e) Montana *mental health nursing care* center ~~for the aged~~; *and*

(f) Eastmont human services center.

(2) This section does not apply to the eastern Montana veterans' home if the department contracts with a private vendor to operate the facility as provided for in 10-2-416."

Section 3. Section 53-21-411, MCA, is amended to read:

"**53-21-411. Location and function of *Montana mental health nursing care* center ~~for the aged~~.** (1) The institution located at Lewistown is the Montana *mental health nursing care* center ~~for the aged~~. The primary function of the center is the care and treatment of persons ~~55 years of age or older~~ *with mental disorders who require nursing care*. Priority must be given to patients referred from the Montana state hospital.

(2) Appropriate admissions to the Montana *mental health nursing care* center ~~for the aged~~ are persons *who are* unable to maintain themselves in their homes or communities due to a mental disorder, as defined in 53-21-102, ~~associated with the aging process,~~ but who do not require the intensity of treatment available at the Montana state hospital.

(3) ~~Admissions to the center are voluntary.~~ The department of corrections and human services may adopt rules concerning specific admission criteria, treatment, and discharge procedures *consistent with [section 4] and subsections (1) and (2) of this section.*"

Section 4. Admissions to mental health nursing care center. (1) The Montana mental health nursing care center may admit patients on a voluntary basis according to admission criteria and procedures established in administrative rules.

(2) A patient involuntarily committed to the Montana state hospital may be transferred by the department of corrections and human services to the Montana mental health nursing care center if the patient meets the admission criteria of the center. The department shall notify the patient, the patient's next of kin, and the mental disabilities board of visitors at least 15 days before the transfer. If a person or entity notified by the department objects to the transfer, the person or entity may petition the district court for a hearing to review whether the transfer is necessary and appropriate to meet the needs of the patient. The notice required by this subsection must include notification of the right to petition the district court pursuant to this subsection. Section 53-21-128 applies to extensions of involuntary commitment of patients to the center.

(3) Except as provided in 53-21-413(2) and subsection (2) of this section, patients involuntarily transferred to the center have the rights provided in this chapter.

Section 5. Section 53-21-413, MCA, is amended to read:

"**53-21-413. Discharge *and transfer* of patients.** *(1)* The superintendent of the *Montana mental health nursing care* center may authorize the discharge of a patient residing at the center according to rules adopted by the department of corrections and human services. ~~However, no patient may be detained at the center without the consent of the patient or his guardian.~~ *Rules adopted by the department governing discharge from the center must be consistent with 53-21-111, 53-21-181, and 53-21-183.*

(2) A patient in the center who requires the intensity of treatment available at the Montana state hospital may be transferred to the Montana state hospital if the patient is subject to an involuntary commitment. The department shall notify the patient, the patient's next of kin, and the mental disabilities board of visitors at least 15 days before the transfer. If a person or entity notified by the department objects to the transfer, the person or entity may petition the district court for a hearing to review whether the transfer is necessary and appropriate to meet the needs of the patient. The notice required by this subsection must include notification of the right to petition the district court pursuant to this subsection. Notice pursuant to this subsection does not preclude transfer pursuant to 53-21-130."

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Section 6. Code commissioner instruction. Wherever the term "Montana center for the aged" appears in material enacted by the 54th legislature, the code commissioner is instructed to change the term to the "Montana mental health nursing care center".

Section 7. Repealer. Section 53-21-412, MCA, is repealed.

Section 8. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 53, chapter 21, part 4, and the provisions of Title 53, chapter 21, part 4, apply to [section 4].

Approved March 9, 1995

CHAPTER NO. 95

[SB 125]

AN ACT EXEMPTING CERTAIN PETROLEUM LAND PROFESSIONALS FROM THE REQUIREMENTS OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION LAWS; AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

"**39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject te this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

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(c) service performed as an officer or member of the crew of a vessel on the navigable waters of tbe United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law may not be entitled to exemption under this subsection and are subject to this chapter the same as state banks, provided tbat tbe service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service ~~with respect to~~ *in* which unemployment insurance is payable under an unemployment insurance system established by an act of congress~~, provided that~~ *if* the department ~~shall enter~~ *enters* into agreements with the proper agencies under an act of congress~~, which~~ *and those* agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this cbapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if the service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university or by the spouse of a student if the spouse is advised, at the time *that* the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university and *that* the employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in

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attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if the service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for services from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors or working members of a partnership;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

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(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states *that* the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.;

(p) services performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

(4) An individual found to be an independent contracter by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant te 39-51-2402.

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(5) This section does not apply to a state or local governmental entity or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment as defined in the Federal Unemployment Tax Act."

Section 2. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits

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articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; hut

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member who operates solely within the exterior boundaries of an Indian reservation.;

(n) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(3) (a) A sole proprietor or a working member of a partnership who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status as an independent contractor until the independent contractor notifies the department of any change in status and provides a description of present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However,

pursuant to rules *that* the department promulgates and subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and to the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, to the department, and to the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if the officer elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202 if the officer falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 9, 1995

CHAPTER NO. 96

[SB 165]

AN ACT PROVIDING A DEADLINE FOR THE FILING OF AN AMENDED PETITION FOR POSTCONVICTION RELIEF; CLARIFYING THAT ONLY ONE AMENDED PETITION MAY BE FILED; AND AMENDING SECTION 46-21-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-21-105, MCA, is amended to read:

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"46-21-105. ~~Waiver~~ *Amendment of petition — waiver* of grounds for relief. (1) All grounds for relief claimed by a petitioner under 46-21-101 must be raised in the original or amended petition. *The original petition may be amended only once. At the request of the state or on its own motion, the court shall set a deadline for the filing of the amended petition. If a hearing will be held, the deadline must be reasonably in advance of the hearing but may not be less than 30 days prior to the date of the hearing.* Those grounds for relief not raised *in the original or amended petition* are waived unless the court on hearing a subsequent petition finds grounds for relief that could not reasonably have been raised in the original or amended petition.

(2) When a petitioner has been afforded a direct appeal of the petitioner's conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in the original or amended petition."

Approved March 9, 1995

CHAPTER NO. 97

[SB 202]

AN ACT REMOVING THE TERMINATION OF THE FRAUD, WASTE, AND ABUSE HOTLINE; REPEALING SECTION 6, CHAPTER 20, SPECIAL LAWS OF NOVEMBER 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 6, Chapter 20, Special Laws of November 1993, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 9, 1995

CHAPTER NO. 98

[SB 216]

AN ACT ESTABLISHING CONTINUING EDUCATION REQUIREMENTS FOR CREDIT LIFE AND DISABILITY INSURANCE PRODUCERS; ELIMINATING PRELICENSING EDUCATION REQUIREMENTS FOR INSURANCE PRODUCERS; AMENDING SECTIONS 33-2-708, 33-17-1203, AND 33-30-312, MCA; AND REPEALING SECTIONS 33-17-207, 33-17-208, AND 33-17-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

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(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers . . . . . $ 600.00

(B) foreign insurers 600.00

(ii) annual continuation of certificate of authority 600.00

(iii) reinstatement of certificate of authority 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 25.00

(c) filing bylaws or amendment to bylaws when required 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) insurance producer's license:

(i) application for original license, including issuance of license, if issued 15.00

(ii) appointment of insurance producer, each insurer, electronically filed 10.00

(iii) appointment of insurance producer, each insurer, nonelectronically filed 15.00

(iv) temporary license 15.00

(v) amendment of license (excluding additions to license) or reissuance of master license 15.00

(vi) termination of insurance producer, each insurer, electronically filed 10.00

(vii) termination of insurance producer, each insurer, nonelectronically filed 15.00

(f) nonresident insurance producer's license:

(i) application for original license, including issuance of license, if issued 100.00

(ii) appointment of insurance producer, each insurer, electronically filed 10.00

(iii) appointment of insurance producer, each insurer, nonelectronically filed 15.00

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(iv) annual renewal of license 10.00

(v) amendment of license (excluding additions to license) or reissuance of master license 15.00

(vi) termination of insurance producer, each insurer, electronically filed 10.00

(vii) termination of insurance producer, each insurer, nonelectronically filed 15.00

(g) examination, if administered by the commissioner, for license as insurance producer, each examination 15.00

(b) surplus lines insurance producer license:

(i) application for original license and for issuance of license, if issued 50.00

(ii) annual renewal of license 50.00

(i) adjuster's license:

(i) application for original license and for issuance of license, if issued 15.00

(ii) annual renewal of license 15.00

(j) insurance vending machine license, each machine, each year 10.00

(k) commissioner's certificate under seal (except when on certificates of authority or licenses) 10.00

(l) copies of documents on file in the commissioner's office, per page 50

(m) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, certificato, enrollment form, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 100.00

~~(n) applications for approval of prelicensing education courses:~~

~~(i) reviewing initial application . . . . . 150.00~~

~~(ii) periodic review . . . . . 50.00~~

(2) The commissioner shall establish by rule fees commensurate with costs for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205.

(3) The commissioner shall establish by rule an annual accreditation fee to be paid by each domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority.

(4) (a) Except as provided in subsection (4)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected by the commissioner pursuant to Title 33 and the

rules adopted under Title 33, except that all fees for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205 must be deposited in the state special revenue fund pursuant to 33-17-1207.

(b) The accreditation fee required by subsection (3) must be turned over promptly to the state treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in discharging the administrative and regulatory duties that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money. The commissioner is responsible for the proper expenditure of the accreditation money.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 2. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer for life*,* *or* disability*,* ~~or credit life and disability~~ insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;

(d) *a person licensed to act as an insurance producer only for credit life and disability insurance shall, during each calendar year, complete 5 credit hours of approved continuing education in the areas of insurance law, ethics, or credit life and disability insurance;*

(e) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause shown, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completod.

(4) The minimum continuing education requirements do not apply to:

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(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(7)(d) through (7)(g);

(b) a person holding a temporary license issued under 33-17-216;

(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state accords substantially similar privileges to and has similar requirements of residents of this state;

(d) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license; *or*

(e) an insurance producer or consultant otherwise exempted by the commissioner~~; or~~

~~(f) a person selling only credit life and disability insurance incidental to other noninsurance activities.~~"

Section 3. Section 33-30-312, MCA, is amended to read:

"**33-30-312. Insurance producer — filing with and approval by commissioner — license.** (1) Each corporation subject to the provisions of this chapter shall notify the commissioner through its proper officer or agent of the name, title, and address of each person it desires appointed as an insurance producer. The notice ~~shall~~ *must* be accompanied by a written application, upon a form furnished by the commissioner, from the appointee. The commissioner shall issue to that appointee a license ~~which states~~ *stating* that the person named is a constituted insurance producer of the corporation in this state if, upon receipt of this written notice, when accompanied by the proper fee, it appears that:

(a) the appointee is a competent and suitable person who intends to ~~hold himself out~~ *act* in good faith as the corporation's insurance producer; and

(b) ~~he~~ *the appointee* qualifies under the provisions of this section.

(2) For ~~appointees~~ *an appointee* who ~~have~~ *has* not acted as an insurance producer for a health service corporation for a period of 2 years prior to July 1, 1975, ~~if he considers it desirable,~~ the commissioner may require ~~an~~ *the* appointee to submit to an examination to determine the qualifications of the appointee to act as an insurance producer in this state. This examination must be the same as given to applicants for a disability insurance producer license as provided for in 33-17-212 through 33-17-214. ~~A person required to take this examination must fulfill the prelicensing education requirement set by 33-17-208.~~

(3) Upon receipt by the commissioner of notification from a health service corporation that the corporation desires a particular individual to be appointed as its insurance producer, that person has a temporary insurance producer's license until the commissioner notifies the corporation of action taken upon the application. If the commissioner rejects the application, the prospective appointee's eligibility to act as an insurance producer ceases on the day the corporation is notified of rejection."

Section 4. Repealer. Sections 33-17-207, 33-17-208, and 33-17-209, MCA, are repealed.

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Approved March 9, 1995

CHAPTER NO. 99

[SB 235]

AN ACT CLARIFYING THAT MOBILE HOMES HELD BY A DEALER OR DISTRIBUTOR AS PART OF THE STOCK IN TRADE ARE BUSINESS INVENTORIES FOR PROPERTY TAX PURPOSES; AMENDING SECTION 15-6-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-202, MCA, is amended to read:

"**15-6-202. Freeport merchandise and business inventories exemption.** (1) Freeport merchandise and business inventories are exempt from taxation.

(2) "Freeport merchandise" means those stocks of merchandise manufactured or produced outside this state ~~which~~ *that* are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state for storage in transit prior to shipment te a final destination outside the state and ~~which~~ *that* have acquired a taxable situs within the state.

(3) Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.

(4) Any person or other group seeking to qualify its property for inclusion in the freeport merchandise class shall make application to the department of revenue in ~~such~~ *the* manner or form as may be required by the department.

(5) "Business inventories" includes goods primarily intended for sale and not for lease in the ordinary course of business and raw materials and work in progress with respect to ~~such~~ *those* goods. Business inventories do not include goods *that are* leased or rented ~~or mobile homes held by a dealer or distributor as part of his stock in trade~~."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 9, 1995

CHAPTER NO. 100

[SB 254]

AN ACT CHANGING THE CRITERIA UPON WHICH A GOVERNING BODY OR THE DISTRICT COURT DECIDES TO WHICH PROPERTIES VACATED PLATS REVERT; AND AMENDING SECTION 76-3-305, MCA.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 76-3-305, MCA, is amended to read:

"76-3-305. Vacation of plats — utility easements. (1) Any plat prepared and recorded as ~~herein~~ provided *in this section* may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, ~~subsections (1) and (2) of~~ 7-14-2616*(1) and (2)*, 7-14-2617, ~~subsections (1) and (2) of~~ 7-14-4114*(1) and (2)*, and 7-14-4115~~, and upon such~~. *Upon* vacation, *the governing body or the district court, as provided in 7-5-2502, shall determine to which properties* the title to the streets and alleys of ~~such~~ *the* vacated portions ~~to the center thereof shall~~ *must* revert. *The governing body or the district court, as provided in 7-5-2502, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert* to *one or more of* the owners of the properties within the platted area adjacent to ~~such~~ *the* vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title ~~thereto~~ *to the vacated street or alley*, the owner of ~~said~~ *the* public or private utility facility ~~shall have~~ *has* an easement over the vacated land to continue the operation and maintenance of the public utility facility."

Approved March 9, 1995

CHAPTER NO. 101

[SB 285]

AN ACT PROHIBITING A PERSON FROM APPLYING FOR A SPECIAL LICENSE OR ENTERING A DRAWING FOR A MOOSE, BIGHORN SHEEP, OR MOUNTAIN GOAT LICENSE OR PERMIT FOR 10 YEARS IF THE PERSON IS CONVICTED OF THE UNLAWFUL TAKING OF A SIMILAR SPECIES OF GAME ANIMAL; AND AMENDING SECTION 87-1-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties. (1) A person who purposely or knowingly violates ~~any~~ *a* provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined *an amount* not less than $50 or more than $500~~,~~ *or* imprisoned in the county jail for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, shall be subject to forfeiture of ~~his~~ *the person's* license and the privilege to hunt, fish, or trap within this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of not less than 24 months from the date of conviction or forfeiture.

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou,

mountain goat, or grizzly bear or any part of these animals shall be fined *an amount* not less than $500 or more than $1,000; *or* imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or hail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction or forfeiture.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals or wasting a deer, antelope, or elk shall be fined *an amount* not less than $300 or more than $1,000; *or* imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 24 months from tbe date of conviction or forfeiture.

(c) A person convicted of unlawfully attempting te trap, take, shoot, or kill a game animal shall be fined *an amount* not less than $200 or more than $600; *or* imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of ~~any such~~ *a game* bird, *wild turkey,* or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined *an amount* not less than $50 or more tban $200 or imprisoned in the county jail for not more than 30 days, or both.

(e) A person convicted of purposely or knowingly taking, killing, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined *an amount* not less than $50 or more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap for not less than 24 months from tbe date of conviction or forfeiture, and any pelts possessed unlawfully must be confiscated.

(f) A person convicted of hunting, fishing, or trapping while ~~his~~ *a* license is forfeited or ~~his~~ *a* privilege *is* denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined *an amount* not less than $500 or more than $1,000.

(3) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined *an amount* not less than $500 or more than $1,000 or imprisoned in tbe county jail for not more than 60 days, or both.

(4) A person convicted or who has forfeited bond or bail under subsection (2) and who has been ordered to pay restitution under the provisions of 87-1-111

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may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or resteration of license privileges, whichever is later. *If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period.* A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined *an amount* not less than $500 or more than $1,000 or imprisoned in the county jail for not more than 60 days, or both.

(5) Notwithstanding the provision of subsection (1), the penalties provided by this section ~~shall be~~ *are* in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2."

Approved March 9, 1995

CHAPTER NO. 102

[SB 319]

AN ACT REGARDING THE PROMOTION AND MARKETING OF MONTANA BEEF; ALLOWING THE DEPARTMENT TO CONDUCT CERTAIN ACTIVITIES, INCLUDING COLLECTION OF AN ASSESSMENT ON CATTLE, AS PART OF THE BEEF PROMOTION AND MARKETING ACTIVITIES; AND ADDRESSING THE DEPARTMENT'S COLLECTION AND INSPECTION DUTIES.

STATEMENT OF INTENT

A statoment of intent is required for this bill because [section 1] grants rulemaking authority to the department of livestock to implement the provisions of this bill. It is intended that the department adopt rules regarding the collection of the assessment on livestock in a manner that ensures reimbursement for the department's administrative costs without imposing liability on the department for collection of the assessment or linking collection with the department's regular livestock inspection duties.

Be it enacted by the Legislature of the State of Montana:

Section 1. Beef promotion and marketing — powers and duties of department. The department shall:

(1) cooperate and contract with the Montana beef council for collecting an assessment of $1 for each head of Montana livesteck as established in the national Beef Promotion and Research Act of 1985, also referred to as the national beef check-off. Any contract agreed to between the department and the beef council must reimburse the department for all expenses incurred through the collection activities.

(2) adopt rules necessary for the administration of this section.

Section 2. Department not liable for collection of assessment — inspection. (1) The department and its agents and employees are not

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responsible or liable for the collection or payment of money due to the Montana beef council pursuant to [section 1(1)] if [sections 1 and 2] are carried out in good faith.

(2) The department may not refuse to inspect livestock if the livestock owner refuses to pay the assessment imposed under [section 1(1)].

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 81, chapter 8, and the provisions of Title 81, chapter 8, apply to [sections 1 and 2].

Approved March 9, 1995

CHAPTER NO. 103

[HB 61]

AN ACT ELIMINATING THE REQUIREMENT THAT CERTAIN SETTLEMENTS ENTERED INTO BY POLITICAL SUBDIVISIONS BE APPROVED BY A DISTRICT COURT; AMENDING SECTION 2-9-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-304, MCA, is amended to read:

"2-9-304. Compromise or settlement of claim against political subdivision. (1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of ~~the~~ insurance, if any. ~~A settlement involving a self-insurance reserve fund or deductible reserve fund must be approved by the district court where the claim is filed.~~

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into ~~or approved~~ pursuant to subsection (1) are public records available for public inspection."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 10, 1995

CHAPTER NO. 104

[HB 105]

AN ACT REPEALING THE LIMITATION AND THE ELECTION REGARDING THE AMOUNT OF COUNTY EXPENDITURES AND LIABILITIES FOR EMERGENCIES; AND REPEALING SECTION 7-6-2344, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 7-6-2344, MCA, is repealed.

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Approved March 10, 1995

CHAPTER NO. 105

[HB 115]

AN ACT INCREASING TO 10 WORKING DAYS THE TIME FOR CITY TREASURERS OR TOWN CLERKS TO CERTIFY DELINQUENT TAXES OR ASSESSMENTS TO THE COUNTY TREASURER; AND AMENDING SECTION 7-6-4423, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4423, MCA, is amended to read:

"7-6-4423. Sales for delinquent taxes when municipality collects municipal tax. (1)(a) ~~Whenever, in~~ *In* a city or town ~~whose city treasurer or town clerk~~ *that* collects its own taxes or special assessments ~~or both,~~ *when* any ~~such~~ taxes or assessments ~~shall~~ become delinquent, ~~no~~ *a* tax sale ~~shall~~ *may not* be held ~~therefor by such city treasurer or town clerk~~ *by the city or town* ~~but such~~ *unless the* city treasurer or town clerk ~~must~~, within 10 *working* days after the date *on which* the ~~same~~ *taxes or assessments* become delinquent, ~~certify all such~~ *certifies the* delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated.

(b) ~~Such~~ *The* certificate ~~shall~~ *must* contain:

(i) the description of each lot or parcel of land on which any tax or assessment has become delinquent;

(ii) the name and address of the person ~~to whom~~ *taxed or* assessed;

(iii) the date when the ~~same~~ *tax or assessment* became delinquent;

(iv) the amount of the delinquent tax or assessment, *and* the penalty to be added ~~thereto~~, *if any* ~~and the total amount of such delinquent tax or assessment with penalty added~~.

(c) If any special assessment is payable in installments and any installment ~~thereof~~ becomes delinquent, the amount of ~~such~~ *the* delinquent installment ~~shall~~ *must* be included in ~~such~~ *the* certificate~~;~~. ~~provided, however, that if~~ *If* the city or town council, by the adoption of an appropriate resolution, ~~shall declare~~ *declares* the ~~whole of the~~ *total* assessment remaining unpaid to be delinquent, as provided in 7-12-4182, then ~~the whole of the assessment remaining unpaid shall~~ *that total must* be included in ~~such~~ *the* certificate.

(2) Upon receipt of ~~such~~ *the* certificate, the county treasurer shall enter ~~such~~ *the* delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes ~~must~~ *shall* include all ~~such~~ city and town delinquent taxes and assessments. There ~~shall~~ *may* be ~~but~~ *only* one sale for each piece of property. ~~Such~~ *The* sale ~~shall~~ *must* cover the aggregate of ~~such~~ *the* city, ~~or~~ town, county, and state taxes and special assessments, ~~with the~~ *including* penalties, interest, and costs provided by law."

Approved March 10, 1995

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CHAPTER NO. 106

[HB 146]

AN ACT ALLOWING JOINT PAYMENT, BY THE DEPARTMENT OF TRANSPORTATION AND A CITY, COUNTY, OR CONSOLIDATED LOCAL GOVERNMENT, OF CERTAIN CONSTRUCTION CONTRACTS; AND AMENDING SECTION 60-2-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-210, MCA, is amended to read:

"60-2-210. **Payment of construction and maintenance costs within municipalities.** The department ~~of transportation~~, *either solely or in conjunction with a city, county, or consolidated local government,* shall pay the ~~entire~~ costs of construction of streets, curbs, gutters, and sidewalks and maintenance of streets, highways, curbs, and gutters ~~which~~ *that are*:

(1) ~~are~~ state highway routes; and

(2) ~~are~~ within incorporated municipalities."

Approved March 10, 1995

CHAPTER NO. 107

[HB 147]

AN ACT ALLOWING ENGINEERING DOCTORATE DEGREE GRADUATES WITH 4 YEARS' EXPERIENCE TO TAKE THE PROFESSIONAL ENGINEERING EXAMINATION; ADDING CONTINUING EDUCATION OR OTHER OPTIONS TO CONTINUED PRACTICE IN ENGINEERING OR LAND SURVEYING AS CRITERIA FOR BIENNIAL REGISTRATION RENEWAL; PROVIDING FOR INJUNCTIVE RELIEF AGAINST THE UNLICENSED PRACTICE OF ENGINEERING OR LAND SURVEYING; AND AMENDING SECTIONS 37-67-306, 37-67-315, AND 37-67-332, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-67-306, MCA, is amended to read:

"37-67-306. **Qualifications of applicant for registration as professional engineer.** The following is considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects of a grade and character ~~which~~ *that* indicate to the board that the applicant may be competont to practice engineering, ~~shall~~ *must* be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of

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engineering. Upon passing ~~such~~ *the* examinations, the applicant ~~shall~~ *must* be granted a certificate of registration te practice engineering in this state ~~provided he~~ *if the applicant* is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character ~~which~~ *that* indicate te the board that the applicant may be competent te practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing ~~such~~ *the* examinations, the applicant ~~shall~~ *must* be granted a certificate of registration te practice engineering in this stete ~~provided he~~ *if the applicant* is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 years have been in charge of important engineering projects, of a grade and character ~~which~~ *that* indicate to tbe hoard that the applicant may be competent to practice engineering ~~shall~~ *must* be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing ~~such~~ *the* examination, the applicant ~~shall~~ *must* be granted a certificate of registration te practice engineering in this stete ~~provided he~~ *if the applicant* is otherwise qualified.

(4) ~~Engineering teaching~~ *Teaching engineering* in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements ~~provided~~ *if* research, product development, or consulting has been a concurrent activity.

(5) A person who holds a doctorate degree in engineering from an institution with an engineering program approved by the board and the engineering accreditation commission of the accreditation board for engineering and technology or the Canadian engineering accreditation board and who provides a specific record of at least 4 years of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be issued a certificate of registration to practice engineering in this state if the applicant is otherwise qualified."

Section 2. Section 37-67-315, MCA, is amended to read:

"37-67-315. Biennial renewal — fee — statement of competency. (1) Certificates of registration expire every second year on tbe date established by rule of the department and become invalid on that date unless renewed. The department shall notify ~~every~~ *each* person registered under this chapter of the date of tbe expiration of ~~his~~ *the person's* certificate and the amount of the fee required for its renewal for 2 years. This notice ~~shall~~ *must* be mailed at least 1 montb in advance of the date of the expiration of the certificate. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or professional land surveyor. For renewal of a dual license as both a professional engineer and professional land surveyor, the fee ~~shall~~ *must* be set by the board.

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(2) ~~No~~ *A* certificate may *not* be renewed unless the registrant submits a statement to the effect and the board is satisfied that ~~he~~ *the registrant* has maintained competency by:

(a) the continued practice of engineering or land surveying; ~~or~~ *and*

(b) engaging in other activities that provide for the maintenance of competency ~~as~~ *if* prescribed by board rule, *such as continuing education, which may require up to 15 professional development hours as prescribed by board rule and is generally patterned after the model rules of the national council of examiners for engineering and surveying.*

(3) Failure on the part of a registrant to renew ~~his~~ *the* certificate biennially prior to the expiration date does not deprive ~~him~~ *the registrant* of the right of renewal; however, a registrant who fails to pay the renewal fee for an additional year of the biennium ~~shall be~~ *is* considered a new applicant and is required to submit a new application.

(4) The fee for any registrant who fails to renew ~~his~~ *the* certificate prior to the expiration date ~~shall~~ *must* be increased by an amount not to exceed 50% of ~~his~~ *the* renewal fee. Renewal may not be completed until all fees are paid."

Section 3. Section 37-67-332, MCA, is amended to read:

"**37-67-332. Violations — penalties — enforcement.** (1) *(a)* A person *commits a criminal offense* ~~who~~ *if the person knowingly:*

(i) practices or offers to practice engineering or land surveying in this state without being registered under this chapter; ~~or a person~~

(ii) ~~presenting or attempting to use as his own~~ *presents or attempts to use* the certificate of registration or the seal of another *person;* ~~or a person who~~

(iii) gives false or forged evidence to the board or department in obtaining a certificate of registration; ~~or a person who falsely~~

(iv) impersonates another registrant; ~~or a person who~~

(v) attempts to use an expired, revoked, or emeritus certificate of registration; or ~~a person who~~

(vi) violates *a provision of* this chapter ~~is guilty of a misdemeanor and~~.

(b) A person convicted under subsection (1)(a) shall on conviction be fined not less than $100 or more than $500 or ~~imprisoned~~ *be incarcerated in the county jail* for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or a *one of its* political ~~subdivision thereof~~ *subdivisions* shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

(3) The board may apply to the appropriate court for an injunction against a person found by the board to have practiced or attempted or offered to practice engineering or land surveying in this state without a valid certificate of registration.

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(4) If a person violates an injunction against practice without a valid certificate of registration, the court may impose a fine in an amount not to exceed $25,000."

Approved March 10, 1995

CHAPTER NO. 108

[HB 148]

AN ACT REVISING CERTAIN PROVISIONS OF PROFESSIONAL ENGINEER AND LAND SURVEYOR LICENSURE; CHANGING THE TERM "ENGINEER-IN-TRAINING" TO "ENGINEER INTERN"; CHANGING THE TERM "LAND SURVEYOR-IN-TRAINING" TO "LAND SURVEYOR INTERN"; PROHIBITING LOCAL GOVERNMENTS FROM IMPOSING FEES OR EXAMINATION REQUIREMENTS ON LICENSEES; ESTABLISHING SEMESTER HOUR REQUIREMENTS FOR REGISTRANTS; REMOVING THE DURATION REQUIREMENT FOR PROFESSIONAL LAND SURVEYOR EXAMINATIONS; REQUIRING APPLICANTS WHO FAIL THE EXAMINATIONS TWICE TO WAIT 1 YEAR BEFORE TAKING A THIRD EXAMINATION; PROHIBITING APPLICANTS WHO FAIL THE EXAMINATIONS THREE TIMES FROM TAKING IT AGAIN EXCEPT UNDER SPECIAL CIRCUMSTANCES; REMOVING THE DURATION REQUIREMENT FOR EXAMINATIONS TAKEN BY LAND SURVEYORS FROM OTHER STATES; CLARIFYING REQUIREMENTS PERTAINING TO PARTNERSHIPS AND CORPORATIONS; REMOVING THE 6-MONTH DEADLINE FOR INVESTIGATION OF CHARGES; AND AMENDING SECTIONS 37-67-101, 37-67-303, 37-67-304, 37-67-305, 37-67-307, 37-67-308, 37-67-310, 37-67-311, 37-67-312, 37-67-313, 37-67-314, 37-67-320, AND 37-67-331, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-67-101, MCA, is amended to read:

"37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1873.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) ~~"Engineer-in-training"~~ *"Engineer intern"* means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) ~~"Land surveyor-in-training"~~ *"Land surveyor intern"* means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(5) *(a)* "Practice of engineering" means:

(i) any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to ~~such~~ *the* services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of ~~assuring~~ *ensuring* compliance with drawings and specifications;

(ii) any of ~~which~~ *the functions described in subsection (5)(a)(i) that embrace* ~~embraces such~~ *the* services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property ~~and including such~~.

(b) The term includes other professional services ~~as may be~~ necessary te the planning, progress, and completion of any engineering services.

(c) Tbe term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(6) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and ~~manmade~~ *constructed* features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including ~~such~~ work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions ~~thereof~~ *of land*, including the alignment and grades of streets and roads ~~therein~~ *in subdivisions*; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(7) "Professional engineer" means a person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been ~~duly~~ registered and licensed as a professional engineer by the board.

(8) "Professional land surveyor" means a person who:

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(a) has been ~~duly~~ registered and licensed as a land surveyor by the board; ~~and~~

(b) is a professional specialist in the technique, analysis, and application of measuring land~~;~~;

(c) is skilled and educated in the principles of mathematically related physical and applied sciences, ~~and~~ relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and

(d) is engaged in the practice of land surveying as ~~herein~~ defined *in this section.*

(9) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying~~, as the case may be~~. Only *a* professional ~~engineers~~ *engineer* or *a* professional land ~~surveyors~~ *surveyor* may legally assume responsible charge under this chapter."

Section 2. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application — contents — fees. (1) Applications for registration ~~shall~~ *must* be on forms prescribed by the board and furnished by the department, ~~shall~~ *must* contain statements made under oath showing the applicant's education and a detailed summary of ~~his~~ *the applicant's* technical work, and ~~shall~~ *must* contain the required references.

(2) The fee for ~~engineer-in-training~~ *engineer intern* is as prescribed by the board ~~and shall~~, *must* accompany the application, and ~~shall~~ *must* include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board for those holding an ~~engineer-in-training~~ *engineer intern* certificate validated for Montana. For those holding a valid ~~engineer-in-training~~ *engineer intern* certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of ~~engineer-in-training~~ *engineer intern* certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board, and payment of an additional fee equal to the appropriate renewal fee, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to ~~him~~ *the person* by the committee on national engineering certification of the national council of ~~engineering~~ examiners *for engineering and surveying* or by a state, territery, or possession of the United Statos or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land ~~surveyor-in-training~~ *surveyor intern* is as prescribed by the board, which ~~shall~~ *must* accompany the application and ~~shall~~ *must* include the cost of one examination. No additional fee is required for issuance of a certificate.

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(6) The application fee for registration as a professional land surveyor is as prescribed by the board for those holding a land ~~surveyor-in-training~~ *surveyor intern* certificate validated in Montana. For those holding a valid land ~~surveyor-in-training~~ *surveyor intern* certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of application for registration as a professional land surveyor, an additional fee equal te the existing renewal fee must be paid before issuance of a certificate as a professional land surveyor.

(7) The application fee for registration as both a professional engineer and professional land surveyor is as prescribed by the board for those holding ~~engineer-in-training~~ *engineer intern* and land ~~surveyor-in-training~~ *surveyor intern* certificates validated in Montana. For those holding valid ~~engineer-in-training~~ *engineer intern* and land ~~surveyor-in-training~~ *surveyor intern* certificates from another ~~state~~ *jurisdiction*, the application fee is as prescribed by the board. The fee ~~shall~~ *must* accompany the application. Upon approval of application for registration as a professional engineer and professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited ~~shall~~ *must* be retained as an application fee."

Section 3. Section 37-67-304, MCA, is amended to read:

"**37-67-304. ~~Municipality may~~ *Local government* not *to* impose fee *or examination*.** ~~No~~ *A* registration or license fee or ~~tax~~ *examination* may *not* be imposed by a ~~municipality~~ *local government* ~~or by any other political subdivision of the state~~ on a person registered under this chapter *to practice engineering or land surveying*."

Section 4. Section 37-67-305, MCA, is amended te read:

"**37-67-305. General qualifications of applicants for registration as professional engineer or ~~engineer-in-training~~ *engineer intern*.** To be eligible for admission to *an* examination for professional engineer or ~~engineer-in-training~~ *engineer intern*, an applicant must be of good character and reputation. The applicant must submit five references with ~~his~~ *the* application for registration as a professional engineer~~.~~ ~~three~~ *Three* references ~~shall~~ *must* be *from* professional engineers with personal knowledge of ~~his~~ *the applicant's* engineering experience. In the case of an application for certification as an ~~engineer-in-training~~ *engineer intern*, the applicant ~~must~~ *shall* submit three character references."

Section 5. Section 37-67-307, MCA, is amended te read:

"**37-67-307. Qualifications of applicant for registration as ~~engineer-in-training~~ *engineer intern*.** The following ~~shall~~ *must* be considered as minimum evidence that the applicant is qualified for certification as an ~~engineer-in-training~~ *engineer intern*:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more, approved by the board as being of satisfactory standing, ~~shall~~ *must* be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing ~~such~~ *the* examination, tbe applicant ~~shall~~ *must* be

certified or enrolled as an ~~engineer-in-training~~ *engineer intern* if ~~he~~ *the applicant* is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board ~~shall~~ *must* be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing ~~such~~ *the* examination, the applicant ~~shall~~ *must* be certified or enrolled as an ~~engineer-in-training~~ *engineer intern* if ~~he~~ *the applicant* is otherwise qualified."

Section 6. Section 37-67-308, MCA, is amended to read:

"**37-67-308. General qualifications of applicants for registration as professional land surveyor or land ~~surveyor-in-training~~ *surveyor intern*.** (1) To be eligible for admission to *an* examination for professional land surveyor or land ~~surveyor-in-training~~ *surveyor intern*, an applicant must be of good character and reputation. The applicant shall submit five references with ~~his~~ *the* application for registration as a professional land surveyor~~,~~. ~~three~~ *Three* of ~~which~~ *the* references ~~shall~~ *must* be *from* professional land surveyors having personal knowledge of ~~his~~ *the applicant's* land surveying experience. In the case of an application for certification as a land ~~surveyor-in-training~~ *surveyor intern*, the applicant shall submit three references, one of whom ~~shall~~ *must* be *from* a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of ~~his~~ *the applicant's* education, technical and land surveying experience, exhibits of land surveying projects which ~~he~~ *the applicant* has been in charge of, recommendations by references, and a reviewing of these categories. The board may require an intorview if it considers one necessary."

Section 7. Section 37-67-310, MCA, is amended to read:

"**37-67-310. Qualifications of applicant for registration as land ~~surveyor-in-training~~ *surveyor intern*.** ~~One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor-in-training~~ *To qualify for registration as a land surveyor intern, an applicant must present as evidence to the board at least one of the following*:

(1) ~~have~~ a bachelor of science degree in a board-approved curriculum that must contain a minimum of *27 semester or* 40 quarter credit hours in surveying techniques, principles, and practices~~,~~ and ~~have~~ *evidence of having* passed the written examinations required by the board;

(2) ~~have~~ at least 2 years of formal education in an approved curriculum that must contain a minimum of *27 semester or* 40 quarter credit hours in surveying techniques, principles, and practices, above high school level, with at least *60 semester or* 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and ~~have~~ *evidence of having* passed the written examinations required by the board;

(3) ~~have~~ a bachelor of science degree in a board-approved curriculum and ~~present~~ evidence satisfactory to the hoard that, in addition ~~thereto~~, ~~he~~ *the*

applicant has had at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a professional land surveyor, and ~~have~~ *evidence of having* passed the written examinations required by tho board; or

(4) ~~present~~ evidence satisfactory to the board that ~~he~~ *the applicant* has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects ~~in Montana~~, under the supervision of a professional land surveyor, and ~~has~~ *evidence of having* passed the examinations required by tho board."

Section 8. Section 37-67-311, MCA, is amended to read:

"**37-67-311. Examinations.** Examination requirements are as follows:

(1) The examinations ~~shall~~ *must* be held at times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination on the fundamentals of engineering. Passing the examination qualifies the examinee for an ~~engineer-in-training~~ *engineer intern* certificate ~~provided he~~ *if the examinee* has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer ~~provided he~~ *if the examinee* has met the other requirements for registration required by this chapter.

(c) The examinations for land ~~surveyor-in-training~~ *surveyor intern* consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land ~~surveyor-in-training~~ *surveyor intern* certificate ~~provided he~~ *the examinee* has met all other requirements for certificates required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land ~~surveyor-in-training~~ *surveyor intern,* ~~and~~ of two ~~4-hour~~ examinations, designated as parts III and IV, on the applied disciplines of land surveying, *and of an examination specifically related to land surveying in Montana.* Passing these examinations qualifies the examinee for registration as a professional land surveyor ~~provided he~~ *if the examinee* has met the other requirements for registration required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee must ~~appear before the board with evidence of having acquired the necessary additional knowledge to qualify~~ *wait 1 year before a third examination.*

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(4) A candidate failing three examinations may not be allowed readmission to the examination. The candidate may apply for a special circumstance waiver from the board to be readmitted to the examination."

Section 9. Section 37-67-312, MCA, is amended to read:

"37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to ~~him~~ *the person* by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the ~~provision~~ *provisions* of this chapter and *that* were of a standard not lower than that specified in the applicahle registration act in effect in this state at the time the certificato was issued~~,~~ may upon application be registered without further examination.

(2) A person holding a certificate of qualification issued by the committoe on national engineering certification of the national council of ~~engineering~~ examiners *for engineering and surveying, and* whose qualifications meet the requirements of this chapter~~,~~ may upon application be registered without further examination."

Section 10. Section 37-67-313, MCA, is amended to read:

"37-67-313. Comity consideration for land surveyors from other states. A person holding a certificato of registration te engage in the practice of land surveying issued by a proper authority of a state, territory, or possession of the United States or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and *that* were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificato was issued, will be given comity consideration. However, ~~he~~ *the person* may be asked to meet the conditions for taking ~~and take such~~ examinations *and to take them* as the board ~~deems~~ *considers* necessary to determine ~~his~~ *the person's* qualifications~~.~~ ~~but in~~ *In* any event, ~~he~~ *the person* shall ~~be required to~~ pass a writtor examination ~~of not less than 8 hours' duration, which shall include~~ *that includes* questions on laws, procedures, and practices pertaining to the practice of land surveying in this state."

Section 11. Section 37-67-314, MCA, is amended to read:

"37-67-314. Issuance of certificates — seal of professional engineer or professional land surveyor — enrollment card for ~~trainees~~ *interns*. (1) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter a certificate of registration giving the registrant proper authority to *engage in the* practice ~~his profession~~ *of engineering or the practice of land surveying* and to assume responsible charge of engineering or land surveying projects in this state. The certificate of registration for a professional engineer ~~shall~~ *must* carry the designation "professional engineer" and for a professional land surveyor, "professional land surveyor". It ~~shall~~ *must* give the full name *and serial number* of the registrant ~~with his serial number~~ and ~~shall~~ *must* be signed by the ~~chairman~~ *presiding officer* and the secretary under the seal of the board.

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(2) This certificate ~~shall be~~ *is* prima facie evidence that the *named* person ~~named thereon~~ is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the certificate of registration remains unrevoked or unexpired.

(3) Each registrant ~~hereunder~~ may, upon registration, obtain a seal of a design authorized by the board, bearing the registrant's name, serial number, and the legend "professional engineer" ~~and/or~~ *or* "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a registrant must when issued be signed with a written signature, dated, and stamped with the seal or a seal facsimile. It is unlawful for a registrant to affix or permit ~~his~~ *the* seal and signature or seal facsimile to be affixed to any plans, specifications, plats, drawings, reports, design information, or calculations after the expiration of a certificate or for projects for which the registrant was not in responsible charge.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as ~~engineer-in-training~~ *an engineer intern* or land ~~surveyor-in-training~~ *surveyor intern*. ~~which indicates~~ *The enrollment card must indicate* that ~~his~~ *the applicant's* name *and status* has been recorded ~~as such in~~ *with* the board ~~office~~. The ~~engineer-in-training or land surveyor-in-training~~ enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor."

Section 12. Section 37-67-320, MCA, is amended to read:

"37-67-320. ~~Practice by~~ *Firms,* partnerships, and corporations — *requirements — exceptions.* (1) ~~The practice of or offer to practice engineering or land surveying by registered professional engineers or registered professional land surveyors organized as a partnership or incorporated as a professional corporation under the provisions of the professional corporations law of this state or under the provisions of a similar law of any other state is permitted in this state if all the partners of the partnership or each officer and shareholder of the professional corporation are registered under or exempt from this chapter.~~

~~(2) The practice of or offer to practice engineering or land surveying by a partnership other than one provided for in subsection (1) or by a corporation, other than a professional corporation, is permitted in this state if:~~

~~(a) all officers, employees, and agents of a partnership or corporation who will perform the practice of engineering or land surveying within this state for the partnership or corporation are registered under this chapter;~~

~~(b) each person in responsible charge of the activities of a partnership or corporation, which activities constitute the practice of engineering or land surveying, is a professional engineer or professional land surveyor registered in this state or a person authorized to practice engineering or land surveying as provided in this chapter;~~

~~(c) the partnership or corporation has been issued a certificate of authorization by the board as provided in subsection (3);~~

~~(d) the partnership or corporation is jointly and severally responsible with and for the conduct or acts of its agents, employees, or officers concerning any~~

~~professional engineering or land surveying services performed or to be executed in this state; an individual practicing engineering or land surveying is not relieved of the responsibility for his conduct or acts performed by reason of his employment by or relationship with the partnership or corporation; and~~

~~(c) all final drawings, specifications, plans, reports, or other engineering or land surveying papers or documents involving the practice of engineering or land surveying, when issued, are dated and bear the seals and signatures of the professional engineers or professional land surveyors registered under this chapter by whom or under whose responsible charge they were prepared.~~

~~(3) A partnership or corporation desiring a certificate of authorization or the renewal thereof shall file a written application with the board listing the names and addresses of all partners of the partnership or officers and directors of the corporation and the names and addresses of all employees who are registered to practice engineering or land surveying in this state and who are or will be in responsible charge of any engineering or land surveying in this state by the partnership or corporation, together with any other information the board requires. Upon the receipt of an application and of a fee in an amount established by the board for the initial certificate or biennial renewal thereof, the board shall issue to the partnership or corporation a certificate of authorization or a renewal thereof, which certificate of authorization may not be transferred. If the board finds an error in an application or that facts exist which would entitle the board to suspend or revoke a certificate if issued to the applicant, the board shall deny the application. If a change occurs in the information submitted on the application of a partnership or corporation within the term of the authorization, the partnership or corporation shall file with the board a written report listing the change within 30 days after the change occurs. The provisions of this chapter concerning issuance, expiration, renewal, and reissuance of certificates of registration of individuals, except for 37-67-315(2), apply to certificates of authorization issued to partnerships and corporations under this subsection. Partnerships or corporations are subject to disciplinary proceedings and penalties and the board may reprimand them or revoke, suspend, or refuse to renew their certificates of authorization for cause in the same manner and to the same extent as provided in 37-67-331. "Registrant" and "certificate of registration" in 37-67-331 include any partnership or corporation holding a certificate of authorization issued under this subsection and to such certificate of authorization** *A firm, partnership, or corporation:*

(a) may engage in the practice of engineering in this state if any member of the firm, partnership, or corporation who is in responsible charge of engineering or land surveying work performed in this state is a professional engineer or a professional land surveyor, as appropriate;

(b) must have a professional engineer or professional land surveyor in residence who is in responsible charge of the engincering or land surveying work conducted in the office or place of business if the firm, partnership, or corporation is engaged in the practice of engineering or the practice of land surveying; and

(c) shall obtain a certificate of authorization from the board before engaging in the practice of engineering or the practice of land surveying.

(2) The provisions of subsection (1) do not apply to firms, partncrships, or corporations that are engaged in the practice of engineering or the practice of

land surveying for their own benefit and do not practice or offer engineering or land surveying services to others."

Section 13. Section 37-67-331, MCA, is amended to read:

"37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement. (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a registrant found ~~guilty of~~ *responsible for*:

(a) fraud or deceit in obtaining a certificate of registration;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or professional land surveyor;

(c) a felony;

(d) *a* violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;

(e) ~~if a professional land surveyor, failure~~ *failing* to comply with the Corner Recordation Act *if the person is a professional land surveyor.*

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges ~~shall~~ *must* be made by affidavit, ~~and~~ subscribed and sworn to by the person making them, and filed with the department. The charges ~~shall~~ *must* be investigated by the board ~~and, unless the board dismisses the charges after investigation as unfounded or trivial, it shall act on the charges within 6 months after the date on which the charges were made. The board is considered to have acted on the charges if it has given notice by mail to the licensee of its intent to revoke, suspend, or refuse to renew his license and the notice contains the facts or conduct which warrant the intended action~~. For purposes of investigation under this section, the board may require that a registrant meet with ~~it~~ *the board.*

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or *to* revoke, suspend, or refuse to renew *the certificate of registration.*

(4) If, after *a* hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificato has been revoked if five or more members of the board vote in favor of the reissuance."

Section 14. Code commissioner instructions. Whenever the term "engineer-in-training" appears in the Montana Code Annotated or in legislation enacted by the 54th legislature, the code commissioner shall change the term to "engineer intern". Whenever the term "land surveyor-in-training" appears in the Montana Code Annotated or in legislation enacted by the 54th legislature, the code commissioner shall change the term to "land surveyor intern".

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Approved March 10, 1995

CHAPTER NO. 109

[HB 174]

AN ACT REVISING THE LAW RELATING TO NOTICE TO OTHER JURISDICTIONS OF DECREES OF SEPARATION OR INVALIDITY OF MARRIAGE; REQUIRING NOTICE OF INVALIDITY OF MARRIAGE; ELIMINATING NOTICE FOR DECREES OF SEPARATION; AND AMENDING SECTIONS 40-1-402 AND 40-4-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-402, MCA, is amended to read:

"**40-1-402. Declaration of invalidity.** (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time *that* the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter inte a marriage by force or duress or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time *that* the marriage was entered into, the other party did not know of the incapacity;

(c) a party was under the age of 16 years or was aged 16 or 17 years and did not have the consent of ~~his~~ *the party's* parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the following persons and must be commenced within tbe times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or otber incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress, or fraud, no lator than 2 years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner obtained knowledge of the described condition;

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(e) for the reason set forth in subsection (1)(c), by the underaged party, ~~his~~ *or the party's* parent or guardian, prior to the time *that* the underaged party reaches the age at which ~~he~~ *the party* could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

(6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a marriage:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of invalidity in the appropriate record."

Section 2. Section 40-4-108, MCA, is amended to read:

"**40-4-108. Decree.** (1) A decree of dissolution of marriage or of legal separation is final when entered, subject te the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree ~~which~~ *that* dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of *the* court shall give notice of the entry of a decree of dissolution ~~or legal separation~~:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of dissolution ~~or separation~~ in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he *the official* enter the fact of dissolution in the appropriate record.

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(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order ~~her~~ *the wife's* maiden name or a former name restored."

Approved March 13, 1995

CHAPTER NO. 110

[HB 175]

AN ACT PROVIDING THAT THE CHIEF JUSTICE, RATHER THAN THE GOVERNOR, MAY ASSIGN A DISTRICT JUDGE TO HOLD COURT IN A DISTRICT OTHER THAN THE JUDGE'S OWN DISTRICT; ELIMINATING THE REQUIREMENT FOR A REQUEST BY AN INTERESTED PERSON; AMENDING SECTIONS 3-5-111 AND 3-5-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-111, MCA, is amended to read:

"3-5-111. **District courts presided over by judges of other districts.** A judge of the district court of any judicial district may hold the district court in any county of another district ~~than his own~~ at the request of the judge ~~thereof~~ *of the other district* or as otherwise provided by law. ~~Upon the request of the governor, it is his duty to do so.~~ *A district judge shall hold the district court in a county of another district if so requested by the chief justice.* ~~In either case the~~ *The* judge holding the court *in the other district* has the same power ~~either in court or chambers as a judge thereof~~ *as within the judge's own district.*"

Section 2. Section 3-5-112, MCA, is amended to read:

"3-5-112. ~~**Order from governor**~~ ***Authority of chief justice.*** *(1)* ~~If~~ *The chief justice may by written order assign a district judge to hold court in a county of another district if:*

(a) for any cause a district court *in another district* is not or cannot be held in any county by ~~the~~ *a* judge ~~or judges thereof or by a district judge requested by such judge or judges to hold such court~~ *of the other district or acting for the other district;* or ~~if~~

(b) the business of the court ~~in any county~~ *in the other district* is not or cannot be dispatched with reasonable promptness~~, the governor may, upon application of any interested person, by an order in writing, require some district judge to hold court in said county for such time as may be specified in the order~~.

(2) A district judge assigned to another district pursuant to subsection (1) shall hold court in the other district for the time specified in the order."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 10, 1995

CHAPTER NO. 111

[HB 205]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING COMPENSATION THAT MAY BE USED IN THE CALCULATION OF RETIREMENT BENEFITS; CLARIFYING THE DEFINITIONS OF AVERAGE FINAL COMPENSATION AND EARNED COMPENSATION; CLARIFYING QUORUM REQUIREMENTS FOR THE TEACHERS' RETIREMENT BOARD; CLARIFYING THAT ELECTED COUNTY SUPERINTENDENTS ARE PROHIBITED FROM BECOMING ACTIVE MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM BUT MAY ELECT MEMBERSHIP UNDER THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE LIMITS ON EARNINGS OF MEMBERS ON DISABILITY RETIREMENT; LIMITING COMPENSATION AS REQUIRED UNDER THE INTERNAL REVENUE CODE; AUTHORIZING TRANSFER OF RETIREMENT CONTRIBUTIONS; ELIMINATING THE REQUIREMENT TO OFFER A TAX-DEFERRED ANNUITY PROGRAM; CLARIFYING APPLICATION OF FAMILY LAW ORDERS TO THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-907, 19-20-101, 19-20-203, 19-20-302, 19-20-602, 19-20-706, AND 19-20-904, MCA; REPEALING SECTION 19-20-207, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-907, MCA, is amended to read:

"**19-2-907. Alternate payees — family law orders.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, *or* 17~~, or 20~~; and

(b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

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(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(5) A family law order may only provide for payment to an alternate payee as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may he apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to altornate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternato payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option.

(6) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section."

Section 2. Section 19-20-101, MCA, is amended to read:

"**19-20-101. Definitions.** As used in this chaptor, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited te ~~his~~ *the member's* individual account in the annuity savings fund, together with interest. Regular interest ~~shall~~ *must* be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(3) "Annuity" means the payments made to a beneficiary for life ~~which~~ *that* are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) (a) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutivo years of full-time service ~~which~~ *that* yield the highest average and on which contributions have been made as required hy 19-20-602.

(b) In detormining a member's retirement allowance under 19-20-802 or 19-20-804, ~~the amount of each year's earned compensation that may be used in the calculation of average final compensation may not exceed the member's earned compensation from the preceding year by more than 10%~~ *the compensation for each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less*, except as provided by rule by the retirement board.

(c) Earned compensation in excess of the amount specified in subsection (5)(b) is considered tormination pay as provided in subsection (5)(d).

(d) If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of tormination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation, if the member has 4 or more years of service with the employer from which the termination pay was received. The amount of compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer ~~must~~ *shall* pay contributions on the termination pay according to the rates provided for in 19-20-602(1) and 19-20-605(1).

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member, and contributions made under 19-20-602 and 19-20-605 must be refunded.

(e) For purposes of this subsection *(5)*, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulatod vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other henefit provided by the retirement systom.

(7) "Creditable service" is that service defined by 19-20-401.

(8) "Earned compensation" means ~~the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement, a cafeteria plan, a tax sheltered annuity, a deferred compensation program, and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member~~, *except as limited by [section 8], remuneration paid for services by a member out of funds controlled by an employer, as defined under this chapter, before any tax-deferred deductions allowed under the Internal Revenue Code, exclusive of maintenance, allowances, and expenses.* The earned compensation is ~~the full compensation, pay, or salary~~ *remuneration* that would have been paid to a member for full-time service but was not paid to the member because of a reduction in compensation, pay, or salary due to a temporary absence, provided that the retirement system receives the contribution required by 19-20-413. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding ~~his~~ *the member's* retirement is the compensation, pay, or salary ~~which he~~ *that the member* would bave earned had ~~his~~ *the member's* part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary ~~which he~~ *that the member* would have received had ~~he~~ *the member* completed the full year, except that any termination pay, as defined in subsection (5)(e), received by the member is limited to the amount actually paid and is not the amount ~~he~~ *that the member* would have earned had ~~he~~ *the member* completed the full year.

(9) "Employer" means tbe state of Montana, the trustees of a district, or any other agency or subdivision of tbe state ~~which~~ *that* employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service ~~which~~ *that* is full-time and ~~which~~ *that* extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service ~~which~~ *that* is full-time and ~~which~~ *that* totals at least 9 months in any ~~one~~ year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(12) "Part-time service" means service ~~which~~ *that* is less than full-time or ~~which~~ *that* totals less than 9 months in any ~~one~~ year. Part-time service ~~shall~~ *must* be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life ~~which~~ *that* are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, witb regular interest, on the basis of the mortality tables adopted by the retirement board.

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(15) "Prior service" means employment of the same nature as service defined in subsection (20) ~~of this section~~ but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at sucb other rate as may be set by tbe retirement board in accordance with 19-20-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(20) "Service" means the performance of ~~such~~ instructional duties or related activities ~~as~~ *that* would entitle the person to active membership in the retirement system under the provisions of 19-20-302."

Section 3. Section 19-20-203, MCA, is amended to read:

"19-20-203. Officers and employees of retirement board. *(1)* It is the duty of the retirement board to:

~~(1)~~*(a)* elect a ~~chairman~~ *presiding officer* from its membership;

~~(2)~~*(b)* appoint a secretary who may be one of its members;

~~(3)~~*(c)* employ technical or administrative employees who are necessary for the transaction of the business of tbe retirement system; and

~~(4)~~*(d)* designate an actuary who meets the qualifications established by the retirement board to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

(2) A quorum of the board is three members."

Section 4. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of:

(i) a vocational-technical center; or

(ii) a unit of the Montana university system and who has not elected or is not required to participate in tho optional retirement program under Title 19, chapter 21;

(c) any person employed as a speech therapist, school nurso, or school psychologist or in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) any person who has elected not to become a member of tho retirement system and is reentering service in a capacity prescribed by ~~(a), (b), (c), or (d) of this~~ subsection (1)*(a), (1)(b), (1)(c), or (1)(d)*;

(f) any person who has elected not to become a member of the retiremont system, who has heen continuously employed in a capacity prescribed by ~~(a), (b), (c), or (d) of this~~ subsection (1)*(a), (1)(b), (1)(c), or (1)(d)* since the time of the election, and who may elect to become a member of the retirement system.

(2) A person elected to the office of county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become an active member of thc teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

~~(2)~~*(3)* In order te be eligible for active membership, ~~any~~ *a* person described in subsection (1) *or (2)* must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have tbe compensation for the person's creditable service tetally paid by an employer.

~~(3)~~*(4)* (a) A substitute teacher:

(i) may elect to become an active member of the retirement systom on the first day of employment in any fiscal year; or

(ii) shall become an active member of the retirement system on the 31st day of employment in any fiscal year if the substitute teacher has not elected membership under subsection ~~(3)(a)(i)~~ *(4)(a)(i)*.

(b) The employer shall give written notification to a substitute teacher on tbe first day of employment in any fiscal year of the option to elect membership under subsection ~~(3)(a)(i)~~ *(4)(a)(i)*.

~~(4)~~*(5)* A substituto teacher who did not elect membership under subsection ~~(3)(a)(i)~~ *(4)(a)(i)* and *who* subsequently becomes a member must be awarded creditable service for substitute teaching service if the substitute teacher contributes:

(a) an amount equal to the combined employee and employer contributions that would have been made if the substitute teacher had elected membership; plus

(b) interest at the rate the contributions would have earned if they had been on deposit with the retirement system.

~~(5)~~*(6)* At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances ~~shall~~ *must* be treated alike."

Section 5. Section 19-20-602, MCA, is amended to read:

"19-20-602. Annuity savings fund — member's contribution. The annuity savings fund is a fund in which the contributions for the members to provide for their annuities ~~shall~~ *must* be accumulated in individual accounts for each member. The normal contribution of each member is 7.044% of ~~his~~ *the member's* earned compensation. Contributions to and payments from the annuity savings fund ~~shall~~ *must* be made in the following manner:

(1) (a) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions ~~which~~ *that* would be payable by the member under this section for service rendered after June 30, 1985.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulatod.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's ~~wages as defined in 19-1-102 and his~~ earned compensation as ~~used to define his average final compensation~~ *defined* in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions ~~shall~~ *must* be made notwithstanding that the minimum compensation provided by law for a member may be reduced ~~thereby~~ *by the deductions*. ~~Every~~ *Each* member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims ~~whatsoever~~ for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the rotirement system.

(2) In addition to the normal contributions and subject te the approval of the retirement board, ~~any~~ *a* member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to ~~any~~ accumulated contributions ~~which he~~ *that the member* has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

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(3) The accumulated contributions of a member withdrawn hy ~~him~~ *the member* or paid to ~~his~~ *the member's* estate or to ~~his~~ *the member's* designated beneficiary in event of ~~his~~ *the member's* death ~~shall~~ *must* be paid from the annuity savings fund. Upon the retirement of a member, ~~his~~ *the member's* accumulated contributions ~~shall~~ *must* be transferred from the annuity savings fund to the pension accumulation fund."

Section 6. Section 19-20-706, MCA, is amended to read:

"**19-20-706. Exemption from taxation and legal process.** Except as provided in ~~19-2-907~~ *[section 9]*, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

Section 7. Section 19-20-904, MCA, is amended to read:

"**19-20-904. Adjustment of allowance.** (1) If ~~any~~ *a* disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between ~~his~~ *the beneficiary's* retirement allowance and ~~his~~ *the beneficiary's* average final compensation or the difference between the median salary of those members retired during the preceding fiscal year and ~~his~~ *the beneficiary's* retirement allowance, whichever is greater, ~~his pension shall~~ *the retirement allowance must* be reduced to an amount ~~which~~ *that*, together with ~~his annuity and~~ the amount earnable by ~~him~~ *the beneficiary*, is equal to ~~his~~ *the beneficiary's* average final compensation or the median salary of those members retired during the preceding fiscal year, whichever is greater.

(2) If ~~his~~ *the beneficiary's* earning capacity is changed later, ~~his pension~~ *the beneficiary's retirement allowance* may be further modified, but the new ~~pension~~ *allowance* may not exceed the ~~pension~~ *retirement allowance* originally granted or an amount ~~which~~ *that*, when added to the amount earnable by the beneficiary, ~~together with his annuity~~ equals ~~his~~ *the beneficiary's* average final compensation.

(3) The board may, in its discretion, require a recipient of a disability retirement allowance to annually submit an earning statement and any documentation necessary to support the earnings of the recipient.

~~(3)~~*(4)* A beneficiary restered to active service at a salary less than the average final compensation upon the basis of which ~~he~~ *the beneficiary* was

retired may not become a member of the retirement system while receiving a reduced benefit."

Section 8. Compensation limit. Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996.

Section 9. Alternate payees — family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of the retirement system designated pursuant te this chapter; and

(b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject te assignment, execution, garnishment, attachment, or other process. An altornate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(5) A family law order may only provide for payment to an alternate payee as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is tbe monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

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(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments te an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option.

(6) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

Section 10. Rollover or transfer of public employee accumulated contributions. (1) A member who is eligible to qualify service under this chapter may at any time before retirement apply to roll over or transfer the member's accumulated contributions on deposit with any other qualified retirement plan. The total amount transferred to the retirement system may not exceed the amount due to purchase service.

(2) If the account includes both tax-deferred and taxed contributions, the transferring agency shall identify the member's tax-deferred and taxed contribution and interest balances at the time the transfer is made.

Section 11. Repealer. Section 19-20-207, MCA, is repealed.

Section 12. Codification instruction. (1) [Sections 8 and 9] are intended to be codified as an integral part of Title 19, chapter 20, and the provisions of Title 19, chapter 20, apply to [sections 8 and 9].

(2) [Section 10] is intended to be codified as an integral part of Title 19, chapter 20, part 4, and the provisions of Title 19, chapter 20, part 4, apply to [section 10].

Section 13. Effective dates. (1) [Sections 1 through 3, 5 through 7, and 9 through 12 and this section] are effective on passage and approval.

(2) [Sections 4 and 8] are effective July 1, 1995.

Approved March 10, 1995

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CHAPTER NO. 112

[HB 216]

AN ACT EXEMPTING EMPLOYMENT OF AN EMPLOYER'S SPOUSE FOR WHOM AN EXEMPTION BASED ON MARITAL STATUS MAY BE CLAIMED UNDER FEDERAL TAX LAW FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT UNLESS COVERAGE IS ELECTED; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstato commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

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(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member who operates solely within the exterior boundaries of an Indian reservation;

(n) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703.

(3) (a) A sole proprietor or a working member of a partnership who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status as an independent contractor until the independent contractor notifies the department of any change in status and provides a description of present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules the department promulgates and subject in all cases to

approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected te be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and to the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, to the department, and to the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if the officer elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice required by subsection (4)(a) under oath or affirmation and is subject te the penalties for false swearing under 45-7-202 if the officer falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices te employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved March 13, 1995

CHAPTER NO. 113

[HB 243]

AN ACT ALLOWING LICENSED ELECTRICIANS TO RENEW A LAPSED STATE LICENSE WITHOUT EXAMINATION WITHIN 1 YEAR OF THE LICENSE EXPIRATION DATE UPON PAYMENT OF RENEWAL AND DELINQUENCY FEES; AMENDING SECTION 37-68-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-68-310, MCA, is amended to read:

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"**37-68-310. License renewal every three years — *renewal of lapsed licenses.*** Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or rovoked by the board, must be renewed for a period of 3 years by the department on application for renewal made to the department prior te July 15 of the year in which the prior license expired and on the payment of a renewal fee. If application for renewal is not mado prior to July 15, an additional fee prescribed by the board must be paid because of the delinquency in renewal. ~~All applications for renewal must be made prior to August 15 of the year in which the prior license expired, otherwise the license is forfeited and the applicant is required to pass the examination and pay the fees required of applicants for original licenses.~~ *It is unlawful for a person who refuses or fails to pay the renewal fee to practice electrical work in this state. A person with a lapsed license may be issued a renewal license without examination if the applicant pays the original renewal fee and any delinquency fee within 1 year of the license expiration date. A lapsed license that is not renewed within 1 year following its expiration date may not be renewed unless the applicant passes the examination and pays the fee required for an original license.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 10, 1995

CHAPTER NO. 114

[HB 285]

AN ACT EXEMPTING CERTAIN EMPLOYEES OF A LICENSED OUTFITTER FROM COVERAGE UNDER THE STATE OVERTIME LAW; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, *and* cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

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(e) any persons not regular employees of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial dato of employment and further provided that during this exclusion, period wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) any individual employed by the Unitod Statos of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States ~~Secretary~~ *secretary* of ~~Transportation~~ *transportation* has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

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(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimato purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by tbe employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection witb livesteck auction operations in which the farmer is engaged as an adjunct to the raising of livestock, eitber alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establisbment tbat sells products and services used in the operation of a farm, if no more than five employees are employed hy the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as tbe children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are togetber compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

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(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours per a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 13, 1995

CHAPTER NO. 115

[HB 288]

AN ACT PROVIDING THAT A PERSON WHO TAKES A MOUNTAIN SHEEP USING AN UNLIMITED MOUNTAIN SHEEP LICENSE, WITH THE EXCEPTION OF A MOUNTAIN SHEEP TAKEN PURSUANT TO AN ADULT EWE LICENSE, IS NOT ELIGIBLE TO RECEIVE ANOTHER SPECIAL LICENSE FOR THAT SPECIES FOR THE NEXT 7 YEARS; AND AMENDING SECTION 87-2-702, MCA.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-702, MCA, is amended to read:

"87-2-702. Restrictions on special licenses. (1) A person who has killed or taken any game animal, except a deer or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) After March 27, 1987, a person may~~, during his lifetime,~~ lawfully take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) *(a)* A person who receives a moose, mountain goat, or limited mountain sheep license, with the exception of an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next ~~succeeding~~ 7 years. *For the purposes of this subsection (a), "limited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is restricted.*

(b) A person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (b), "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted."

Approved March 10, 1995

CHAPTER NO. 116

[HB 291]

AN ACT ALLOWING THE POSSESSION, TRANSPORTATION, SALE, OR PURCHASE OF THE BONES OF AN ELK, ANTELOPE, MOOSE, OR DEER THAT HAS BEEN LAWFULLY KILLED OR THAT HAS DIED OF NATURAL CAUSES; AND AMENDING SECTION 87-3-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-111, MCA, is amended to read:

"87-3-111. (Temporary) Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties. (1) It is unlawful for ~~any~~ *a* person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging te the same or *a* different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

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(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

(c) the possession, transportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed; ~~or~~

(d) *the possession, transportation, sale, or purchase of the bones of an elk, antelope, moose, or deer that has been lawfully killed or that has died of natural causes; or*

(e) the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601.

(3) ~~Any~~ *A* person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102. (Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)

87-3-111. (Effective July 1, 2003) Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties. (1) It is unlawful for ~~any~~ *a* person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or *a* different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratery game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110; ~~or~~

(c) *the possession, transportation, sale, or purchase of the bones of an elk or deer that has been lawfully killed or that has died of natural causes; or*

(d) the possession, transportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed.

(3) ~~Any~~ *A* person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction sball be punished as provided in 87-1-102."

Approved March 10, 1995

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CHAPTER NO. 117

[HB 310]

AN ACT ALLOWING REGULATED COMPANIES TO IMMEDIATELY RECOVER IN THEIR RATES AND CHARGES FEES LEVIED BY THE MONTANA CONSUMER COUNSEL; AMENDING SECTION 69-1-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1-224, MCA, is amended to read:

"**69-1-224. Determination of fee.** (1) On or before August 31 of each year, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies for the previous fiscal year;

(b) compute the percentage, subject to revision as provided in subsection (2), of the amount determined in subsection (1)(a) that will produce an amount equal to the current appropriation to the office of the consumer counsel, except that a regulated company owned and operated by any municipal corporation within this state may not he required to pay a sum in excess of .06 of 1% of its gross operating revenue;

(c) adjust the percentage multiplier computed in subsection (1)(b) to ensure that sufficient funds are generated to meet the appropriation and that excess funds are not generated or retained by:

(i) determining the appropriation to the office of the consumer counsel for the previous fiscal year and comparing it to the fees collected from the previous fiscal year;

(ii) reducing or increasing the percentage determined in *subsection* (1)(b) for the current year in order to account for any difference determined in suhsection (1)(c)(i); and

(iii) if necessary, reducing the revenue to be collected for the current year by any funds remaining unspent at the close of the prior fiscal year; and

(d) give notice hy mail to each regulated company of the percentage to be applied to the gross operating revenue reported under 69-1-223(2) te determine the amount of the fee to be paid.

(2) (a) The department of revenue shall adjust the percentage multiplier if the department considers a change necessary to meet or to not exceed the amount to be raised by the fee because of:

(i) fluctuations in the actual gross operating revenue subject to the fee; or

(ii) submission and approval of a budget amendment authorizing tbe spending of money from a contingency appropriation included in the appropriation measure for the office of the consumer counsel and authorized to be raised by means of the fee.

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(b) Adjustments of the percentage multiplier are subject to the exception provided in subsection (1)(b) for municipally owned and operated regulated companies.

(c) Regulated companies must be given at least 30 days' notice of any change in the percentage multiplier.

(d) Any change in the percentage multiplier is effective at the beginning of the next calendar quarter.

(3) In the event *that* the fee charged in ~~one~~ *1* year is in excess of the amount actually expended in that year, the excess ~~shall~~ *must* be deducted from the amount required to be raised by the fee for the next year before the determination required by subsection (1) is made. Money remaining unspent at the close of the fiscal year ~~shall~~ *must* be used to reduce the percentage calculated in 69-1-224 in the subsequent fiscal year.

(4) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of the notice required by subsection (1), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by this part."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 10, 1995

CHAPTER NO. 118

[HB 379]

AN ACT ALLOWING A GOVERNING BODY TO DETERMINE THE TIME OF ITS MEETING AS THE BOARD OF COUNTY CANVASSERS; AND AMENDING SECTION 13-15-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-15-401, MCA, is amended to read:

"13-15-401. ~~County governing~~ *Governing* body as board of county canvassers. (1) The governing body of a county, consolidated, or confederated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the governing body within 3 days after each election, at ~~8 a.m.~~ *a time determined by the board*, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, ~~his~~ *the member's* place ~~shall~~ *must* be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county,

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consolidated, or confederated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of ~~his~~ *the administrator's* office."

Approved March 10, 1995

CHAPTER NO. 119

[SB 24]

AN ACT REVISING THE LAWS GOVERNING VOTER INFORMATION PAMPHLETS TO REQUIRE A VOTER INFORMATION PAMPHLET TO BE SENT WITH CERTAIN ABSENTEE BALLOTS IF THERE IS A STATEWIDE BALLOT ISSUE ON THE BALLOT; REVISING THE TIME FOR SUBMITTING ARGUMENTS ADVOCATING ACCEPTANCE OR REJECTION OF A BALLOT MEASURE; REVISING THE TIME FOR PRINTING THE VOTER INFORMATION PAMPHLET; AND AMENDING SECTIONS 13-13-214, 13-27-406, AND 13-27-410, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing ballot to elector. (1) As soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom ~~he~~ *the administrator* has received a valid application whatever official ballots are necessary. Ballots ~~shall~~ *must* be sent immediately to electors submitting valid requests after the official ballots are printed.

(2) The election administrator shall enclose with the ballots a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state ~~shall~~ *must* be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots sent to an absentee elector as provided in 13-13-116.

(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope ~~shall~~ *must* have printed across the face ~~such~~ *the* information and graphics and be of ~~such~~ *the* color ~~as may be~~ prescribed by the secretary of state consistent with the regulations established by the federal election commission, *the* U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so *that* it can be identified as being used by any one elector.

(6) Instructions for voting ~~shall~~ *must* be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments ~~which~~ *that* may be used to mark the absentee ballot. *The*

election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector;

(b) the elector is out of the state or will be out of the state at the time of the election; and

(c) the elector requests a voter information pamphlet.

(7) The return envelope ~~shall~~ *must* be self-addressed to the election administrator."

Section 2. Section 13-27-406, MCA, is amended to read:

"13-27-406. Limitation on length of argument — time of filing. An argument advocating approval or rejection of a ballot issue is limited to 500 words and ~~shall~~ *must* be filed, in typewritton form, with the secretary of state no later than ~~85~~ *105* days before the election at which the issue will be voted on by the people. A majority of the committee responsible for preparation ~~must~~ *shall* approve and sigu each argument filed. Separate signed lettors of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline."

Section 3. Section 13-27-410, MCA, is amended to read:

"13-27-410. Printing and distribution of votor information pamphlet. (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a votor information pamphlet for all ballot issues to be submitted to the people at least ~~90~~ *110* days before the election at which they will be submitted. The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to ~~every~~ *each* voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than ~~30~~ *45* days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registored voter in the county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing must take place no later than 2 weeks before the election.

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(5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues."

Approved March 10, 1995

CHAPTER NO. 120

[SB 69]

AN ACT RELATING TO MILITARY JUSTICE IN THE MONTANA NATIONAL GUARD; CLARIFYING THAT THE FEDERAL UNIFORM CODE OF MILITARY JUSTICE AND ITS IMPLEMENTING REGULATIONS, FORMS, AND USAGES ARE ADOPTED FOR USE BY THE MILITARY FORCES OF THIS STATE WHEN SERVING OTHER THAN IN A FEDERAL CAPACITY UNDER TITLE 10, U.S.C.; PROVIDING FOR THE ADMINISTRATION OF MILITARY JUSTICE; AND AMENDING SECTION 10-1-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-104, MCA, is amended to read:

"10-1-104. **Federal regulations to govern.** *(1)* Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the militia~~, including The Uniform Code of Military Justice, shall~~, *as in effect on [the effective date of this act],* insofar as they are applicable and not inconsistont with the constitution of this state, apply to and govern the military forces of this state, including all members of the national guard on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32~~, U.S.C.~~ *of the United States Code.*

(2) The Uniform Code of Military Justice, as in effect on [the effective date of this act], including the regulations, manuals, forms, precedents and usages implementing, interpreting, and complementing the code, is adopted for use by the military forces of this state and applies, insofar as the code is not otherwise inconsistent with the constitution of this state and except as otherwise provided by this title or by rule adopted by the department, to the greatest extent practicable to govern the military forces of this state, including all members of the national guard on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

Section 2. Administration of military justice. (1) When a court-martial is convened, the senior judge advocate of that element shall assigu trial counsel and defense counsel for the court-martial.

(2) A military judge appointed pursuant to 10-1-104 and the manual for courts-martial must be appointed by the adjutant general. The military judge must be an attorney licensed to practice law in the state of Montana and a member of the Montana national guard senior in rank to the accused, but may not be the stato judge advocate of the Montana national guard. The adjutant general may prescribe additional requirements for a military judge.

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(3) Following approval of the findings and sentence of a court-martial by the court-martial convening authority, the findings and sentence or either the findings or sentence may be appealed to the adjutant general of the Montana national guard in a manner directed by the adjutant general. The adjutant general may reverse a decision of the convening authority only if the findings of fact are clearly erroneous, a fraud upon the court has occurred, the law has been incorrectly applied, or the sentonce is an abuse of discretion. Because courts-martial are military courts of the military justice system adopted under 10-1-104 and because the federal military appellate courts do not have jurisdiction over national guard members not in active federal service, no appeal to other courts is allowed.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [section 2].

Approved March 10, 1995

CHAPTER NO. 121

[SB 238]

AN ACT EXEMPTING TEMPORARY UNIVERSITY SYSTEM EMPLOYEES WHO HAVE NEGOTIATED AN ALTERNATIVE BENEFITS PACKAGE THROUGH COLLECTIVE BARGAINING WITH THE UNIVERSITY SYSTEM FROM THE REQUIREMENTS TO PAY CERTAIN STATE-MANDATED BENEFITS; PROHIBITING THE COST OF AN ALTERNATIVE BENEFITS PACKAGE FROM EXCEEDING THE COST OF AN EMPLOYEE'S STATE BENEFITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemption for certain university temporary employees — "temporary employee" defined. (1) With the exception of 2-18-603, the requirements of parts 6 and 7 of this chapter do not apply to a tomporary employee of the university system.

(2) As used in this section, "temporary employee" means an employee of the university system who is hired into a position that is not permanent and who has negotiated an alternative benefits package through a labor organization certified to represent employees of the university system pursuant to Title 39, chapter 31. The employer contribution to the alternative benefits package may not exceed the cost of the benefits that the employee would otherwise be entitled te through employment.

Section 2. Exemption for certain university temporary employees — "temporary employee" defined. (1) This chapter does not apply to a temporary employee of the university systom.

(2) As used in this section, "temporary employee" means an employee of the university system who is hired into a position that is not permanent and who has negotiated an alternative benefits package through a labor organization certified to represent employees of the university system pursuant to Title 39,

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chapter 31. The employer contribution to the alternative benefits package may not exceed the cost of the benefits that the employee would otherwise be entitled to through employment.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, part 1, and the provisions of Title 2, chapter 18, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 19, chapter 3, part 1, and the provisions of Title 19, chapter 3, part 1, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 10, 1995

CHAPTER NO. 122

[SB 269]

AN ACT ADOPTING THE INTERSTATE WILDLIFE VIOLATOR COMPACT; AND PROVIDING AUTHORITY TO IMPLEMENT THE COMPACT TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Compact adopted — text. The Interstate Wildlife Violator Compact is entered into by this state, with all other states legally joining therein, in the form substantially as follows:

INTERSTATE WILDLIFE VIOLATOR COMPACT

ARTICLE I

Findings, Declaration of Policy, and Purpose

(1) The participating states find that the following provisions apply:

(a) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(b) The protection of the wildlife resources of a state is materially affected by the degree of compliance with stato statutes, laws, ordinances, regulations, and administrative rules relating to the management of such resources.

(c) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of such natural resources.

(d) Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances, regulations, and administrative rules of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(e) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(f) The mobility of many wildlife law violaters necessitates the maintenance of channels of communication among the various states.

(g) In most instances, a person who is cited for a wildlife violation in a state otber than that person's own state:

(i) is required to post collateral or a bond to secure appearance for a trial at a later date;

(ii) is taken into custody until the collateral or bond is posted; or

(iii) is taken directly to court for an immediate appearance.

(h) The purpose of the enforcement practices set forth in subsection (1)(g) of this article is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to proceed after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(i) In most instances, a person receiving a wildlife citation in that person's home stato is permitted to accept the citation from the officer at the scene of the violation and immediately proceed after agreeing or being instructed to comply with the terms of the citation.

(j) The practices described in subsection (1)(g) of this article cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine and is thus compelled to remain in custody until some alternative arrangement is made.

(k) The enforcement practices described in subsection (1)(g) of this article consume an undue amount of law enforcement time.

(2) It is the policy of the participating states te:

(a) promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states;

(b) recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat such suspension as if it had occurred in their state;

(c) allow a violator, except as provided in subsection (2) of Article III, to accept a wildlife citation and proceed without delay, whether or not a resident of the state in which the citation was issued, provided that the violator's home state is party to this compact;

(d) report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state;

(e) allow the home state to recoguize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they occurred in the home state;

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(f) extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state;

(g) maximize effective use of law enforcement personnel and information;

(h) assist court systems in the efficient disposition of wildlife violations.

(3) The purpose of this compact is to:

(a) provide a means through which participating states may join in a reciprocal program to effectuate the policies enumerated in subsection (2) of this article in a uniform and orderly manner;

(b) provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

ARTICLE II

Definitions

As used in this compact and [sections 2 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document that is issued to a person by a wildlife officer or other peace officer for a wildlife violation and that contains an order requiring the person to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(3) "Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any.

(4) "Conviction" means a conviction, including any court conviction, for any offense that is related to the preservation, protection, management, or restoration of wildlife and that is prohibited by stato statute, law, regulation, ordinance, or administrative rule. Such conviction shall also include the forfeiture of any bail, bond, or other security depositod to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere and the imposition of a deferred or suspended sentence by the court.

(5) "Court" means a court of law, including magistrato's court and the justice of the peace court.

(6) "Home state" means the state of primary residence of a person.

(7) "Issuing state" means the participating state which issues a wildlife citation to the violator.

(8) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing,

possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a participating state.

(9) "Licensing authority" means the department or division within each participating state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(10) "Participating state" means any state which enacts legislation to become a member of this wildlife compact.

(11) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.

(12) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada, and other countries.

(13) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(14) "Terms of the citation" means those conditions and options expressly stated in the citation.

(15) "Wildlife" means all species of animals including but not limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state, and determination of whether a species is "wildlife" for purposes of this compact shall be based on state or local law.

(16) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

(17) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.

(18) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

ARTICLE III

Procedures for Issuing State

(1) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral te secure appearance, subject to the exceptions noted in subsection (2) of this article, if the officer receives the recognizance of such person that the person will comply with the terms of the citation.

(2) Personal recognizance is acceptable:

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(a) if not prohibited by state or local law or the compact manual; and

(b) if the violator provides adequate proof of identification to the wildlife officer.

(3) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

(4) Upon receipt of the report of conviction or noncompliance pursuant to subsection (3) of this article, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in form and content as prescribed in the compact manual.

ARTICLE IV

Procedure for Home State

(1) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(2) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall entor such conviction in its records and shall treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

(3) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states as provided in the compact manual.

ARTICLE V

Reciprocal Recognition of Suspension

(1) All participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

(2) Each participating state shall communicate suspension information to other participating states in form and content as contained in the compact manual.

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ARTICLE VI

Applicability of Other Laws

Except as expressly required by provisions of tbis compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating stato and a nonparticipating state concerning wildlife law enforcement.

ARTICLE VII

Compact Administrator — Procedures

(1) For the purposes of administering the provisions of this compact and to serve as a governing body for the resolution of all mattors relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the participating statos, to be known as the compact administrator. The compact administrator sball be appointed by the head of the licensing authority of each participating stato and shall serve and be subject to removal in accordance with the laws of tbe state the compact administrator represents. A compact administrator may provide for the discharge of duties and the performance of functions as a board member by an alternato. An alternate shall not be entitled to serve unless writton notification of the identity of the alternate has been given to the board.

(2) Eacb member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at wbich a majority of the total number of the board's votes are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating statos are represented.

(3) The board shall elect annually from its membership a presiding officer and a vice presiding officer.

(4) The board shall adopt bylaws not inconsistont with the provisions of this compact or the laws of a participating state for the conduct of its business and sball have the power to amend and rescind its bylaws.

(5) The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, matorials, and services, conditional or otherwise, from any state, the Unitod States, or any governmental agency, and receive, utilize, and dispose of same.

(6) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, or corporation, or any private nonprofit organization or institution.

(7) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

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ARTICLE VIII

Entry Into Compact and Withdrawal

(1) This compact shall become effective at such time as it is adopted in a substantially similar form by two or more states.

(2)(a) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the presiding officer of the board.

(b) The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

(i) a citation of the authority from which the stato is empowered to become a party to this compact;

(ii) an agreement of compliance with tbe terms and provisions of this compact; and

(iii) an agreement that compact entry is with all states participating in the compact and with all additional states legally becoming a party to the compact.

(c) The effective date of entry shall be specified by tbe applying state but sball not be less than 60 days after notice has been given:

(i) by the presiding officer of the board of the compact administrators; or

(ii) by the secretariat of the board to each participating state that the resolution from the applying stato has been received.

(3) A participating state may withdraw from participation in this compact by official written notice te each participating stato, but withdrawal shall not become effective until 90 days after the notice of withdrawal is given. The notice shall be directed te the compact administrator of each member state. No withdrawal of any stato shall affect the validity of this compact as to the remaining participating states.

ARTICLE IX

Amendments to the Compact

(1) This compact may be amended from time to time. Amendments shall he presented in resolution form te the presiding officer of the board of the compact administrators and sball be initiated by one or more participating states.

(2) Adoption of an amendment shall require endorsement by all participating states and shall become effective 30 days after the date of the last endorsement.

(3) Failure of a participating state to respond te the compact presiding officer within 120 days after receipt of a proposed amendment shall constitute endorsement thereof.

ARTICLE X

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary

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to the constitution of any participating state or the United States, or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

Section 2. Department authorization to effect purposes of compact. (1) The department shall enforce the Interstate Wildlife Violator Compact and shall do all things within the department's jurisdiction that are appropriate in order to effectuate the purposes and the intent of the compact.

(2) The department is authorized on behalf of the state of Montana to enter into or withdraw from the Interstate Wildlife Violator Compact pursuant to tbe terms of Article VIII of the compact.

(3) Tbe department is authorized to adopt amendments to the Interstate Wildlife Violator Compact pursuant to the terms of Article IX of tbe compact.

Section 3. Reciprocal recognition of license suspensions — suspension of privileges for conviction in participating state. (1) When the department receives notice of the suspension of a person's hunting, trapping, or fishing privileges by a participating state, the department shall determine whether the violation leading te the suspension could have led to the forfeiture of privileges under Montana law. If tbe department determines that the person's privileges could have been forfeited, the department shall suspend the person's privileges to hunt, trap, or fish in Montana for the same period as imposed by the participating state or for the minimum period that would have been imposed under Montana law, whichever period is longer.

(2) When the department receives notice of a conviction of a Montana resident from the licensing authority of the issuing state, the department shall treat the conviction as if it had occurred in Montana and shall determine whether the conviction could have led to tbe forfeiture of the resident's hunting, trapping, or fishing privileges under Montana law. If the department determines that the resident's privileges could have heen forfeited, the department shall suspend the resident's privileges to hunt, trap, or fish in Montana for the minimum period that would have been imposed under Montana law.

(3) Notice of the suspension must be sent to tbe person, who shall surrender any current Montana hunting, trapping, and fishing licenses to the department within 10 days.

(4) A person whose privileges have been suspended and who hunts, traps, or fishes in Montana, who applies for or purchases any licenses or permits to hunt, trap, or fish in Montana, or who refuses to surrender any current hunting, trapping, and fishing licenses as required, is guilty of a misdemeanor and is subject to the penalties prescribed in 87-1-102(3).

Section 4. Suspension of privileges for failure to comply with citation issued in participating state. (1) The department shall suspend the hunting, trapping, or fishing privileges of any resident of Montana upon

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notification from the licensing authority of an issuing state that the resident has failed to comply with the terms of a citation issued for a wildlife violation. The suspension remains in effect until the department receives satisfactory evidence of compliance from the issuing state.

(2) Notice of the suspension must be sent to the resident, who shall surrender all current Montana hunting, trapping, and fishing licenses to the department within 10 days.

(3) A person who hunts, traps, or fishes, who applies for or purchases licenses or permits, or who refuses to surrender any current hunting, trapping, or fishing license in violation of this section is guilty of a misdemeanor and is subject to the penalties prescribed in 87-1-102(3).

Section 5. Hearing on suspension. (1) Upon suspending the hunting, trapping, or fishing privileges of any person under [section 3 or 4], the department shall immediately notify the person in writing. The person may, within 20 days of the notice, request a hearing before the department on whether the requirements for suspension have been met. The hearing must be informal.

(2) Upon request, the department shall set a hearing as early as practicable.

(3)(a) The requesting person may present evidence and arguments at the hearing contesting whether:

(i) a participating state suspended the person's privileges;

(ii) there was a conviction in the participating state;

(iii) the person failed to comply with the terms of a citation issued for a wildlife violation in a participating state; or

(iv) a conviction in a participating state could have led to the forfeiture of privileges under Montana law.

(b) Grounds other than those listed in subsection (3)(a) may not he used to contest the department's decision to suspend the person's privileges.

(4) At the hearing, the department, through its authorized agent, may:

(a) administer oaths;

(b) issue subpoenas for the attendance of witnesses; and

(c) admit all relevant evidence and documents, including notifications from participating states.

(5) Following the hearing, the department, through its authorized agent, may, based on the evidence, affirm, modify, or rescind the suspension of privileges.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to [sections 1 through 5].

Approved March 10, 1995

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CHAPTER NO. 123

[SB 299]

AN ACT PROVIDING A PROCEDURE FOR TERMINATING LOCAL WATER QUALITY DISTRICTS OR JOINT LOCAL WATER QUALITY DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Referendum to abolish local water quality district or joint local water quality district — termination procedures. (1) A person owning a fee-assessed unit located within a local water quality district or a joint local water quality district may petition the commissioners of a local water quality district or the board of directors of a joint water quality district to submit a referendum to the registered voters residing in the district to terminate or abolish the district. The petition must be in writing and contain the signatures and addresses of 20% or more of the owners of fee-assessed units in the district. The petition requesting a referendum for termination or abolishment of a district must be delivered to the county clerk who shall endorse on it the date on which the petition was received and validate the signatures within 60 days of receipt of the petition. If the petition contains valid signatures of at least 20% of the owners of fee-assessed units located within the district, the county clerk shall notify the commissioners of a local water quality district or the board of directers of a joint water quality district.

(2) Upon receipt of a valid petition described in subsection (1), the commissioners of a local water quality district or the board of directors of a joint water quality district shall submit the referendum to the registered voters residing in the district in accordance with the provisions of 7-5-136.

Seetion 2. Allocation of funds upon termination of local water quality district or joint local water quality district. (1) Except as provided in subsection (2), if a local water quality district or joint local water quality district is terminated, any funds held by the county treasurer pursuant to 7-13-4525 or 7-13-4529 must he deposited in the county general fund. In the case of a terminated joint local water quality district, any funds held by the county treasurer pursuant to 7-13-4529 must be allocated between the counties on the basis of the number of fee-assessed units located in each county.

(2) If the funds held by the county treasurer pursuant to 7-13-4525 or 7-13-4529 are derived frem grants or gifts that restrict the use of those funds, the county treasurer shall return those funds te the grantor or donor.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 7, chapter 13, part 45, and the provisions of Title 7, chaptor 13, part 45, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 10, 1995

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CHAPTER NO. 124

[HB 46]

AN ACT EXPANDING THE CRIME OF ARSON TO INCLUDE PROPERTY NOT CURRENTLY INCLUDED AND TO INCLUDE THE DAMAGE OR DESTRUCTION OF ONE'S OWN PROPERTY TO OBTAIN A PECUNIARY OR OTHER GAIN THROUGH FRAUD OR DECEPTION; PROVIDING THAT ONLY PERSONAL PROPERTY OF ANOTHER, EXCEPT A VEHICLE, THAT EXCEEDS $500 IN VALUE MAY BE THE SUBJECT OF ARSON; AND AMENDING SECTION 45-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-103, MCA, is amended to read:

"**45-6-103. Arson.** (1) A person commits the offense of arson when, by means of fire or explosives, ~~he~~ *the person* knowingly or purposely:

(a) damages or destroys ~~an occupied~~ *a* structure*, vehicle, personal property (other than a vehicle) that exceeds $500 in value, crop, pasture, forest, or other real property* ~~which~~ *that* is property of another without consent; ~~or~~

(b) damages or destroys a structure, vehicle, crop, pasture, forest, or other property that the person owns or has a possessory interest in, with the purpose of obtaining a pecuniary or other gain through fraud or deception; or

~~(b)~~ *(c)* places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for ~~any~~ *a* term not to exceed 20 years or be fined an amount not to exceed $50,000, or both."

Approved March 13, 1995

CHAPTER NO. 125

[HB 69]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE PROTECTION AND TREATMENT OF VICTIMS OF CRIME AND TO THE PAYMENT OF RESTITUTION BY THE OFFENDER; AMENDING SECTIONS 27-2-201, 44-2-601, 44-5-303, 45-9-205, 46-11-701, 46-18-101, 46-18-112, 46-18-113, 46-18-115, 46-18-201, 46-18-202, 46-18-222, 46-18-241, 46-18-242, 46-18-243, 46-18-244, 46-18-245, 46-18-246, 46-18-247, 46-18-302, 46-23-202, 46-23-210, 46-23-215, 46-23-405, 46-23-1011, 46-23-1021, 46-23-1025, 46-24-103, 46-24-104, 46-24-201, 46-24-202, 46-24-203, 46-24-205, AND 53-9-128, MCA; REPEALING SECTION 46-23-204, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-2-601, MCA, is amended to read:

"**44-2-601. Notification of escape or release from confinement.** (1) The notice required by subsection (2) must be given if:

(a) a person committed to a hospital or mental health facility under Title 46, chapter 14, escapes or is released from confinement;

(b) a person confined in an institution other than a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a prison or other state institution after conviction of a criminal offense involving the use or threat of physical force or violence or after being designated as a dangerous offender under 46-18-404 escapes or is released from confinement; or

(c) a person confined in a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a jail after conviction of a criminal offense involving the use or threat of physical force or violence or after being designated as a dangerous offender under 46-18-404 escapes from confinement.

(2) If a person referred to in subsection (1) escapes or is released from confinement, the institution in which the person was confined shall notify:

(a) the sheriff or other law enforcement officials in the county in which the offense occurred;

(b) the sheriff or other law enforcement officials in the county or counties, if known, in which a victim or the victims of the offense reside at the time of the escape or release;

(c) the sheriff or other law enforcement officials in the county, if known, in which the person intends to reside upon leaving confinement;

(d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital, mental health facility, or other institution from which the person escaped or was released is located; ~~and~~

(e) a victim of the offense who has requested notification in the event of an escape or a release of the person; and

~~(e)~~*(f)* a court that has requested that it be notified in the event of *an escape or* a release ~~or an escape~~ of the person."

Section 2. Section 44-5-303, MCA, is amended to read:

"**44-5-303. Dissemination of confidential criminal justice information.** ~~Dissemination~~ *(1) Except as provided in subsection (2), dissemination* of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure.

(2) If the prosecutor determines that dissemination would not jeopardize a pending investigation or other criminal proceeding of confidential criminal justice information, the information may be disseminated to a victim of the

offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) A *Unless otherwise ordered by a court, a person or* criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of ~~such~~ *the* information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential."

Section 3. Nondisclosure of information about victim. (1) If a victim of an offense requests confidentiality, a criminal justice agency may not disseminate, except te another criminal justice agency, the address, telephone number, or place of employment of the victim or a member of the victim's family unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

(2) The court may not compel a victim or a member of the victim's family who testifies in a criminal justice proceeding to disclose on the record in open court a residence address or place of employment unless the court determines that disclosure of the information is necessary.

(3) A criminal justice agency may not disseminate to the public any information directly or indirectly identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507 unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

Section 4. Section 45-9-205, MCA, is amended to read:

"45-9-205. Exemption from mandatory minimum sentences. If a court imposes any of the sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in 46-18-201~~(4)~~*(5)* do not apply."

Section 5. Section 46-11-701, MCA, is amended to read:

"46-11-701. Pretrial proceedings — exclusion of public and sealing of records. (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presentod that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a hearing on a motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means.

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the trial or earlier if consistent with trial fairness.

(5) Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect either party's right to a fair trial or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

~~(5)~~*(6)* When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant's right to a fair trial, the document or portion of tho document must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness."

Section 6. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional policy. (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for the individual's actions, *including, whenever possible, the restoration of all pecuniary losses sustained by a victim of the offense.* Corrections laws and programs must be implemented to impress upon each individual the responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistont. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual charactoristics, circumstances, needs, and potentialities. *Finally, it is the policy of the state to recognize that the interests of crime victims should be considered so that, to the extent possible, victims of crime may be protected from threat of future harm by the offender.*

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of tbe offender;

(iii) tbe circumstances under which the crime was committed;

(iv) the criminal history of the offender; and

(v) consideration of alternatives to imprisonment of the offender in the state prison or the women's correctional center.

(b) Dangerous offenders who habitually violate the law and victimize the public must be removed from society and correctively treated in custody for long terms, as needed. Other offenders must be dealt with by probation, suspended sentence, community corrections, community service, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders must include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

(4) It is also the policy of the stato that alternatives to imprisonment, such as community corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate in other activities that will reduce recidivism and enable offenders to become productive members of society."

Section 7. Section 46-18-112, MCA, is amended to read:

"**46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is required, the probation officer shall promptly inquire into and report upon:

(a) the defendant's characteristics, circumstances, needs, and potentialities;

(b) the defendant's criminal record and social history;

(c) the circumstances of the offense;

(d) the time of the defendant's detention for the offenses charged; ~~and~~

(e) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and the community*; and*

(f) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with the victim to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or declines to confer, the officer shall record that information in the report.

(2) All local and state mental and correctional institutions, courts, and law enforcement agencies shall furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal record and other relevant information.

(3) The court may, in its discretion, require that the presentence investigation report include a physical and mental examination of the defendant.

~~(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and make a restitution report to the court as provided by law.~~"

Section 8. Section 46-18-113, MCA, is amended to read:

"**46-18-113. Availability of presentence investigation report.** (1) All presentence investigation reports must be a part of the court record but may not be opened for public inspection. A copy of the presentence investigation report must be provided to the prosecution, the defendant and the defendant's attorney, and the agency or institution to which the defendant is committed. *The prosecutor may disclose the contents of the presentence report to a victim of the offense.*

(2) The court having jurisdiction of the case may permit other access te the presentence investigation report as it considers necessary."

Section 9. Section 46-18-115, MCA, is amended to read:

"**46-18-115. Sentencing hearing.** Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the applicability of sentencing enhancement provisions, mandatory minimum sentences, persistent felony offender status, or an exception to these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so.

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the victim's statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

~~(4)~~*(5)* The court shall impose sentence or make any other disposition authorized by law.

~~(5)~~*(6)* In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment."

Section 10. Section 46-18-201, MCA, is amended to read:

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"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

~~(iv) restitution;~~

~~(v)~~*(iv)* payment of the costs of confinement;

~~(vi)~~*(v)* payment of a fine as provided in 46-18-231;

~~(vii)~~*(vi)* payment of costs as provided in 46-18-232 and 46-18-233;

~~(viii)~~*(vii)* payment of costs of court-appointed counsel as provided in 46-8-113;

~~(ix)~~*(viii)* with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

~~(x)~~*(ix)* community service;

~~(xi)~~*(x)* home arrest as provided in Title 46, chapter 18, part 10;

~~(xii)~~*(xi)* any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

~~(xiii)~~*(xii)* any combination of the above.

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant te the department of corrections and human services for placement in an appropriate correctional institution or program;

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(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; *or*

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

~~(2)~~*(3)* If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

~~(3)~~*(4)* If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit ~~and~~. *The court shall* state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

~~(4)~~*(5)* Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

~~(5)~~*(6)* Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

~~(5)~~*(7)* Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

~~(7)~~*(8)* If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

~~(8)~~*(9)* In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

~~(9)~~*(10)* A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

~~(10)~~*(11)* In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison,

including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced te the state prison or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 11. Section 46-18-202, MCA, is amended to read:

"**46-18-202. Additional restrictions on sentence.** (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary to obtain the objectives of rehabilitation and the protection of *the victim and* society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of the defendant's owning or carrying a dangerous weapon;

(c) restrictions on the defendant's freedom of association;

(d) restrictions on the defendant's freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of *the victim and* society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant ~~be~~ *is* ineligible for parole and participation in the supervised release program while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~ *must* contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsection (1)(a).

(4) When the district court imposes a sentence of probation, as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition."

Section 12. Section 46-18-222, MCA, is amended to read:

"**46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201~~(4)~~*(5)* through ~~(6)~~*(7)*, 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which the defendant is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which the defendant is to be sentenced, was significantly impaired, although not so impaired as to constituto a defense te the prosecution. However,

a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which the defendant is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and tbe defendant's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the court determines tbat treatment of the defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the ultimato protection of *the victim and* society, in which case the court shall include in its judgment a statement of the reasons for its determination."

Section 13. Section 46-18-241, MCA, is amended to read:

"**46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court ~~may~~ *shall* require an offender to make restitution to any victim of the offense *who has sustained pecuniary loss as a result of the offense.*

(2) The court may require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less tban $5 or more than $250. Payment must be made to the court, which shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245.

(3) If the court finds that, bccause of circumstances beyond the offender's control, the offender is not and will not be able to pay any restitution during the period of state supervision, the court may order the offender to perform community service commensurate with the amount of restitution that would have been imposed."

Section 14. Section 46-18-242, MCA, is amended to read:

"**46-18-242. Investigation and report of victim's loss.** (1) Whenever the court believes that ~~restitution may be a proper condition of a deferred or suspended sentence~~ *a victim of the offense may have sustained a pecuniary loss as a result of the offense* or *whenever* the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) documentation of the offender's financial resources and future ability to pay restitution; and

(b) documentation of the victim's pecuniary loss, suhmittod by the victim *or by the board of crime control if compensation for the victim's loss has been reimbursed by the crime victims compensation and assistance account.*

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(2) ~~Where no~~ *When a* presentence report is *not* authorized or requested, the court may receive evidence of the offender's ability to pay and the victim's loss at the time of sentencing."

Section 15. Section 46-18-243, MCA, is amended to read:

"46-18-243. ~~**Definition**~~ ***Definitions.*** For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses, *loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services*; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2)*(a)* "Victim" means:

~~(a)~~*(i)* a person who suffers loss of property, bodily injury, or death as a result of:

~~(i)~~*(A)* ~~criminally injurious conduct~~ *the commission of an offense*; ~~or~~

~~(ii)~~*(B)* ~~his~~ *the* good faith effort to prevent ~~criminally injurious conduct~~ *the commission of an offense*; *or*

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state; or

~~(b)~~*(iv)* an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for ~~his~~ pecuniary loss.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

Section 16. Section 46-18-244, MCA, is amended to read:

"46-18-244. Type and time of payment — defenses. (1) The court shall specify the amount, method, and time of payment to the victim and may permit payment in installments. The court may not establish a payment schedule extending beyond the period ~~for which the sentence has been suspended or deferred under 46-18-201~~ *of state supervision over the offender.*

(2) In determining the amount, method, and time of payment, the court shall consider the financial resources and future ability of the offender to pay. The court may provide for payment to a victim up to but not in excess of the pecuniary loss caused by the offense. The offender may assert any defense that ~~he~~ *the offender* could raise in a civil action for the loss sought to be compensated by the restitution order.

(3) In addition to other methods of payment, the court may order one or more of the following in order to satisfy the offender's restitution obligation:

(a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale, any remaining amount must be returned to the offender.

(b) return of any property to the victim;

(c) payment of up to one-third of the offender's prison earnings.

(4) With the consent of the victim and in the discretion of the court, an offender may be ordered to make restitution in services in lieu of money or to make restitution to a person designated by the victim, if that person provided services to the victim as a result of the offense."

Section 17. Section 46-18-245, MCA, is amended to read:

"**46-18-245. Supervision of payment.** The court may order a probation officer, restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment. *If the victim has received compensation under Title 53, chapter 9, the court may also order an employee of the board of crime control to supervise the making of restitution and to report to the court any default in payment."*

Section 18. Section 46-18-246, MCA, is amended to read:

"**46-18-246. Waiver or modification of payment.** An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that ~~he~~ *the victim* will bave an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition, amount, method, or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making restitution. The court may extend the restitution schedule, but not beyond the period ~~for which the sentence has been suspended or deferred under 46-18-201~~ *provided for in 46-18-244."*

Section 19. Section 46-18-247, MCA, is amended to read:

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"46-18-247. **Default.** (1) If an offender sentenced te make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why ~~he~~ *the offender* should not be confined for failure to obey the sentence of the court. The court may order the offender te appear at a time, date, and place for a hearing or, if ~~he~~ *the offender* fails to appear as ordered, issue a warrant for ~~his~~ *the offender's* arrest. The order or warrant must he accompanied by written notice of the offender's right to a hearing as provided in 46-18-203.

(2) If the court finds that the offender's default was attributablo to a *the offender's* failure ~~on his part~~ to make a good faith effort to ohtain the necessary funds for payment of the ordered restitution, the court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering the order, may ~~at any time, for good cause shown,~~ reduce the term of confinement and, *in accordance with the provisions of 46-18-246,* waive satisfaction of the restitution order.

(3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment ~~thereof~~ *of restitution*, the sentencing court may order the restitution to he collected hy any method authorized for the enforcement of other judgments."

Section 20. Allocation of fines, costs, restitution, and other charges. (1) If an offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same criminal proceeding, money collectod from the offender must be allocated as provided in this section.

(2) Except as otherwise provided in this section, if a defendant is suhject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

(h) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

(c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

(d) any other payments ordered by the court.

(3) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution.

Section 21. Section 46-18-302, MCA, is amended te read:

"46-18-302. **Evidence that may be received.** In the sentencing hearing, evidence may he presented as to any matter the court considers relevant to the sentence, including but not limited to the nature and circumstances of the crime;; the defendant's character, hackground, history, and mental and physical

condition;; *the harm caused to the victim and the victim's family as a result of the offense;* and any other facts in aggravation or mitigation of the penalty. Any evidence *that* the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to ~~such~~ aggravating or mitigating circumstances ~~shall~~ *must* be considered without reintroducing it at the sentencing proceeding. The state and the defendant or ~~his~~ *the defendant's* counsel ~~shall~~ *must* be permitted to present argument for or against sentence of death."

Section 22. Section 46-23-202, MCA, is amended to read:

"**46-23-202. Investigation of prisoner by board — *consideration of victim's statement.*** (1) Within the 2 months prior to a prisoner's official parole eligibility date or within the 2 months following the date *on which* a prisoner becomes eligible pursuant to 53-30-105(5), the board shall consider all pertinent information regarding each prisoner, including the circumstances of the offense;; the prisoner's previous social history and criminal record;; the prisoner's conduct, employment, and attitude in prison;; and the reports of any physical and mental examinations that have been made.

(2) Before ordering the parole of any prisoner, the board shall:

(a) conduct a hearing and interview the prisoner. *At the time of the hearing, the board shall receive relevant statements from interested persons and any person may be represented by counsel, provided that the board has the power to regulate procedures at all hearings.*

(b) permit a victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement may be kept confidential. The board shall consider the victim's statement, along with the information provided under subsection (1), in determining whether to grant parole."

Section 23. Section 46-23-210, MCA, is amended to read:

"**46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order a person placed in a correctional institution or program, except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:

(a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome that renders the person highly unlikely to present a clear and present danger to public safety;

(b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the physical condition, disease, or syndrome and the extent of any potential recovery.

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(2) The diagnosis must be reviewed and accepted by the department before the board may consider granting a medical parole.

(3) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity has improved to the extent that the person is likely to pose a possible detriment to society, the board may revoke the parole and return the person to the custody of the department.

(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(6) Sections 46-23-203, *46-23-205* through 46-23-207, and 46-23-215 through 46-23-218 apply to nonmedical parole."

Section 24. Section 46-23-215, MCA, is amended to read:

"**46-23-215. Conditions of parole.** (1) ~~Every~~ *A* prisoner while on parole ~~shall remain~~ *remains* in the legal custody of the institution from which ~~he~~ *the prisoner* was released but ~~shall be~~ *is* subject to the orders of the board.

(2) When an order for parole is issued, it ~~shall~~ *must* recite the conditions ~~thereof~~ *of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim.* An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that ~~he~~ *the prisoner* obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the warden may grant ~~him~~ *the prisoner* a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on ~~such~~ furlough, the prisoner remains in the legal custody of the prison and is subject to all other conditions recited by the board."

Section 25. Section 46-23-405, MCA, is amended to read:

"**46-23-405. Establishing program — rules.** The department ~~is authorized and directed to~~ *shall* establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana Administrative Procedure Act), to implement and control the ~~same~~ *program.* Rules ~~shall~~ *must* include guidelines for:

(1) prisoner eligibility;

(2) prisoner participation in a recognized educational, treatment, or training program or work program in conjunction with any of the ~~above~~ programs *listed in this subsection*;

(3) approval of the sponsor;

(4) review of a board decision to deny an applicant admittance into the program;

(5) supervision of the prisoner by or under the direction of a supervising agent while ~~he~~ *the prisoner* is in the program;

(6) implementation of a plan for the prisoner to satisfy any restitution or community service obligation imposed as part of the prisoner's sentence under 46-18-201;

~~(6)~~*(7)* conducting revocation hearings;

~~(7)~~*(8)* establishment of a program by the prisoner; and

~~(8)~~*(9)* any other provisions necessary to implement this part."

Section 26. Section 46-23-1011, MCA, is amended to read:

"**46-23-1011. Supervision on probation.** (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation must be signed by the probationer and given to the probationer and the probationer's probation and parole officer, who shall report on the probationer's progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and *shall* inform the probationer of the restoration of rights on successful completion of the sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice must be given to the probation and parole officer before any condition is modified, and the officer must be given an opportunity to present the officer's ideas or recommendations on any modification. A copy of a modification of conditions must be delivered to the probation and parole officer and the probationer. *Waiver or modification of restitution may be ordered only as provided under the provisions of 46-18-246.*

(5) The probation and parole officer shall keep records as the department or the court may require.

(6) (a) Upon recommendation of the probation and parole officer, a court may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if the court determines that a conditional discharge from supervision is in the best interests of the probationer and society *and will not present unreasonable risk of danger to the victim of the offense.*

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(b) Subsection (6)(a) does not prohibit a court from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the court that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the court may not place an offender on probation under supervision by that district office unless it grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the court for conditional discharge. The court may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 27. Section 46-23-1021, MCA, is amended te read:

"**46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole ~~period~~ *periods* in ~~accord~~ *accordance* with the conditions set by the board.

(2) The department shall assign personnel to assist ~~persons~~ *a person who is* eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of parole must be signed hy the parolee and given to the parolee and te the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist the parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful completion of *the* sentence.

(5) The probation and parole officer shall keep records as the board or department may require. All records must be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of the parolee's sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society *and will not present unreasonable risk of danger to the victim of the offense.*

(b) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.

(c) If the department certifies to the board that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the board may not parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised by that district office. The department may recommend parolees to the board for conditional discharge. The board may accept or reject the recommendations of

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the department. The department shall determine the optimum workload for each district probation and parole office."

Section 28. Section 46-23-1025, MCA, is amended to read:

"**46-23-1025. Report to and action by ~~the~~ board.** (1) If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of ~~his~~ parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. This report ~~shall~~ *must* be accompanied by the findings of the hearings officer.

(2) ~~Thereupon~~ *Upon receipt of a report,* the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged under ~~such~~ rules ~~as~~ *that* the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release or *may* enter ~~such other~~ *an* order as it ~~may see~~ *sees* fit.

(3) If the prisoner has violated a condition of release requiring the payment of restitution, the board shall notify the victim of the offense prior to the hearing required by subsection (2) and give the victim an opportunity to be heard. If the board finds that due to circumstances beyond the prisoner's control, the prisoner is unable to make the required restitution payments, the board may not revoke the prisoner's parole for failure to pay restitution. The board may modify the time or method of making restitution and may extend the restitution schedule, but the schedule may not be extended beyond the period of state supervision over the prisoner.

~~(3)~~*(4)* If it appears that ~~he~~ *the prisoner* has violated the provisions of ~~his~~ release, the board shall determine whether the time from the issuing of the warrant to the date of ~~his~~ *the prisoner's* arrest or any part of it will be counted as time served under the sentence."

Section 29. Section 46-24-103, MCA, is amended to read:

"**46-24-103. Duty of attorney general.** The attorney general shall ~~assure~~ *ensure* that victims and witnesses of crime receive fair and proper treatment in the criminal justice system. *The attorney general shall prepare a written notice of the rights and services available to victims of crime under this chapter. The notice must be distributed to local law enforcement agencies in the state.* In addition, the attorney general shall ~~assure~~ *ensure* that victims and witnesses are provided important services and assistance as required under this chapter."

Section 30. Section 46-24-104, MCA, is amended to read:

"**46-24-104. Consultation with victim of ~~felony offense~~ *certain offenses.*** ~~The~~ *As soon as possible prior to disposition of the case, the* prosecuting attorney in a criminal case shall consult with the victim of a felony offense *or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim* or, in the case of a minor child victim or homicide victim, with the family of the victim in order to obtain the views of the victim or ~~his~~ *the victim's* family regarding the disposition of the case, including:

(1) dismissal of the case;

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(2) release of the accused pending judicial proceedings;

(3) plea negotiations; and

(4) pretrial diversion of the case from the judicial process."

Section 31. Section 46-24-201, MCA, is amended to read:

"**46-24-201. Services to victims of crime.** *(1)* Law enforcement personnel shall ~~assure~~ *ensure* that a victim of a crime receives emergency social and medical services as soon as possible and that ~~such~~ *the* victim is given ~~information on~~ *written notice, in the form supplied by the attorney general, of* the following:

~~(1)~~*(a)* the availability of crime victim compensation;

~~(2) community-based victim treatment programs;~~

(b) access by the victim and the defendant to information about the case;

~~(3)~~*(c)* the role of the victim in the criminal justice process, including what ~~he~~ *the victim* can expect from the system, as well as what the system expects from the victim; and

~~(4)~~*(d)* stages in the criminal justice process of significance to a crime victim and the manner in which information about ~~such~~ *the* stages may be obtained.

(2) In addition to the information supplied under subsection (1), law enforcement personnel shall provide the victim with written information on community-based victim treatment programs, including medical, housing, counseling, and emergency services available in the community.

(3) As soon as possible, law enforcement personnel shall give to the victim the following information:

(a) the name, office address, and telephone number of a law enforcement officer assigned to investigate the case; and

(b) the prosecuting attorney's name, office address, and telephone number."

Section 32. Section 46-24-202, MCA, is amended to read:

"**46-24-202. Notification of available protective services.** Law enforcement officers and prosecuting attorneys shall provide a victim or witness information on the availability of services to protect the victim or witness from intimidation, *including the process for obtaining a protective order from the court.*"

Section 33. Section 46-24-203, MCA, is amended to read:

"**46-24-203. Prompt notification to victims and witnesses of ~~felony~~ *certain* offenses.** (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating te ~~his~~ *the person's* case, including:

(a) the arrest of an accused;

(b) the release of the accused pending judicial proceedings; ~~and~~

(c) the crime with which the accused has been charged, including an explanation of the elements of the offense when necessary to an understanding of the nature of the crime;

~~(c)~~*(d)* proceedings in the prosecution of the accused, including entry of a plea of guilty; *and* the setting of a trial date~~, the sentencing schedule, the sentence imposed, the term of imprisonment, if imposed, and the release of the accused from imprisonment~~;

(e) if the accused is convicted or pleads guilty, the function of a presentence report; the name, office address, and telephone number of the person preparing the report; and the convicted person's right of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be present at the sentencing proceeding and to have access to the victim's statement;

(f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of imprisonment, if imposed; and

(g) the right under [section 36] of a victim of a felony offense to receive information from the department of corrections and human services concerning the convicted person's incarceration.

(2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense *or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim*, a relative of such a victim or witness who is a minor, or a relative of a homicide victim."

Section 34. Section 46-24-205, MCA, is amended to read:

"**46-24-205. Notification to employer or creditor — *limitations on employer.*** (1) The law enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests assistance in informing an employer that the need for victim and witness cooperation in the prosecution of the case may necessitato absence of the victim or witness from ~~his~~ *the* place of employment.

(2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney, is suhjectod to serious financial strain. ~~Such~~ *The* agency or prosecuting attorney shall assist tbe victim or witness hy explaining to creditors the reason for ~~such~~ *the* serious financial strain.

(3) An employer may not discharge or discipline a victim or a member of the victim's family for participation at the prosecuting attorney's request in preparation for or attendance at a criminal justice proceeding.

(4) As used in this section, "member of the victim's family" means the victim's spouse, child by birth or adoption, stepchild, parent, stepparent, or sibling, but does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

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Section 35. Information concerning appeal or postconviction remedies. If the defendant appeals or pursues a postconviction remedy, the attorney general, or the county attorney if the case has not been referred to the attorney general, shall promptly inform the victim of the notice of appeal or postconviction petition, of the date, time, and place of any hearing, and of the decision.

Section 36. Information concerning confinement. Upon request of a victim of a felony offense, the department of corrections and human services or the board of pardons, as applicable, shall:

(1) promptly inform the victim of the estimated date of the prisoner's release from confinement in the Montana state prison, if reasonably ascertainable;

(2) promptly inform the victim of the time and place of a parole hearing concerning the prisoner and of the victim's right to submit a statement to the board of pardons under 46-23-202;

(3) provide reasonable advance notice to the victim before release of the defendant on furlough or to a work-release program, half-way house, or other community-based program or correctional facility; and

(4) promptly inform the victim of the occurrence of any of the following events concerning the prisoner:

(a) an escape from a correctional or mental health facility or community program;

(b) a recapture;

(c) a decision of the board of pardons;

(d) a decision of the governor to commute the sentence or to grant executive clemency;

(e) a release from confinement and any conditions attached to the release; and

(f) the prisoner's death.

Section 37. General requirements for information. (1) Unless specifically stated otherwise, the requirements of 44-2-601, 46-24-104, 46-24-201 through 46-24-203, [section 35], and [section 36] to provide information to the victim may be satisfied by either written or oral communication with the victim or the victim's designee.

(2) The person responsible for providing information required by 44-2-601, 46-24-104, 46-24-201 through 46-24-203, [section 35], and [section 36] shall promptly inform the victim of significant changes in the information.

(3) The obligation to furnish information to a victim under 44-2-601, 46-24-104, 46-24-201 through 46-24-203, [section 35], and [section 36] is conditioned upon the victim informing the appropriate agency in writing of the name, address, and telephone number of the person to whom the information should be provided and of any change of name, address, or telephone number.

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Section 38. Section 53-9-128, MCA, is amended to read:

"**53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks ~~such~~ weekly benefits, the claimant, as a result of ~~such~~ *the* injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments ~~shall~~ *must* be made at the end of each 2-week period. ~~No weekly~~ *Weekly* compensation payments may *not* be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments ~~shall~~ *must* be paid from the date the wage loss began. Weekly compensation payments ~~shall~~ *must* continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and ~~such~~ other treatment ~~as may be~~ approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments ~~shall~~ *must* be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) ~~of this section shall~~ *must* be paid to the spouse for the benefit of the spouse and other dependents unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) ~~shall~~ *must* cease to be paid to the spouse but ~~shall~~ *must* continue to be paid to the other dependents ~~so~~ *as* long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding ~~$2,000~~ *$3,500*, ~~shall~~ *must* be paid if all other collateral sources have properly paid ~~such~~ expenses but have not covered all ~~such~~ expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of ~~such~~ *the* injury has no reasonable prospect of being regularly employed in the normal labor market~~,~~ *and* who was employable but was not employed at the time of ~~such~~ *the* injury~~,~~ may in the discretion of the division be awarded weekly compensation benefits in an amount determined by

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the division not to exceed $100 per week. Weekly compensation payments ~~shall~~ *must* continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division. The claimant ~~shall~~ *must* be awarded benefits as provided in subsection (2) ~~of this section~~.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week, which ~~shall be~~ *is* payable in the manner and for the period provided by subsection (3)(b) ~~of this section~~ or for ~~such~~ *a* shorter period as determined by the division. The claimant ~~shall~~ *must* be awarded benefits as provided in subsection (4) ~~of this section~~.

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim of a sexual crime ~~for which a person has been charged~~ and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of the crime.

(c) Total payments made under subsections (9)(a) and (9)(b) may not exceed ~~$500~~ *$2,000 or 12 consecutive months of treatment* for each person ~~or $1,500 for a family~~, *whichever occurs first*."

Section 39. Section 27-2-201, MCA, is amended to read:

"**27-2-201. Actions upon judgments.** (1) Except as provided in ~~subsection~~ *subsections* (3) *and (4)*, the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation.

(4) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record may be commenced at any time within the offender's lifetime during which restitution remains unpaid."

Section 40. Repealer. Section 46-23-204, MCA, is repealed.

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Section 41. Codification instruction. (1) [Section 3] is intonded to be codified as an integral part of Title 44, chapter 5, part 3, and tbe provisions of Title 44, chaptor 5, part 3, apply to [section 3].

(2) [Section 20] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 20].

(3) [Sections 35 through 37] are intended to be codified as an integral part of Title 46, chapter 24, part 2, and the provisions of Title 46, chaptor 24, part 2, apply to [sections 35 tbrougb 37].

Section 42. Severability. If a part of [this act] is invalid, all valid parts tbat are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 43. Applicability. [Sections 10, 13, and 21] apply to trials for and sentences imposed for crimes that were committed on or after [tbe effective date of this act].

Approved March 13, 1995

CHAPTER NO. 126

[HB 97]

AN ACT AUTHORIZING THE ISSUANCE OF PERSONALIZED VETERANS' LICENSE PLATES; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Personalized veterans' license plates. (1) Subject to the provisions of 61-3-405 and 61-3-406, an application for veterans' license plates under 61-3-332(10)(f) may be combined with an application for personalized plates.

(2) An application for personalized veterans' license plates must be made on a form supplied by the department.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 1].

Section 3. Applicability. [Section 1] applies to registrations of motor vehicles occurring after December 31, 1995.

Approved March 13, 1995

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CHAPTER NO. 127

[HB 99]

AN ACT REVISING THE DEFINITION OF DISPLACED HOMEMAKER TO CONFORM TO THE DEFINITION IN THE CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT; AMENDING SECTION 39-7-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-7-303, MCA, is amended to read:

"**39-7-303. Definitions.** As used in this part, the following definitions apply:

(1) *"Adult" means a person who is 18 years of age or older.*

(2) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

~~(2)~~*(3)* "Displaced homemaker" means an ~~individual~~ *adult* who:

(a) has worked ~~in the home for at least 3 years providing unpaid household services for family members~~ *as an adult primarily without remuneration to care for the home and family and for that reason has diminished marketable skills*;

~~(b)~~ *and who* ~~is not gainfully employed or is underemployed~~ *has been dependent on public assistance or on the income of a relative but is no longer supported by that income*; *or*

~~(c)~~*(b) (i)* ~~has had or would have difficulty securing paid employment~~ *is a parent whose youngest dependent child will become ineligible to receive assistance under the program for aid to families with dependent children pursuant to Title 53, chapter 4, part 2, within 2 years of the parent's application for displaced homemaker assistance*; ~~and~~

~~(d)~~*(ii)* ~~was dependent on the income of another family member but is no longer supported by such income, was dependent on federal assistance but is no longer eligible for such assistance, or whose eligibility for such federal assistance will be terminated within 6 months~~ *is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or*

(iii) meets the qualifications described in subsection (3)(a) or (3)(b) and is a criminal offender."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 13, 1995

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CHAPTER NO. 128

[HB 104]

AN ACT MAKING PERMANENT THE PROVISION ALLOWING THE BOARD OF REGENTS TO RETAIN UNSPENT APPROPRIATIONS FOR LONG-TERM MAINTENANCE; AMENDING SECTION 5, CHAPTER 5, SPECIAL LAWS OF JULY 1992; REPEALING SECTION 23, CHAPTER 787, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5, Chapter 5, Special Laws of July 1992, is amended te read:

"Section 5. **Effective date ~~—termination~~.** [This act] is effective on passage and approval~~, and [section 2] terminates June 30, 1996~~."

Section 2. Repealer. Section 23, Chapter 787, Laws of 1991, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 13, 1995

CHAPTER NO. 129

[HB 151]

AN ACT REMOVING THE TERMINATION OF THE SCHOOL DISTRICT COMPENSATED ABSENCE LIABILITY FUND, WHICH INCLUDED IN THE FUND UNTIL JUNE 30, 1995, THE ACCUMULATED AMOUNTS OF SICK LEAVE AND VACATION LEAVE FOR NONTEACHING AND ADMINISTRATIVE DISTRICT EMPLOYEES; CHANGING THE SCHOOL FISCAL YEAR USED IN CALCULATING THE COMPENSATED ABSENCE LIABILITY FUND RESERVE; AMENDING SECTION 20-9-512, MCA; REPEALING SECTION 3, CHAPTER 754, LAWS OF 1991; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-512, MCA, is amended to read:

"**20-9-512. ~~(Temporary)~~ Compensated absence liability fund.** (1) The trustees of a school district may establish a compensated absence liability fund for the purpose of paying:

(a) any accumulated amount of sick leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618; and

(b) any accumulated amount of vacation leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district.

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(2) The compensated absence liability fund may he used only for the stated purpose of this section.

(3) ~~At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year fund balance~~ *The trustees may transfer money from the general fund, within the adopted budget,* to establish and maintain the compensated absence liability fund.

(4) The maximum amount in a reserve fund established under the provisions of subsections (1) and (3) may not exceed 30% of:

(a) tbe total school district liability for accumulated sick leave of nonteaching and administrative school district employees on June 30 of the ~~preceding~~ *current* school fiscal year; and

(b) the total school district liability for accumulated vacation leave of nonteaching and administrative school district employees on June 30 of the ~~preceding~~ *current* school fiscal year.

(5) For the purposes of this section, "administrative school district employee" means a school district employee who is employed in an administrative position and who accrues vacation leave as part of tlie employee's contract with the school district. ~~(Terminates July 1, 1995—sec. 3, Ch. 754, L. 1991.)~~

~~20-9-512. (Effective July 1, 1995) Reserve fund for payment of accumulated sick leave. (1) The trustees of a school district may establish a reserve fund for the purpose of paying any accumulated amount of sick leave that a nonteaching school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618. The reserve fund may be used only for the stated purpose of this section.~~

~~(2) At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year fund balance to establish a reserve fund.~~

~~(3) The maximum amount in a reserve fund established under the provisions of subsections (1) and (2) may not exceed 30% of the total school district liability for accumulated sick leave of nonteaching school district employees on June 30 of the preceding school fiscal year.~~"

Section 2. Repealer. Section 3, Chapter 754, Laws of 1991, is repealed.

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved March 13, 1995

CHAPTER NO. 130

[HB 163]

AN ACT GENERALLY REVISING THE REQUIREMENTS FOR BID SECURITY AND CONTRACT PERFORMANCE SECURITY; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION

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REQUIRE BID SECURITY AND CONTRACT PERFORMANCE SECURITY IN CERTAIN CIRCUMSTANCES; EXTENDING THE TERM OF CERTAIN CONTRACTS; AMENDING SECTIONS 18-2-201, 18-2-202, 18-2-203, 18-2-204, 18-2-205, 18-2-206, 18-2-207, 18-2-208, 18-2-302, 18-4-304, 18-4-312, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-201, MCA, is amended to read:

"**18-2-201. ~~Bonding~~ *Security* requirements.** (1) Except as otherwise provided in 85-1-219 and subsections (4) through (6) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body contracts with ~~any~~ *a* person or corporation to do ~~any~~ work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the corporation, person, or persons with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or persons shall:

(a) faithfully perform all of the provisions of the contract;

(b) pay all laborers, mechanics, subcontractors, and material suppliers; and

(c) pay all persons who supply the corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for performing the work.

(2) A copy of the bond must be filed with the county clerk and recorder of the county in which the work is to be performed or the improvement is to be made or, if the work is to be performed or the improvement is to be made in more than one county, ~~then~~ with the county clerk of either county, except in cases of cities and towns, in which case the bond must be filed with the city or town clerk.

(3) Notwithstanding the provisions of subsections (1) and (2), the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, *certificate of deposit, money market certificate,* or bank draft, drawn or issued by:

(i) any ~~banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or~~ *federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or*

(ii) a credit union insured by the national credit union share insurance fund.

~~(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.~~

(4) Notwithstanding the provisions of subsections (1) and (2), any board, council, commission, trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu of a bond from a licensed surety company, accept a good and sufficient bond with two or more sureties acceptable to the governmental body.

(5) Except as provided in subsection (6), the state or other governmental entity may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than $5,000.

(6) A school district may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than $7,500."

Section 2. Section 18-2-202, MCA, is amended to read:

"18-2-202. **Failure to require ~~bond~~ *security* — waiver ~~of bond~~.** If any board, council, commission, trustee, or body acting for the state or any board of county commissioners or any mayor and common council of any incorporated city or town or tribunal transacting the business of any such municipal corporation waives or fails to take ~~such bond, cash, checks, drafts, money orders, or certificates of deposit as herein required~~ *the security required or authorized by 18-2-201*, the state or ~~such~~ *the* county, incorporated city or town, or other municipal corporation ~~shall be~~ *is* liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of ~~such~~ *the contracted* debts ~~so contracted~~ by any ~~such~~ subcontractor as well as ~~such~~ *the* contractor."

Section 3. Section 18-2-203, MCA, is amended to read:

"18-2-203. **Amount and terms of ~~bond~~ *security*.** The ~~bond~~ *security* mentioned in 18-2-201 ~~shall~~ *must* be in an amount equal to the full contract price agreed to be paid for ~~such~~ *the* work or improvement and ~~shall~~ *must* be to the state of Montana, except in cases of cities and towns, in which case ~~such~~ *the* municipality may by general ordinance fix and determine the amount of ~~such bond~~ *the security* and ~~to whom such bond shall run~~ *the name of the secured party*, provided that the ~~same shall~~ *amount may* not be for a less ~~amount~~ than 25% of the contract price of ~~any such~~ *the* improvement, and *the security* may designate that the ~~same shall be~~ *amount is* payable to ~~such~~ *the* city or town and not to the state of Montana."

Section 4. Section 18-2-204, MCA, is amended to read:

"18-2-204. **Right of action on ~~bond~~ *security* — notice.** (1) All ~~such~~ persons mentioned in 18-2-201 ~~shall~~ have a right of action in ~~his or her or~~ their own name or names on any ~~bond~~ *security* furnished under the terms of this part for work done by ~~such~~ *the* laborers or mechanics and for provender, materials, supplies, provisions, or goods supplied and furnished in the ~~prosecution of such~~ work or the making of ~~such~~ *the* improvements~~;~~. ~~provided that such~~ *The* persons ~~shall~~ *do* not have any right of action on ~~such bond for any sum whatever~~ *the security* unless within 90 days ~~from and~~ after the completion of the contract with an acceptance of the work by the affirmative action of the board, council,

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commission, trustees, officer, or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer, mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials, provisions, or goods for the prosecution of ~~such~~ *the* work or the making of ~~such~~ *the* improvement ~~shall present~~ *presents* to and ~~file~~ *files* with ~~such~~ *the* board, council, commission, trustees, or body acting for the state, county, or municipality or other public body, city, town, or district a notice in writing in substance as follows:

"TO (here insert the name of the state, county, or municipality or other public body, city, town, or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for ~~or upon such~~ *the* contract or work) has a claim in the sum of .... dollars (here insert the amount) against the ~~bond~~ *security* taken from .... (here insert the name of the principal and ~~surety or sureties upon such bond~~ *name of the person providing the security*) for the work of .... (here insert a brief mention or description of the work concerning which ~~said bond~~ *the security* was taken).

(Here to be signed) ...."

(2) ~~Such~~ *The* notice ~~shall~~ *must* be signed by the person or corporation making the claim or giving the notice~~, and said notice, after~~. *After* being presented and filed, ~~shall be~~ *the notice is* a public record open to inspection by any person."

Section 5. Section 18-2-205, MCA, is amended to read:

"**18-2-205. Effect of dealing with subcontractor.** ~~Any~~ *A* corporation~~,~~ *or* person~~, or persons~~ performing ~~such~~ services or furnishing ~~such~~ provender, provisions, supplies, or material to ~~any~~ *a* subcontractor ~~shall have~~ *has* the same right under the provisions of ~~such bond~~ *the security* as ~~if such~~ *the* work, services, provender, provisions, supplies, or material was furnished to tbe original contractor."

Section 6. Section 18-2-206, MCA, is amended to read:

"**18-2-206. Notice to contractor concerning subcontractor.** (1) ~~Every~~ *A* person, firm, or corporation furnishing provender, provisions, materials, or supplies to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state or any county, city, town, district, municipality, or other public body sball, not later than 30 days after the date of the first delivery te ~~any~~ *a* subcontractor or agent of ~~any~~ *a* person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of ~~such~~ *the* work, give a notice of a right of action on the ~~bond~~ *security*.

(2) (a) The notice must be delivered personally or sent by certified mail to the contractor.

(b) The notice must be in writing and state:

(i) that it is a notice of a right of action on the ~~bond~~ *security*;

(ii) that the person, firm, or corporation giving the notice has commenced to deliver provender, provisions, materials, or supplies;

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(iii) the name of the subcontractor or agent who placed the order or to whom the provender, provisions, materials, or supplies were delivered; and

(iv) that the contractor and ~~his bond~~ *the contractor's security* will be held for the unpaid price if the supplier is not paid.

(3) To have a right of action against the contractor and ~~his bond~~ *the security* under this part, a person, firm, or corporation ~~must~~ *shall* give the written notice required by this section in substantially ~~this~~ *the* form *described in subsection (2)*. Any other type of actual or constructive notice is not sufficient.

(4) ~~No~~ *A* suit or action may *not* be maintained in any court against the contractor or ~~his bond~~ *the security* to recover for ~~such~~ *the* provender, provisions, ~~material~~ *materials*, or supplies or any part thereof unless the provisions of this part have been complied with."

Section 7. Section 18-2-207, MCA, is amended to read:

"18-2-207. Costs — ~~attorneys'~~ *attorney* fees. In ~~any~~ *a* suit or action brought against ~~such surety or sureties~~ *the surety, payor, or other person liable on the security* by ~~any such~~ *a* person or corporation to recover for any of the items ~~hereinbefore~~ specified *in this part*, the prevailing party ~~shall be~~ *is* entitled to recover, in addition to all other costs, ~~attorneys'~~ *attorney* fees in ~~such~~ *a* sum ~~as~~ *that* the court ~~shall adjudge~~ *finds* reasonable~~, provided, however, that no attorneys' fees shall~~. *However, attorney fees may not* be allowed in ~~any~~ *a* suit or action brought or instituted before the expiration of 30 days following the date of filing of the notice ~~hereinbefore mentioned~~ *required in 18-2-206*."

Section 8. Section 18-2-208, MCA, is amended to read:

"18-2-208. Exceptions. (1) The provisions of this part ~~shall~~ *do* not apply to ~~any~~ money loaned or advanced to ~~any such~~ *a* contracter, subcontractor, or other person in the performance of ~~any such~~ *the* work.

(2) ~~Any~~ *A* city or town may impose any other or further conditions and obligations in ~~such bond as may be deemed~~ *the security that is considered* necessary for its proper protection in the fulfillment of the terms of the contract ~~secured thereby~~ and not in conflict ~~herewith~~ *with this part*.

(3) ~~Nothing herein referred to with reference to the giving of such~~ *The* notice *required by 18-2-204 to be given* within 90 days ~~from and~~ after completion of the contract and acceptance of the work ~~shall~~ *may not* be construed to prevent or delay the payment of ~~moneys~~ *money* due the contractor under the terms and conditions specified in ~~his~~ *the* contract."

Section 9. Section 18-2-302, MCA, is amended to read:

"18-2-302. Bid security — *waiver*. (1) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid~~, such~~. *The* security ~~to~~ *may* consist of cash, *a* cashier's check, *a* certified check, *a* bank money order, *a certificate of deposit, a money market certificate,* or *a* bank draft~~, in any case~~. *The security must be:*

(a) drawn and issued by a ~~national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana~~ *federally chartered or state-chartered bank or savings and loan*

association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

(b) drawn and issued by a credit union insured by the national credit union share insurance fund~~,~~; or

(c) a hid hond or bonds executed hy a surety ~~corporation~~ *company* authorized to do business in the state of Montana.

(2) The state or other governmental entity may waive the requirements for bid security on huilding or construction projects, as defined in 18-2-101, that cost less than $5,000."

Section 10. Section 18-4-304, MCA, is amended to read:

"18-4-304. **Competitive sealed proposals.** (1) When, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines ~~in writing~~ that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. The department may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of supplies and services by competitive sealed bidding.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) Proposals must be opened so as to avoid disclosure of contents to competing offerers during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award.

(5) Tlie request for proposals must state the relative importance of price and other evaluation factors.

(6) As provided in the request for proposals and under rules adopted by the department, discussions ~~may be conducted~~ with responsible offerors who submit apparently responsive proposals *may be conducted* for the purpose of clarification~~,~~ *in order* to assure full understanding of and responsiveness to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and ~~such~~ revisions may be permitted, after submissions and prior to award, for the purpose of ohtaining best and final offers. In conducting discussions, there may *not* be ~~no~~ disclosure of any information derived from proposals submittod by competing offerors. The department may require the submission of cost or pricing data in connection with an award under this section.

(7) The award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for preposals. No other factors or criteria may be used in the evaluation. The contract file ~~shall~~ *must* contain the basis on which the award is made."

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Section 11. Section 18-4-312, MCA, is amended to read:

"**18-4-312. Bid and contract performance security.** (1) For state contracts for the procurement of services ~~in the amount of $10,000 or less~~ or of supplies, the department may in its discretion require ~~the filing of~~:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors; or

(c) both bid and contract performance security.

~~(2) For state contracts for the procurement of services exceeding $10,000, the department shall require bid security and contract performance security, except for purchases described in 18-4-305 and 18-4-306.~~

~~(3)~~*(2)* If security is required under subsection (1) ~~or (2)~~, the following types of security may be required to be deposited with the state:

(a) a ~~good and~~ sufficient bond with a licensed surety company as surety;

(b) an irrevocable letter of credit not to exceed $100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

(c) ~~lawful~~ money of the United States;

(d) a cashier's check, certified check, bank money order, *certificate of deposit, money market certificate,* or bank draft, *that is* drawn or issued by ~~any banking corporation incorporated under the laws of Montana or by a banking association located in Montana; or~~

~~(e) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana~~ *a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.*

~~(4)~~*(3)* The amount and type of the security ~~mentioned above~~ must be determined by the department to be sufficient to cover the risk involved to the state~~, except that the same shall not be less than 10% of the bid price for bid security and 25% of the total contract price for contract performance security,~~ and. *The security* must be payable to the state of Montana *and must remain in effect for the entire contract period.* In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection te the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails te enter inte a formal contract~~; such~~. *The* considerations ~~shall~~ *must* include but are not limited te the type of supply or service being procured, *the* dollar amount of the proposed contract, ~~or~~ *and* delivery time requirements. The department may adopt rules te assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security

requirements must be included in the invitations for bids or requests for proposals.

~~(5)~~*(4)* If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder to forfeit ~~his~~ *the* bid security to the state and become immediately liable on the bid ~~bond~~ *security*, but not in excess of the sum stated ~~therein~~ *in the security*. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond *or other security* ~~shall~~ *may* not exceed the amount specified in the invitation for bid or request for proposal.

~~(6)~~*(5)* Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

~~(7)~~*(6)* The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter."

Section 12. Section 18-4-313, MCA, is amended to read:

"**18-4-313. Contracts — terms, extensions, and time limits.** (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a ~~longer~~ period *of more* than ~~3~~ 7 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems, data processing equipment, the department of revenue liquor agencies, and the department of social and rehabilitation services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed~~, notwithstanding the time limits stated in this section,~~ if the terms of the extension or renewal, if any, are included in the solicitation, ~~and~~ *if* funds are available for the first fiscal period at the time of the agreement, *and if the total contract period, including any extension or renewal, does not exceed 7 years.* Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the *issuance,* extension, or renewal of a contract, it must be determined ~~in writing~~ that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 13. Effective date. [This act] is effective on passage and approval.

Approved March 13, 1995

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CHAPTER NO. 131

[HB 168]

AN ACT REQUIRING THAT WORKERS' COMPENSATION INSURANCE PREMIUMS AND WEEKLY COMPENSATION BENEFITS FOR VOLUNTEER FIREFIGHTERS BE BASED ON THE NUMBER OF TRAINING HOURS, RESPONSE TIME, AND TIME AT THE EMPLOYER'S PREMISES TIMES THE AVERAGE WEEKLY WAGE DIVIDED BY 40 HOURS; DEFINING VOLUNTEER HOURS; AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined hy 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directers of quasi-public or private corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be hound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehahilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this suhsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centors;

(e) an aircrew memher or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in suhsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment frem a third party. For a person covered by the definition in this subsection (f):

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(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage estahlished under Title 39, chapter 3, part 4, for tbe number of hours of community service required under the order from the court or hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) Tbe terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) *(a)* The term "volunteer firefighter" means a firefightor who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to he covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner or sole proprietor is not considered an employee within this chapter until notice bas been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must he based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation henefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(5) *(a)* Tbe trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service

area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

(6) An employee or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(8) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under subsection (7)(d)."

Section 2. Section 39-71-123, MCA, is amended to read:

"**39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d). Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value;

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(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement; and

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

~~(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118 must be based upon a wage of not less than $900 a month and not more than 1-1/2 times the average weekly wage as defined in this chapter.~~"

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved March 13, 1995

CHAPTER NO. 132

[HB 173]

AN ACT ALLOWING THE DEPARTMENT OF JUSTICE TO PROVIDE CERTAIN GAMBLING INFORMATION TO GAMBLING REGULATORY AGENCIES OF JURISDICTIONS OUTSIDE THE STATE; AMENDING SECTION 23-5-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-116, MCA, is amended to read:

"**23-5-116. Disclosure of information.** (1) The department shall, upon request, disclose the following information from a license or permit application:

(a) the applicant's name;

(b) the address of the business where the activity under the license or permit is to be conducted;

(c) the name of each person ~~having~~ *who has* an ownership interest in the business; and

(d) *the* types of permits requested by the applicant.

(2) In addition to the information enumerated in subsection (1), the department may disclose any other relevant information obtained in the application or tax reporting process or as a result of other department operations to:

(a) a federal, state, city, county, or tribal criminal justice agency; ~~and~~

(b) the department of revenue and the federal internal revenue service*; and*

(c) a gambling regulatory agency of another state, a local government unit of another state, a tribal government, or a foreign nation, provided that the disclosure of the information complies with the law of that jurisdiction and that the receiving entity has been approved for receipt by the Montana attorney general."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 13, 1995

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CHAPTER NO. 133

[HB 180]

AN ACT CLARIFYING THE LAW RELATING TO MOTOR VEHICLE WINDOW TINTING; AND AMENDING SECTION 61-9-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-405, MCA, is amended to read:

"61-9-405. Windshields to be unobstructed and equipped with wipers — window tinting and sunscreening — restrictions — exemptions. (1) A person may not drive a motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of the vehicle that obstructs the driver's clear view of the highway or any intersecting highway.

(2) The windshield on each motor vehicle must be equipped with a device for clearing rain, snow, or other moisture from the windshield.

(3) Each windshield wiper upon a motor vehicle must he maintained in good working order.

(4) A person may not operate a motor vehicle that is required to be registered in this state upon a highway if:

(a) the windshield has any sunscreening material that is not clear and transparent below the AS-1 line or if it has a sunscreening material that is red, yellow, or amber in color above the AS-1 line;

(b) the front side windows have any sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than ~~35%~~ *24%*;

(c) the rear window or side windows behind the front seat have sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than ~~20%~~ *14%*, except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus; or

(d) the windows of a camper, motor home, pickup cover, slide-in camper, or other motor vehicle do not meet the standards for safety glazing material specified by federal law in 49 CFR 571.205.

(5) As used in 61-9-428, 61-9-429, and this section, the following definitions apply:

(a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incompleto vehicle for the purpose of providing shelter for persons.

(b) "Glass-plastic glazing material" means a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle.

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(c) "Light transmission" means the ratio of the amount of total light, expressed in percentages, that is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(d) "Luminous reflectance" means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(e) "Motor home" means a multipurpose passenger vehicle that provides living accommodations.

(f) "Multipurpose vehicle" means a motor vehicle designed to carry 10 or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use.

(g) "Pickup cover" means a camper having a roof and sides but without a floor designed to be mounted on and removable from the cargo area of a pickup truck by the user.

(h) "Slide-in camper" means a camper having a roof, floor, and sides designed to be mounted on and removable from the cargo area of a truck by the user.

(i) "Sunscreening material" means a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

(6) Except as provided in subsection (7), subsection (4) applies to all vehicles that are equipped with tinted windows, including windows with less than 100% light transmission to which additional sunscreening material has been applied.

~~(6)~~*(7)* Subsection (4) does not apply to a *multipurpose* vehicle that is equipped with tinted windows of the type and specifications that were installed by the manufacturer of the vehicle or to any hearse, ambulance, government vehicle, or any other vehicle to which a currently valid certificate of waiver is affixed as specified under 61-9-428. A certificate of waiver must be issued by the department for a vehicle that is *was* registered in this state on October 1, 1991, and is *was* equipped with a sunscreening device or other material prohibited under subsection (4) on October 1, 1991."

Approved March 13, 1995

CHAPTER NO. 134

[HB 250]

AN ACT PROVIDING FOR GARNISHMENT AND ATTACHMENT OF PROPERTY OR REQUIRING COMMUNITY SERVICE FOR PERSONS WHO FAIL TO PAY FINES FOR MINOR TRAFFIC OFFENSES; ELIMINATING INCARCERATION PENALTY FOR THOSE OFFENSES IN SOME INSTANCES; AND AMENDING SECTIONS 61-8-711, 61-8-720, AND 61-9-511, MCA.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-711, MCA, is amended to read:

"61-8-711. Violation of chapter — penalty. (1) It is a misdemeanor for ~~any~~ *a* person to violate any of the provisions of this chapter unless the violation is declared to be a felony ~~by this chapter or other law of this state~~.

(2) ~~Every~~ *Each* person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction ~~thereof~~ be punished by a fine of not less than $10 or more than $100 ~~or by imprisonment for not more than 10 days~~. For a second conviction within 1 year ~~thereafter~~ *after the first conviction*, the person shall be punished by a fine of not less than $25 or more than $200 ~~or by imprisonment for not more than 20 days or by both such fine and imprisonment~~. Upon a third or subsequent conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than $50 or more than $500 ~~or by imprisonment for not more than 6 months or by both such fine and imprisonment~~.

(3) ~~On failure of payment of a fine, the offender in case of a misdemeanor~~ *Except as provided in subsection (4), failure to pay a fine imposed under this chapter is a civil contempt of the court. On failure of payment of a fine, the court may:*

(a) order enforcement of the fine by execution in the manner provided in 25-13-204 and under the provisions of Title 25, chapter 13; or

(b) if the court finds that the person is unable to pay, order the person to perform community service.

(4) If property is not found in an amount necessary to satisfy the unpaid portion of the fine and if the court makes a written finding that community service is inappropriate, the person shall be imprisoned in the county jail in the county in which the offense was committed, and the imprisonment shall be ~~computed upon the basis of 1 day's incarceration for each $25 of the fine~~ *the number of days that the fine is divisible by the dollar amount of the incarceration credit contained in 46-18-403.*

~~(4)~~*(5)* Upon conviction, the court costs or any part ~~thereof~~ *of the court costs* may be assessed against the defendant in the discretion of the court."

Section 2. Section 61-8-720, MCA, is amended to read:

"61-8-720. Penalty. ~~Any~~ *A* person who violates any of the provisions of 61-8-331(2) is guilty of a misdemeanor. Upon arrest and conviction ~~therefor~~, ~~he~~ *the person* shall he punished hy a fine of not less than $5 or more than $100 ~~or by imprisonment in the city or county jail for not less than 5 days or more than 90 days or by both fine and imprisonment~~."

Section 3. Section 61-9-511, MCA, is amended to read:

"61-9-511. Violation of chapter — penalty. (1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless the violation is declared to be a felony.

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(2) A person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction be punished by a fine of not less than $10 or more than $100. For a second conviction within 1 year, the person shall he punished by a fine of not less than $25 or more than $200. Upon a third or subsequent conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than $50 or more than $500.

(3) ~~On failure of payment of fines, the offender in cases of misdemeanor~~ *Except as provided in subsection (4), failure to pay a fine imposed under this chapter is a civil contempt of the court. On failure of payment of a fine, the court may:*

(a) order enforcement of the fine by execution in the manner provided in 25-13-204 and under the provisions of Title 25, chapter 13; or

(b) if the court finde that the person is unable to pay, order the person to perform community service.

(4) If property is not found in an amount necessary to satisfy the unpaid portion of the fine and if the court makes a written finding that community service is inappropriate, the person shall be imprisoned in the county jail in the county in which the offense has been committed. The imprisonment shall he ~~computed upon the basis of $25 of the fine for each day's incarceration~~ *the number of days that the fine is divisible by the dollar amount of the incarceration credit contained in 46-18-403.*

~~(4)~~*(5)* Upon conviction, the court costs or any part of the court costs may he assessed against the defendant in the discretion of the court."

Approved March 13, 1995

CHAPTER NO. 135

[HB 284]

AN ACT RAISING THE NUMBER OF CANDIDATES NECESSARY BEFORE AN ELECTION ADMINISTRATOR IS REQUIRED TO CONDUCT A PRIMARY ELECTION; AND AMENDING SECTIONS 13-14-115 AND 13-14-117, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-14-115, MCA, is amended to read:

"**13-14-115. Preparation and distribution of nonpartisan primary ballots — *determination on conducting a primary.*** (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". ~~They shall~~ *The ballots must* be arranged as other primary hallots and be without political designation.

(2) The number of nonpartisan primary ballote and sample ballots furnished ~~shall~~ *must* be the same as other primary ballots.

(3) (a) The election administrator of a political subdivision may determine that a primary need not be held if:

(i) the number of candidates for an office exceeds ~~twice~~ *three times* the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of ~~twice~~ *three times* the number to be elected is not more than one for any office on the ballot.

(b)If the election administrator detormines that a primary *election* need not be held pursuant to subsection (3)(a), ~~he must~~ *the administrator shall* give notice to the governing body that no primary election will be held.

(4) ~~The~~ *The* governing body may require that a primary election be held if it passes a resolution not more than 10 days after the close of filing by candidates for election, stating that a primary election ~~shall~~ *must* be held."

Section 2. Section 13-14-117, MCA, is amended to read:

"**13-14-117. Placing names on ballots for general election.** *(1)* ~~Candidates~~ *Except as provided in subsection (2), candidates* for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

(2) If, pursuant to 13-14-115(3), a primary election is not held, then all candidates who filed for an office are nominees for the office."

Approved March 13, 1995

CHAPTER NO. 136

[HB 316]

AN ACT CLARIFYING CURRENT CREDITABLE SERVICE PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; PROVIDING THAT MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM WHO BECAME MEMBERS ON OR AFTER JULY 1, 1989, MAY PURCHASE AT THE ACTUARIAL COST MEMBERSHIP SERVICE FOR CERTAIN SERVICE PERFORMED OUT-OF-STATE, PRIVATE TEACHING SERVICE, EMPLOYMENT WHILE ON LEAVE, AND TIME SPENT ON AN INJURY-RELATED LEAVE; PROVIDING THAT KINDERGARTEN THROUGH GRADE 12 PRIVATE TEACHING SERVICE MUST BE SERVICE AS A CERTIFIED TEACHER; AMENDING SECTIONS 19-20-402, 19-20-403, 19-20-405, 19-20-408, 19-20-411, AND 19-20-412, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-402, MCA, is amended to read:

"**19-20-402. Creditable service for out-of-state *public and federal* employment.** (1) (a) A member who ~~became a member before July 1, 1989,~~ *has*

5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may ~~apply for~~ *receive* creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, ~~he must~~ *the member shall roll the member's contributions over into the retirement system or must* receive a refund of ~~his~~ *the member's* contributions for the ~~out-of-state~~ service before qualifying service under this section. ~~The member must be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system as provided in subsection (2).~~

~~(b)~~ *(c)* For the purpose of this section, out-of-state employment ~~includes~~ *means* service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution ~~if the service would have been acceptable under this chapter if performed in the state of Montana~~.

(2) (a) ~~Except as provided in subsection (2)(b), to~~ *To* qualify *the* service ~~under this section~~ *described in subsection (1)(c)(i),* ~~the~~ *a* member *who became a member before July 1, 1989,* ~~must~~ *shall* contribute *for each year of service to be qualified* an amount equal to the combined employer and employee contribution for ~~his~~ *the member's* first full year's teaching salary earned in Montana after ~~his~~ *the member's* out-of-state service ~~for each year of creditable service~~, plus interest ~~at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana.~~ The contribution rate must be the rate in effect at the time ~~he~~ *the member* is eligible for the service.

(b) To qualify *the* service *described in (1)(c)(ii)* ~~performed outside the United States in a federal or other public or private school or institution~~, ~~the~~ *a* member *who became a member before July 1, 1989,* ~~must~~ *shall* contribute for each year of service to be qualified an amount equal to the combined employer and employee contribution for ~~his~~ *the member's* first full year's teaching salary earned in Montana after ~~his~~ *the member's* out-of-state service or after July 1, 1989, whichever date is later, plus interest ~~at the rate the contribution would have earned had the contribution been in his account from the date he was eligible to qualify the service~~. The contribution rate must be the rate in effect at the time ~~he~~ *the member* is eligible te qualify the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) *The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to qualify the service.*

(4) The contributions *and interest* required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 2. Section 19-20-403, MCA, is amended to read:

"19-20-493. Creditable service for employment while on leave. (1) *(a)* A member ~~with 5 years or more of creditable service in the retirement system who became a member before July 1, 1989,~~ *who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2)* may ~~apply for~~ *receive up to 2 years of* creditable service for employment while on leave. ~~If he contributes to the retirement system as provided in subsection (2), the member must be awarded creditable service in an amount not exceeding 2 years as determined by the board, conditional upon his having~~

(b) To be eligible to qualify service under this section, a member must have at least 5 years of membership service in the retirement system, must have been a member prior to ~~his~~ *the* leave, and ~~upon his completing~~ *must have completed* 1 year of active membership in Montana subsequent to ~~his~~ *the member's* return.

(2) *(a)* ~~To qualify service under this section~~ *For each year of service to be credited,* ~~the~~ *a* member *who became a member before July 1, 1989,* ~~must~~ *shall* contribute *for each year of service to be qualified* an amount equal to the combined employer and employee contributions for ~~his~~ *the member's* first full year's teaching salary earned in Montana after ~~his~~ *the member's* return from leave ~~for each year of creditable service~~, plus interest ~~at the rate the contribution would have earned had the contribution been in his account. The contribution rate must be the rate in effect at the time he is eligible for the service~~.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to qualify the service.

(4) The ~~contribution~~ *contributions and interest* may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 3. Section 19-20-405, MCA, is amended to read:

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"19-20-405. Limit on creditable service ~~which can~~ *that may* be awarded. The total creditable service for ~~out-of-state teaching, employment while on leave, employment with the Montana cooperative extension service, and active service in the armed forces of the United States or the American red cross or merchant marine~~ *service purchased under 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-410, and 19-20-412* may not exceed 5 years."

Section 4. Section 19-20-408, MCA, is amended to read:

"19-20-408. Creditable service for employment in private schools. *(1) (a)* A ~~person applying for~~ *member who has at least 5 years of* membership ~~before July 1, 1989,~~ *service, who has completed 1 full year of active membership subsequent to the member's private school employment, and who contributes to the retirement system as provided in subsection (2)* may ~~also apply for~~ *receive up to 5 years of* creditable service in the retirement system for employment ~~service~~ *within the United States* in a private elementary, secondary, or postsecondary educational institution.

(b) Employment ~~service~~ *to be credited* must be of an instructional nature, ~~or be employment~~ as an administrative officer, or *as* a member of the scientific staff. *If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.* ~~Employment service does not include students~~

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution. ~~The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in the retirement system, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes~~

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute te the retirement system an amount equal to the combined employer and employee contribution for ~~his~~ *the member's* first full year's teaching salary earned after becoming a member of the retirement system or *after* returning te the retirement system, whichever is later, ~~for each year of creditable service~~ plus interest ~~at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service~~. The contribution rate ~~shall~~ *must* be that rate in effect at the time ~~he~~ *the member* is eligible ~~for such~~ *to purchase the* service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to qualify the service.

(4) The contributions *and interest* may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

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Section 5. Section 19-20-411, MCA, is amended to read:

"19-20-411. Absenco ~~due to~~ *because of* employment-related injury. (1) ~~(a)~~ Subject to the limitation in subsection ~~(5), time during which a member is absent because of an injury related to employment covered by the retirement system that entitles him to workers' compensation payments may be qualified under the retirement system if the member was a member of the retirement system before July 1, 1989~~ *(6), a member who is absent because of an injury entitling the member to workers' compensation payments may qualify as creditable service the time during which the member is absent.* To qualify this service, a member shall contribute to the retirement system~~,~~ *as provided in subsection (2)* upon ~~his~~ *the member's* return to contributing membership service~~,~~.

(2) (a) A member who became a member before July 1, 1989, shall contribute an amount equal to:

(i) the contributions ~~which would have been made by him had he~~ *that the member would have made had the member* not been absent, based on ~~his~~ *the member's* compensation at the commencement of ~~his~~ *the* absence;

(ii) *the* interest~~, which~~ *that* begins to accrue 1 year from the date ~~he~~ *that the member* returns to covered employment; and

(iii) *the* interest not paid by the employer under subsection ~~(1)(b)~~ *(3).*

(b) A member who became a member on or after July 1, 1989, shall pay the actuarial cost of the service based on the most recent valuation of the system.

~~(b)~~*(3)* ~~Whenever~~ *When* a member elects to contribute under subsection ~~(1)(a)~~ *(2)(a)*, the employer shall contribute an amount equal to the contributions ~~which~~ *that* would have been made by the employer had the member not been absent, based on the member's compensation at the commencement of ~~his~~ *the* absence. The employer may contribute an amount equal to the interest accruing on the employer's contributions calculated in the same manner as interest on the employee's contributions under subsection ~~(1)(a)~~ *(2)(a)*. If the employer elects not to pay the interest, this amount must be paid by the employee.

~~(2)~~*(4)* A member shall file with the retirement board a writtsn notice of ~~his~~ *the member's* intent to pay the contributions under subsection ~~(1)(a)~~ *(2).*

~~(3)~~*(5)* Payment of the employee's contributions ~~due because of the period of absence~~ may be made in one sum at the time of filing the notice or ~~on an installment basis~~ *in installments* before termination of covered employment *as agreed between the board and the member.*

~~(4)~~*(6)* A member absent as provided in subsection (1)~~(a)~~ loses ~~his~~ *the* right to contribute under this section if ~~all of his~~ *the member's* accumulated normal contributions are refunded under 19-20-603.

~~(5)~~*(7)* The maximum amount of membership service allowable under this section is 2 years."

Section 6. Section 19-20-412, MCA, is amended to read:

"19-20-412. Election to purchase additional service. (1) (a) Except as provided in subsection (3), a member with 5 years or more of creditable service

may make a written election with the retirement board to purchase, for the purpose of calculating ~~his~~ *the member's* retirement allowance, 1 year of additional service for:

(i) each 5 years of service on which contributions have been made as required under the provisions of 19-20-602; and

(ii) each 5 years of membership service as defined in Title 19, chapter 3, for which contributions have been made as required under the provisions of 19-20-409.

(b) A maximum of 5 years of additional service may be purchased under this section. A part-time member may purchase additional service on a prorated basis.

(2) (a) To purchase additional service under this section, a member shall contribute, in a lump-sum payment or in installments as agreed upon by the member and the retirement board, an amount equal to:

(i) the combined employer and employee rate on July 1, 1989, or the combined rate in effect at the time ~~he~~ *the member* is eligible to purchase the service, whichever date is later, multiplied by ~~his~~ *the member's* earned compensation as provided in subsection (2)(b); and

(ii) interest at a rate of 8% compounded annually from July 1, 1989, or from the date at which ~~he~~ *the member* is eligible to purchase the service, whichever date is later.

(b) The earned compensation used in calculating the cost of purchasing additional service under this section is:

(i) for the first year of service purchased, the member's earned compensation for the 1988-89 school year or for ~~his~~ *the member's* fifth year of service, whichever year is later;

(ii) for the second year of service purchased, the member's earned compensation for the 1988-89 school year or for ~~his~~ *the member's* 10th year of service, whichever year is later;

(iii) for the third year of service purchased, the member's earned compensation for the 1988-89 school year or for ~~his~~ *the member's* 15th year of service, whichever year is later;

(iv) for the fourth year of service purchased, the member's earned compensation for the 1988-89 school year or for ~~his~~ *the member's* 20th year of service, whichever year is later; and

(v) for the fifth year of service purchased, the member's earned compensation for the 1988-89 school year or for ~~his~~ *the member's* 25th year of service, whichever year is later.

(3) ~~On or after July 1, 1989, a~~ *A* member *who became a member prior to July 1, 1989, and who is* eligible to purchase creditable service under 19-3-504, 19-3-510, 19-3-512, 19-3-513, 19-20-402, 19-20-403, 19-20-408, 19-20-410, or 19-20-411 may not purchase additional service under this section unless ~~he~~ *the member* elects in writing to:

(a) waive ~~his~~ eligibility to purchase creditable service under sections referred to in subsection (3); and

(b) apply the accumulated contributions made under sections referred to in subsection (3) to the cost of additional service purchased under this section.

(4) Additional service purchased under this section may not be used to qualify a member for service retirement."

Section 7. Coordination instruction. If House Bill No. 205 is not passed and approved or if it is passed and approved but does not contain a new section providing that a member of the teachers' retirement system may roll over, or transfer, the member's contributions from another qualified retirement plan to the teachers' retirement system, then [section 1(1)(b) of this act], amending 19-20-402, must read as follows:

"(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-stato service, the member must receive a refund of the member's contributions for the service before qualifying service under this section."

Section 8. Effective date. [This act] is effective July 1, 1995.

Approved March 13, 1995

CHAPTER NO. 137

[SB 58]

AN ACT REVISING REPORTING REQUIREMENTS FOR VOLUNTEER FIRE COMPANIES; AND AMENDING SECTIONS 7-33-2311 AND 19-17-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2311, MCA, is amended to read:

"**7-33-2311. Fire companies authorized.** (1) Fire companies in unincorporated towns and villages are organized by filing with the county clerk of the county in which they are located a certificato in writing, signed by the ~~foreman or~~ presiding officer and secretary, setting forth the dato of organization, name, officers, and roll of active and honorary members *or a copy of the certificate provided for in 19-17-402.* The certificate and filing must be renewed annually on or before September 1.

(2) ~~There must not be allowed to any such towns or villages~~ *A town or village is not allowed* more than one company for each 1,000 inhabitants, but one company must be allowed in ~~any~~ *a* city, town, or village ~~where~~ *in which* the population is less than 1,000.

(3) ~~There must not be allowed to any~~ *A* fire company *is not allowed* more than 28 certificate members."

Section 2. Section 19-17-402, MCA, is amended to read:

"**19-17-402. Certificate of eligibility.** On or before September 1 of each year, the chief or ~~foreman~~ *presiding officer* of ~~every~~ *each* volunteer fire company shall prepare and file with the board a certificate, subscribed and verified under oath, stating whether or not ~~his~~ *the* company qualified under 19-17-401(4) during the preceding fiscal year and listing the full name and residence address of each member of ~~his~~ *the* company who satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 19-17-401(3). *The certificate must contain the date of organization.* The verified certificate ~~shall~~ *must* be maintained in a permanent file by the board for the purpose of establishing eligibility for participation in the volunteer firefighters' pension plan and ~~shall~~ *must* be open for inspection as a public record."

Approved March 14, 1995

CHAPTER NO. 138

[SB 59]

AN ACT PROVIDING THAT A SUBPOENA REMAINS IN EFFECT UNLESS QUASHED OR UNTIL FINAL DETERMINATION OF THE ACTION; AND AMENDING SECTION 46-15-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time during which subpoena is effective. A subpoena remains in effect unless quashed or until judgment, dismissal, or other final determination of the action by the court in which the action was filed or to which the action was transferred.

Section 2. Section 46-15-101, MCA, is amended to read:

"**46-15-101. Subpoenas.** (1) After the filing of charges and upon the request of the prosecuting attorney, the defendant, or the defendant's attorney, the clerk of the court shall issue subpoenas with the name of the person to whom each subpoena is directed, commanding the person to appear and to give testimony. The court shall maintain a list of the names of the persons to whom subpoenas are issued.

(2) A subpoena must state the name of the court and the title, if any, of the proceeding and must command each person to whom it is directed to attend and give tostimony at the time and place specified in the subpoena. *The time and place may be modified by mutual written agreement of the parties or by an amended subpoena issued by the clerk of the court.*

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive.

(4) A subpoena remains in effect unless quashed or until judgment, dismissal, or other final determination of the action by the court in which the action was filed or to which the action was transferred."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 26, chapter 2, part 1, and the provisions of Title 26, chaptor 2, part 1, apply to [section 1].

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Approved March 14, 1995

CHAPTER NO. 139

[SB 239]

AN ACT PROVIDING THAT THE BEER WHOLESALER INTERBRAND COMPETITION LAW DOES NOT APPLY TO BRANDS PRODUCED IN LIMITED QUANTITIES; AND AMENDING SECTION 16-3-220, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-220, MCA, is amended to read:

"**16-3-220. Wholesalers' service obligations — applicability.** (1) A wholesaler appointed to distribute a brand of beer within a territory specified by agreement pursuant to 16-3-221(3) shall call on and offer that brand to at least 75% of the retailers within that territory at least every 3 weeks. *However, if the brand of beer for which the wholesaler is appointed is a product of a brewer or beer importer whose products are not generally available, the wholesaler shall, at least every 3 weeks, call on and offer that brand to as many retailers within that territory as is reasonably possible given the amount of that brand that is available to the wholesaler.*

(2) If a retailer's account with a wholesaler is current as required under 16-3-243, the wholesaler may not refuse to sell the retailer any *generally available* brand of beer for which the wholesaler has been appointed for the territory in which the retailer is located. The wholesaler shall offer to deliver the beer to ~~such~~ *the* retailer at least every 3 weeks.

(3) For the purposes of this section, a brewer or beer importer's products are not generally available if:

(a) all of the brands of a brewer or beer importer shipped to a wholesaler during the most recent calendar quarter total less than 600 barrels;

(b) all of the brands of a brewer or beer importer shipped into the state total less than 1,200 barrels in each of the 2 consecutive preceding calendar quarters; and

(c) all of the brands produced by the brewer at all of its facilities total less than 150,000 barrels per year.

~~(3)~~*(4)* This section applies te all beer distribution agreements entered into, assigned, or amended after July 1, 1986. It does not apply to a distribution agreement for a named brand entered into before July 1, 1986, but does not prohibit a brewer *who is a* party to ~~such~~ an agreement from requiring the appointed wholesaler to fulfill similar service obligations in the territory."

Approved March 14, 1995

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CHAPTER NO. 140

[SB 243]

AN ACT REPLACING THE SKIER RESPONSIBILITY CODE REQUIRED BY LAW TO BE POSTED BY A SKI AREA OPERATOR WITH THE UPDATED VERSION OF THE CODE; AND AMENDING SECTION 23-2-733, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-733, MCA, is amended to read:

"**23-2-733. Duties of operator regarding ski areas.** Consistont with the duty of reasonable care owed by a ski area operator to a skier, a ski area operator shall:

(1) mark all trail grooming vehicles by furnishing the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in tbe ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski trails;

(3) maintain one o. more trail boards at prominent locations at each ski area displaying that area's network of ski trails and the relative degree of difficulty of the ski trails at that area;

(4) post a notice requiring the use of ski-retention devices;

(5) designate at the start of each day, by trail board or otherwise, which trails are open or closed and amend those designations as openings and closures occur during the day;

(6) post in a conspicuous location the *current* skier responsibility code that is published by the national ski areas association ~~and that is current on April 4, 1989~~; and

(7) post a copy of 23-2-736 in a conspicuous location."

Approved March 14, 1995

CHAPTER NO. 141

[SB 392]

AN ACT AUTHORIZING THE GOVERNOR OR A DESIGNEE TO PARTICIPATE IN THE PACIFIC NORTHWEST ECONOMIC REGION; AMENDING SECTIONS 5-11-702, 5-11-703, AND 5-11-704, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-702, MCA, is amended to read:

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"5-11-702. Participation in Pacific Northwest economic region. The Pacific Northwest economic region is hereby enacted into law and entered into by the state of Montana as a party and is in full force and effect in accordance with the terms of this agreement.

THE PACIFIC NORTHWEST ECONOMIC REGION

ARTICLE I — Policy and Purpose

(1) States and provinces participating in the Pacific Northwest economic region shall seek to develop and establish policies that:

(a) promote greater regional collaboration among the seven entities;

(b) enhance the overall competitiveness of the region in international and domestic markets;

(c) increase the economic well-being of all citizens in the region; and

(d) improve the quality of life of the citizens of the Pacific Northwest.

(2) (a) States and provinces recognize that there are many public policy areas in which cooperation and joint efforts would be mutually beneficial. These areas include but are not limited to:

(i) international trade;

(ii) economic development;

(iii) human resources;

(iv) the environment and natural resources;

(v) energy; and

(vi) education.

(b) Parties to this agreement shall work diligently to establish collaborative activity in these and other appropriate policy areas where such cooperation is considered to be worthwhile and of benefit to the participating entities.

(c) Participating states and provinces also agree that there are areas in which cooperation may not be feasible.

(3) The substantive actions of the Pacific Northwest economic region may take the form of uniform legislation enacted by two or more states or provinces or policy initiatives endorsed as appropriate by participating entities. It is not necessary for all states and provinces to participate in each initiative.

ARTICLE II — Eligible Parties and Effective Date

(1) Each of the following states and provinces is eligible to become a party te this agreement: Alaska, Alberta, British Columbia, Idaho, Montana, Oregon, and Washington.

(2) This agreement establishing the Pacific Northwest economic region becomes effective when it is executed by one state, one province, and one additional state or province in a form considered appropriate by each entity.

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(3) This agreement continues in force and remains binding upon each of the states and provinces entering inte it until renounced by the state or province.

(4) Renunciation of this agreement must be preceded by sending 1 year's notice in writing of intention to withdraw from the agreement to all other parties to the agreement.

ARTICLE III — Organizational Structure

(1) Each state and province participating in this agreement shall appoint representatives to the Pacific Northwest economic region.

(2) The organizational structure of the Pacific Northwest economic region shall consist of the following:

(a) a delegate council consisting of *the governor or a designee and* four legislators from each participating state and four representatives from each participating province; and

(b) an executive committee consisting of one legislator from each participating state or province who is a member of the delegate council *and four of the governors or premiers or their designees.*

(3) Policy committees may be established te carry out further duties and responsibilities of the Pacific Northwest economic region.

ARTICLE IV — Duties and Responsibilities

(1) The delegate council has the following duties and responsibilities:

(a) facilitate the involvement of other government officials in the development and implementation of specific collaborative initiatives;

(b) work with policymaking committees in the development and implementation of specific initiatives;

(c) approve general organizational policies developed by the executive committee;

(d) provide final approval of the annual budget and staffing structure for the Pacific Northwest economic region developed by the executive committee; and

(e) other duties and responsibilities as may be established in the rules and regulations of the Pacific Northwest economic region.

(2) The executive committee shall perform the following duties and responsibilities:

(a) elect the president and vice president of the Pacific Northwest economic region;

(b) approve and implement general organizational policies;

(c) develop the annual budget;

(d) devise the annual action plan;

(e) act as liaison with other public and private secter entities; and

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(f) other duties and responsibilities established in the rules and regulations of the Pacific Northwest economic region.

(3) The rules and regulations of the Pacific Northwest economic region shall establish the procedure for voting.

ARTICLE V — Membership of Policy Committees

(1) Policy committees dealing with specific subject matter may be established by the executive committee.

(2) Each participating state and province shall appoint legislators te sit on these policy committees in accordance with its own rules and regulations concerning such appointments.

ARTICLE VI — General Provisions

This agreement may not be construed to limit the powers of any state or province or to repeal or prevent the enactment of any legislation."

Section 2. Section 5-11-703, MCA, is amended to read:

"5-11-703. Appointment to Pacific Northwest economic region — vacancy. (1) Pursuant to 5-11-702, Article III, *the governor or a designee and* four legislators must be appointed to the delegate council of the Pacific Northwest economic region. *The legislative members are appointed* as follows:

(a) one member to be appointed by the president of the senate;

(b) one member to be appointed by the speaker of the house of representatives;

(c) one member to be appointed by the minority leader of the senate; and

(d) one member to be appointed by the minority leader of the house of representatives.

(2) If the Pacific Northwest economic region establishes policy committees under 5-11-702, Article V, appointments of legislators to the policy committees are to be made by the legislative council as provided in 5-11-301.

(3) In the event that a vacancy occurs, appointment to fill the vacancy must be made in the same manner as the original appointment."

Section 3. Section 5-11-704, MCA, is amended to read:

"5-11-704. Compensation of *certain* appointees to Pacific Northwest economic region. ~~Members~~ *Legislative members* appointed to the Pacific Northwest economic region under 5-11-703 are entitled to compensation as provided in 5-2-302."

Section 4. Effective date. [This act] is effective July 1, 1995.

Approved March 14, 1995

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CHAPTER NO. 142

[SB 22]

AN ACT PROVIDING A LIMITED EXEMPTION FROM WORKERS' COMPENSATION COVERAGE FOR A JOCKEY WHO IS LICENSED BY THE BOARD OF HORSERACING; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the custemer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstato commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

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(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal memher who operatos solely within the exterior boundaries of an Indian reservation.;

(n) employment of a jockey performing under a license issued by the board of horseracing from the time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey.

(3) (a) A sole proprietor or a working member of a partnership who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contracter.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status as an independent contractor until the independent contractor notifies the department of any change in ststus and provides a description of present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However,

pursuant to rules the department promulgates and subject in all cases to approval by the department, an officer of a privato corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and to the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directers of the employer, to the department, and to the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if the officer elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chaptor does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202 if the officer falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of *workers'* compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 15, 1995

CHAPTER NO. 143

[SB 94]

AN ACT CLARIFYING THE LAWS GOVERNING WRITE-IN CANDIDATES; REQUIRING AN INDIVIDUAL FILING A DECLARATION OF INTENT FOR A WRITE-IN CANDIDACY TO RECORD THE CANDIDATE'S FIRST AND LAST NAMES AND ANY NICKNAME, INITIALS, OR DERIVATIVE OR DIMINUTIVE USED IN PLACE OF A FIRST NAME OR FIRST AND MIDDLE NAMES; REQUIRING THAT ELECTION OFFICIALS COUNT A WRITE-IN VOTE ONLY IF THE VOTE IDENTIFIES THE CANDIDATE BY ANY OF THE

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PREVIOUSLY FILED NAMES; AND AMENDING SECTIONS 13-10-211, 13-10-302, AND 13-15-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-211, MCA, is amended to read:

"**13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (4), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrater, depending on where a declaration of nomination for the desired office is required to he filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsection (2), the declaration must be filed no later than 5 p.m. on the 15th day before the election and *must* contain:

(a) ~~the candidate's name~~ *(i) the candidate's first and last names;*

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, less than 15 days before the election, a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with ~~his office~~ *the secretary of state*. Each election administrator and school district clerk shall notify the election judges in ~~their~~ *the* county or district of the names of write-in candidates who have filed a declaration of intent.

(4) The requirements in subsection (1) do not apply to a write-in candidato seeking election:

(a) as a precinct ~~committeeman or committeewoman~~ *officer* in a primary election; or

(b) to an office for whicb no candidate has filed a declaration or petition for nomination or a declaration of intent."

Section 2. Section 13-10-302, MCA, is amended to read:

"**13-10-302. Write-in votes for previously nominated candidates.** If an elector writes the name of an individual upon a primary party ballot when the individual's name appears as a candidate for the same office on another party ballot, the vote shall count for the individual only as a candidate of the party upon whose ballot ~~his~~ *the individual's* name is written and the votes cast on the separate party ballots may not be added together. *Except as provided in 13-10-211(4), a write-in vote may be counted only if the vote identifies the individual by any of the designations filed pursuant to 13-10-211(1)(a)(i) through (1)(a)(iv).*"

Section 3. Section 13-15-202, MCA, is amended to read:

"**13-15-202. Counting votes cast — pollbook.** (1) (a) When the procedures required by 13-15-201 are completed, the election judges shall count and determine the votes cast for each individual, except as provided in subsection (1)(b).

(b) The judges may not count or record write-in votes for candidates who have not filed a declaration of intent as provided in 13-10-211, except for write-in votes cast:

(i) for the office of precinct committeeman or committeewoman in a primary election;

(ii) for an office for which no candidate has filed a declaration or petition for nomination or a declaration of intent; or

(iii) on a federal write-in absentee ballot as provided in 13-13-273.

(2) In counting, the ballots shall be opened singly by one of the election judges and the contents read aloud to the other judges.

(3) A ballot or part of a ballot is void and ~~shall~~ *may* not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part. *Except as provided in 13-10-211(4), a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a).*

(4) As the ballots are read, two judges must write on a tally sheet the name of every individual and the office voted for and keep tallies of the number of votes for each individual, except as provided in subsection (1)(b).

(5) The tally sheets shall be compared and their correctness ascertained, and the judges shall immediately write in the pollbook:

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(a) the names of all individuals who received votes;

(b) the offices for which they received votes;

(c) total votes received by each individual as shown by the tally sheets.

(6) In making the count in precincts where voting machines are used, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

(7) A ballot or vote rejected by the election judges may not be included in the count."

Approved March 15, 1995

CHAPTER NO. 144

[SB 217]

AN ACT CLARIFYING THE QUALIFICATIONS FOR THE INDIAN CHILD WELFARE SPECIALIST TO ALLOW APPOINTMENT OF A QUALIFIED PERSON; REQUIRING NOTIFICATION OF TRIBAL GOVERNMENTS; AMENDING SECTION 52-2-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-2-117, MCA, is amended to read:

"52-2-117. Indian child welfare specialist. *(1)* The director of the department shall appoint a qualified ~~employee of the department~~ *person* to act as an Indian child welfare specialist.

(2) The duties of the specialist include:

~~(1)~~*(a)* developing Indian foster homes and other Indian placement resources;

~~(2)~~*(b)* providing technical advice to tribal, state, and county agencies and district courts on matters pertaining to Indian child welfare;

~~(3)~~*(c)* providing assistance in negotiating cooperative agreements to provide foster care services to Indian children;

~~(4)~~*(d)* conducting training seminars on implementing the Indian Child Welfare Act of 1978 (25 U.S.C. 1901, et seq.);

~~(5)~~*(e)* applying for and accepting grants and other funds for Indian child welfare activities;

~~(6)~~*(f)* developing and maintaining a list of atterneys to represent indigent parents and Indian custodians in Indian child welfare proceedings;

~~(7)~~*(g)* making recommendations to the department on legislation and rules concerning Indian child welfare matters; and

~~(8)~~*(h)* performing other duties concerning Indian child welfare matters as determined by the director."

Section 2. Notification of tribal governments. The secretary of state shall send a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal chairperson of the Little Shell tribe.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 15, 1995

CHAPTER NO. 145

[SB 240]

AN ACT CREATING A RESTRICTED LICENSE TO PRACTICE MEDICINE; PROVIDING QUALIFICATIONS; AMENDING SECTION 37-3-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-301, MCA, is amended to read:

"**37-3-301. License required — kinds of certificates.** (1) Prior to the issuance of a license, an applicant may not engage in the practice of medicine in this stato.

(2) The department may issue ~~two~~ *three* forms of certificates *of licensure* under the board's seal: the physician's certificate, *the restricted certificate,* and the temporary certificate. The physician's certificate ~~shall~~ *and the restricted certificate must* be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates ~~shall~~ *must* be designatod as:

(a) physician's certificate, which is subject to annual registration;

(b) *restricted certificate; and*

(c) temporary certificate, which is subject to specifications and limitations imposed by the board."

Section 2. Qualifications for licensure — restricted certificate — suspension — practice authorized. (1) A person may not be granted a restricted license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school;

(c) is licensed and engaged in the active practice of medicine in another state or foreign country, whose licensing standards are acceptable to the board;

(d) has never been subject to license discipline in any form;

(e) demonstrates evidence of research and publication:

(i) in a peer-reviewed medical journal in the English language;

(ii) in the 2 years preceding receipt of the application; and

(iii) that demonstrate the applicant's competency in the field of medicine in which the restricted license is requested;

(f) has been accepted for privileges in a hospital pending licensure by the board;

(g) has demonstrated to the satisfaction of the board the applicant's knowledge, skills, and abilities by providing evidence of at least one of the following criteria:

(i) at least 3 years' postgraduate clinical training in a formal education program;

(ii) board certification in a specialty recognized or certified by the American board of medical specialties; or

(iii) passing, in the 75th percentile or higher, a board-approved state or national examination in medicine, such as the United States medical licensing examination, the special purpose examination, an examination given by the educational commission for foreign medical graduates, or the licensing examination of another state or territory of the United States or Canada;

(h) has submitted a completed application file, which has been reviewed by the board, and has made a personal appearance before the board; and

(i) is able to communicate, in the opinion of the board, in the English language. Passing an examination given by the educational commission for foreign medical graduates or the test of English as a foreign language constitutes prima facie evidence of ability to communicate in the English language.

(2) The restricted license is suspended and subject to revocation after a hearing pursuant to the Montana Administrative Procedure Act upon one of the following:

(a) restriction, termination, or other cessation of the licensee's hospital privileges; or

(b) proof of one of the conditions or offenses identified in 37-3-323.

(3) The holder of a restricted license is limited to the practice of medicine specifically approved by the board after consideration of the applicant's training, skill, and experience. All restrictions, specifications, conditions, and limitations imposed by the board must be stated on the restricted certificate.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 37, chapter 3, part 3, and the provisions of Title 37, chapter 3, part 3, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 15, 1995

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CHAPTER NO. 146

[SB 270]

AN ACT REQUIRING THE DESTRUCTION OF RECORDS OF REPORTS OF CHILD ABUSE OR NEGLECT IF THE CHILD IS DETERMINED NOT TO HAVE BEEN ABUSED OR NEGLECTED AND THE INITIAL REPORT IS UNFOUNDED; AND AMENDING SECTIONS 41-3-202 AND 41-3-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-202, MCA, is amended to read:

"**41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child is or has been abused or neglected, a social worker or the county atterney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters ~~which~~ *that* in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer ~~shall~~, consistent with reasonable medical practice, ~~have~~ *has* the right of access to the child for interviews, photegraphs, and securing physical evidence and ~~have~~ *has* the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county atterney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(3) *(a)* If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(b) If from the investigation it appears that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department shall destroy all records concerning the report and the investigation. The destruction must be completed within 20 days of the determination that the child has not suffered abuse or neglect.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. ~~The~~ *Subject to subsection (3)(b), the* department shall maintain a record system containing child abuse and neglect cases.

(5) Any person reporting abuse or neglect ~~which~~ *that* involves acts or omissions on the part of a public or private residential institution, home, facility, or agency ~~shall be~~ *is* responsible for ensuring that the report is made to the

department ~~of family services~~, its local affiliate, and the county attorney of the county in which the facility is located."

Section 2. Section 41-3-204, MCA, is amended to read:

"**41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding ~~where~~ *for which* the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report ~~shall~~ *may* not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the atterney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section ~~shall~~ *must* be paid by the department.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, ~~he must~~ *the person shall* include in ~~his~~ *the* report either a written description or photographs of the evidence.

(4) A physician, either in the course of ~~his~~ providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when, in ~~his~~ *the physician's* professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section ~~shall~~ *must* be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section ~~shall~~ *must* be sent te the local affiliate of the department at the time *that* the written confirmation report is sent or as soon ~~thereafter~~ *after the report is sent* as is possible. *If a confirmation report is not made, the evidence and the initial report must be destroyed as provided in 41-3-202(3)(b).*"

Approved March 15, 1995

CHAPTER NO. 147

[SB 275]

AN ACT INSTITUTING A GRADUATED PLANT NURSERY LICENSING SCALE BASED ON THE ANNUAL GROSS AMOUNT OF SALES OF NURSERY STOCK; AMENDING SECTION 80-7-106, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-106, MCA, is amended to read:

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"80-7-106. License required — application and payment of license fee. (1) A firm engaging in the business of selling or distributing nursery stock in this state sball obtain a license for each nursery from the department.

(2) The license must be in the name of the firm seeking the license and expires on December 31 following the date of issue. The applicant shall provide information *that* the department finds necessary to carry out the provisions and purposes of tbis chapter.

(3) ~~The license fee is $95 per nursery.~~

~~(4)~~*(a)* A nursery that earns less than $1,000 in gross annual sales of nursery stock and that submits a notarized affidavit to that effect te the department is exempt from licensing.

(b) A nursery that earns $1,000 but less than $3,000 in gross annual sales of nursery stock and that submits a notarized affidavit to that effect to the department shall pay a license fee of $30.

(c) A nursery that earns $3,000 or more in gross annual sales of nursery stock shall pay a license fee of $95.

~~(5)~~*(4)* A new applicant or a firm failing to renew a license by January 1 of each year shall pay an additional nonrefundable application fee of $25 for each license.

~~(6)~~*(5)* An out-of-stato firm that imports nursery stock into Montana for resale by a licensed Montana nursery is not required te obtain a license if the firm is licensed in the state of origin of the nursery stock and if that state extends a similar exemption to Montana firms.

~~(7)~~*(6)* If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee."

Section 2. Effective date. [This act] is effective January 1, 1996.

Approved March 15, 1995

CHAPTER NO. 148

[HB 559]

AN ACT EXEMPTING PINOCHLE TOURNAMENTS SPONSORED BY NONPROFIT ORGANIZATIONS FROM CERTAIN PROVISIONS OF THE CARD GAMES LAWS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Pinochle tournaments. (1) Subject to the department's approval, a nonprofit organization is entitled, upon submission of a permit application and payment of a $25 fee, to a permit for sponsoring a pinochle tournament. A nonprofit organization is entitled to only one permit in each calendar year. The department shall retain the fee for administrative purposes.

The tournament may be conducted for no more than 3 consecutive days and may be conducted at one or more premises.

(2) The tournament may be managed and operated only by members of the nonprofit organization that was issued the permit under subsection (1), and members may not be compensated for their services.

(3) Tournament participants must be provided with a copy of the tournament rules before the start of the teurnament. A copy of the rules must be posted in a conspicuous location in each area and premises where the tournament is conducted. A person must be present on the premises during the tournament to oversee the conduct of the card games and te settle disputes among players.

(4) A tournament sponsor may charge a tournament participant an entry fee, which may include a fee to cover expenses incurred in conducting the tournament.

(5) Proceeds from the tournament, after payment of reasonable administrative expenses, may be used only for a civic, charitable, or educational purpose, and administrative expenses may not exceed 50% of the proceeds.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 5, part 3, and the provisions of Title 23, chapter 5, apply to [section 1].

Approved March 15, 1995

CHAPTER NO. 149

[SB 203]

AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE UNITED STATES NATIONAL PARK SERVICE AND THE STATE OF MONTANA FOR THE BIGHORN CANYON NATIONAL RECREATION AREA AND THE LITTLE BIGHORN BATTLEFIELD NATIONAL MONUMENT; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. United States National Park Service — Montana compact ratified. The compact entered inte by the state of Montana and the United States National Park Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands

administered by the National Park Service within the State of Montana at the time of the effective date of this Compact.

A Compact between the State of Montana and the United States of America regarding water rights for National Park Service lands was executed January 31, 1994. The parties were unable to finalize agreement on quantification of the water rights for Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument prior to the completion of the Compact executed January 31, 1994. This Compact is the final agreement regarding the water rights attributable to these two NPS Units.

RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, *inter alia*, its rights to water with respect to Glacier National Park, *see* United States v. Aageson, No. CV-79-21-GF; United States v. Abell, No. CV-79-33-M; and United States v. AMS Ranch, Inc., No. CV-79-22-GF.

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the existing National Park Service units in the State of Montana;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Park units to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority te execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the document entitled "Abstract of National Park Service Water Rights - BCNRA and LBBNM" referenced in this compact as Appendix 2.

(2) "Bighorn Canyon National Recreation Area" or "BCNRA" means those lands located in Montana that were acquired pursuant to, or designated as such by Act of October 15, 1966, 80 Stat. 913.

(3) "Bureau" means the Montana Bureau of Mines and Geology or its successor.

(4) "Category 1 stream" means a stream that headwaters on the reserved land administered by the National Park Service.

(5) "Category 1a stream" means a stream that headwaters on the reserved land administered by the National Park Service and whicb, in part, carries water tbat drains non-federal land within the boundaries of the same reserved land.

(6) "Category 3 stream" means a stream tbat headwaters in Montana outside the reserved land administered by the National Park Service that flows into the reserved land and is the source for consumptive use water rights recognized under state law on the effective date of this Compact.

(7) "Category 4 stream" means a stream that is treated individually due to special circumstances.

(8) "Consumptive use" means use of surface water not considered a non-consumptive use under (18) and use of groundwater which is shown to be hydrologically connected to surface water pursuant to Article II.

(a) "Current consumptive use", when referring to water rights recognized under stato law only, means all consumptive use water rights recognized under state law with a priority date on or before the effective date of the compact.

(b) "Future consumptive use", when referring to a water right recognized under state law only, means a consumptive use water right recognized under state law with a priority date after the effective date of the compact.

(9) "Credible information" means credible evidence sufficient to support a prima facie basis for the theory asserted.

(10) "Crow Tribal Water Rights" means those senior reserved water rights and any aboriginal water rights held by the United States in trust for the Crow Tribe which are being quantified as part of the general adjudication of water rights in Montana.

(11) "Curtailment" means action pursuant to this Compact te reduce or shut-off diversions by a junior water user to satisfy the senior instream flow right of the National Park Service.

(12) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(13) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States

Department of the Interior, or written approval by the United States Department of Justice, whichever is later.

(14) "Groundwater" means water that is beneath the ground surface.

(15) "Hydrologically connected", for the purposes of Articles II and III, means groundwater that is connected to surface water such that appropriation at the proposed rate will cause a calculable reduction in surface water flow. A "calculable reduction in surface water flow" means a theoretical reduction based on credible information as opposed te a measured reduction.

(16) "Instream flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the reserved land.

(17) "Little Bighorn Battlefield National Monument" or "LBBNM" means those lands located in Montana that were acquired pursuant to or withdrawn and reserved by Presidential Proclamation of December 7, 1886, and by Act of March 22, 1946, 60 Stat. 59.

(18) (a) "Non-consumptive use" when applied to a mining or hydropower use for which a water right is recognized under state law with a priority date after the effective date of this compact, means an appropriation that does not cause a net loss in the surface source of supply, and where substantially all of the diverted water becomes return flow with little or no delay between the time of diversion and the time of return, and without adverse effect on the quantity or quality of water necessary te fulfill the purposes of the reserved land.

(b) "Non-consumptive use" when applied to a water right recognized under state law other than a mining or hydropower use with a priority date after the effective date of this compact, or a water right recognized under state law with a priority date on or before the effective date of this compact, means a water right considered to be non-consumptive by the decree, permit or law authorizing the use.

(19) "Parkman Sandstone" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(20) "Parties" means the State of Montana and the United Statss.

(21) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(22) "Quaternary Alluvium" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

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(23) "Quaternary Terrace Deposits" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between tbe Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(24) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(25) "Return flow" means the portion of water diverted from a source that is returned to the same source, at or near the point of diversion.

(26) "Stato" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(27) "Tributary to" means surface water that originates in the same hydrologic basin or subbasin as the stream referred to and which contributes water to the samo stream.

(28) "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means tho Secretary of tho Department of the Interior, or his or her designees.

ARTICLE II

IMPLEMENTATION

A. Abstract:

Concurrent with this Compact, the parties prepared an Abstract, a copy of which is referenced as Appendix 2, which is a specific listing of all of the United States' water rights for Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234(4) and (7), MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of the Compact. In the event of a discrepancy between a right listed in the Abstract and that same rigbt as quantified in accordance with Articles II and III of the Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall be reflected in a final decree.

B. Method of Allocation of Water on Category 3 and 4 Streams and of Determining Rights Subject to Curtailment on the Little Bighorn River and its Tributaries:

This section explains the method of quantification of the reserved instream flow water rights of tho United States for Category 3 and 4 streams and the metbod of calculating the quantity of consumptive use pursuant to state law

within a basin to which the United States agrees to subordinate its reserved instream flow water rights. The method set forth in this section shall be used to determine whether the limits on consumptive use pursuant to state law set forth in Article III have been reached and whether a water right on the Little Bighorn River and its tributaries upstream from the LBBNM shall be subject to curtailment to satisfy the reserved instream flow water right for LBBNM. Addition to the Abstract of a reserved instream flow water right on a stream inadvertently omitted by the parties or reclassification of a stream due to a water right recognized under state law and inadvertently omitted by the parties shall be consistent with this section and shall not be deemed a modification of this Compact.

1. Allocation to Instream Flow:

With the exception of the reserved instream flow rights for LBBNM, the allocation of water to instream flow on Category 3 and 4 streams is arrived at using tbe following method as explained in general terms:

a. The United States' reserved water right for instream flow includes the entire flow of that stream within the State of Montana at tbe point where the stream flows over or forms the boundary of the specified reserved land after: (1) all consumptive use water rights of any agency of the United States recognized under federal or stato law are satisfied; and (2) subordination of the reserved water right for instream flow to water rights recognized under state law as set forth in and limited by Article III and more specifically in the Abstract.

b. Actual use of water in Wyoming shall not diminish the quantity of water designated for consumptive use pursuant to state law as set forth in Article III.

2. Method of Calculation of Consumptive Use Rights Recognized Under State Law:

To determine whether water is available for appropriation for consumptive use pursuant to stato law on Category 3 and 4 streams, and for determining whether the limit on subordination of the United States' water rights to consumptive uses has been reached, the following provisions shall apply:

a. Tributary Water: The calculation of total consumptive use on a Category 3 or 4 stream shall include all current and future consumptive use, recognized under stato law, of surface water tributary to the stream to the point it enters the reserved land. The limits on total consumptive use on a Category 4 stream that forms the boundary of the reserved land shall include all current and future consumptive use recognized under state law, of surface water tributary to the stream to the most downstream point that the stream forms the boundary of the reserved land.

b. Groundwater:

The following sections i. and ii., sball apply to BCNRA. The following sections i., and iii., shall apply to LBBNM.

i. Within 2 years after the effective date of this Compact, the Department, in consultation with the United States, is directed to promulgate rules as may be necessary to implement Article II, section B.2.b. Said rules shall not alter the rights or obligations of the parties hereto.

ii. The calculation of total future consumptive use on Category 3 or 4 streams at BCNRA shall include appropriations of groundwator as follows:

(1) The calculation of total future consumptive use shall not include appropriation of groundwater by means of a well or developed spring with an appropriation of 35 gallons per minute (gpm) or less that does not exceed 10 acre feet per year (afy).

(2) The limit on total consumptive use shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the Unitod Statos shows by a preponderance of the evidence that the proposed appropriation is hydrologically connectod to surface water tributary te the reserved portion of a Category 3 or 4 stream. If the United States meets this burden, the Department shall include the appropriation in the calculation of total consumptive use.

(a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.

(b) Within 60 days of the mailing of notice, the Unitod States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

(c) If the proposed appropriation is determined not to be hydrologically connected to surface water, or if the limit on consumptive use has not been reached, the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

iii. Determination of whether an appropriation of groundwater after the effective date of the this Compact shall be subject to a curtailment to satisfy the instream flow water right at LBBNM shall be made as follows:

(1) Groundwater appropriations subject to curtailment shall not include an appropriation ef groundwater for stock or domestic purposes by means of a well or developed spring with an appropriation of 35 gpm or less that does not exceed 10 afy.

(2) Groundwater appropriations subject to curtailment to satisfy the 51 cfs instream flow water rights for LBBNM shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United Statos shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the Little Bighorn River or its tributaries upstream from LBBNM.

(a) The Department shall provide notice of the proposed appropriation to the United Statos concurrent with notice pursuant to 85-2-307, MCA.

(b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

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(c) If the proposed appropriation is determined not to be hydrologically connected to surface water the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

(d) If the proposed appropriation is determined to be hydrologically connected to surface water the Department may issue the permit in accordance with state law with notice that the appropriation is subject to curtailment to satisfy the instream flow water right of the LBBNM and the applicant may complete the appropriation.

(3) Groundwater appropriations subject to curtailment to satisfy the 950 cfs instream flow water rights for LBBNM shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the Little Bighorn River or its tributaries upstream from LBBNM and the appropriation is completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone.

(a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.

(b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water and the proposed appropriation is to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone.

(c) If the proposed appropriation is determined not to be hydrologically connected to surface water or not to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone the Department may issue a permit in accordance with state law and the applicant may completo the appropriation.

(d) If the proposed appropriation is determined to be hydrologically connected to surface water and to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone the Department may issue the permit in accordance with state law with notice that the appropriation is subject to curtailment to satisfy the instream flow water right of the LBBNM and the applicant may complete the appropriation.

c. Abandonment: When a consumptive use right recognized under state law on a Category 3 or 4 stream is abandoned and such abandonment causes water to become available for appropriation within the limits of the total amounts of water allocated to consumptive use rights recognized under state law established for that stream by Article III, the increment of water below that limit is available for new appropriation in accordance with state law and this Compact. State law governs the issue of whether an abandonment has occurred.

d. Non-Consumptive Use: The limit on total consumptive use rights recognized under state law shall not include non-consumptive uses as defined by this Compact.

C. Subordination of Instream Flow Right:

1. The United States agrees to subordinate its reserved water right for instream flow to consumptive uses calculated according to this Article in a manner that is specific to each stream on which a reserved wator right is described. This subordination is set forth for each stream in Article III. Curtailment of uses to which the reserved water rights described in this Compact have not been subordinated during periods of low flow shall proceed on the basis of priority and may he initiated in a state or federal court of competent jurisdiction pursuant to Article II, sections I and K.

2. The reserved water rights described in this Compact shall not he subordinate to water rights which were forfeited by § 85-2-212 as interpreted in In the Matter of the Adjudication of the Water Rights within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor shall any claimant of such forfeited water right have standing, based solely on such claimed right, to object to this Compact or any reserved water right described in this Compact, provided that water allocated to future consumptive use pursuant to Article III of this Compact may be used to satisfy claims filed pursuant to 85-2-221(3), MCA in order of priority.

D. Location of Instream Flow Rights: The United States' reserved water rights for instream flow apply to the portion of the Categories 1 through 4 streams specified in this Compact that flow over or form the boundary to reserved land administered by the National Park Service.

E. Change in Instream Flow Right: Except as provided in Article II, section J.2.b., the water rights dedicated to instream flow by this Compact shall not be changed to any other use.

F. Prohibition on Future Impoundments: No new impoundments may be permitted on the mainstom of the Little Bighorn River in Montana upstream of the LBBNM after the effective date of this Compact. This prohibition shall include impoundments that are exempt from permit requirements under state law. Reclamation, repair or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that without the consent of the United States, reclamation, repair or rehabilitation shall not cause the impoundment to exceed the original constructed capacity of the impoundment. This prohibition shall not apply to impoundments constructed to store a senior Tribal water right or to implement settlement of litigation regarding quantification of a Tribal water right.

G. Management to Maximize Use by Montana Water Users of the Water Allocated to Consumptive Use Rights Recognized Under State Law: If any type of conservation or water distribution plan which includes measurement of actual water use, including use pursuant to rights recognized under state law with a priority date before the effective date of this compact, is adopted pursuant to state law, the limits established for consumptive use appropriated pursuant to stato law shall apply to actual measured use, not permitted and decreed or claimed rights, provided that records of actual use be made available to the United States on request and provided further that, such plan shall not diminish the reserved water right of the United States as described in this Compact.

H. Basin Closure

1. Except as provided in Article II, section B.2.c., in the following drainage basins upstream of the portion of the stream for which a reserved water right for instream flow is described in this Compact, the Department shall not process or grant an application or registration for a permit to appropriate or to reserve water for future consumptive use as defined by this Compact once the limits on consumptive use tabulated in Article III and set forth more specifically in the Abstract are reached:

Big Horn Canyon National Recreation Area:

Dry Head, Deadman, Davis and Layout Creeks

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

I. Enforcement of Water Right

1. The United States, the state, or the holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water right described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2 The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter a federal reservation for which a water right is described in this Compact for the purpose of data collection, including the collection of information necessary for water distribution on or off the federal reservation, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of instream flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

3. The Department or the Bureau may enter a federal enclave for which a reserved water right is described in this Compact, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department or Bureau shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located upstream of the reserved portion of a stream for which a reserved water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. Tbe United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the

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devices it deems necessary for enforcement of its reserved water right for instream flow described in this Compact. The United States shall install and maintain a rated gauge to measure instream flows in the Little Bighorn River. The gauge on the Little Bighorn River shall be on the reach of the river which forms the boundary of the LBBNM, the exact location of which shall be at the discretion of the NPS. The NPS shall resurvey the channel cross section as necessary to maintain gauge accuracy, but in any event not less frequently than every three (3) years. The United States may not seek curtailment of junior water uses unless the channel has been resurveyed within three (3) years of the date on which curtailment is sought.

6. A person who violates or refuses or neglects to comply with the provisions of this Compact, an order of the Department pursuant to this Compact, or an action by the Bureau pursuant to this Compact is subject to the penalties provided by state law.

7. For any appeal to state court of an administrative decision authorized by this Compact, venue shall be the First Judicial District in Helena and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

8. In any contested case proceeding held under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated, pursuant to this Compact, the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.

J. Change in Use

1. Change in Use Defined: For the purpose of this Article, the following actions affecting the use of a reserved water right for consumptive use described in this Compact shall be considered a change in use:

a. An action that alters type of use, place of use, point of diversion, place or means of storage, period of use or point of return flow that will:

i. increase the net depletion on a source; or

ii. adversely affect water quality at the point the reserved water right ends; or

iii. result in a change in point of diversion or point of return flow relative to a holder of a water right recognized under stato law; or

iv. change the point of diversion from groundwater to surface wator, or from surface to groundwater; or

v. in any other manner, adversely affects the reasonable exercise of a water right that is recognized under state law.

b. The exercise of a reserved water right to future consumptive use as authorized by this Compact shall not be considered a change in use.

2. Instream flow: Reserved water rights specified in this Compact for instream flow shall not be subject to change to any other use, provided that:

a. the emergency use of water for fire suppression as provided for in Article III.C. shall not be deemed a change or alteration in use, or violation of a reserved water right for instream flow; and

b. the United States may seek to appropriate water for a consumptive use on a source for which no consumptive use is described in this Compact by seeking a permit under state law for consumptive use, provided that the water right granted shall not be counted against the limits on allocation for state consumptive use water rights imposed by this Compact. The water right so acquired shall be administered in accordance with Article V, section B.

3. Consumptive uses: The United States may take action affecting the use of its consumptive use water rights provided that (1) the action shall be in fulfillment of the purposes of the reservation; (2) tbe total use shall not exceed the amount described in this Compact; and (3) the action shall not adversely affect a wator right that is recognized under state law.

4. Notice of intent to change use: At least 180 days prior to a change in use, the United States agrees to provide notice to the Department.

a. The notice shall contain the facts pertinent to the proposed change including, where applicable:

i. The location of a new point of diversion.

ii. The new source of water.

iii. The new means of diversion.

iv. If a well is involved, the depth and locations of the old and new well.

v. The new use and its impact on actual consumption and water quality.

vi. If the change includes storage, the location, period and capacity of the storage facility.

vii. An estimato of when the change will be effective.

viii. A map showing the existing systom and the proposed change.

h. At least 120 days prior to the proposed change, the United States agrees to publish the notice required by Article II, section J.4.a. with a statement that within 60 days following publication or service of notice, relief may be sought in a stato or federal court of competent jurisdiction, once in a newspaper of general circulation in the area of the source, and to serve the notice by first-class mail on interested and potentially affected persons as identified by the records of the Department, including:

i. an appropriator of water or applicant for or holder of a permit who, according to the records of the Department, may be affected by the proposed appropriation;

ii. a purchaser under contract for deed that, according to the records of the Department, may be affected by the proposed appropriation;

iii. any public agency that has reserved water in the source recognized under state law; and

iv. a federal agency or Tribe that claims a reserved water right or other water rights in the source.

c. On request by the United States, the Department shall provide the information contained in its records identifying any person potentially affected hy the proposed change. The United States agrees te reimburse the Department for the expense of providing this information.

d. In the event that future changes in state law establish a method of notice of a proposed change in use to interested and potentially affected persons other than by first-class mail, the United States may alter the method of notification accordingly.

e. Prior to the actual change, tbe United States agrees to provide the Department with proof of notice by affidavit.

5. Objection to proposed change: Within 60 days following the notice pursuant to Article II, section J.4.b., the Department or any other person may hring an action against the proposed change in use in a state or federal court of competent jurisdiction, if a property right, water right, or other interest protected under state law would be adversely affected, or if the proposed change is not in compliance with this Compact.

6. Notice of Change:

a. The United States agrees to notify the state and provide a copy of the final order within 60 days of its entry by a state or federal court of competent jurisdiction resolving any objections to the change in use of a federal reserved water right described in this Compact.

b. The United States agrees to provide the state with notice of completion of the change within 60 days after the completion.

7. Reporting by the United States: For any action affecting the use of a consumptive right whether or not such action is deemed a change in use, the United States agrees to provide the following information to the Department:

a. Well log: For a use that includes the drilling of a well or enlargement of an existing wellhore, the United States agrees to provide a well log to the state within 60 days of the completion of the well.

b. Emergency Use: Within 60 days after the commencement of a tomporary emergency use for fire suppression described in Section III.C. of this Compact, the United States agrees to notify the state of the use to which the water was put, the dates of use, and the estimated amount of water used.

c. Annual Report: Between April 1 and May 1 of each year, the United States agrees to provide the Department with a report on (1) actions during the preceding year affecting the use of a consumptive use right described in this Compact, regardless of whether the action is deemed a change in use pursuant te Article II, section J.1.; (2) the initiation of new uses that were completed during the preceding year; and (3) any data and documents generated or received by the National Park Service during the preceding year on measurement of instream flow on a Category 3 or 4 stream.

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8. Reporting by the State: Between December 1 and December 31 of each year, the Department shall provide the United States with a report of: (1) changes in use during the preceding year, as defined by state law, of water rights upstream of or within the boundaries of reserved land for which a reserved water right is described in this Compact; (2) new permits issued during the preceding year according to the records of the Department; and (3) any data and documents generated by the Department during the preceding year on the measurement of streamflows, diversions and well use on or tributary to Category 3 or 4 streams.

K. Administration of Little Bighorn Instream Flow

Tbis section governs the administration of instream flow rights of the United States on the Little Bighorn River described in Article III. section B.3., in relation to junior water rights initiated after the effective date of this Compact te which the United States has not subordinated and which are not a part of the Crow Tribal Water Rights. Nothing in these provisions, or in this Compact, regarding administration affects or in any way impairs any ability or authority of the Crow Tribe to administer, regulate or manage any water rights within the boundaries of the Crow Indian Reservation.

1. For purposes of administering the instream flow water right of the United States described in Article III. section B. 3. the United States shall establish and maintain a discharge gauge at the LBBNM gaugo site. The United States shall keep a record of daily flows for the period from March 1 through June 30 of each year in which the United States seeks curtailment of junior water rights.

2. The United States may seek curtailment to enforce its 950 cfs instream flow water right, described in Article III. section B.3.b., at the LBBNM gauge site any time from May 1 through June 30. The decision te seek curtailment shall be initiated by the NPS and at the NPS's discretion.

a. A decision to seek curtailment to enforce tbe 950 cfs instream flow water right shall be based on a determination that the flow at tbe LBBNM gauge site plus claimed or permitted appropriations by non-subordinated junior water users equals 950 cfs or more.

b. Once curtailment is sought and confirmed as set forth in Article II. section K.3, it may last for up to 15 consecutive days, or through June 30, whichever occurs first, provided, however, that the 15 days shall be reduced by subtracting the number of days between March 1st and the date of confirmation of curtailment that the flow at the LBBNM gauge site has equalled or exceeded 950 cfs

c. Any curtailment based upon the 950 cfs water right shall be limitod to direct surface diversions from the Little Bighorn River and its tributaries, and wells completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone, as described in Article II. section B.2.b.iii.(3).

3. Notice by NPS that it seeks curtailment to enforce the 950 cfs instream flow water right shall be by either written or verbal notice to the appropriate DNRC office. The NPS shall use its best efforts te maintain contact with the DNRC beginning May 1st of each year to provide advance warning of stream flow conditions.

a. Upon receipt of notice from the NPS that the United States requests curtailment to enforce the 950 cfs instream flow water right, the DNRC shall, within 24 hours, verify actual diversions hy non-suhordinated junior water users and confirm that the sum of flow at the LBBNM and actual diversions by non-subordinated junior water users equals or exceeds 950 cfs. If the DNRC determines that the actual diversions are insufficient to bring the flow at the LBBNM gauge site te 950 cfs, it shall not proceed with curtailment. If a decision is made not to proceed with curtailment, the DNRC shall notify the NPS the same day. After notification, the NPS may again seek curtailment beginning the following day if conditions of flow and time of year meet the conditions set forth in Article II. section K.2.

b. If the DNRC proceeds with curtailment te enforce the 950 cfs water right, the DNRC shall, without delay, shut off non-subordinated junior wator uses in reverse order of priority to the extent necessary to bring the flow at the LBBNM gauge site to 950 cfs, provided that, DNRC has the discretion to forgo curtailment of a particular water right if it determines that curtailment of that water right to satisfy the 950 cfs instream flow right would be futile.

c. Should flow at the LBBNM gauge site exceed 950 cfs at any time during curtailment, the DNRC may reopen diversions in order of priority until 950 cfs is reached. Should the flow at the LBBNM gauge site drop below 950 cfs at any time during the curtailment, non-subordinated junior water uses shall remain shut off provided that, if the NPS reasonably detormines the flow at the LBBNM gauge site is not likely to come back up to 950 cfs during the remainder of the curtailment period, it may consent to end the curtailment.

4. Notice by NPS that it seeks curtailment to enforce the 51 cfs instream flow water right described in Article III. section B.3.a., shall be by either written or verbal notice to the appropriate DNRC office. Upon receipt of notice from the NPS that the United States requests a curtailment to enforce the 51 cfs instream flow water right, the DNRC shall, within 24 hours, verify actual diversions by non-subordinated junior water users. If diversions are being made by non-subordinated junior water users, the DNRC shall, without delay, shut off non-subordinated junior water uses in order of priority to the extont necessary to bring the flow at the LBBNM gauge site to 51 cfs, provided that, DNRC has the discretion to forgo curtailment of a particular water right if it determines that curtailment of that water right to satisfy the 51 cfs instream flow right would be futile.

5. All permits within the Little Bighorn River Basin upstream of the LBBNM gauge site with a priority date after the effective date of this Compact shall be conditioned on the prior right of the NPS for 950 cfs instream flow water right at the LBBNM during May and June, and for the 51 cfs instream flow water right during any portion ef the year, and on the authority of DNRC to curtail use to satisfy the instream flow right.

6. All diversions from the Little Bighorn River er its tributaries ahove LBBNM with a priority date after the effective date of this Compact, shall have the duty to establish and maintain a controllable headgate and an adequate measuring device and shall also be required to maintain a record of daily water diversions, including noting the number of hours for which diversions are made for each day and the flow rate at which water is diverted.

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7. DNRC and NPS shall work together to develop a quantitative prediction relationship between the flow at the LBBNM gauge site, diversions hy non-subordinated junior water users, and the prediction of curtailment requirements.

8. Either party has the right to petition a court of competent jurisdiction for administration of wator rights or for appointment of a water commissioner should cooperative administration not be proceeding as planned or should cooperative administration become burdensome. Any wator commissioner shall enforce the curtailment as described in this Compact. Exhaustion of administrative remedies pursuant to this article is not a prerequisite to any such suit.

ARTICLE III

WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the reservations described. The parties to this agreement recognize that the water rights for these NPS Units are junior to Crow Tribal Water Rights. All reserved water rights described in this Article are subject to Article V, section A.

A. Bighorn Canyon National Recreation Area

1. Priority Date: The United Statos has a priority date of October 15, 1966 for the water rights described in this Compact for Bighorn Canyon National Recreation Area. The United States recognizes that its water rights for the BCNRA are junior in priority to Crow Tribal Water Rights.

2. Consumptive Use: The United States has water rights for current and future consumptive use for the purposes of the Bighorn Canyon National Recreation Area (BCNRA) as set forth in the following Table. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract.

TABLE 1

United States National Park Service

Bighorn Canyon National Recreation Area Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Fort Smith Visitor center	17.6	110
Ok-A Beh/Marina	6.9	35
Grapevine Creek Overflow Campground	12.5	110
Barry's Landing, Trail Creek, Chain Canyon	29.3	180
Bighorn River Ranch	4.7	35

Layout Creek Ranger Station, Sorenson Ranch	140.4	230
Lockhart Ranch	25.6	110
Hillsboro Site	11.0	230
Stock and Wildlife Watering	3.5	
Total Volume of Use:	251.5 acre-feet	

3. Instream Flow

The United States has water rights for instream flow in the streams which flow over the land of Bighorn Canyon National Recreation Area. These water rights for instream flow are quantified and defined as follows:

a. Category 1a:

i. Identification: The following streams are designated as "Category 1a": North Fork Trail Creek, South Fork Trail Creek, and Trail Creek.

ii. Instream Flow: The United States has a water right for instream flow on the Category 1a streams where they enter the BCNRA in the amount of the entire flow of the streams, less (1) any United States' consumptive use rights described in this Compact and any Crow Tribal Water Rights; and (2) all water rights appurtenant to nonfederal land within the boundaries of BCNRA recognized under state law and having a priority date before the effective date of this Compact.

In the event that all non-federal land on a Category 1a stream is acquired by the United States for the purpose of addition to BCNRA, the stream may be reclassified as a Category 1 stream at the request of the United States.

b. Category 3:

i. Identification: The following streams are designated as "Category 3": Dry Head Creek, Deadman Creek, Davis Creek (aka Medicine Creek), and Layout Creek.

ii. The United States has a water right for instream flow on Category 3 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, and any Crow Tribal Water Rights, provided that, the instream flow right is subordinate to (1) the sum of all water rights recognized under state law with a priority date before the effective date of this Compact, plus any future consumptive use rights calculated according to Article II of this Compact until the limit on future consumptive use set forth in the table below is reached; (2) any use considered non-consumptive as defined by this Compact; (3) any use for instream stockwatering or for stockwater or domestic uses by wells or developed springs with an appropriation of 35 gpm or less that does not exceed 10 afy; and (4) any use of groundwater not included in the calculation of consumptive use according to Article II of this Compact.

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TABLE 2

State Law Based

Total Future Consumptive Use Rights (cfs)

Tributary te the Reserved Portion of Category 3 Streams

Dry Head	Deadman	Davis	Layout
2.23*	1.59**	0.50	0.11

* Or the amount of net depletions reasonably necessary to irrigato 20 acres, whichever is largest.

** Or the amount of net depletions reasonably necessary to irrigate 35 acres, whichever is largest.

c. Category 4:

i. Identification: The following streams are designated as "Category 4": Pete's Canyon Creek, the tributary of Deadman Creek that issues from Annerer Spring and flows across BCNRA land in the N1/2NW1/4 Sec. 8, T8S, R29E, M.P.M.

(1) The United States has a water right for instream flow on Pete's Canyon Creek in the amount of one-balf (1/2) of the naturally occurring flow that originates from Pete's Spring.

(2) The United States has a water right for the tributary of Deadman Creek, in the amount of one (1) gallon per minute.

4. Springs

The United States has a water right for instream flows for the following springs identified by location, in the amount of the entire flow of the springs, less any consumptive use rights of the United Statos described by this Compact.

Sorenson Spring	Sec. 09, T9S, R28E
Lockhart #1 Spring	Sec. 13, T8S, R28E
Lockhart #2 Spring	Sec. 13, T8S, R28E
Hillsboro Spring	Sec. 36, T8S, R28E

This list of springs may be modified based on field verification of any spring located entirely within the boundaries of the BCNRA that is not the source of a water right recognized under state law. Springs that occur on Crow Reservation lands are excluded from any water rights for springs.

B. Little Bighorn National Battlefield

1. Priority Date

a. The Unitod States has a priority date of December 7, 1886 for current and future consumptive uses under the water rights reserved for the irrigation, maintenance and administration of the Little Bighorn Battlefield National Monument. The United States recognizes that its water rights for the BCNRA are junior in priority to Crow Tribal Water Rights.

b. The United States has a priority date of March 22, 1946 for the instream flow water rights reserved for use as part of the Little Bighorn Battlefield National Monument, and necessary for historical interpretation of the battle. The United States recognizes that its water rights for the LBBNM are junior in priority te Crow Tribal Water Rights.

2. Consumptive Use

a. The United States has a reserved water right for current and future consumptive uses for the purposes of LBBNM as set forth in Table 3. The period of use shall be from January 1 through December 31. Tbe place of use or point of diversion of a consumptive use water right at LBBNM shall include any non-reserved land within LBBNM boundaries as the boundaries exist on the effective date of this Compact.

TABLE 3

United States National Park Service

Little Bigborn National Battlefield Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)	Source
Cemetery, Visitors Center, Administrative Offices, Residences, Historic Buildings Maintenance Area, and Firehouse Facilities.	84.9	450	ground-water well

3. Instream Flow

The United States bas a reserved water right for instream flow on the Little Bighorn River where it forms the boundary of the Little Bighorn Battlefield National Monument as follows:

a. The United States has a reserved water right for minimum instream flow in the amount of 51.0 cfs with a priority of March 22, 1946, for the period January 1 through December 31, provided that, the instream flow water right is subordinate to:

(1) any water rights recognized under the state law with a priority date before the effective date of this Compact;

(2) any instream stockwater use;

(3) any use of groundwater through wells or developed springs with an appropriation of 35 gpm or less that does not exceed 10 afy;

(4) any use considered non-consumptive as defined by this Compact;

(5) any use of groundwater not included in the calculation of consumptive use according te Article II of this Compact.

b. The United States has a reserved water right for instream flow in the amount of 950 cfs, with a priority date of March 22, 1946, for 15 days during the period of May 1st through June 30th, subject to the terms and conditions regarding implementation as set fortb in Article II, section K, provided that, the instream flow water right is suhordinate to:

(1) any water rights recognized under the stato law with a priority date before the effective date of this Compact;

(2) any instream stockwater use;

(3) any use of ground water from wells completed outside of the Quaternary Alluvium or Quaternary Terrace Deposits of the Little Bighorn River and its tributaries or the Parkman Sandstone;

(4) any use of groundwater from wells or developed springs completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone with an appropriation of 35 gpm or less that does not exceed 10 afy;

(5) any use of groundwater from wells completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone with a permit amount in excess of 35 gpm or 10 afy that is not determined to he hydrologically connected to the Little Bighorn River or its tributaries pursuant to Article II. section B.2.b.iii. of this Compact;

(6) any use considered non-consumptive as defined by this Compact.

c. Instream Flow Rights Not Cumulative: The 950 cfs instream flow, when it occurs, is not additive to the 51.0 cfs year-round minimum flow.

C. Emergency Fire Suppression

The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the various Park reservations. The United States, may as part of its reserved water right, divert water for fire suppression at all of the National Park Service Units as needed, and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be deemed an exercise of the United States' reserved water rights for consumptive use or a violation of its reserved water rights for instream flow.

ARTICLE IV

GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights:

1. Nothing in this Compact may be construed or interpreted in any manner to establish the nature or extent of the rights to water or the right to administer water of an Indian Trihe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or trihal member. The relationship between the water rights of the National Park Service described herein and any rights to water of an Indian Trihe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on hehalf of such tribe or tribal member shall be determined by the rule of priority. The United States specifically recognizes the seniority of the Crow Tribal Water Rights.

2. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the National Park Service. The exercise of a water right of the United States, if any, to water for a consumptive use on land administered by the United States Forest Service upstream of a water right to instream flow described in tbis Compact shall be allocatod from the United States' share for instream flow, not the state's share for consumptive use.

B. State Water Rights

Nothing in this Compact may limit the exclusive authority of the state, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the reserved land covered by this Compact, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. General Disclaimers

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation or the interpretation or administration of future compacts between the United States and the state; or of the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, *inter sese*, of persons using water under the authority of state law or to limit tbe rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights tbrough headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

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9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the National Park Service, and does not affect the water rights of any other federal agency.

10. to alter or amend any provisions of the Yellowstone River Compact, Act of October 30, 1951, ch. 629, 65 Stat. 663 (1951).

D. Use of Water Right

Except as otherwise provided in this Compact, the rights of the United States described in this agreement are federal reserved wator rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall he restricted to uses necessary to fulfill the purposes of the associated reserved land.

E. Appropriation Pursuant to State Law

Nothing in this Compact may prevent the United States from seeking a permit to appropriate water under state law for use outside the boundaries of the federal reservations for which a water right is described in this Compact, provided that, no such use may be included in the calculation of total current or future consumptive use rights allocated to use pursuant to state law by this Compact, and provided further that, a water right obtained in this manner shall be considered a state water right and shall be administered pursuant to general provisions of state law as provided in Article II, section J.2.b.

F. Reservation of Rights

Tbe parties expressly reserve all rights not granted, described or relinquished in this Compact.

G. Severability

Tbe provisions of this Compact are not severable, provided that for the purposes of Sec. 85-2-702(3) MCA, the water rights described in this Compact for the LBBNM and BCNRA Units shall be considered as separate Compacts.

H. Multiple Originals

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Directer of the Department and such other officials as he or she may designato in writing.

2. United States: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE V

FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United Stetes Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:

a. The state and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the state te the use of water; and

b. except as otherwise provided in Article V, section A., the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. § 666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a stete court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the limited waiver or sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. § 666 or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 3 to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

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2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice any claims made by the United States for LBBNM or BCNRA in federal court. This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rigbts described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

C. Settlement of Claims

The parties intend that, with the exceptions noted herein, the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land administered by the National Park Service in Montana on the effective date of this Compact. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact and other water rights claims of the United States are expressly retained in Article III, sections D. and F. in the Compact for YNP, GNP and BHNM, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed hy the United States for reserved land administered by the National Park Service in Montana relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved land administered by the National Park Service. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

Specifically excepted from this final settlement of water rights are water rights Claims No. 43P-W-162354-00 and 43P-W-162348-00, both of which are claimed in the general adjudication of water rights as stata law based water rights. Claim No. 43P-W-162354-00 is for 0.75 cfs from the Big Horn Canal for irrigation purposes at the Bighorn River Ranch site within BCNRA. Claim No. 43P-W-162348-00 is for 50 gpm from Pete's Spring for recreation and wildlife purposes and is located outside of the BCNRA boundary.

D. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____, 19__.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of the United States National Park Service-Montana Water Rights Compact, as provided in 85-20-401, and the provisions of the United States National Park Service-Montana Water Rights Compact, as provided in 85-20-401, apply to [section 1].

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Section 3. Effective date — applicability. (1) [This act] is effective upon signature by the parties as provided in [this act].

(2) Because [this act] requires Montana and United States approval and incorporates provisions of the existing water rights compact between the United States National Park Service and the State of Montana as provided in 85-20-401, [this act] applies only to the Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument. The provisions of the existing compact, as provided in 85-20-401, continue in effect and are not affected by [this act] and are incorporated into [this act].

Approved March 15, 1995

CHAPTER NO. 150

[HB 64]

AN ACT REVISING THE QUALIFICATIONS FOR POLICE OFFICERS; AMENDING SECTION 7-32-4112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-4112, MCA, is amended to read:

"**7-32-4112. Qualifications of policemen *police officers*.** ~~(1) The~~ members *A member* of ~~the~~ *a* police department on the active list of any city at the time of ~~their~~ appointment under this part may not be less than 18 years of age ~~or more than 35 years of age, but this restriction does not apply to any member of any police department as of July 2, 1973, to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service is not less than 3 months, or to applicants for reinstatement under 7-32-4110.~~

~~(2) A police officer~~ must be a citizen of the United States, and *shall* meet the minimum qualifying standards for employment promulgated by the board of crime control."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1995

CHAPTER NO. 151

[HB 144]

AN ACT ELIMINATING THE ENUMERATION OF THE ALLOCATION OF FINES, FORFEITURES, AND PENALTIES INCURRED BY A VIOLATION OF THE STATE'S TAX LAWS; REPEALING SECTION 15-1-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 15-1-105, MCA, is repealed.

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Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1995

CHAPTER NO. 152

[HB 199]

AN ACT MAKING PERMANENT THE TAX CREDIT FOR CONTRIBUTIONS MADE TO THE GENERAL ENDOWMENT FUNDS OF THE MONTANA UNIVERSITY SYSTEM FOUNDATIONS AND MONTANA PRIVATE COLLEGE FOUNDATIONS; AMENDING SECTION 15-30-163, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-163, MCA, is amended to read:

"15-30-163. Credit for contributions to university system *or private college* foundations. (1) ~~For taxable years beginning after December 31, 1990, and before January 1, 1996, an~~ *An* individual, corporation, partnership, or small business corporation, as defined in 15-31-201, is allowed a tax credit against taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 10% of the aggregate amount of charitable contributions made by the taxpayer during the year to any of the general endowment funds of the Montana university system foundations or a general endowment fund of a Montana private college or its foundation. The maximum credit *that* a taxpayer may claim in a year under this section is $500. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(3) (a) For the purposes of this section, "foundation" means a nonprofit organization *that is* created exclusively for the benefit of any unit of the Montana university system or a Montana private college and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(b) For the purposes of this section, "Montana private college" means a nonprofit private educational institution:

(i) whose main campus and primary operations are within the state; and

(ii) that offers baccalaureate degree level education and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1995

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CHAPTER NO. 153

[HB 231]

AN ACT INCREASING THE COST FOR ENTRY OF CONFESSION OF JUDGMENT; AND AMENDING SECTION 27-9-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-9-103, MCA, is amended to read:

"**27-9-103. Filing and costs — district court.** The statement must he filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of ~~such~~ *the* court for the amount confessed, with ~~$25~~ *$45* costs. The clerk of the district court shall deposit the fee in the district court fund. If no district court fund exists, the fee must be deposited in the general fund for district court operations."

Approved March 16, 1995

CHAPTER NO. 154

[SB 304]

AN ACT REVISING THE REQUIREMENTS FOR THE TAKING OF FISH OR GAME FOR SCIENTIFIC PURPOSES; INCREASING THE PERMIT FEE FOR THE TAKING OF FISH OR GAME FOR SCIENTIFIC PURPOSES; TO ALLOW AN INDIVIDUAL TO BE ELIGIBLE TO RECEIVE A PERMIT TO COLLECT FOR SCIENTIFIC PURPOSES; AMENDING SECTION 87-2-806, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-806, MCA, is amended to read:

"**87-2-806. Taking fish or game for scientific purposes.** (1) It is lawful for the duly accredited representative of an accredited school, college, university, or other institution of learning or of any governmental agency *or for an individual*, who may be investigating a scientific subject ~~making it~~ *for which collection may be* necessary, to take, kill, capture, and possess for that purpose any birds, fish, or animals protected by Montana law or state fish and game rule, *provided that a permit to collect is authorized by the department.* ~~He~~ *Under the provisions of this section, a permittee* may take, kill, and capture protected or unprotected birds, fish, or animals in any way *that is approved by the department,* except by the explosion of dynamite. ~~No~~ *A permittee may not take, kill, or capture* more ~~of the~~ birds, fish, or animals ~~may be taken~~ than are necessary for the investigation. *A collection permit may not be given for a species for which a taking is prohibited by statute or rule.*

(2) A person who desires to engage in the scientific investigation shall apply to the ~~director~~ *department* for a permit. *The department may require the applicant to submit a plan of operations that includes the purpose for the collection, collection methodology to be employed, and the qualifications of the person who will be doing the collecting.* The ~~director~~ *department* may set

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qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. If the ~~director~~ *department* is satisfied of the good faith and qualifications of the applicant *and that the collecting is necessary for a valid purpose,* ~~he shall~~ *the department:*

(a) may issue a permit ~~which shall~~ *that must* place a time limit on the collections and may place a restriction on the number of birds, fish, or animals to be taken; and

(b) shall require a report of the numbers and species of animals taken by collection areas.

(3) The department may deny a permit if:

(a) the applicant is not qualified to make the scientific investigation;

(b) the proposed collecting is not necessary for the proposed scientific investigation;

(c) the method of collecting is not appropriate;

(d) the proposed collecting may threaten the viability of the species; or

(e) there is no valid reason or need for the proposed scientific investigation.

(4) By December 31 of each year, a permittee is required to submit a report to the department that lists the species and numbers of individuals of the species taken and locations from which collections were taken. A permittee who fails to file a required report may not be issued another permit.

~~(3)~~*(5)* The permittee shall pay $5 *$50* for the permit, *except that a permittee who is a representative of an accredited school, college, university, or other institution of learning or of any governmental agency is exempt from payment of the fee.*

~~(4)~~*(6)* The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are ~~mentioned~~ *allowed* in the permit.

~~(5)~~*(7)* ~~Any~~ *A* representative of an accredited school, college, university, or other institution of learning *or an individual permittee* who may have various students or associates assisting ~~him~~ throughout the year may apply to have ~~his~~ *a* permit issued ~~to himself and his~~ *that includes the individual and the students or* associates. *The department shall approve the qualifications of a student or an associate and the level of supervision required by the primary permittee.* The *students or* associates, when carrying a copy of the permit, ~~shall~~ have the same authorizations and restrictions as the ~~original~~ *primary* applicant. The ~~original~~ *primary* applicant shall keep a record of all *students or* associates ~~to whom he issued a copy of his~~ *listed on the* permit and of the ~~times for which~~ *dates when* each *student or* associate ~~is issued a copy~~ *conducts a collection under the permit.* The ~~original~~ *primary* applicant is responsible for ~~his~~ *the students' or* associates' use of the permit or copies of the permit~~, including their reports of species and numbers of animals collected~~."

Section 2. Effeetive date. [This act] is effective on passage and approval.

Approved March 16, 1995

CHAPTER NO. 155

[SB 400]

AN ACT PROVIDING REQUIREMENTS FOR FLOW-THROUGH HOT SPRINGS POOLS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of health and environmental sciences authority to adopt administrative rules. It is the intent of the legislature that in adopting rules to implement [section 1], the department consult with flow-through hot springs pool owners. The rules should set out standards for hot springs pools maintained at 106 degrees F or less and used primarily for soaking, pools under 100 degrees F and used primarily for swimming, and shallow pools designed primarily for young children.

Be it enacted by the Legislature of the State of Montana:

Section 1. Special requirements for flow-through hot springs pools. In addition to the other requirements of this chapter and rules promulgated under this chapter, flow-through hot springs pools must meet the following requirements:

(1) The temperature of the pool water must be 106 degrees F or less.

(2) The water must have sufficient clarity at all times so that a black disc, 6 inches in diameter, is readily visible when placed on a white field at the deepest point of the pool.

(3) The pool water must be maintained at a pH of no less than 7.2 and not greater than 8.5.

(4) The pool must provide sufficient water volume exchange to produce an 8-hour turnover of the entire volume of pool water to waste. In addition:

(a) the pool, and all surfaces that flow into the pool, must be drained, cleaned, and sanitized every 72 hours; or

(b) the pool must be disinfected, and a chlorine residual of 1 to 3 parts per million or a bromine residual of 3 to 6 parts per million must be maintained in the pool at all times.

(5) Signs must be prominently posted that specify pool rules and special health hazards associated with swimming or bathing in flow-through hot springs pools. The contents of the signs must be determined by department rule. The department, in developing rules under this section, shall consult with flow-through hot springs pool owners.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 53, part 1, and the provisions of Title 50, chapter 53, part 1, apply te [section 1].

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Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1995

CHAPTER NO. 156

[HB 229]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE X, SECTION 9, OF THE MONTANA CONSTITUTION TO REPLACE THE BOARD OF EDUCATION, THE BOARD OF REGENTS, AND THE COMMISSIONER OF HIGHER EDUCATION WITH THE DEPARTMENT OF EDUCATION AND A STATE EDUCATION COMMISSION; PROVIDING TRANSITIONAL INSTRUCTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article X, section 9, of The Constitution of the State of Montana is amended to read:

"Section 9. ~~Boards~~ *Department* of education — *state education commission* — *board of public education.* (1) There is a ~~state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests~~ *department of education, with a director appointed by the governor. The department and the director shall have duties as assigned by law.*

(2) There is a state education commission, consisting of eight members appointed by the governor and confirmed by the senate to staggered terms, as provided by law. The commission shall have duties assigned by law. ~~A~~ *Except in the case of a* tie vote at any meeting ~~may be broken by~~ *of the commission,* the ~~governor, who~~ *director shall serve as the non-voting presiding officer and* is an ex officio member of ~~each component board~~ *the commission.*

~~(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.~~

~~(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are an ex officio non-voting members of the board.~~

~~(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.~~

~~(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.~~

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(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, ~~commissioner of higher education~~ and state superintendent of public instruction shall be ex officio non-voting members of the board."

Section 2. Effective date. If approved by the electorate, this amendment is effective on passage and approval.

Section 3. Transition. Upon passage and approval, the governor may create a department of education and the state education commission as provided in Article X, section 9. The department and the commission may exercise statutorily assigned duties. The board of regents and the commissioner of higher education shall continue to perform duties that were constitutionally assigned until January 1, 2001. The terms of office and appointments to the board of regents remain in effect until January 1, 2001.

Section 4. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to he held in November 1996 by printing on the ballot the full title of this act and the following:

☐ FOR replacing the board of education, board of regents, and commissioner of higher education with a department of education and a state education commission.

☐ AGAINST replacing the board of education, board of regents, and commissioner of higher education with a department of education and a state education commission.

CHAPTER NO. 157

[HB 50]

AN ACT REVISING AND MAKING PERMANENT CERTAIN PROVISIONS REGARDING THE SALE OF TIMBER ON STATE LANDS; CONTINUING THE STATE TIMBER SALE ACCOUNT AND PLACING TIMBER SALE REVENUE IN THE ACCOUNT IN AN AMOUNT EQUAL TO THE AMOUNT APPROPRIATED FROM THE ACCOUNT; REMOVING THE REQUIREMENT FOR A PERCENTAGE DOWNPAYMENT UPON THE AWARD OF A TIMBER SALE CONTRACT; ESTABLISHING THE SALE PRICE OF LIVE TIMBER ON STATE LANDS AT NOT LESS THAN FULL MARKET VALUE; AMENDING SECTIONS 77-1-613 AND 77-5-204, MCA; REPEALING SECTION 12, CHAPTER 533, LAWS OF 1993; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-613, MCA, is amended to read:

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"77-1-613. ~~(Temporary)~~ Deduction of portion of income received from sale of timber from state trust lands — creation of account. (1) There is an account in the state special revenue fund *called the state timber sale account.* ~~The amount of $312,000 per year of the income received from the sale of timber from state trust lands must be deducted and placed in the account to the credit of the state timber sale program~~ *Money in the account may be appropriated by the legislature* for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. *There must be placed in the account an amount from timber sales on state lands each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year.*

(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation and documentation.

(3) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(4) To maximize overall return te the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs.

~~(5) A timber purchaser who successfully bids on a contract to purchase timber from state trust lands shall deposit with the department 20% of the bid price as a downpayment when the contract is awarded. (Terminates June 30, 1995—sec. 12, Ch. 533, L. 1993.)~~"

Section 2. Section 77-5-204, MCA, is amended to read:

"77-5-204. Sale of timber — fee for forest improvement. (1) The board may sell timber on state lands, at a price per 1,000 *board* feet, *when appropriate,* that, in the board's judgment, is in the best interest of the state, provided that live timber is not sold for less than:

~~(a) $3 per 1,000 feet for white pine, yellow pine, and spruce; or~~

~~(b) $1.50 per 1,000 feet for all other timber species~~ *full market value.*

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by tbe board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before tbe sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible:

~~(a)~~ the value ~~per 1,000 feet~~ *per 1,000 board feet, when appropriate,* of all merchantable timber;

~~(b) the condition of the timber relative to risk from fires or other damage;~~

~~(c) the timber's distance from the nearest lake, stream, or railroad; and~~

~~(d) the timber's value as a protection to a watershed.~~

(4) In addition to the price of the timber established under subsection (1), the board may require a timber purchaser to pay a fee for forest improvement. Revenue from the fee must be deposited in the state special revenue fund to the credit of the department and, as appropriated by the legislature, may be used only for:

(a) disposing of logging slash;

(b) acquiring access and maintaining roads necessary for timber harvesting on state lands;

(c) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands; and

(d) complying with legal requirements for timber harvesting."

Section 3. Repealer. Section 12, Chapter 533, Laws of 1993, is repealed.

Section 4. Coordination instruction. If __Bill No.__ [LC 294] is passed and approved, then [sections 1 and 3 of this act] are void.

Section 5. Effective dates. (1) [Sections 1, 3, and 4 and this section] are effective June 30, 1995.

(2) [Section 2] is effective October 1, 1995.

Approved March 17, 1995

CHAPTER NO. 158

[HB 141]

AN ACT CLARIFYING TERMS APPLICABLE TO THE TAXATION OF GASOLINE, DIESEL, AND SPECIAL FUEL; PROVIDING AN ALLOWANCE FOR COLLECTING TAXES ON MOTOR FUELS RATHER THAN FOR THE EVAPORATION OF FUEL; ELIMINATING THE REQUIREMENT FOR RECORDKEEPING FOR SEPARATE STORAGE TANKS; CLARIFYING THAT THE DEPARTMENT OF TRANSPORTATION HAS 120 WORKING DAYS IN WHICH TO APPROVE OR REJECT A CLAIM FOR A REFUND; ALLOWING THE DEPARTMENT OF JUSTICE TO EXPEND FUNDS FROM THE TRIBAL MOTOR FUELS ADMINISTRATION ACCOUNT; LIMITING THE USE OF RESTRICTIVE ENDORSEMENTS ON NEGOTIABLE INSTRUMENTS; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO COLLECT DELINQUENT MOTOR FUEL TAXES; AMENDING SECTIONS 15-70-201, 15-70-205, 15-70-222, 15-70-226, AND 15-70-235, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-201, MCA, is amended to read:

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"15-70-201. **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may he known or sold, compounded for use in and sold for use in aircraft, including but not limited te any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal sterage for sale or use in this state or for the transportation te destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) any exporter as defined in subsection (8);

(e) any dealer licensed as of January 1, 1969, except a dealer at an established airport;

(f) any person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a moter vehicle, gasoline received from a refinery or pipeline terminal within Montana.

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(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) *(a)* "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; *and*

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" ~~includes and~~ means to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of any gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(12) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(13) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(14) "Use" ~~includes and~~ means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

Section 2. Section 15-70-205, MCA, is amended to read:

"15-70-205. (Temporary) Distributor's statement and payment — confidentiality. (1) Each distributor shall, not later than the 25th day of each calendar month, render a true signed statement to the department of transportation of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information *that* the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for ~~evaporation and other loss of gasoline distributed by the distributor~~ *collecting the tax; however, an. An* allowance may not be deducted from the 3-cent tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information

contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section may not be construed to prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative ~~only~~ if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction. (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

15-70-205. (Effective on occurrence of contingency) Distributor's statement and payment — confidentiality. (1) Each distributor shall, not later than the 25th day of each calendar month, render a true signed statement to the department of transportation of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information *that* the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for ~~evaporation and other loss of gasoline distributed by the distributor~~ *collecting the tax*~~; however, an~~. *An* allowance may not be deducted from the 2-cent tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statoment.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section may not be construed to prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of tho report or return of any distributor or the furnishing te the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished te the officer or the officer's representativo ~~only~~ if the statutes of the United Statos or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Seetion 3. Section 15-70-222, MCA, is amended to read:

"15-70-222. Required records. (1) Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and *for* nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which *the gasoline was* used. Gasoline on hand, determined by actual measurement, ~~shall~~ *must* be deducted from a claim and ~~shall~~ *must* be reported as an opening inventory on the next claim.

~~(2) If separate storage tanks are maintained on claimant's premises for use in licensed vehicles and in unlicensed equipment, the bulk delivery invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided refunds are claimed only on the number of gallons delivered into the unlicensed equipment tank. Withdrawal of gasoline from the unlicensed vehicle tank for licensed vehicles will invalidate this method of determining refundable gallonage.~~

~~(3)~~*(2)* Special storage facilities used for certain periods must be identified and explained. If ~~such~~ *special* storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into ~~such~~ *special* storage.

~~(4)~~*(3)* Service stations, bulk dealers, and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for their own use upon which a refund is to be claimed.

~~(5)~~*(4)* When no highway use of gasoline is deducted from the claim, the applicant ~~must~~ *shall* substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department of transportation.

~~(6)~~*(5)* Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim *a* refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership if ~~such~~ *the* person has maintained the following records:

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(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) total gallons of gasoline used in each vehicle;

(c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources.

~~(7)~~*(6)* An exporter or any other person who transports gasoline out of Montana for sale, use, or consumption outside of Montana shall maintain detailed and contemporaneous records of withdrawal, transportation, ownership, and delivery of the gasoline to destinations outside of Montana as required by the department of transportation."

Section 4. Section 15-70-226, MCA, is amended to read:

"**15-70-226. Approval or rejection of claim.** (1) The department ~~shall have~~ *has* 120 *working* days after receiving the claim to approve or reject it. If approved, the department of transportation shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor~~; for~~. *For* all other persons, a warrant ~~shall~~ *must* be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject ~~such~~ *the* claim in full. If a claim is rejected, the department may suspend claimant's right to refund for a period not to exceed 1 year."

Section 5. Section 15-70-235, MCA, is amended to read:

"**15-70-235. Tribal motor fuels administration account.** (1) There is a special revenue account called the tribal motor fuels administration account.

(2) The administrative expenses and refund amounts deducted by the department of transportation under 15-70-234(3) must be deposited in the tribal motor fuels administration account.

(3) The tribal motor fuels administration account may be expended by the department of transportation *or by the department of justice* only for the purposes of administering the motor fuels tax and providing refunds under 15-70-234."

Section 6. Payment of taxes by negotiable instrument. The department of transportation is not bound by conditions pertaining to endorsement by the department that are placed on a negotiable instrument by the maker or drawer, tendered to the department for the payment of a tax liability or other liabilities, unless:

(1) the debtor and the department have previously entered into a written agreement that specifies the amount of the debtor's liability; and

(2) the amount tendered is in accordance with the written agreement.

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Section 7. Authority to collect delinquent motor fuel taxes — offset — hearing. (1) The department of transportation shall collect motor fuel taxes that are delinquent as determined under this chapter.

(2) To collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a hearing on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

(5) The department shall provide the taxpayer with notice of the right to request a hearing under the contested case procedures of Title 2, chapter 4, on the matter of the offset action or the department's intent to file a claim on behalf of the taxpayer. A request for hearing must be made within 30 days of the date of the notice. If a hearing is requested, it must be held within 20 days of the request.

Section 8. Codification instruction. [Sections 6 and 7] are intended to be codified as an integral part of Title 15, chapter 70, part 1, and the provisions of Title 15, chapter 70, part 1, apply to [sections 6 and 7].

Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. Effective dates. (1) [Sections 1, 2, and 4 through 9 and this section] are effective on passage and approval.

(2) [Section 3] is effective January 1, 1996.

Approved March 17, 1995

CHAPTER NO. 159

[HB 162]

AN ACT CHANGING THE DEFINITION OF PROSPECTING; EXTENDING THE APPLICATION PERIOD FOR RENEWAL OF A MINING PERMIT; AND AMENDING SECTIONS 82-4-203, 82-4-221, AND 82-4-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-203, MCA, is amended to read:

"**82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation ~~where~~ *in which* no mineral is being produced and ~~where~~ *about which* the department determines that the operation will not continue or resume.

(2) *(a)* "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities~~;~~.

(b) ~~but the~~ *The* term does not include upland areas ~~which~~ *that* are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities ~~which~~ *that* permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited ~~and~~. *The term* includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral~~;~~*;* lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral~~;~~*;* processing facilities at or near the mine site or other ~~mine-associated~~ *mine-associated* facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining~~;~~*;* and all activities necessary and incident to the reclamation of ~~such~~ *those* operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation ~~to include~~ *and includes* plans for the removal and ~~utilization~~ *use* of minable and marketable coal located within the area planned to be mined.

(8) *(a)* "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(10) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(11) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral

seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(12) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(13) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(14) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation~~, provided that~~. *However,* the nonremoval or nonutilization of minable and marketable coal in accordance with reclamation standards established hy the department may not be considered failure to conserve coal.

(15) "Fill bench" means that portion of a bench or table ~~which~~ *that* is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(16) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause suhstantial physical harm to persons outside the permit area hefore the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(17) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(18) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(19) "Minable coal" means that coal ~~which~~ *that* can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to he mined.

(20) "Mineral" means coal and uranium.

(21) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants, and all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(22) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of

mineral or overburden, ~~or~~ a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location, or a person engaged in operating a coal preparation plant.

(23) "Overburden" means all of the earth and other materials that lie above a natural mineral deposit and also means the earth and other material after removal from their natural state in the process of mining.

(24) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(25) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptihility to flooding, and erosion charactoristics and which histerically has been used for intensive agricultural purposes and as defined in the Federal Register.

(26) "Prospecting" means ~~the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;~~*:*

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical, or other techniques necessary to determine*:*

(i) the quality and quantity of overburden in an area*; or*

(ii) the location, quantity, or quality of a natural mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

(27) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(28) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(29) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral. For the purposes of this part only, strip mining also includes remining and coal preparation. The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

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(30) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(31) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land; ~~or~~

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit te be directly affected by strip-mining operations or who receives directly a significant portion of income, if any, from farming or ranching operations; or

(c) the state of Montana ~~where~~ *when* the state owns the surface.

(32) "Topsoil" means the unconsolidated mineral matter *that is* naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(33) "Underground mining" means any part of the process *that is* followed in the production of a mineral ~~such that~~ *and that uses* vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata ~~are utilized and~~. *The term* includes mining by in situ methods.

(34) "Unwarranted failure to comply" means the failure of a permittee to prevent tbe occurrence of any violation of a permit or any requirement of this part ~~due to~~ *because of* indifference, lack of diligence, or lack of reasonable care~~,~~ or the failure to abate any violation of a permit or this part ~~due to~~ *because of* indifference, lack of diligence, or lack of reasonable care.

(35) "Waiver" means any document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(36) "Written consent" means a written statement executed by the owner of the surface estate, upon a form approved by the department, demonstrating that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 2. Section 82-4-221, MCA, is amended to read:

"**82-4-221. Mining permit required.** (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation~~,~~. ~~which~~ *The* designation ~~shall~~ *must* include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit ~~shall~~ *must* authorize the operator to engage in strip or underground mining upon the area of land described in ~~his~~ *the* application and designated in the permit for a period

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of 5 years from the date of its issuance. ~~Such~~ *The* permit ~~shall be~~ *is* renewable upon each 5-year anniversary ~~thereafter~~ *after issuance* upon application to the department at least ~~120~~ *240* but not more than ~~150~~ *300* days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules ~~hereunder~~ *adopted to implement this part*, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. ~~Such~~ *The* renewal ~~shall~~ *is* further ~~be~~ subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden ~~shall be~~ *is* on the opponents of renewal to demonstrate that the permit should not be renewed. A permit ~~shall~~ *must* terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that ~~such~~ *the* extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at ~~such~~ *the* time ~~as~~ the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of ~~every~~ *each* permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person ~~shall~~ *must* be allowed to accompany the inspecter during the inspection.

(3) During the term of the permit, the permittee may suhmit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision ~~shall~~ *must* be approved or disapproved within a reasonable time, depending on the scope and complexity, but in no case longer than 120 days. Applications for major revisions are suhject to all the permit application requirements and procedures."

Seetion 3. Section 82-4-226, MCA, is amended to read:

"82-4-226. **Prospecting permit.** (1) Except as provided in subsection (8), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and *an* adequate reclamation performance hond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information ~~as~~ *that* may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application ~~shall~~ *must* also include any other or further information *that* the department may require.

(3) The application must be accompanied by a fee of $100. This fee must be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(5) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(6) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228 and that is not conducted for the purpose of determining the location, quality, or quantity of a natural mineral deposit is not subject to subsections (1) through (7). *In addition, prospecting that is conducted to determine the location, quality, or quantity of a natural mineral deposit and that does not substantially disturb the natural land surface is not subject to subsections (1) through (7).* However, a person who conducts ~~this~~ prospecting *described in this subsection* shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially

disturbs the natural land surface, it must be conducted in accordance with the performance standards of the department's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time."

Approved March 17, 1995

CHAPTER NO. 160

[HB 386]

AN ACT GENERALLY REVISING THE MONTANA LIVESTOCK MARKETING ACT; REVISING THE DEFINITION OF A LIVESTOCK DEALER; DEFINING A CUSTODIAL ACCOUNT; DEFINING A SATELLITE VIDEO LIVESTOCK AUCTION MARKET; REQUIRING A SATELLITE VIDEO LIVESTOCK AUCTION MARKET TO BE LICENSED; AND AMENDING SECTION 81-8-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-8-213, MCA, is amended to read:

"81-8-213. **Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of livesteck provided for in 2-15-3102.

(2) "Custodial account for shippers' proceeds" or "custodial account" means a separate account established and maintained by a market agency or a satellite video livestock auction market engaged in selling livestock on a commission or agency basis. The account must be maintained in a Montana bank insured by the federal deposit insurance corporation and used to maintain and disburse all funds due to consignors from livestock sold on a commission basis. All checks or banking instruments to consignors in payment of the net proceeds from the sale of consigned livestock must be issued on the custodial account. This account must disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

~~(2)~~*(3)* "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

~~(3)~~*(4)* "Immediate resale" means a sale of livestock within 60 days of the purchase of the livestock.

~~(4)~~*(5)* "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.

~~(5)~~*(6)* *(a)* "Livestock dealer" means a person engaged in the business of purchasing livestock*:*

(i) for immediate resale ~~or~~*;*

(ii) for interstate shipment*; or*

(iii) on a commission or fee basis:

(A) for the account of others; or

(B) for or on behalf of a dealer or a market.

(b) The term does not include a farmer or rancher who buys or sells livestock in the ordinary course of a farming or ranching operation.

~~(6)~~*(7)* "Livestock market" means a place where a person for compensation assembles livestock for sale, except:

(a) a place used solely for a dispersal sale of the livestock of a farmer, ~~dairyman~~ *dairy producer*, livestock breeder, or feeder who is discontinuing business and at which ~~no~~ other livestock is *not* sold or offered for sale;

(b) a farm, ranch, or place where livestock either raised or kept ~~thereon~~ for the grazing season or for fattening is sold and to which ~~no~~ other livestock is *not* brought for sale or to be offered for sale;

(c) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(d) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits ~~his~~ sale to livestock of ~~his~~ *the person's* own production;

(e) a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under ~~his~~ *the breeder's* or ~~its~~ *the association's* own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

~~(7)~~*(8)* "Person" means an individual, firm, association, partnership, or corporation.

(9) "Satellite video livestock auction market" or "video auction market" means a place or establishment operated or conducted for compensation or profit as a public market where livestock located in this state are sold or offered for sale at a facility within the state through the use of a satellite video at a public auction.

~~(8)~~*(10)* "Test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock."

Section 2. Satellite video livestock auction market — license to transact business — license fee — contract — renewal. (1) A satellite video livestock auction market may transact business in this state only through a licensed livestock dealer or through a livestock market that is domiciled in the state.

(2) A livestock dealer or a livestock market that proposes to transact business with a video auction market shall file an application for a license with the department on a form prescribed by the department with the following information:

(a) the nature of the business for which a license is requested;

(b) the name and address of the livestock dealer or the livestock market;

(c) the name and address of the video auction market; and

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(d) any additional information that the department may require.

(3) The application must be accompanied by:

(a) a fee established by the department commensurate with the costs of administering [section 3] and this section;

(b) evidence that the department may require indicating that the video auction market is financially responsible and bonded to transact business and has established a custodial account for shippers' proceeds; and

(c) a copy of the contract between the licensed livestock dealer or the livestock market and the video auction market. The contract must provide:

(i) for reasonable access by the department to all records and documents relating to the activities of the video auction market; and

(ii) that the livestock dealer or the livestock market and the video auction market are jointly and severally liable, with the right of contribution, for all business transacted within the state.

(4) If the contract described in subsection (3)(c) is torminated, rescinded, breached, or materially altered, the livestock dealer or the livestock market shall immediately notify the department. Failure to notify the department is considered to be:

(a) a failure to keep and maintain suitable records with the department; and

(b) a false entry or statement of fact in an application filed with the department.

(5) On or before May 1 of each year, a livestock dealer or a livestock market shall renew the license by fulfilling the requirements of subsections (1) through (4).

(6) The license fee must be remitted to the stato treasurer to the credit of the department.

Section 3. Refusal to issue or renew license — suspension or revocation. (1) The department may refuse to issue or renew a license in accordance with the provisions of 81-8-273.

(2) The department may suspend or revoke a license in accordance with the provisions of 81-8-274.

(3) If the contract between the livestock dealer or the livestock market and the video auction market is terminated, rescinded, breached, or otherwise matorially altered by either party, the department may refuse to renew the license or may suspend or revoke the license.

Section 4. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 81, chapter 8, part 2, and the provisions of Title 81, chapter 8, part 2, apply to [sections 2 and 3].

Approved March 17, 1995

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CHAPTER NO. 161

[HB 392]

AN ACT ALLOWING LAW ENFORCEMENT OFFICERS AND RESERVE OFFICERS TO HAVE THEIR RESIDENTIAL ADDRESSES, FOR SECURITY REASONS, NOT APPEAR ON A REGISTER, LIST, OR MAILING LABEL DISSEMINATED BY REGISTRARS TO ELECTORS; AND AMENDING SECTIONS 13-2-115 AND 13-2-122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-115, MCA, is amended to read:

"13-2-115. Registration lists to be prepared. (1) ~~Immediately~~ *Except as provided in subsection (5), immediately* after registration is closed, the election administrator shall prepare and *must* have printed lists of all registered electors in each precinct. Names of electors ~~shall~~ *must* be listed alphabetically, with their residence address or *with a* mailing address if located where street numbers are not used. A preliminary list of registered electors may be printed before the close of registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.

(2) A copy of the list of registered voters ~~shall~~ *must* be displayed at the polling place. Extra copies of the lists ~~shall~~ *must* be retained by the election administrator and furnished to an elector upon request.

(3) The list of registered electors prepared for a primary election may be used for the general election if a supplemental list giving the additions and deletions since the primary list was prepared is printed. The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.

(4) Lists of registered voters need not be printed if the election will not be held.

(5) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the registrar may not include the address on any list of registered voters but shall list only the name or names."

Section 2. Section 13-2-122, MCA, is amended to read:

"13-2-122. Charges for registers, elector lists, and mailing labels made available to public. *(1)* ~~Upon~~ *Except as provided in subsection (2), upon* written request, the registrar shall furnish to any elector, for noncommercial use, a copy of the official precinct registers, a current list of registered electors, or mailing labels for registered electors. Upon delivery, the registrar may collect a charge not to exceed the actual cost of the register, list, or mailing labels.

(2) If the registrar receives in writing from a law enforcement officer or reserve officer, as defined in 7-32-201, a request that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be

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disclosed, the registrar may not include the address on any register, list, or mailing labels disseminated pursuant to subsection (1)."

Approved March 17, 1995

CHAPTER NO. 162

[HB 306]

AN ACT REVISING THE SERVICE RETIREMENT BENEFITS PAYABLE UNDER THE SHERIFFS' RETIREMENT SYSTEM; REDUCING THE NUMBER OF YEARS OF SERVICE REQUIRED FOR NORMAL AND EARLY RETIREMENT ELIGIBILITY; ELIMINATING THE AGE REQUIREMENT FOR NORMAL SERVICE RETIREMENT; ELIMINATING THE PERCENT OF SALARY LIMIT ON THE AMOUNT OF A NORMAL SERVICE RETIREMENT BENEFIT; INCREASING THE BENEFIT PAID TO SURVIVORS; INCREASING EMPLOYER AND EMPLOYEE CONTRIBUTION RATES TO FUND THE BENEFIT CHANGES; AMENDING SECTIONS 19-7-403, 19-7-404, 19-7-501, 19-7-502, 19-7-503, 19-7-504, AND 19-7-901, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-7-403, MCA, is amended to read:

"**19-7-403. Member's contributions deducted.** (1) Every member shall contribute into the pension trust fund ~~7%~~ *7.865%* of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and salary as used to define the member's final average salary in 19-7-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 2. Section 19-7-404, MCA, is amended to read:

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"**19-7-404. Employer contributions.** (1) The employer shall pay monthly ~~7.67%~~ *8.535%* of each member's gross compensation into the pension trust fund created by this chapter.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may budget, levy, and collect annually a special tax on the assessable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation. This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county."

Section 3. Section 19-7-501, MCA, is amended to read:

"**19-7-501. Eligibility and application for service retirement — commencement of benefit.** (1) ~~(a)~~ A member ~~initially elected or appointed before July 1, 1989,~~ who has completed at least ~~24~~ *20* years of membership service may retire on a service retirement benefit.

~~(b) A member initially elected or appointed on or after July 1, 1989, who has completed at least 24 years of membership service, reached the age of 50 years, and terminated service may retire on a service retirement benefit.~~

(2) A member electing to retire shall apply in writing to the board.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 65th birthday.

(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of the term of office. An official electing this option may not earn service or compensation for purposes of final average salary under the retirement system in that month, and compensation earned in that month is not subject to employer or member contributions."

Section 4. Section 19-7-502, MCA, is amended to read:

"**19-7-502. Early retirement option.** A member with 15 years of membership service ~~who has reached age 50~~ may retire with an early retirement benefit *commencing no sooner than the first day of the month following the member's 50th birthday*. The early retirement benefit must be calculated to be the actuarial equivalent of the member's retirement benefit as otherwise accrued, based upon payment commencing when the member would have completed ~~24~~ *20* years of membership service or reached age 60, whichever event would have occurred first."

Section 5. Section 19-7-503, MCA, is amended to read:

"**19-7-503. Service retirement benefit.** (1) The amount of any service retirement benefit granted to a member ~~with 24 years or less of membership service~~ is 2.0834% of the member's final average salary for each year of service credit~~, up to a maximum of 50% of final average salary~~.

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~~(2) The member's retirement benefit must be increased for any member who contributes after 24 years of service credit by 1.35% of the member's final average salary for each year of service credit in excess of 24 years, up to a maximum of 60% of the member's final average salary.~~

~~(3)~~ If a member dies after retirement and had not elected an optional retirement benefit provided for in 19-7-1001, the member's designated beneficiary must be paid the excess, if any, of the member's accumulated contributions at the time of retirement less payments made to the retired member."

Section 6. Section 19-7-504, MCA, is amended to read:

"**19-7-504. Involuntary retirement benefit.** If a member is involuntarily discontinued from service after having completed 5 years of membership service but before reaching retirement ~~age~~ *eligibility under 19-7-501*, the member must, upon filing an application, be paid in one of the following ways:

(1) the full amount of the member's accumulated contributions; or

(2) a retirement benefit beginning on the member's 50th birthday, calculated under the provisions of 19-7-502."

Section 7. Section 19-7-901, MCA, is amended to read:

"**19-7-901. Payments in case of death before retirement.** If a member dies before retirement, the member's designated beneficiary ~~is entitled to~~ *may* elect one of the following options for which the member qualified and the designated beneficiary qualifies:

(1) a lump-sum payment of the accumulated contributions standing to the member's credit at the member's death;

(2) a ~~retirement~~ *survivorship* benefit ~~based on 2% of~~ *equal to 2.0834% of the member's* ~~the~~ final average salary for each year of service credit ~~up to a maximum of 25 years,~~ *actuarially* reduced ~~on an actuarially equivalent basis~~ from age 65 or the date the member would have completed ~~25~~ *20* years of membership service, whichever provides a larger retirement benefit; *or*

(3) a ~~retirement~~ *survivorship* benefit ~~based on~~ *that is no less than* one-half of *the member's* final average salary if the board finds that the member died as a direct and proximate result of injuries received in the course of employment."

Section 8. Coordination instruction. If ____ Bill No. ____ [LC 772] is passed and approved and if it amends sections 19-7-403 and 19-7-404 to fund a guaranteed annual benefit adjustment, then the employee contribution rate in [section 1 of this act], amending 19-7-403, must be 8.67% and the employer contribution rate in [section 2 of this act], amending 19-7-404, must be 9.34%.

Section 9. Effective date. [This act] is effective on July 1, 1995.

Approved March 17, 1995

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CHAPTER NO. 163

[HB 494]

AN ACT PROVIDING THAT A MONTANA HIGHWAY PATROL OFFICERS' MEMORIAL BE ESTABLISHED ON THE GROUNDS OF THE CAPITOL.

WHEREAS, on March 14, 1935, the 24th Montana Legislative Assembly established the Montana Highway Patrol to reduce the number of deaths on state highways; and

WHEREAS, officers of the Montana Highway Patrol have dedicated their lives to traffic law enforcement service for 60 years; and

WHEREAS, four officers have given their lives in service to the Montana Highway Patrol and citizens of Montana; and

WHEREAS, the memory of these officers' service will always be honored by family, friends, and fellow workers; and

WHEREAS, the State of Montana desires to recognize and remember the dedicated service of fallen Montana Highway Patrol officers.

Be it enacted by the Legislature of the State of Montana:

Section 1. Highway patrol officers' memorial. (1) The department of administration shall set aside on the capitol grounds an area on the north side of the capitol for a memorial to Montana's slain highway patrol officers. The area must be agreed upon between the Montana highway patrol and the department of fish, wildlife, and parks and must maintain the historical design integrity of the block on which the capitel is located, also known as capitel square.

(2) The memorial must be constructed to consider long-term maintenance efficiency and must be paid for by private donations. The memorial must be maintained with the assistance of private donations as part of the capitol grounds maintonance program provided in 2-17-111.

Section 2. Codification instruction. [Section 1] is intonded to be codified as an integral part of Title 2, chapter 17, part 1, and the provisions of Title 2, chapter 17, part 1, apply to [section 1].

Approved March 17, 1995

CHAPTER NO. 164

[SB 40]

AN ACT REVISING PROVISIONS FOR THE ASSESSMENT, PLACEMENT, CONFIRMATION, AND ADMISSION TO AN APPROVED PUBLIC TREATMENT FACILITY; AND AMENDING SECTIONS 53-24-209 AND 53-24-301, MCA.

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STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance concerning the adoption of rules to establish policies and procedures governing assessment, patient placement, confirmation, and admission to an approved public treatment facility. It is the intent of the legislature that the rules adoptod by the department of corrections and human services take into consideration the treatment resources. programs, and facilities available for the treatment of chemically dependent persons.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-209, MCA, is amended to read:

"53-24-209. Rules for acceptance for treatment. The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of chemically dependent persons, intoxicated persons, and family members. In adopting the rules, the department ~~shall~~ *must* be guided by the following standards:

(1) If possible, a patient ~~shall~~ *must* be treated on a voluntary rather than an involuntary basis.

(2) A patient ~~shall~~ *must* be initially assigned or transferred to outpatient treatment unless ~~he is~~ found to require inpatient treatment.

~~(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.~~

~~(4)~~ An individualized treatment plan ~~shall~~ *must* be prepared and maintained on a current basis for each person.

~~(5)~~*(4)* Provision ~~shall~~ *must* be made for a continuum of coordinated treatment services so that a person who leaves a facility or a form of treatment will have available and ~~utilize~~ *use* other appropriate treatment."

Section 2. Section 53-24-301, MCA, is amended to read:

"53-24-301. ~~Voluntary treatment~~ *Treatment* of ~~alcoholics~~ *the chemically dependent.* (1) ~~An alcoholic may apply directly to an approved public treatment facility for voluntary treatment.~~ *An applicant for voluntary admission or court-referred admission to an approved public treatment facility shall obtain confirmation from a certified chemical dependency counselor that the applicant is chemically dependent and appropriate for inpatient, freestanding care as described in the administrative rules. The department shall adopt rules to establish policies and procedures governing assessment, patient placement, confirmation, and admission to an approved public treatment facility.* If the proposed patient is a minor or an incompetent person, ~~he~~ *the proposed patient*, a parent, legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who ~~shall be~~ *is* admitted for treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person

to ~~another~~ *an* approved ~~public~~ *private* treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved public treatment facility, ~~he shall~~ *the patient must* be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator of the treatment facility that the patient is ~~an alcoholic who~~ *chemically dependent and* requires help, the department shall arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall make reasonable provisions for ~~his~~ *the patient's* transportation to another facility or to ~~his~~ *the patient's* home. If ~~he~~ *the patient* has no home, ~~he shall~~ *the patient must* be assisted in obtaining shelter. If ~~he~~ *the patient* is a minor or an incompetent person, the request for discharge from an inpatient facility ~~shall~~ *must* be made by a parent, legal guardian, or other legal representative or by the minor or incompetent, if ~~he~~ *the minor or incompetent person* was the original applicant."

Approved March 17, 1995

CHAPTER NO. 165

[SB 84]

AN ACT REVISING THE SERVICES PROVIDED BY THE MONTANA CHEMICAL DEPENDENCY CENTER; ELIMINATING THE PROVISION OF EMERGENCY SERVICES AT THE MONTANA CHEMICAL DEPENDENCY CENTER FOR INTOXICATED PERSONS OR PERSONS INCAPACITATED BY ALCOHOL; AMENDING SECTIONS 53-21-603, 53-24-207, AND 53-24-303, MCA; AND REPEALING SECTION 53-24-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-603, MCA, is amended to read:

"**53-21-603. Chemical dependency treatment center.** (1) There is a Montana chemical dependency treatment center. The Montana chemical dependency treatment center is the approved public treatment facility as defined in 53-24-103.

(2) The Montana chemical dependency treatment center shall provide detoxification, evaluation, treatment, referral, and rehabilitation to persons in Montana who are referred for ~~the~~ *inpatient* treatment of alcoholism or other chemical dependency."

Section 2. Section 53-24-303, MCA, is amended to read:

"**53-24-303. Treatment and services for intoxicated persons and persons incapacitated by alcohol.** (1) ~~An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment.~~ A person who appears to be intoxicated in a public place and to be in need of help~~, if he consents to the proffered help,~~ may be assisted to ~~his~~ *the person's* home, ~~an approved public treatment facility,~~ an approved private treatment

facility, or other health facility by the police, *if the person consents to an offer for help.*

(2) A person who appears to be incapacitated by alcohol ~~shall~~ *must* be taken into protective custody by the police and ~~forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available, he shall~~ *must* be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person ~~and in taking him to an approved public treatment facility~~, are taking ~~him~~ *the person* into protective custody and shall make every reasonable effort to protect ~~his~~ *the person's* health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps ~~to protect himself~~ *for the officer's own protection.* ~~No~~ *An* entry or other record may *not* be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

~~(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.~~

~~(4) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission may not be detained at the facility once he is no longer incapacitated by alcohol or, if he remains incapacitated by alcohol, for more than 48 hours after admission as a patient unless he is committed under 53-24-304. A person may consent to remain in the facility as long as the physician in charge believes appropriate.~~

~~(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.~~

~~(6) If a patient is admitted to an approved public treatment facility, his family or next of kin may be notified if the patient consents to such notification.~~"

Section 3. Section 53-24-207, MCA, is amended to read:

"**53-24-207. Comprehensive program for treatment.** (1) The department shall establish a comprehensive and coordinated program for the treatment of chemically dependent persons, intoxicated persons, and family members.

(2) The program ~~shall~~ *must* include:

(a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

(b) inpatient treatment;

(c) intermediate treatment;

(d) outpatient treatment; and

(e) ~~follow-up~~ *followup* services.

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(3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under 53-24-301 through ~~53-24-304~~ *53-24-303*.

(4) All appropriate public and private resources ~~shall~~ *must* be coordinated with and ~~utilized~~ *used* in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and privato treatment facilities."

Section 4. Repealer. Section 53-24-304, MCA, is repealed.

Approved March 17, 1995

CHAPTER NO. 166

[SB 284]

AN ACT DIRECTING THE PUBLIC SERVICE COMMISSION TO USE A MARKET COMPARISON METHODOLOGY WHEN DETERMINING THE REASONABLENESS OF THE COST OF COAL OR OTHER BOILER FUEL PURCHASED BY A REGULATED PUBLIC UTILITY FROM ITS AFFILIATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [section 2] and this section, the following definitions apply:

(1) "Affiliate" means a corporation or other entity wholly owned or controlled, directly or indirectly, by the public utility or by a corporation or other entity that wholly owns or controls, directly or indirectly, the public utility.

(2) "Different supplier" means a fuel supplier that is not an affiliate of the public utility that is subject to commission review under [section 2].

Section 2. Evaluation of coal or other boiler fuel costs. (1) The purchases of coal or other boiler fuel for the generation of electricity by a public utility from a fuel supplier that is an affiliate of the public utility is subject to review by the commission to enable the commission to determine whether the costs incurred by the public utility are reasonable.

(2) In determining whether the costs incurred are reasonable, the commission shall compare the costs incurred by the public utility to the costs that the public utility would have incurred if the coal or other boiler fuel had been purchased from a different supplier under similar contract terms.

(3) The commission may disallow recovery in the rates charged by the public utility of any amount by which the costs incurred exceed the amount that the commission determines to be reasonable based on the comparison required under subsection (2).

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 1 and 2].

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Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 17, 1995

CHAPTER NO. 167

[SB 302]

AN ACT CLARIFYING LAWS THAT ALLOW ELECTRIC SUPPLIERS TO ENTER AGREEMENTS CONCERNING SERVICE AREAS; AND AMENDING SECTION 69-5-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-5-108, MCA, is amended to read:

"69-5-108. Agreements between electric suppliers as to service areas. Notwithstanding the provisions of 69-5-103 through ~~69-5-107~~ *69-5-109*, ~~any~~ *an* electric supplier may furnish electric service to any consumer at any premises being served by another electric supplier upon written agreement of the affected electric suppliers or at premises ~~which~~ *that* another electric supplier has the right to serve pursuant to this part, upon written agreement of the affected electric suppliers."

Approved March 17, 1995

CHAPTER NO. 168

[SB 327]

AN ACT REVISING THE LICENSURE REQUIREMENTS FOR CHIROPRACTORS; ADDING PROOF OF A BACHELOR'S DEGREE AS A REQUIREMENT; ALLOWING AN EXEMPTION FOR A PERSON LICENSED IN ANOTHER STATE OR ENROLLED IN AN ACCREDITED CHIROPRACTIC COLLEGE; AND AMENDING SECTION 37-12-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-12-302, MCA, is amended to read:

"37-12-392. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board, at least 21 days prior to a meeting of the board. Each applicant ~~shall~~ *must* be a graduate of or expect to graduate within 90 days prior to the next licensing examination administered by the board from a college of chiropractic approved by the board, in which ~~he~~ *the applicant* has attended a course of study of 4 school years of not less than 9 months each~~, and~~. *The applicant* shall present evidence showing ~~completion of 2 full academic years of college or university work from an institution acceptable to the board of regents of higher education~~ *proof of a bachelor's degree from an accredited college or university*. Application ~~shall~~ *must* be made in writing, ~~and shall~~ *must* be sworn to by an officer authorized to administer oaths, and ~~shall~~ *must* recite the history of applicant's educational qualifications, how long ~~he~~ *the*

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applicant has studied chiropractic, of what school or college ~~he~~ *the applicant* is a graduate, and the length of time ~~he~~ *the applicant* has been engaged in practice. The application ~~shall~~ *must* be accompanied with ~~proofs by~~ *copies of* diplomas~~,~~ *and* certificates~~, etc.,~~ and satisfactory evidence of good character and reputation.

(2) ~~There shall be paid to the department by an applicant for~~ *The applicant shall pay to the department* a license a fee prescribed by the board. ~~Like fees shall be paid~~ *A fee must also be paid* for a subsequent examination and application.

(3) A person who is licensed in another state or who previously graduated from or was enrolled in a chiropractic college accredited by the council on chiropractic education on or before October 1, 1995, is exempt from the bachelor's degree requirement."

Approved March 17, 1995

CHAPTER NO. 169

[HB 463]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION TO ALLOW STATE COMPENSATION INSURANCE FUND MONEY TO BE INVESTED IN PRIVATE CORPORATE CAPITAL STOCK.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII, section 13, of The Constitution of the State of Montana is amended to read:

"**Section 13. Investment of public funds.** (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds *or monies in the state compensation insurance fund*, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law."

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Section 2. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1996 by printing on tbe ballot the full title of this act and the following:

☐ FOR allowing state compensation insurance fund money to be invested in private corporate capital stock.

☐ AGAINST allowing state compensation insurance fund money to be invested in private corporate capital stock.

CHAPTER NO. 170

[HB 113]

AN ACT ALLOWING THE BOARD OF COUNTY COMMISSIONERS OR THE TRUSTEES OF A RURAL FIRE DISTRICT TO PLEDGE INCOME OF THE DISTRICT TO SECURE FINANCING TO PROCURE EQUIPMENT AND BUILDINGS TO HOUSE THE EQUIPMENT; AND AMENDING SECTION 7-33-2109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2109, MCA, is amended to read:

"7-33-2109. Tax levy, *debt incurrence,* and bonds authorized. (1) At the time of the annual levy of taxes, the board of county commissioners may levy a special tax upon all property witbin a rural fire district for the purpose of huying or maintaining fire protection facilities and apparatus, including emergency response apparatus, for tbe district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for the purpose of furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(3), to secure financing necessary to procure equipment and buildings to house the equipment.

~~(2)~~*(3)* In addition to the levy authorized in subsection (1), a ~~rural fire~~ district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities and apparatus, including emergency response apparatus, for the district.

~~(3)~~*(4)* The amount of *debt incurred pursuant to subsection (2) and* the *amount of* honds issued pursuant to subsection ~~(2)~~*(3)* and outstanding at any time may not exceed 18% of the taxable value of the property in the district as ascertained hy the most recent assessment for state and county taxes prior to *the incurrence of debt or the* issuance of the bonds.

~~(4)~~*(5)* The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and

limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22."

Approved March 20, 1995

CHAPTER NO. 171

[HB 278]

AN ACT ELIMINATING THE TERMINATION DATE FOR INFORMATION AND LIABILITY RESTRICTIONS ON HERBICIDE USE; REPEALING SECTION 7, CHAPTER 516, LAWS OF 1987, AND SECTION 8, CHAPTER 530, LAWS OF 1991; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 7, Chapter 516, Laws of 1987, and section 8, Chapter 530, Laws of 1991, are repealed.

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved March 20, 1995

CHAPTER NO. 172

[SB 139]

AN ACT CLARIFYING THE STATUTES ON THE WORKERS' COMPENSATION OLD FUND LIABILITY TAX; PROVIDING AN EXEMPTION FOR PARTNERS OF A PUBLICLY TRADED LIMITED PARTNERSHIP; DEFINING "ONGOING ACTIVITIES" AND "PUBLICLY TRADED LIMITED PARTNERSHIP"; CLARIFYING THAT INTERSTATE EMPLOYERS AND EMPLOYEES ARE SUBJECT TO THE WORKERS' COMPENSATION OLD FUND LIABILITY TAX ONLY FOR INCOME EARNED IN MONTANA; EXCLUDING PAYMENTS FROM A MULTIPLE EMPLOYER WELFARE ARRANGEMENT FROM THE DEFINITION OF WAGES; AMENDING SECTIONS 15-30-304, 39-71-2501, AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICARILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-304, MCA, is amended to read:

"15-30-304. Furnishing copy of federal return; — *copy of share of income, credit, and deductions schedule* — copies of federal corrections; and — filing amended return required. ~~Every~~ *Each* taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year ~~which he~~ *that the taxpayer* has filed or may file with the federal government, showing ~~his~~ *the taxpayer's* net income and how obtained and the several sources from which derived. *Partners of a partnership, shareholders of a subchapter S. corporation, and members or managers of a limited liability company who are subject to the workers' compensation old fund liability tax shall*

attach to their Montana individual income tax return a copy of the share of income, credit, and deductions schedule that the partner, shareholder, or member or manager received from the entity that reports income to the federal government for the corresponding year. If the amount of a taxpayer's taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall report ~~such~~ *the* change or correction to the department within 90 days after receiving notice ~~thereof~~ *of the change or correction.* If a taxpayer files an amended federal income tax return changing or correcting ~~his~~ *the taxpayer's* federal taxable income for any ~~taxable~~ *tax* year, ~~he~~ *the taxpayer* shall also file an amended return with the department within 90 days ~~thereafter~~ *after filing an amended federal income tax return.* The department shall supply all necessary forms and shall, upon the request of the taxpayer, return all ~~such~~ forms to the taxpayer after they have been examined by the department."

Section 2. Section 39-71-2501, MCA, is amended to read:

"**39-71-2501. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

(3) (a) "Employer" means, except as provided in subsection (3)(b), the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.

(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term employer means the person who has control of the payment of wages.

(4) "Employer's payroll" means wages paid for each of the calendar quarters ending March 31, June 30, September 30, and December 31.

(5) *"Ongoing activities" means obligations or occurrences that are continuous, rather than intermittent or occasional, that exist for a definite period of time during the year, or that are intended to cover or apply to successive and similar obligations or occurrences.*

(6) "Publicly traded limited partnership" means a business entity that issues shares or similar ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders on a public exchange recognized by the securities exchange commission.

(7) "State fund" means the state compensation insurance fund.

~~(6)~~*(8)* "Tax" *or "old fund liability tax"* means the workers' compensation old fund liability tax provided for in 39-71-2503, created to address the unfunded

liability for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~(7)~~*(9)* "Tax account" means the workers' compensation tax account created by 39-71-2504.

~~(8)~~*(10)* "Wages" means all remuneration for services performed *in the state of Montana* by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer te perform the service. For purposes of this subsection ~~(8)(a)~~ *(10)(a)*, an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ *(10)(a)(i)*, by the employer in the performance of service during the preceding calendar quarter;

(b) for services not in the course of the employer's trade or business, te the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at the request of and for the convenience of the employer;

(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program tbat benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club activities;

(d) as payments from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002, to a qualified individual employee;

~~(d)~~*(e)* as wages or compensation, the taxation of which is prohibited by federal law*;*

(f) as wages or compensation for services performed by Montana residents outside the borders of the state of Montana."

Section 3. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding week.

(b) There is imposed on each employee, except workers engaged in the rail industry who are under the jurisdiction of the federal railroad administration, United States department of transportation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages in the preceding calendar quarter. *An employer paying wages for services performed in Montana shall deduct and withhold the tax from the wages.*

(c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager *derived from ongoing activities.*

(i) The tax imposed in this subsection (c) applies only to the ordinary income of a shareholder, partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

(ii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this subsection (c).

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who *owns stock in a closely held corporation that* meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rato for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, tbat is in excess of the reserve maintained in the account and that is equal te the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

(g) Each employer shall maintain the records *that* the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid te the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the stato the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section.

(2) All collections of the tax must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter and in addition shall remit withholdings for employees' old fund liability taxes at the same time.

(b) An employer subject to 15-30-204(2) sball remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) and sball remit withholdings for employees' old fund liability taxes at the same time.

(c) Tax payments required by subsections (1)(a) and (1)(b) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(d) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall~~, on July 1, 1991, or as soon after that date as possible,~~ give the department a list of all employers having coverage under any plan administored or regulated hy the department of labor and industry and the state fund. ~~After the lists have been given to the department, the~~ *The* department of labor and industry and the state

fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 20, 1995

CHAPTER NO. 173

[SB 177]

AN ACT REQUIRING DISABILITY INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS TO DISCLOSE THE MEANING OF CERTAIN TERMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Explanation of charges. A disability insurer, health service corporation, or health maintenance organization that issues policies, certificates, or contracts, that issues policies, certificates, or contracts for delivery in this state, or that renews, extends, or modifies policies, certificates, or contracts on or after October 1, 1995, shall include in the disability policies, certificates, or contracts definitions for terms that limit payment of health care services based on standards described as usual and customary, reasonable and customary, prevailing fee, allowable charges, or a relative value schedule. These definitions must inform the insured that the insured's health care provider may charge more than the limits established by the defined terms and that such additional charges may not be covered by the policy, certificate, or contract.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply to [section 1].

Approved March 20, 1995

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CHAPTER NO. 174

[SB 220]

AN ACT AUTHORIZING COURTS TO KEEP COURT RECORDS BY MEANS OF ELECTRONIC FILING AND STORAGE; AND AMENDING SECTIONS 3-2-402, 3-5-501, 3-6-302, 3-10-501, 3-10-503, 3-10-511, 3-10-512, AND 3-11-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 and 2], the following definitions apply:

(1) "Document" means all contents in the file or record of any case or matter docketed by a court, including decisions, administrative orders, court records, court books, court minutes and minute books, court dockets, court ledgers, registers of actions, court indexes, and other documents, instruments, or papers required by law to be filed with a court.

(2) "Electronic filing of documents" means the transmission of data to a court by the communication of information that is originally displayed in written form and then converted to digital electronic signals, transformed by computer, and stored by the clerk of the court on microfilm, magnetic tape, optical disc, or other medium.

(3) "Electronic storage of documents" means the recording, storage, retention, maintenance, and reproduction of court documents, using microfilm, microfiche, data processing, computers, or other electronic processes that correctly and legibly store and reproduce documents.

Section 2. Electronic filing and storage of documents — rules. (1) The supreme court may make rules establishing procedures for electronic filing of documents and electronic storage of documents.

(2) Courts may, but are not required to, institute procedures for electronic filing of documents and electronic storage of documents to further the efficient administration and operation of the courts. Electronically filed or stored documents may be kept in lieu of any paper documents. Electronic filing of documents and electronic storage of documents must be in conformity with rules adopted by the supreme court.

(3) The provisions of [sections 1 and 2] may not be construed to repeal any other provision of existing law that requires or provides for the maintenance of official written documents, records, dockets, books, ledgers, or proceedings by a court or clerk of the court in those courts that do not institute electronic filing of documents and electronic storage of documents.

(4) The procedures for electronic storage of documents may require but are not limited to the following:

(a) all original documents to be recorded and released into the court's electronic filing and storage system within a specified minimum time period after presentation to the court;

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(b) the use of original paper records during the pendency of any legal proceeding;

(c) standards for organizing, identifying, coding, indexing, and reproducing an original document so that an image produced from electronically stored information can be certified as a true and correct copy of the original and can be retrieved rapidly; and

(d) retention of the original documents consistent with other law and security provisions to guard against physical loss, alterations, and deterioration.

Section 3. Section 3-2-402, MCA, is amended to read:

"**3-2-402. Duties — *electronic filing and storage of court records.*** *(1)* It is the duty of the clerk to:

~~(1)~~*(a)* keep the seal of the supreme court, its records and files, and the roll of attorneys and counselors at law;

~~(2)~~*(b)* adjourn the court from day to day at the beginning of any term in the absence of any justice and until the arrival of a majority of the justices;

~~(3)~~*(c)* file all papers or transcripts required by law to be filed;

~~(4)~~*(d)* issue writs and certificates and approve bonds or undertakings when ~~so~~ required;

~~(5)~~*(e)* make out all transcripts to the supreme court of the United States;

~~(6)~~*(f)* make copies of papers or records when demanded by law or the rules of the court; and

~~(7)~~*(g)* perform ~~such~~ other duties as may be required ~~of him~~ by law and the rules and practice of the supreme court.

(2) The clerk may elect to keep court documents by means of electronic filing or storage, or both, as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

Section 4. Section 3-5-501, MCA, is amended to read:

"**3-5-501. General duties — *electronic filing and storage of court records.*** *(1)* The clerk of the district court, in addition to keeping the records and performing the duties prescribed elsewhere, shall:

~~(1)~~*(a)* take charge of and safely keep or dispose of according to law all books, papers, and records ~~which~~ *that* are filed or deposited in ~~his~~ *the clerk's* office;

~~(2)~~*(b)* act as clerk of the district court and attend each term or session ~~thereof~~ *of the court* and upon the judges at chambers when required;

~~(3)~~*(c)* issue all process and notices required to be issued;

~~(4)~~*(d)* enter all orders, judgments, and decrees proper to be entered;

~~(5)~~*(e)* keep in each court a register of actions, as provided in 3-5-504;

~~(6)~~*(f)* keep for the district court two separate indexes, one labeled "General Index—Plaintiffs" and the other labeled "General Index—Defendants", which ~~shall~~ *must* be in the form prescribed in 3-5-502;

~~(7)~~*(g)* keep a minute book, which must contain the daily proceedings of court, which may be signed by the clerk;

~~(8)~~*(h)* keep a fee book, in which must be shown in an itemized form all fees ~~that he has~~ received for any services rendered in ~~his~~ *the* capacity as clerk.

(2) The clerk of the district court may elect to keep court documents by means of electronic filing or storage, or both, as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

Section 5. Section 3-6-302, MCA, is amended to read:

"3-6-302. Records — *electronic filing and storage.* *(1)* The records of the court ~~shall~~ *must* be kept by the clerk. ~~Such~~ *The* records in civil causes ~~shall~~ *must* conform as nearly as possible to the records of district courts. In criminal causes, in cases arising under city ordinances, and in cases mentioned in 3-11-103, the records ~~shall~~ *must* be similar to the records now kept in justices' courts.

(2) The clerk may elect to keep court documents by means of electronic filing or storage, or both, as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

Section 6. Section 3-10-501, MCA, is amended to read:

"3-10-501. Contents of docket — *electronic filing and storage of court records.* *(1)* ~~Every~~ *Each* justice ~~must~~ *shall* keep a book, denominated a "docket", in which ~~he~~ *the justice* ~~must~~ *shall* enter:

~~(1)~~*(a)* the title of ~~every~~ *each* action or proceeding;

~~(2)~~*(b)* the object of the action or proceeding and, if a sum of money ~~be~~ *is* claimed, the amount ~~thereof~~;

~~(3)~~*(c)* the date of the summons and the time of its return and, if an order to arrest the defendant ~~be~~ *is* made or a writ of attachment ~~be~~ *is* issued, a statement of the fact;

~~(4)~~*(d)* the time when the parties or either of them appear or their nonappearance if default ~~be~~ *is* made; a minute of the pleading and motions, if in writing, referring to them, if not in writing, a concise statement of the material parts of the pleadings;

~~(5)~~*(e)* ~~every~~ *each* adjournment, stating on whose application and to what time;

~~(6)~~*(f)* the demand for a trial by jury, when the same *demand* is made, and by whom made; the order for the jury; and the time appointed for the return of the jury and for the trial;

~~(7)~~*(g)* the names of the jurors who appear and are sworn and the names of all witnesses sworn and at whose request;

~~(8)~~*(h)* the verdict of the jury and when received; if the jury disagree and ~~are~~ *is* discharged, the fact of ~~such~~ disagreement and discharge;

~~(9)~~*(i)* the judgment of the court, specifying the costs included and the time when rendered, and an itemized statement of the costs;

~~(10)~~*(j)* the issuing of the execution, when issued, and to whom; the renewals ~~thereof~~ *of the execution*, if any, and when made; and a statement of any money paid to the justice, when *paid*, and by whom;

~~(11)~~*(k)* the receipt of a notice of appeal, if any ~~be~~ *is* given, and of the undertaking on appeal, if any ~~be~~ *is* filed.

(2) The justice may elect to keep court documents by means of electronic filing or storage, or both, as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

Section 7. Section 3-10-503, MCA, is amended to read:

"3-10-503. Index to the docket — *electronic filing and storage of court records.* *(1)* A justice ~~must~~ *shall* keep an alphabetical index to ~~his~~ *the* docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs and defendants must be entered in the index in the alphabetical order of the first letter of the family name.

(2) The justice may elect to keep the index by means of electronic filing or storage, or both, as provided in [sections 1 and 2], in lieu of or in addition to keeping paper records."

Section 8. Section 3-10-511, MCA, is amended to read:

"3-10-511. Records delivered to successor. ~~Every~~ *Each* justice of the peace, upon the expiration of ~~his~~ *the* term of office, ~~must~~ *shall* deposit with ~~his~~ *the justice's* successor ~~his~~ *the* official dockets and all papers *or electronically filed or stored documents that were* filed in ~~his office~~ *the court*~~, his own as well as those of his predecessors or any other which may be in his custody~~ *during the justice's term of office or before*, to be kept as public records."

Section 9. Section 3-10-512, MCA, is amended to read:

"3-10-512. Proceedings when office becomes vacant. If the office of a justice becomes vacant because of his death or his removal from the county or for any other cause before his *a* successor is appointed, the docket and papers *or electronically filed or stored documents* that were in ~~his~~ *the justice's* possession ~~shall~~ *must* be deposited in the office of some other justice in the county, who shall deliver them to the successor of the former justice. If there is no other justice in the county, the docket and papers *or electronically filed or stored documents* ~~shall~~ *must* be deposited in the office of the county clerk, who shall deliver them to the successor in office of the former justice."

Section 10. Section 3-11-206, MCA, is amended to read:

"3-11-206. City to provide facilities — conduct of court business — *electronic filing and storage of court records.* (1) The governing body of the city in which the judge has been elected or appointed shall provide for the judge:

(a) the office space, courtroom, and clerical assistance necessary to enable ~~him~~ *the judge* to perform ~~his~~ *the judge's* duties in dignified surroundings;

(b) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary for the proper keeping of the records and files of the judicial office and the transaction of business;

(c) one copy of the latest edition of the Montana Code Annotated and all official supplements ~~thereto~~ or immediate access to the code and supplements.

(2) (a) Except as provided in subsection (2)(b), the provisions of 3-6-301 through 3-6-303 concerning conduct of municipal court business apply to the city court.

(b) If the governing body of a city establishes by ordinance the position of clerk of city court, 3-6-301 does not apply to the city court.

(3) The records of the court may be kept by means of electronic filing or storage, or both, as provided in [sections 1 and 2], in lieu of or in addition to paper records."

Section 11. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 3, chapter 1, part 1, and the provisions of Title 3, chapter 1, part 1, apply to [sections 1 and 2].

Section 12. Coordination instruction. If Senate Bill No. 249 is passed and approved and if it includes a section amending 3-2-402 in a manner that eliminates the reference to the clerk of the supreme court and replaces the reference with a reference to the supreme court administrator, then the reference to the clerk of the supreme court in [section 3(2) of this act], amending 3-2-402, must be changed to refer to the supreme court administrator.

Approved March 20, 1995

CHAPTER NO. 175

[HB 63]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; PROVIDING FOR ACTUARIALLY FUNDED BENEFITS AND REVISING THE MONTHLY PENSION AMOUNTS ACCORDINGLY; AMENDING SECTIONS 19-17-102, 19-17-103, 19-17-201, 19-17-204, 19-17-301, 19-17-302, 19-17-401, 19-17-402, 19-17-403, 19-17-404, 19-17-405, 19-17-407, 19-17-408, 19-17-409, 19-17-501, 19-17-502, 19-17-503, 19-17-504, 19-17-505, AND 19-17-506, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Pension trust fund established — restrictions on use. (1) A pension trust fund is established and maintained for payment of claims and benefits provided under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan.

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(2) Except as provided in this section, a member or an employee of the department or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust fund;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust fund or deposits;

(c) in any manner use the pension trust fund except to make current and necessary payments that are authorized by the division; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust fund.

(3) The assets of the pension trust fund may not be used for or diverted to any purpose other than for the exclusive benefit of members, their surviving spouses, their dependent children, and qualified fire companies and for paying the reasonable administrative expenses of administering this chapter.

Section 2. Employment of actuary — biennial investigation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public pension systems. The actuary is the technical adviser to the board on matters regarding the actuarial funding of the pension trust fund.

(2) The board shall require the actuary to make a biennial actuarial valuation of the assets and liabilities of the pension trust fund. The actuarial valuation must include the sufficiency of the fund to pay full and partial benefits to members and benefit recipients and must include recommendations for any changes that should be made to those benefits or the contributions te the pension trust fund to ensure the actuarial soundness of the pension trust fund.

(3) The board shall require the actuary to conduct periodic actuarial experience studies of the pension trust fund and to recommend any changes in actuarial assumptions or tables based upon the studies.

Section 3. Credit for service as volunteer firefighter. (1) The annual period of service that may be credited under tbis chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefigbter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the division by the chief or foreman of the fire company;

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(b) the fire company maintained firefighting equipment that is in serviceable condition and owns one or more buildings used for the storage of that equipment that all together are valued at $12,000 or more; and

(c) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium ratos.

Section 4. Section 19-17-102, MCA, is amended to read:

"**19-17-102. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

~~(1)~~*(3)* "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Disability" or "permanent total disability" has the meaning defined in 39-71-116.

(8) "Division" means the public employees' retirement division of the department.

~~(2)~~*(9)* "Fire company" means a fire company organized in an unincorporated area, town, or village ~~under the laws of the state of Montana~~ *in accordance with 7-33-2311.*

~~(3)~~*(10)* ~~The fiscal year~~ *"Fiscal year" means the 12-month period that* begins on July 1 and ends on June 30 of ~~each~~ *the following* year.

~~(4) "Fund" or "volunteer firefighters' fund" means the volunteer firefighters' pension trust fund.~~

(11) "Member" means a volunteer firefighter who has service credited under this chapter.

(12) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay benefits under this chapter.

(13) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits from the pension trust fund.

(14) "Service" means cumulative periods of active membership that are credited only in full fiscal years.

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(15) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

(16) "Surviving spouse" means the spouse married to a member when the member dies.

(17) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(18) "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter."

Section 5. Section 19-17-103, MCA, is amended to read:

"19-17-103. **Payments to ~~volunteer~~ fire companies maintaining ~~group~~ *supplemental* insurance.** To encourage and aid ~~volunteer~~ fire companies to maintain ~~group~~ *supplemental* insurance ~~for~~ *to provide* benefits ~~on account of the death of or injury incurred by~~ *when* members *are injured or killed* while ~~in the performance of~~ *performing* duties as volunteer firefighters, *the board shall authorize payment of* $75 per year for each *motorized* mobile unit of firefighting equipment, not ~~exceeding two units for any one~~ *to exceed $150 per fire* company~~, shall~~ *per year. Payment must* be ~~paid by the board from~~ *a charge against* the ~~volunteer firefighters'~~ *pension trust* fund *and must be paid* to each ~~volunteer~~ fire company maintaining such *supplemental* insurance or to the organization or agency maintaining such *supplemental* insurance for a ~~volunteer~~ fire company."

Section 6. Section 19-17-201, MCA, is amended to read:

"19-17-201. **Administration of chapter.** *(1)* The board ~~shall administer the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, and all payments made under 19-17-103, 19-17-405, 19-17-407, and 19-17-506 shall be made by warrants drawn by the board~~ *is the trustee of all money collected under this chapter and has exclusive control of the administration of the pension trust fund except as otherwise provided by law.*

(2) The department shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) The state treasurer is the custodian of the pension trust fund, subject to the control of the board for the administration of the fund and the board of investments for the investment of the fund.

(4) The board shall review the sufficiency of benefits ~~paid by the retirement system~~ *provided under this chapter* and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living."

Section 7. Section 19-17-204, MCA, is amended to read:

"19-17-204. ~~**Office supplies to be a charge against the fund**~~ ***Administrative expenses.*** Necessary expenses ~~of the board~~ for ~~office supplies, stationery, and forms in connection with~~ the administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan are

a charge against the *pension trust* fund. ~~The board shall draw from the fund through warrants at such intervals as it considers proper to pay these expenses.~~ *The necessary administrative expenses attributable to this chapter must be paid from the investment earnings on the public employees' pension trust fund. Before fiscal yearend closing, the division shall compute the expenses directly or proportionally attributable to this chapter over the past fiscal year and transfer that amount from the volunteer firefighters' pension trust fund to the public employees' pension trust fund.*"

Section 8. Section 19-17-301, MCA, is amended to read:

"**19-17-301. Fire insurance premium tax to be paid into *pension trust* fund.** The state auditor and ex officio commissioner of insurance shall annually deposit in the ~~volunteer firefighters'~~ *pension trust* fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in 19-18-512~~,~~. *The sum must be* computed before the amounts provided for by 19-13-604 and 19-18-512 are deducted. The ~~moneys shall~~ *money must* be used for the payment of claims, *benefits,* and administrative costs as provided in this chapter. The money is statutorily appropriated as provided in 17-7-502."

Section 9. Section 19-17-302, MCA, is amended to read:

"**19-17-302. ~~Earnings to be part of moneys~~ *Investment of pension trust fund.*** ~~All earnings made by moneys received under 19-17-301 by reason of interest paid for the deposit thereof or otherwise shall be credited to and become a part of such moneys.~~ *(1) The pension trust fund must be invested by the board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.*

(2) All income earned on any assets constituting a part of the pension trust fund must be paid into the pension trust fund as received.

(3) For investment purposes, the pension trust fund may be commingled with other pension funds administered by the board, but a separate account must be maintained for each system."

Section 10. Section 19-17-401, MCA, is amended to read:

"**19-17-401. Eligibility for pension *and disability* benefits.** *(1)* ~~In order~~ *To* qualify for ~~participation in the volunteer firefighters' pension plan under 19-17-404, a volunteer firefighter shall~~ *pension and disability benefits under this chapter, a member shall* meet ~~each of~~ the ~~following~~ requirements *of subsections (2) or (3) and (4)*~~:~~.

~~(1) (a)~~ *(2) (a)* ~~To qualify for~~ *For* full ~~participation~~ *pension benefits,* a ~~volunteer firefighter~~ *member* must have completed ~~a total of~~ at least 20 years' service ~~as an active volunteer firefighter and as an active member of a qualified volunteer fire company~~ *and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.*

(b) ~~If a firefighter~~ *A member who* is prevented from completing at least 20 years' service~~, the firefighter~~ may qualify for partial ~~participation~~ *pension benefits* if the ~~firefighter has~~ *member has* completed at least 10 years' service and has attained ~~the~~ *60 years of* age ~~of 60. In that event, the firefighter is eligible~~

~~for only a proportion of the benefits specified in 19-17-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.~~

~~(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.~~

~~(d) Effective March 1, 1965, the annual period of service for the purpose of this chapter is the fiscal year. A fractional part of any year may not count toward the service requirement, and to receive credit for any particular year, a volunteer firefighter shall serve with one particular volunteer fire company throughout that entire fiscal year.~~

~~(2) (a) Except as provided in subsection (2)(b), in order to receive pension benefits, a firefighter must have attained the age of 55,~~ but need not be ~~an active volunteer firefighter or~~ an active member of any ~~volunteer~~ fire company when ~~that~~ *60 years of* age is reached.

~~(b)~~*(3)* An active member of a ~~volunteer~~ fire company whose duty-related injury results in a permanent total disability ~~as defined in 39-71-116~~ is eligible, regardless of age *or service*, to receive a ~~partial pension calculated as follows:~~ *disability benefit.*

~~(i) for a member with less than 10 years of service, a pension calculated as provided in subsection (1)(b) in which the numerator equals 10; or~~

~~(ii) for a member with 10 years or more of service, a pension calculated as provided in subsection (1)(b).~~

~~(3) During each of the years for which credit is claimed under subsection (1), a firefighter must have completed a minimum of 30 hours of instruction in matters pertaining to firefighting under a program formulated and supervised by the chief or foreman of the volunteer fire company.~~

~~(4) Effective July 1, 1965, a volunteer firefighter may not receive credit for any year of membership in a volunteer fire company unless, throughout the year:~~

~~(a) the company maintained firefighting equipment in serviceable condition of a value of $2,500 or more; and~~

~~(b) the company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.~~

~~(5)~~*(4)* ~~In order to~~ *To* receive pension *or disability* benefits, a *volunteer* firefighter ~~must have ceased to~~ *may not* be an active member of any ~~volunteer~~ fire company.~~, and if the~~ *A volunteer* firefighter ~~applies for and receives~~ *who receives* pension *or disability* benefits under this ~~part, the firefighter is not eligible to~~ *chapter may not* become an active member of any ~~volunteer~~ fire company."

Section 11. Section 19-17-402, MCA, is amended to read:

"19-17-402. Certificate of eligibility. ~~On or before September 1 of each year, the~~ *The* chief or foreman of ~~every~~ *each* ~~volunteer~~ fire company *that claims eligibility under this chapter* shall, *on or before September 1 of each year,* ~~prepare and~~ file ~~with the board~~ a certificate *on a form to be provided by the board,* subscribed and verified under oath, stating ~~whether or not his~~ *whether the* company qualified under ~~19-17-401(4)~~ *[section 3(3)]* during the preceding fiscal year ~~and listing~~. *The certificate must list* tho full name, *social security number,* and ~~residence address~~ *date of birth* of each member of ~~his~~ *the fire* company who *was a member for the entire fiscal year and* satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by ~~19-17-401(3)~~ *[section 3(3)]*. The ~~verified~~ certificate ~~shall~~ *must* be maintained ~~in a permanent file~~ by the board for the purpose of establishing *service for members and* eligibility for ~~participation in the volunteer firefighters' pension plan and shall be open for inspection as a public record~~ *benefits*."

Section 12. Section 19-17-403, MCA, is amended te read:

"19-17-403. ~~Procedure for claiming pension~~ *Application for* benefits. (1) ~~Anyone claiming eligibility under the volunteer firefighters' pension plan must file his claim with the board upon~~ *A member, surviving spouse, or dependent child shall apply for benefits on* a form ~~to be~~ provided ~~therefor~~ by the board. ~~The claim must be filed on or before May 1 of the calendar year in which the claimant seeks to qualify for participation in the pension plan.~~

(2) The ~~claim~~ *application* must contain:

(a) the name, address, and date of birth of the ~~claimant and of the volunteer firefighter, if he is not the claimant~~ *member, surviving spouse, or dependent child*;

(b) ~~the fiscal year during which eligibility will commence~~ *the date of birth of the member*; and

(c) the *fiscal* years during which service as ~~a volunteer firefighter was rendered~~ *an active member is claimed* and the names of the ~~volunteer~~ fire companies with which the service was rendered.

(3) The board may require ~~such~~ *any* proof of age and service as *that* it may consider proper, but it must accept a certificate *properly completed and timely* filed under 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of ~~such~~ service.

(4) If ~~the claim is~~ *a qualified member* properly ~~filed and the claimant is found by the board to be properly qualified to participate in the volunteer firefighters' pension plan, the name of the claimant shall be added to the list of qualified persons and the claimant will then be~~ *submits an application, the member is* entitled to ~~participate in the volunteer firefighters' pension plan~~ *receive benefits* as of the ~~fiscal year beginning July 1 next~~ *first day of the month* following ~~the filing~~ *approval* of the ~~claim~~ *application*."

Section 13. Section 19-17-404, MCA, is amended to read:

"19-17-404. ~~Pension~~ *Amount of pension and disability* benefits. (1) Each ~~person who meets the requirements set forth in 19-17-401 or, in the case of a beneficiary, 19-17-405(1) and who has completed and filed a claim as~~

~~provided in 19-17-403 is entitled to participate in the volunteer firefighters' pension plan and to~~ *eligible member must* receive ~~payments~~ *pension and disability benefits* as provided in this section.

~~(2) The payments must be computed each year in the following manner:~~

(a) ~~For fiscal years 1994 and 1995, the~~ *The* base *pension* benefit ~~level~~ is ~~$120~~ *$100* per month for ~~each retiree qualifying~~ *members who are eligible* for full ~~participation~~ *pension benefits* ~~under the provisions of 19-17-401(1)(a)~~.

(b) Partial ~~participation is~~ *pension benefits are* calculated ~~under the provisions of 19-17-401(1)(b)~~ *by multiplying the full pension benefit of $100 by a fraction, the numerator of which is the member's years of service and the denominator of which is 20.*

~~(b) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of $6 million, the board shall set aside the amount to be paid to each qualifying claimant.~~

~~(c) For the purpose of computation and payment of benefits under this section, if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter must be treated collectively as one claimant.~~

~~(3) If the amount of the benefit for a qualified claimant is at least $20 per month throughout the succeeding fiscal year, the pension must be paid monthly on or before the last day of each month. If the amount of the benefit for a qualified claimant is less than $20 per month, the qualified claimant's full pension for that year must be paid in one lump payment on or before December 15 of that year.~~

(2) The disability benefit paid to eligible members is calculated in the same manner as partial pension benefits described in subsection (1)(b), except that the numerator may not be less than 10."

Section 14. Section 19-17-405, MCA, is amended to read:

"19-17-405. ~~Pension~~ *Survivorship* benefits to surviving spouse or *dependent* children. (1) ~~The~~ *Subject to the limitation in subsection (3), survivorship benefits equal to the* full or partial ~~participation~~ pension ~~shall~~ *benefits otherwise payable to the deceased member must* be paid or continue to be paid to the surviving spouse~~, if any, until such spouse's death or remarriage~~ or, if the deceased ~~volunteer firefighter~~ *member* left no surviving spouse but left a *dependent* child ~~or children under the age of 18~~, to the guardian or other person having custody of the ~~children~~ *dependent child* ~~until the youngest child reaches the age of 18~~.

(2) The ~~pension shall~~ *survivorship benefit must* be paid in each of the following circumstances:

(a) the death on or after July 1, ~~1985~~ *1995*, of a ~~volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for full participation~~ *member who had at least 10 years of service and who was not receiving pension benefits*; *or*

~~(b) the death on or after July 1, 1985, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for partial participation;~~

~~(c)~~*(b)* the death on or after July 1, 1985, of a ~~volunteer firefighter~~ *retired member* ~~after qualifying for full participation~~ *who was receiving pension benefits* but ~~before receiving payments totaling at least $4,000~~ *who had not received benefits for a total of 40 months*~~; or~~.

~~(d) the death on or after July 1, 1985, of a volunteer firefighter after he has qualified for partial participation but before he has received payments totaling the proportion of $4,000 determined under the formula prescribed in 19-17-401(1)(b).~~

~~(2)~~*(3)* ~~Payments~~ *Survivorship benefits* under subsection (1) ~~shall~~ terminate~~, in the case of a full participation pension,~~ when *benefits have been paid for* a total of ~~$4,000 has been paid upon the pension~~ *40 months*, including any ~~payments made~~ *pension or disability benefits paid* to the ~~volunteer firefighter~~ *retiree* before ~~his~~ death~~, or in the case of a partial participation pension, when a total of the proportion of $4,000 determined under the formula prescribed in 19-17-401(1)(b) has been paid upon the pension, including any payments made to the volunteer firefighter before his death~~."

Section 15. Section 19-17-407, MCA, is amended to read:

"**19-17-407. ~~Payment of pension benefits — exemption~~ *Exemption* from taxation.** ~~(1) All payments under the volunteer firefighters' pension plan must be approved by the board and paid by warrants drawn upon the pension trust fund, payable to the order of the individual qualified volunteer firefighter or the beneficiary as provided in 19-17-405(1).~~

~~(2)~~ The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from stato, county, and municipal taxation."

Section 16. Section 19-17-408, MCA, is amended to read:

"19-17-408. **Medical review of certain disability retirees.** The board may require ~~the recipient of a partial pension resulting from a permanent, total disability~~ *a member who receives a disability benefit* to undergo periodic medical examinations. The examinations must be made by a physician or surgeon at the ~~recipient's~~ *member's* residence or ~~another~~ *a* place mutually ~~agreed on~~ *agreeable to the board and the member*. Upon the basis of ~~the examination~~ *these examinations and the advice of the board's consulting physician*, the hoard shall determine, by reason of physical or mental capacity, whether the ~~recipient~~ *member* remains permanently and totally disabled."

Section 17. Section 19-17-409, MCA, is amended to read:

"19-17-409. **Cancellation and reinstatement of ~~certain pensions~~ *disability benefits*.** (1) The board may cancel a ~~recipient's partial pension resulting from a permanent, total~~ *member's* disability *benefit* if:

(a) the board determines, *as provided in 19-17-408,* that the ~~recipient~~ *member* is no longer ~~permanently and totally~~ disabled ~~as provided in 19-17-408~~;

(b) the ~~recipient~~ *member* refuses to submit to a medical examination under 19-17-408; or

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(c) the ~~recipient~~ *member* engages in a gainful occupation during the previous year and ~~the compensation earned by him in that year exceeds~~ *earns compensation exceeding* $5,500.

(2) The cancellation of a ~~pension~~ *disability benefit* under this section does not prejudice any right of a ~~firefighter~~ *member* to other pension benefits payable under the Volunteer Firefighters' Compensation Act.

(3) If ~~a former recipient's~~ *the member's* earnings in any year after the cancellation of ~~his pension~~ *disability benefits* under subsection (1)(c) are less than $5,500, ~~his pension~~ *the disability benefit* must be reinstated."

Section 18. Section 19-17-501, MCA, is amended to read:

"**19-17-501. Eligibility for ~~disability~~ *medical* and ~~death benefits~~ *funeral expenses.*** (1) To qualify for ~~benefits~~ *medical expenses* under 19-17-504, a *volunteer* firefighter must~~, at the time the injury or sickness for which benefits are claimed was incurred, have been~~ *be* an ~~enrolled~~ active member of a fire company *that is* not covered by workers' compensation insurance *when the injury or illness occurs.*

(2) To qualify for ~~benefits~~ *funeral expenses* under 19-17-505, a *volunteer* firefighter must, at the time of death, ~~have been~~ *be* an ~~enrolled~~ active member of a fire company."

Section 19. Section 19-17-502, MCA, is amended to read:

"**19-17-502. Procedure for claiming ~~disability benefits~~ *medical expenses.*** (1) A ~~firefighter claiming benefits~~ *member who claims medical expenses* under 19-17-504 ~~must file his~~ *shall submit a* claim ~~with the board~~ on a form ~~to be~~ provided by the board. The claim must be verified by the ~~claimant, the attending physician or surgeon and nurse, if any, and the person in charge of the hospital, if the claimant was confined~~ *member and by competent medical authority.* The claim must be ~~filed with the board~~ *submitted* within 1 year from the date of ~~disability~~ *incurring the injury or illness.*

(2) The claim must contain:

(a) the name and address of the ~~claimant~~ *member*;

(b) the date, place, and manner of incurring ~~of disability~~ *the injury or illness*;

(c) the name and address of the attending physician, ~~or~~ surgeon ~~and/or~~, *or* nurse, if any;

(d) the dates ~~of confinement, if confined, or if not confined, the dates of attendance by a physician or surgeon and the dates of attendance by a nurse~~ *of hospitalization, if hospitalized*;

(e) ~~the~~ *an* affidavit ~~of~~ *from* the attending physician, ~~or~~ surgeon, *or nurse* ~~as~~ to *that describes* the nature of the ~~disability~~ *injury or illness*, the number and dates of visits, and the ~~charges~~ *expenses*;

(f) ~~if confined in a hospital, the~~ *if hospitalized, an* affidavit ~~of a person in charge~~ *from competent authority* stating the nature of the ~~disability~~ *injury or*

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illness, the dates of ~~confinement~~ *hospitalization*, and the expenses ~~incurred while so confined~~;

(g) ~~the~~ *an* affidavit ~~of~~ *from* the chief or secretary of the fire company stating that the fire company was duly organized under the laws of Montana in an unincorporated town or village, that the ~~claimant~~ *member* was, at the ~~date of disability~~ *time of the injury or illness*, an active ~~enrolled~~ member of the company, and that the ~~disability~~ *injury or illness* was incurred in the line of duty as ~~defined~~ *described* in 19-17-105~~;~~.

~~(h) the affidavit of the nurse stating the nature of the disability, the dates of attendance, and the charges for services.~~"

Section 20. Section 19-17-503, MCA, is amended to read:

"**19-17-503. Procedure for claiming ~~death benefit~~ *funeral expenses*.** ~~Anyone~~ *A person* claiming the ~~benefit~~ *funeral expenses* provided for in 19-17-505 ~~must file his claim with the board upon~~ *shall submit the claim on* a form ~~to be~~ provided by the board, in accordance with ~~such~~ *the board's* rules ~~as the board may make~~."

Section 21. Section 19-17-504, MCA, is amended to read:

"**19-17-504. ~~Disability benefits~~ *Medical expenses*.** (1) ~~Each member of a fire company is entitled to receive compensation for disability~~ *The board shall authorize payment of some or all medical expenses resulting from an injury or illness that was* incurred ~~while in the performance of his duties as a firefighter~~ *in the line of duty*, as ~~defined~~ *described* in 19-17-105, ~~when the disability necessitates~~ *and that required* the services of a physician, ~~or~~ surgeon, *or nurse,* whether *or not* the member ~~is confined or not~~ *was hospitalized*. The ~~compensation shall~~ *payments must* equal the amount of the member's necessary and reasonable *out-of-pocket* medical expenses ~~resulting~~ *that resulted* directly from the ~~disability~~ *injury or illness* and ~~incurred~~ *that were billed* within 36 months ~~from~~ *following* the date of the injury ~~which caused the disability~~ *or illness*. The total ~~compensation~~ *claim for reimbursement* may not exceed $25,000.

(2) ~~When~~ *If* an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall ~~order that an artificial member be furnished. The expense of furnishing an artificial member may not exceed~~ *authorize either a payment for the cost of a prosthesis or a payment of* $1,500 *to help defray the cost of a prosthesis, whichever is less.* The ~~artificial member so furnished shall~~ *prosthesis may* be replaced *when necessary, but not more often than* every 5 years~~, if necessary~~. *The board shall authorize payment of not more than $1,500 of the replacement costs.*"

Section 22. Section 19-17-505, MCA, is amended to read:

"**19-17-505. ~~Death benefit~~ *Funeral expenses*.** ~~To~~ *The board shall authorize payment of reasonable expenses or $1,500, whichever is less, to* aid in defraying the funeral expenses of ~~a firefighter covered under this chapter~~ *an active member* whose death occurs in the line of duty~~, an amount not to exceed the actual necessary and reasonable expenses or $1,500, whichever is less, shall be allowed~~."

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Section 23. Section 19-17-506, MCA, is amended to read:

"19-17-506. **Payment of ~~disability~~ *medical* and ~~death benefits~~ *funeral expenses*.** When a claim under 19-17-504 or 19-17-505 is received *and approved* by the board, ~~and is found to be in compliance with 19-17-502 or, in the case of a claim under 19-17-505, with 19-17-503, the board must order the allowance thereof and pay it by warrants drawn upon the volunteer firefighters' fund to the order of the attending physician or surgeon, attending nurse, and hospital or the~~ *payment must be made directly to the appropriate* provider of *the medical care or* funeral services~~, as applicable~~."

Section 24. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 19, chapter 17, and the provisions of Title 19, chapter 17, apply to [sections 1 through 3].

Section 25. Effective date. [This act] is effective July 1, 1995.

Approved March 21, 1995

CHAPTER NO. 176

[HB 142]

AN ACT PROVIDING FOR RESPONSE TO INCIDENTS BY DISASTER AND EMERGENCY SERVICES PERSONNEL; DEFINING "INCIDENT"; PROVIDING A STATUTORY APPROPRIATION; AUTHORIZING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES; AND AMENDING SECTIONS 10-3-103, 10-3-104, 10-3-105, 10-3-111, 10-3-301, 10-3-305, 10-3-312, AND 17-7-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-103, MCA, is amended to read:

"10-3-103. **Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, ~~or~~ air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, or accidents involving radiation byproducts or other hazardous materials.

(4) "Disastor and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other stato or federal agencies are

primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department ~~of military affairs~~.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property ~~which~~ *that* timely action can avert or minimize.

(7) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency, but the term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

~~(7)~~*(8)* "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

~~(8)~~*(9)* "Principal executive officer" means the mayor, ~~chairman~~ *presiding officer* of the county commissioners, or other chief executive officer of a political subdivision.

~~(9)~~*(10)* "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile bomes, or other readily fabricated dwellings."

Section 2. Section 10-3-104, MCA, is amended to read:

"10-3-104. General authority of ~~the~~ governor. (1) The governor is responsible for carrying out parts 1 through 4 of this chapter.

(2) In addition to any other powers conferred upon the governor by law, ~~he~~ *the governor* may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rnles of any state agency if the strict compliance with the provisions of any statuto, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disastor area within the state if ~~he~~ *the governor* considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an *incident or* emergency or disaster area, the movement of persons within the area, and the occupancy of premises ~~therein~~ *within the area*.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a stato of emergency or disaster ~~shall~~ *must* indicate the nature of the emergency or disaster, the area threatened, *and* the conditions ~~which~~ *that* have brought about the declaration or ~~which~~ *that* make possible termination of the state of emergency or disaster."

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Section 3. Section 10-3-105, MCA, is amended to read:

"10-3-105. Division of disaster and emergency services — duties. (1) A division of disaster and emergency services is established in the department ~~of military affairs~~. The division ~~shall~~ *must* have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department ~~of military affairs~~ through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program ~~shall~~ *must* be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disastor and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program ~~due to~~ *because of* limitations of funding, ~~manpower~~ *personnel*, or other reasons;

(e) make surveys of industries, resources, and facilities within the stato, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of *an* actual *incident,* emergency, or disaster, to ~~insure~~ *ensure* the availability of adequately trained and equipped personnel in time of *an incident,* emergency, or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with *incidents,* emergencies, and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) ~~have~~ *assume* any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor."

Section 4. Section 10-3-111, MCA, is amended to read:

"**10-3-111. Personnel immune from liability.** (1) Neither the state nor any political subdivision of the state nor the agents or representatives of the state or any political subdivision ~~thereof~~ *of the state* are liable for personal injury or property damage sustained by any person appointed or acting as a volunteer civilian defense worker or member of any agency engaged in civilian defense activity during ~~a~~ *an incident,* disaster, or ~~catastrophe~~ *emergency*. This section does not affect the right of any person to receive benefits or compensation to which ~~he~~ *the person* might otherwise be entitled under the workers' compensation law or any pension law or any act of congress.

(2) Neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision ~~thereof~~ *of the state* nor any volunteer or auxiliary civilian defense worker or member of any agency engaged in civilian defense activity during ~~a~~ *an incident,* disaster, or ~~catastrophe~~ *emergency*, nor the owners of facilities used for civil defense shelters, pursuant ~~te~~ a fallout shelter license or privilege agreement and while complying with or reasonably attempting ~~te~~ comply with parts 1 through 4 of this chapter or any order or rule promulgated under the provisions of parts 1 through 4 of this chapter or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivisions of the state, are liable for the death of or injury to persons or for damage to property as a result of any such activity."

Section 5. Section 10-3-301, MCA, is amended to read:

"**10-3-301. State disaster and emergency plan.** (1) The state disaster and emergency plan and program may provide for:

(a) prevention and minimization of injury and damage caused by disaster;

(b) prompt and efficient response to an *incident,* emergency, or disaster;

(c) emergency relief;

(d) identification of areas particularly vulnerable te disasters;

(e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(f) organization of ~~manpower~~ *personnel* and chains of command;

(g) coordination of federal, state, and local disaster and emergency activities; and

(h) otber necessary matters.

(2) In preparing and maintaining the state disaster and emergency plan and program, the division may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division may encourage them te seek advice from tbese sources."

Section 6. Section 10-3-305, MCA, is amended to read:

"**10-3-305. Governor commander-in-chief — duties.** (1) During *an incident and during* a state of emergency or disaster, the governor is commander-in-chief of the militia and of all other forces available for *incident,* emergency, or disaster duty. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in the state disaster and emergency plan and program and appropriate executive orders.

(2) The governor shall ~~utilize~~ *use* the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities te the governor as ~~he~~ *the governor* may request in the carrying out of the purposes of parts 1 through 4 of this chapter."

Section 7. Section 10-3-312, MCA, is amended to read:

"**10-3-312. Maximum expenditure hy governor — appropriation.** (1) (a) Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $2 million in any biennium, *minus any amount appropriated pursuant to [section 8] in the same biennium.*

(b) Whenever an emergency or disaster due to fire is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $3 million in any biennium. The amount appropriated in this subsection (b) may be combined with the amount appropriated in subsection (1)(a) for an emergency or disaster due to fire.

(2) In the event of tbe recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared hy the president of the United States, there is statutorily appropriated to the office of tbe governor, as provided in 17-7-502, and ~~he~~ *the governor* is authorized to expend from the general fund, an amount

not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178."

Section 8. Incident response — authority — appropriation — expenditures — recovery — rules. (1) The governor may by executive order upon request of the local governing body or its authorized agent activate that part of the stato disaster and emergency plan pertaining to incident response. The order may be issued for any year, for any part of a year, or upon occurrence of an incident.

(2) Upon approval of an executive order pursuant to this section:

(a) that part of the state disaster and emergency plan pertaining te incidents becomes effective;

(b) the division may use any of the resources usable by the division during a state of emergency or disaster to respond to the incident; and

(c) there is statutorily appropriated, as provided in 17-7-502, to the office of the governor, and the governor is authorized to expend from the general fund an amount not to exceed $10,000 per incident and not to exceed $100,000 for incidents in a biennium.

(3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, upon activation of the incident response portion of the state disaster and emergency plan. Money appropriated by this section may be used only for incident response costs of the state and may not be used to reimburse a local government for incident response costs incurred by that local government.

(4) In the event of recovery of money expended pursuant to this section, the spending authority must be reinstated to the level reflecting the recovery.

(5) The department may adopt rules to implement this section.

Section 9. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; *[section 8];* 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404;

16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all honds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 10. Codification instruction. [Section 8] is intended to be codified as an integral part of Title 10, chapter 3, part 3, and the provisions of Title 10, chapter 3, part 3, apply to [section 8].

Approved March 21, 1995

CHAPTER NO. 177

[HB 179]

AN ACT PROVIDING THAT A CHARGE FOR VIOLATION OF SECTION 45-7-306, MCA, AFTER COMMITMENT TO A STATE PRISON OR TO THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES MAY, UNDER CERTAIN CIRCUMSTANCES, BE FILED IN ANY COUNTY IN THE STATE; AND AMENDING SECTIONS 46-3-110, 46-3-112, 46-3-113, 46-3-114, AND 46-3-115, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-3-110, MCA, is amended to read:

"**46-3-110. Filing the charge.** *(1)* In all criminal prosecutions, the charge must be filed in the county where the offense was committed unless otherwise provided by law.

(2) A charge for violation of 45-7-306 after imposition of a state prison sentence or after commitment to the department of corrections and human services may, at the discretion of the county attorney for the county in which the person was arrested and without objection from the person charged, be filed in any county in the state."

Section 2. Section 46-3-112, MCA, is amended to read:

"46-3-112. Requisite act in multiple counties. (1) ~~When~~ *Except as provided in 46-3-110(2), if* two or more acts are requisito to the commission of an offense or ~~when~~ *if* two or more acts are committed in furtherance of a common scheme, the charge may be filed in any county in which any of the acts or offenses occurred.

(2) ~~When~~ *Except as provided in 46-3-110(2), if* an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued."

Section 3. Section 46-3-113, MCA, is amended to read:

"46-3-113. Assisting in commission of or committing an offense. ~~When~~ *Except as provided in 46-3-110(2), if* a person in one county commits an offense or aids, abets, or procures the commission of an offense in another county, the charge may be filed in either county."

Section 4. Section 46-3-114, MCA, is amended te read:

"46-3-114. County of offense unknown. (1) ~~If~~ *Except as provided in 46-3-110(2), if* tho county in which the offense was committed cannot be readily determined, the offender may be charged in any county in which it appears that an element of the offense occurred.

(2) ~~When~~ *Except as provided in 46-3-110(2), if* an offense is committed in or against a public or private conveyance and it is doubtful in which county the offense occurred, the charge may be filed in any county in or through which the conveyance has traveled."

Section 5. Section 46-3-115, MCA, is amended to read:

"46-3-115. Offense consummated within the state. ~~If~~ *Except as provided in 46-3-110(2), if* an offense is committed partly within this stato, the offense may be charged in any county where an act requisite te the commission of the offense is committed or continued."

Approved March 21, 1995

CHAPTER NO. 178

[HB 208]

AN ACT IMPLEMENTING THE PUBLIC'S CONSTITUTIONAL RIGHT TO KNOW BY PROVIDING FOR PUBLIC ACCESS TO INFORMATION RELATING TO CIVIL AND CRIMINAL SANCTIONS IMPOSED FOR GAMBLING LAW VIOLATIONS; AMENDING SECTION 23-5-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-116, MCA, is amended to read:

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"**23-5-116. Disclosure of information.** (1) The department shall, upon request, disclose the following information from a license or permit application:

(a) the applicant's name;

(b) the address of the business where the activity under the license or permit is to be conducted;

(c) the name of each person ~~having~~ *who has* an ownership interest in the business; and

(d) *the* types of permits requested by the applicant.

(2) The department shall, upon request, disclose:

(a) public criminal justice information, as defined in 44-5-103, as required by 44-5-301;

(b) all records and other information, except confidential criminal justice information, as defined in 44-5-103, that relates to:

(i) a sanction imposed under 23-5-136, for a violation of this chapter or a department rule; or

(ii) any other civil or administrative sanction or penalty imposed under a provision of this chapter or a department rule for a violation of this chapter or a department rule.

~~(2)~~ *(3)* In addition to the information enumerated in ~~subsection~~ *subsections* (1) *and (2)*, the department may disclose any other relevant information obtained in the application or tax reporting process or as a result of other department operations te:

(a) a federal, state, city, county, or tribal criminal justice agency; and

(b) the department of revenue and the federal internal revenue service."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 21, 1995

CHAPTER NO. 179

[HB 282]

AN ACT REVISING AND CLARIFYING THE DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT OF COMMERCE WITH RESPECT TO AUDITING AND SUPERVISING CERTAIN RECORDS AND FINANCIAL TRANSACTIONS OF LOCAL GOVERNMENTS; AMENDING SECTIONS 2-6-402, 2-6-403, 2-9-702, 2-9-802, 7-4-2634, 7-6-2212, 7-6-4113, 7-7-123, 7-21-2114, 17-6-103, 85-7-1616, AND 85-7-1913, MCA; REPEALING SECTIONS 7-6-210 AND 85-9-611, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 2-6-402, MCA, is amended to read:

"2-6-402. Local government records committee — creation. (1) There is a local government records committee.

(2) The committee consists of the following seven members:

(a) the stato archivist;

(b) the stato records manager;

(c) ~~the bureau chief of the local government services bureau~~ *a representative* of the department of commerce;

(d) two local records custodians, appointed by the director of the Montana historical society; and

(e) two additional local records custodians, appointed by the secretary of state.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning on January 1 of the year following tbeir appointment.

(4) Any vacancies must be filled in the same manner *that* they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet twice a year upon the call of the secretary of state or the presiding officer.

(7) Members of the committee not serving as part of their compensatod government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attonding committee meetings."

Section 2. Section 2-6-403, MCA, is amended to read:

"2-6-403. Duties and responsibilities. (1) The local government records committee shall approve, modify, or disapprove proposals for local government records retention and disposition schedules.

(2) The committee shall appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist and ~~the bureau chief of the local government services bureau~~ *a representative* of the department of commerce. Unless specifically authorized by statute, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of any local government records must be submittod to tbe subcommittee by the entity concerned.

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(3) The local government records committee may by unanimous approval establish categories of records for which a disposal request is not required, providing that those records are retained for the designated retention period.

(4) The committee shall respond to requests for technical advice on matters relating to local government records.

(5) The committee shall provide leadership and coordination in matters affecting the records of multiple local governments."

Section 3. Section 2-9-702, MCA, is amended to read:

"**2-9-702. Amount.** ~~(1)~~ The amount for which a county officer or employee ~~shall~~ *must* be bonded ~~shall~~ *must* be based on the amount of money or property handled and the opportunity for defalcation.

~~(2) The amount for which a county officer or employer or group of officers or employees shall be bonded is subject to the supervision of the department of commerce. If the department of commerce determines that the amount of the bond is inadequate, it may require the board of county commissioners to purchase an adequate bond.~~"

Section 4. Section 2-9-802, MCA, is amended to read:

"**2-9-802. Bonds — amount.** ~~(1)~~ All elected or appointed city or town officers and employees ~~shall~~ *must* be bonded in ~~such sums as the~~ *the amount required by* ordinance ~~may require~~. The amount for which a city or town officer or employee ~~shall~~ *must* be bonded ~~shall~~ *must* be based on the amount of money or property handled and the opportunity for defalcation.

~~(2) The amount for which a city or town officer or employee or group of officers or employees shall be bonded is subject to the supervision of the department of commerce. If the department of commerce determines that the amount of the bond is inadequate, it may require the city or town council or commission to purchase an adequate bond.~~"

Section 5. Section 7-4-2634, MCA, is amended to read:

"**7-4-2634. Fees to be noted on recorded documents.** On each instrument delivered ~~to him~~ for recording, the county clerk shall endorse on it all charges made for each service, and the endorsement ~~shall~~ *must* be recorded as a part of the instrument in ~~his~~ *the county clerk's* office ~~in order that the department of commerce may verify~~ *to document* the charges ~~and may see that they have been properly~~ entered on the fee book or reception record in the county clerk's office."

Section 6. Section 7-6-2212, MCA, is amended to read:

"**7-6-2212. Authorization to maintain petty cash fund.** (1) The board of county commissioners~~, with the approval of the department of commerce,~~ may set aside a sum of not less than $100 or more than $1,000 out of the general fund, which ~~shall~~ *must* be known as a petty cash fund, for the purpose of paying incidental expenses, such as freight, express, postage, and other similar items, which must be paid in cash at *the* time of delivery.

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(2) (a) In counties having a county auditor, the county auditor is responsible for expenditures from the petty cash fund.

(b) In counties not having a county auditor, the county clerk is responsible for expenditures from the petty cash fund."

Section 7. Section 7-6-4113, MCA, is amended to read:

"**7-6-4113. Filing of annual financial statement.** ~~(1)~~ The city or town clerk ~~must~~ *shall*, within 120 days following the close of each fiscal year, transmit one copy of the statement to the department of commerce and ~~must~~ *shall* present the other copy to the city or town council or commission.

~~(2) If a city or town clerk fails to file a copy of the statement with the department within the time specified, the department, without delay, shall examine the books, records, and accounts of the city or town. The department shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special audit under the provisions of subsections (5) and (6) of 2-7-503, and all of the provisions of subsections (5) and (6) of 2-7-503 apply to it.~~"

Section 8. Section 7-7-123, MCA, is amended to read:

"**7-7-123. Investment of sinking funds of local governments.** (1) (a) Except as provided in 7-7-124 and whenever outstanding bonds cannot be purchased pursuant to 7-7-2270 or 7-7-4270, the board of county commissioners of a county and the council or commission of a city or town shall invest so much of the bond sinking funds of the county, city, or town as ~~is~~ *are* not needed for the payment of bonds or interest coupons in general obligation bonds or securities of the United States; state bonds or securities; time or savings deposits; county, city, or school district bonds; county or city warrants; or other bonds or securities ~~which~~ *that* are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants. ~~All those investments must first be approved by the department of commerce.~~

(b) All those bonds, securities, or time or savings deposits must be due and payable at least 60 days before the obligations for the payment of which the sinking fund was established are due and payable.

(2) The bonds, securities, and any time or savings deposits in which any sinking funds are invested ~~shall~~ *must* be kept in tho custody of the county or city treasurer or town clerk and held ~~by him~~ for the benefit of the county, city, or town. The treasurer shall properly protect the bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which is a proper charge against the county, city, or town.

(3) All money derived from interest on sinking fund investments as authorized by this section ~~shall~~ *must* be credited by the treasurer of the county or city or the town clerk to the sinking fund for which the investment was made."

Section 9. Section 7-21-2114, MCA, is amended to read:

"**7-21-2114. Investigation of possible licensing violations.** ~~It shall be the duty of the~~ *The* board of county commissioners ~~or the department of~~

~~commerce, when examining the treasurer's report, to~~ *shall* investigate ~~if~~ *whether* any persons are doing business in the county without a license or if the amount of ~~the~~ *a* license is sufficient. In either event, the treasurer ~~shall~~ *must* be officially notified."

Section 10. Section 17-6-103, MCA, is amended to read:

"17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration;

(i) federal housing administration; and

(j) federal home loan mortgage corporation;

(4) securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(5) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(6) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of the subdivision or when the ~~revenues~~ *revenue* pledged to the payment of the bonds ~~are~~ *is* derived from a

water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce ~~revenues~~ *revenue* equal to at least 125% of the average annual principal and interest due on all bonds payable from the ~~revenues~~ *revenue* during the outstanding term of the bonds;

(7) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount ~~which~~ *that*, with all other claims on the same fund, ~~do~~ *does* not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(8) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency ~~thereof~~ *of the United States* providing for contributions or a loan sufficient with other funds pledged te pay the principal of and interest on the obligations when due. ~~Subject to rules prescribed by the department of commerce, the~~ *The* bonds and other obligations made eligible for investment in ~~32-1-424(3)(a) and~~ 7-15-4505 *and 32-1-424(3)(a)* may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(9) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(10) undertaking or guarantees issued hy a surety company authorized to do business in the state;

(11) first mortgages and trust indentures on real property. The depository shall, on a quarterly hasis, certify te the state treasurer that sufficient first mortgages and trust indentures on real property are availahle and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(12) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

(13) bonds issued pursuant te Title 90, chapter 6, part 1;

(14) revenue bonds issued by any unit of the university system of the state of Montana; and

(15) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow."

Section 11. Section 85-7-1616, MCA, is amended to read:

"**85-7-1616. Required records *and audits*.** (1) ~~It shall be the duty of the~~ *The* board of control ~~to~~ *shall* keep or cause te be kept, in the form prescribed by the department of commerce, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts.

(2) ~~It is hereby made the duty of the~~ *The* department of commerce ~~to~~ *shall* prescribe ~~such~~ forms for the use of the board of control ~~and to examine the same as provided by law for the examination of the affairs of county offices~~.

(3) The accounting records of all boards of control must be audited in accordance with 2-7-503."

Section 12. Section 85-7-1913, MCA, is amended to read:

"85-7-1913. Board to maintain records. (1) The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district in the form prescribed by the department of commerce. The department of commerce shall prescribe forms for the use of irrigation districts ~~and examine them as provided by law for the examination of the affairs of county officers~~. The books and records ~~shall~~ *must* be open to the inspection of any landowner of the district the same as other public records.

(2) The ~~department of commerce shall notify the secretaries of the districts of the time of presenting the books and records at the courthouse for examination~~ *books and records of irrigation districts are subject to audit in accordance with 2-7-503*.

(3) If a district is appointed fiscal agent of the United States or is authorized by the United States to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district ~~which~~ *that* are in possession or control of the secretary or board.

(4) The failure of the board of commissioners to comply with this section or 85-7-1914 is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district and ~~shall~~ *must* be paid as are other bills against the districts."

Section 13. Repealer. Sections 7-6-210 and 85-9-611, MCA, are repealed.

Section 14. Effective date. [This act] is effective July 1, 1995.

Approved March 21, 1995

CHAPTER NO. 180

[HB 324]

AN ACT PROVIDING THAT A MEMBER OF THE JUDGES', HIGHWAY PATROL OFFICERS', GAME WARDENS', MUNICIPAL POLICE OFFICERS', OR FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM MAY PURCHASE ADDITIONAL SERVICE FOR THE PURPOSE OF CALCULATING RETIREMENT BENEFITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

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WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens', municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement.

Be it enacted by the Legislature of the State of Montana:

Section 1. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(3) A member may elect to qualify no more than 5 years of service under 19-2-705 and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement.

Section 2. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

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(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-705, 19-6-801, 19-6-803, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement.

Section 3. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-705, 19-8-901, 19-8-903, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement.

Section 4. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-705, 19-13-403, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement.

Section 5. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's

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retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-705, 19-13-403, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement.

Section 6. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 19, chapter 5, and the provisions of Title 19, chapter 5, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 19, chapter 6, part 8, and the provisions of Title 19, chapter 6, part 8, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 19, chapter 8, part 9, and the provisions of Title 19, chapter 8, part 9, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 19, chapter 9, part 4, and the provisions of Title 19, chapter 9, part 4, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 19, chapter 13, part 4, and the provisions of Title 19, chapter 13, part 4, apply to [section 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved March 21, 1995

CHAPTER NO. 181

[HB 333]

AN ACT REPEALING MATTRESS REGULATION LAWS; REPEALING SECTIONS 50-36-101, 50-36-102, 50-36-103, 50-36-104, 50-36-105, 50-36-106, AND 50-36-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 50-36-101, 50-36-102, 50-36-103, 50-36-104, 50-36-105, 50-36-106, and 50-36-107, MCA, are repealed.

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved March 21, 1995

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CHAPTER NO. 182

[HB 334]

AN ACT ELIMINATING THE REGULATION OF FLOUR AND BREAD BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; REPEALING SECTIONS 50-34-101, 50-34-102, 50-34-103, 50-34-104, 50-34-105, 50-34-106, 50-34-107, 50-34-108, 50-34-109, AND 50-34-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 50-34-101, 50-34-102, 50-34-103, 50-34-104, 50-34-105, 50-34-106, 50-34-107, 50-34-108, 50-34-109, and 50-34-110, MCA, are repealed.

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved March 21, 1995

CHAPTER NO. 183

[HB 337]

AN ACT REQUIRING THE LEGISLATIVE AUDITOR TO PARTICIPATE WITH THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF THE INSPECTOR GENERAL IN JOINT AUDITS OF THE MONTANA MEDICAID PROGRAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Joint audits of medicaid program. (1) The legislative auditor shall participate with the United States department of health and human services office of the inspector general in a program of joint audits of the Montana medicaid program authorized by Title 53, chapter 6. For the purpose of the joint audits, the legislative auditor may cooperato with the inspector general, accept and provide information necessary to the success of the joint audits, and enter into contracts for the performance of the joint audits. Audits authorized by this section may examine all or any part of the financing or performance of the medicaid program, whether operated directly by the department of social and rehabilitation services, by another state agency, or by a contractor with a state agency. Joint audits are subject te the audit standards, objectives, and reporting procedures required hy state law and as required in applicable federal laws, regulations, and policies.

(2) Audit costs of the legislative auditor for conducting joint audits authorized by subsection (1) are considered direct costs of the state agency or program subject to the audit. Funds for tbe payment of the expenses of the legislative auditor must be deposited in the state special revenue fund as provided in 5-13-403. To the maximum extent allowable under federal regulations, the legislative auditer sball charge audit costs of joint audits to federal funds.

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(3) Audits conducted pursuant to this section must be approved by the committee as part of the operational plan of the legislative auditor.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 13, and the provisions of Title 5, chapter 13, apply to [section 1].

Approved March 21, 1995

CHAPTER NO. 184

[HB 455]

AN ACT PROVIDING THAT IF A CANDIDATE FOR SUPERVISOR OF A CONSERVATION DISTRICT IS UNOPPOSED, THE DISTRICT'S GOVERNING BODY MAY, WITHOUT AN ELECTION, DECLARE THE CANDIDATE ELECTED BY ACCLAMATION; PROVIDING THAT IF THERE IS NO CANDIDATE FOR SUPERVISOR OF A CONSERVATION DISTRICT, THE DISTRICT'S GOVERNING BODY SHALL APPOINT A SUPERVISOR WITHOUT AN ELECTION; AND AMENDING SECTION 76-15-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-15-303, MCA, is amended to read:

"76-15-303. General election — *election by acclamation — appointment.* (1) All qualified electers within the district are eligible to vote in the election.

(2) ~~The~~ *Except as provided in subsection (5), the* candidate or, if more than one supervisor position is to be filled by the general election, the candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of the individuals nominated ~~shall~~ *must* be printed, as provided under 13-12-205, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the elector's preference.

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors~~, which~~. *The* ballots ~~shall~~ *must* be delivered to the election judges in those precincts ~~which~~ *that* contain registered electors prior to each general election and each primary election, if necessary. The election judges and other election officials in ~~such~~ *the* precincts shall submit ~~such~~ *the* ballots to qualified electors, conduct the election, and tabulate the results of ~~such~~ *the* election in the manner provided in Title 13.

(5) (a) Except as provided in subsection (5)(b), if the number of candidates nominated is equal to or less than the number of positions to be elected, the election administrator shall give notice that an election will not be held.

(b) The governing body may require that an election be held if, not more than 10 days after the close of filing by candidates, the governing body passes a resolution to hold an election and notifies the election administrator.

(c) If an election is not held, the governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If a candidate has not filed a nominating petition for the position, the governing body shall make an appointment to fill the position."

Approved March 21, 1995

CHAPTER NO. 185

[HB 502]

AN ACT CLARIFYING THE MONTANA RADON CONTROL ACT; CLARIFYING WHEN A RADON DISCLOSURE STATEMENT MUST BE PROVIDED TO A BUYER; AND AMENDING SECTIONS 75-3-602 AND 75-3-606, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-3-602, MCA, is amended to read:

"75-3-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences.

(2) "Inhabitable real property" means any real property that includes a building affixed to land. *The building must be designed to be primarily occupied by humans, either as a dwelling or as a place of business.*

(3) "Mitigation project" means to repair or alter a building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere.

(4) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, consultant, state or municipal agency, political subdivision of the state, or any other entity.

(5) "Radon" means any of the gaseous radioactive decay products of uranium or thorium.

(6) "Radon progeny" means any of the radioactive decay products of radon.

(7) "Radon-related occupation" means the occupation of any person who performs radon gas or radon progeny measurements, including sample collection, analysis, or interpretation of those measurements, or who performs radon gas or radon progeny mitigation."

Section 2. Section 75-3-606, MCA, is amended to read:

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"75-3-606. Radon disclosure statement on real estate documents — disclosure of prior radon testing — immunity from liability. (1) ~~After January 1, 1994, a~~ *A* radon disclosure statement must be provided on at least one document, form, or application executed prior to ~~the execution of any contract~~ *or contemporaneously with an offer* for the purchase and sale of inhabitable real property. The seller or seller's agent shall provide the following disclosure statement to the buyer, and the buyer shall acknowledge receipt of this disclosure statement by signing a copy of the disclosure statement:

"RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT."

(2) Whenever a seller knows that a building has been tested for radon gas and radon progeny, the seller shall provide to the buyer, ~~with the contract of sale~~ *prior to or upon entry into a contract for the purchase of that building*, a copy of the results of that test and evidence of any subsequent mitigation or treatment. A prospective buyer who contracts for the testing may receive the results of that testing. The furnishing of test results and evidence of mitigation or treatment is not to be construed as a promise, warranty, or representation of any sort by the seller or the seller's agent that the test results are accurate or that the mitigation or treatment is effective. *This section does not create a contingency on the purchase of the property or any right to rescind a contract for purchase unless the contingency or right to rescind is an express term of the applicable contract.*

(3) A seller or seller's agent who complies with subsections (1) and (2) is not liable in any action based on the presence of radon gas or radon progeny in the building."

Approved March 21, 1995

CHAPTER NO. 186

[SB 384]

AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION INSURANCE RATING LAWS; PROVIDING DEFINITIONS; PROVIDING FOR THE DETERMINATION OF A COMPETITIVE WORKERS' COMPENSATION MARKET; REQUIRING THE COMMISSIONER OF INSURANCE TO DESIGNATE AN ADVISORY ORGANIZATION; AUTHORIZING THE FILING AND ADOPTION BY AN INSURER OF AN ADVISORY ORGANIZATION'S PROSPECTIVE LOSS COSTS; AUTHORIZING AN INSURER TO FILE ITS OWN RATES AND SUPPLEMENTARY RATE INFORMATION; PROVIDING FOR RATE REVIEW; ELIMINATING THE REQUIREMENT THAT A RATING ORGANIZATION FILE WORKERS' COMPENSATION RATES; AMENDING SECTIONS 33-16-303, 33-16-403, 33-16-1002, 33-16-1011, 33-16-1012,

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39-71-435, 39-71-2204, 39-71-2205, 39-71-2211, AND 39-71-2316, MCA; REPEALING SECTIONS 33-16-1004 AND 33-16-1005, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. As used in this subsection, two or more insurers who have a common ownership or operate in this state under common management or control constitute a single insurer.

(3) "Classification system" means the plan, system, or arrangement for recognizing differences in exposure te hazards among industries, occupations, or operations of insurance policyholders.

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited te a consideration in selecting a single estimato from a reasonable range of estimates, or both.

(5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) "Expenses" means the portion of a rato that is attributable to acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) "Experience rating" means a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer under the laws of the state.

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(9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers' compensation and employer's liability insurance pursuant to the provisions of this part.

(11) (a) "Prospective loss costs" means historical aggregato losses and loss adjustment expenses, including all assessments that are loss-based, projected through development to their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of exposure, including loss adjustment expense.

(13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of workers' compensation and employer's liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or loss adjustment expenses.

(15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

(16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required te be filed by the commissioner.

Section 2. Competitive market — hearing. (1) A competitive market is presumed to exist unless the commissioner, after hearing, issues an order stating that a reasonable degree of competition does not exist in the market. The order may not expire later than 1 year after issuance.

(2) In determining whether a reasonable degree of competition exists, the commissioner shall consider the following factors:

(a) the number of insurers actively engaged in providing coverage;

(b) market shares and changes in market shares;

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(c) ease of entry into the market;

(d) market concentration among plan No. 2 insurers as measured by the Herfindahl-Hirschman index;

(e) whether long-term profitability for insurers in the market is unreasonably high in relation to the risks being insured;

(f) wbether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risks; and

(g) generally accepted and relevant tests relating te competitive market structure, market performance, and market conduct.

(3) The workers' compensation insurance market may not be determined to be noncompetitive if the market concentration of the 50 largest insurers writing workers' compensation insurance under plan No. 2 satisfied the U.S. department of justice merger guidelines for an unconcentrated market.

(4) The commissioner's determinations must be made on the basis of findings of fact and conclusions of law.

Section 3. Ratemaking standards — review by commissioner. (1) Rates may not be excessive, inadequate, or unfairly discriminatory.

(2) Rates in a competitive market are not excessive. Rates in a noncompetitive market are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services rendered.

(3) A rate may not be determined te be inadequate unless:

(a) it is clearly insufficient to sustain projected losses and expenses; and

(h) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will tend to create a monopoly in the market; or

(c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not produced when prospective loss costs are applied to anticipated payrolls.

(4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with different loss exposures or expense levels.

(5) In determining whether rates comply with standards under subsection (1), consideration must be given to:

(a) past and prospective loss experience within and outside Montana, in accordance with accepted actuarial principles;

(b) catastrophe hazards and contingencies;

(c) past and prospective expenses within and outside Montana;

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(d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) a reasonable margin for underwriting profit; and

(f) all other relevant factors within and outside Montana.

(6) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the operating methods of the insurer or group insurers.

(7) The rate may contain provisions of contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of a profit, consideration must be given to all investment income attributable to premiums and the reserves associated with those premiums.

(8) The commissioner may investigate and determine whether rates in Montana are excessive, inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also consider the factors specified in [section 2].

Section 4. Dividends — no regulation or prohibition. (1) An advisory organization may not adopt a rule that would regulate or prohibit the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(2) A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers is not a rating plan or system.

(3) It is an unfair trade practice under 33-18-1003 to make the payment of a dividend or any portion of it conditioned upon renewal of the policy or contract.

Section 5. Membership in advisory organization. (1) The commissioner shall designate one workers' compensation advisory organization to assist the commissioner in gathering, compiling, and reporting relevant statistical information. Each workers' compensation insurer shall record and report its workers' compensation experience to the designated advisory organization as set forth in the uniform statistical plan approved by the commissioner.

(2) Each workers' compensation insurer must be a member or subscriber of the designated workers' compensation advisory organization. Each workers' compensation insurer may adhere to the policy forms filed by the advisory organization.

(3) Each workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan that has been filed by the designated advisory organization with the commissioner and approved by the commissioner.

(4) Each workers' compensation insurer shall use the forms and adhere to the rules that the designated advisory organization shall develop and file with the commissioner. The forms and rules must be reasonably related to the

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recording and reporting of data pursuant to the uniform statistical plan, the uniform experience rating plan, and the uniform classification system.

(5) The methodology of the experience rating plan required under subsection (3) must be based on:

(a) reasonable eligibility standards;

(b) incentives for loss prevention; and

(c) a premium differential to encourage safety.

(6) The designated advisory organization or an insurer may file rating plans with the commissioner that provide for prospective or retrospective premium adjustment based on an insured's expected or actual loss experience, including but not limited to scheduled rating adjustments, retrospective rating plans, optional deductible plans under 39-71-435, a construction industry premium credit plan under 39-71-2211, or other plans as authorized by statute or approved by the commissioner.

Section 6. Plan No. 3 membership in licensed workers' compensation advisory organization — reporting requirements. (1) The plan No. 3 insurer under Title 39, chapter 71, part 23, is required to be a member of a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4.

(2) If the plan No. 3 insurer is not a member of the workers' compensation advisory organization designated under [section 5], then, subject to the deviations from the uniform statistical plan, uniform classification system, and uniform experience rating plan that may be approved by the board of directors of the plan No. 3 insurer as provided in 39-71-2316(5), the insurer shall:

(a) record and report its workers' compensation experience to the designated advisory organization as required in the uniform statistical plan of the designated workers' compensation advisory organization approved by the commissioner, the uniform classification system, and the uniform experience rating plan that have been filed by the designated advisory organization with and approved by the commissioner; and

(b) use the forms and adhere to the rules that the designated advisory organization develops and files with the commissioner under [section 5].

Section 7. Interchange of rating plan — data exchange — cooperative action in ratemaking — violation of part. (1) Reasonable rules and plans may be adopted by the commissioner for the interchange of data necessary for the application of rating plans.

(2) To ensure conformity in administering rate regulatory laws, the commissioner, each insurer, and the advisory organization designated by the commissioner may exchange information and experience data with insurance regulatory officials, insurers, and advisory organizations in other states and may consult with them with respect to ratemaking and the application of rating systems.

(3) Cooperation among advisory organizations or among insurers and advisory organizations in ratemaking or in other matters within the scope of

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this part is authorized, but the filings resulting from the cooperation are subject to all provisions of this part.

(4) The commissioner may review the cooperative activities and practices. If, after hearing, any cooperative activity or practice is found to violate the provisions of this part, a written order may be issued specifying that the activity or practice violates the provision of this part and requiring the discontinuance of the activity or practice.

Section 8. Rate filings. (1) A workers' compensation advisory organization shall file with the commissioner:

(a) workers' compensation rates and rating plans that are limited to prospective loss costs;

(b) each workers' compensation policy form to be used by its members or subscribers;

(c) the uniform classification plan and rules of the advisory organization;

(d) the uniform experience rating plan and rules of the advisory organization; and

(e) any other information that the commissioner requests and is entitled to receive under this part.

(2) Each insurer shall file with the commissioner all ratos, supplementary rate information, and any changes and amendments made by it for use in this state as required by tbe commissioner under [section 9(2)].

(3) An insurer may establish rates and supplementary rate information based upon the factors in [section 3]. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed by the advisory organization designated under [section 5] or the rates and supplementary rate information filed by another insurer.

(4) An insurer may not make or issue a contract or policy of insurance under this part, except in accordance with the filings that are in effect for the insurer as provided in this part.

(5) In addition to other prohibitions in this part, an advisory organization may not file rates, supplementary rato information, or supporting information on behalf of an insurer.

(6) If each rate in a schedule of workers' compensation rates for specific classifications of risks filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers' compensation ratos for those classifications filed by tbe designated advisory organization under [section 8(1)], tbe schedule of rates filed by the insurer is not subject to [section 9(1)] but becomes effective upon filing.

Section 9. Rate filing review. (1) The commissioner shall review each insurance filing to ensure compliance with the following guidelines:

(a) The effective date of eacb workers' compensation insurer or advisory organization filing must be the date specified in the filing. The effective date of

the filing may not be earlier than 30 days after the date on which the filing is received by the commissioner or the date of receipt of the information furnished in support of the filing, if the supporting information is required by the commissioner.

(b) Upon written application of the insurer or advisory organization, the commissioner may authorize a filing that becomes effective before the expiration of the period described in subsection (1)(a).

(c) A filing is considered to have met the requirements of this part unless disapproved by the commissioner within the period described in subsection (1)(a) or any extension of the period.

(2) Whenever a filing is not accompanied by the information required under this section, the commissioner shall inform the filer of the deficiency within 10 days of the initial filing. The filing is considered made when the required information is furnished or when the filer certifies to the commissioner that the additional information requested by the commissioner is not maintained or cannot be provided.

Section 10. Improper rates — hearing. (1) If the commissioner finds that a rate is not in compliance with [section 3] or that a rate has been set in violation of [section 14], the commissioner shall order that its use be discontinued for any policy issued or renewed after the date of the order, and the order may prospectively provide for premium adjustment of any policy then in force.

(2) The order must be issued within 30 days after the close of a hearing, if one is requested by the insurer, or within a reasonable time fixed by the commissioner. The order expires 1 year after its effective date unless rescinded earlier by the commissioner.

(3) If the commissioner disapproves a rate under subsection (1), disapproval must take effect not less than 15 days after the commissioner's order and the last previous rate in effect for the insurer must be reimposed for a period of 1 year unless the commissioner approves a rate under the provisions of subsection (5) or (6).

(4) A determination made by the commissioner under this section must be in accordance with accepted actuarial standards on the basis of findings of fact and conclusions of law.

(5) For a period of 1 year after the effective date of a disapproval order under subsection (1), a rate adopted to replace one disapproved under the order may not be used until it has been filed with the commissioner and approved within 30 days.

(6) Whenever an insurer does not have legally effective rates pursuant to subsection (1), the commissioner shall, on the insurer's request, specify interim rates for the insurer that are adequate to protect the interests of all parties. The commissioner may order that a specified portion of the premiums be placed in a special reserve established by the insurer. When new rates become legally effective, the commissioner shall order the reserved funds or any overcharge in the interim rates to be distributed appropriately, except that minimal adjustments may not be required.

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Section 11. Restrictions on certain insurers — waiting period. (1) The commissioner may require that a particular insurer file any of its rates and supplementary rate information 30 days prior to the effective date of the rates, if the commissioner finds after a hearing that the protection of the interests of the insurer's insureds and the public in this state requires closer supervision of the insurer's rates.

(2) Upon written application by an insurer, the commissioner, following review, may authorize a filing, which is effective before the expiration of the period described in subsection (1).

(3) The filing must be approved or disapproved during the waiting period and, if not disapproved before the expiration of the waiting period, is considered to have met the requirements of this section.

(4) An insurer aggrieved by the commissioner's actions under this section may request a rehearing hy the commissioner after the expiration of 12 months from the date of the commissioner's initial order.

Section 12. Delay of rates in noncompetitive market. (1) A 30-day waiting period may be implemented or extended under one of the following circumstances:

(a) after finding that the market is not competitive under [section 2], the commissioner adopts a rule requiring that any subsequent changes in rates or supplementary information must be filed with the commissioner at least 30 days before the changes become effective;

(b) the commissioner extends the waiting period under this section for a period not exceeding 30 additional days by written notice to the filer before the first 30-day period expires;

(c) upon written application by an insurer or advisory organization, the commissioner, following review, authorizes a filing, which becomes effective before the expiration of the period described in subsection (1)(a) or (1)(b); or

(d) the filing is approved or disapproved during the waiting period and, if not disapproved before the expiration of the waiting period, is considered to have met the requirements of this section.

(2) If a rule is adopted under subsection (1), the commissioner may require the filing of supporting data as to classes of risks or combinations of risk classes that the commissioner considers necessary for the proper functioning of the rate monitering and regulating process. The supporting data must include:

(a) the experience and judgment of the filer and, to the extent that the filer wishes or the commissioner requires, the experience and judgment of other insurers or the advisory organization designated under [section 5];

(b) the interpretation of any statistical data upon which the filer relied;

(c) a description of the actuarial and statistical methods used in setting the rate; and

(d) any other relevant matter required by the commissioner.

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(3) A rule adopted under this section expires 1 year after adoption unless renewed by the commissioner after hearings and appropriate findings under this section.

(4) Whenever a filing is not accompanied by the information that the commissioner has required under subsection (2), the commissioner shall inform the insurer within 10 days of the initial filing. The filing is considered made when the required information is furnished.

Section 13. Consent to rate. Notwithstanding any other provision of this part, upon the written consent of the insured, filed with the commissioner, a rate in excess of that determined in accordance with the other provisions of this part may be used on any specific risk.

Section 14. Acts reducing competition prohibited. (1) In this section, the word "insurer" includes two or more affiliated insurers engaged in joint or cooperative underwriting, investment management, marketing, servicing, or administration of their business and affairs as insurers and:

(a) under common management; or

(b) under common controlling ownership or under other common effective legal control.

(2) An insurer or advisory organization may not:

(a) monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize the business of insurance of any kind, subdivision, or class;

(b) agree with any other insurer or advisory organization te charge or adhere to any rate or rating plan other than the uniform experience rating plan or rating rules of the advisory organization, except as needed to comply with the requirements of [section 8];

(c) make an agreement with any other insurer, advisory organization, or other person to unreasonably restrain trade or substantially lessen competition in the business of insurance of any kind, subdivision, or class; or

(d) make an agreement with any other insurer or advisory organization to refuse to deal with any person in connection with the sale of insurance.

(3) The fact that two or more insurers, whether they are members or subscribers of a common advisory organization, use consistently or intermittently the same advisory organization rules or insurer guidelines, rating plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules, surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.

(4) An advisory organization or member or subscriber of an advisory organization may not interfere with the right of any insurer te establish its rates independently of that advisory organization or to charge rates different from the rates made by that advisory organization.

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(5) Except as required by [section 8], an advisory organization may not have or adopt any rule or exact any agreement or formulate or engage in any program that would require any member, subscriber, or other insurer to:

(a) adhere to its rates; or

(b) prevent any insurer from acting independently.

Section 15. Advisory organization — permitted activity. An advisory organization may:

(1) develop statistical plans, including class definitions;

(2) collect statistical data from members, subscribers, or any other source;

(3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit insurers to modify pure premiums based upon their own rating methods or interpretations of underlying data.

(4) prepare and distribute manuals for rating rules and rating schedules that do not contain any rules or schedules, including final ratos, without information outside the manuals;

(5) distribute information that is filed with the commissioner and open to public inspection;

(6) conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses;

(7) prepare and file policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;

(8) collect, compile, and distribute past and current prices of individual insurers, if the information is made available to the general public;

(9) conduct research and collect information to determine the impact of benefit level changes on pure premium rates;

(10) prepare and distribute rules and rating values for the uniform experience rating plan; and

(11) calculate and disseminato individual risk premium modification factors. Individual risk premium modification factors may only be disseminated to:

(a) a licensed producer or a plan No. 2 or plan No. 3 insurer for the business of insurance only; and

(b) the department of labor and industry for regulatory purposes only. Individual employer payroll and loss information may be provided to a person other than the current licensed producer or a plan No. 2 or plan No. 3 insurer only after obtaining the employer's written permission.

Section 16. Advisory organization — prohibited activity. In addition to other prohibitions in this part, except as specifically permitted under [section 15], an advisory organization may not compile or distribute recommendations

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relating to rates that include expenses, other than loss adjustment expenses, or profit.

Section 17. Penalties — suspension of license. (1) The commissioner may impose upon a person or organization that violates [sections 1 through 18] a penalty of not more than $500 for each violation.

(2) If the commissioner determines that the violation is willful, the commissioner may impose a penalty of not more than $1,000 for each violation in addition to any other penalty provided by law.

(3) The commissioner may suspend the license of an insurer or an advisory organization that fails to comply with any order within the time set by the order or extension granted by the commissioner. The commissioner may not suspend a license for failure to comply with an order until the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may determine the period of a suspension, which remains in effect for the period unless modified or rescinded or until the order upon which the suspension is based is modified, rescinded, or reversed.

(4) Unless a consent decree has been entered, a penalty may not be imposed nor may a license be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings of fact. The hearing must be held at least 10 days after written notice to the person or organization specifying the alleged violation.

(5) A party aggrieved by an order or decision of the commissioner may, within 30 days after receiving the commissioner's notice, make a written request for a hearing.

Section 18. Appeals from commissioner. (1) An order, decision, or act of the commissioner under this part may be appealed to district court upon petition of a person aggrieved.

(2) A petition for review must be filed within 60 days from notice of the order, decision, or act. The commencement of the proceeding does not affect enforcement or validity of the commissioner's action unless the court determines, after notice to the commissioner, that a stay of enforcement until further direction of the court will not injure the interests of the public.

Section 19. Section 33-16-303, MCA, is amended to read:

"33-16-303. **Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations — agreements to adhere to.** (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of ~~such~~ *those* organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305, 33-16-307, and ~~33-16-1005 shall~~ *[sections 1 through 18], may* not agree with each other or rating organizations or others to adhere ~~thereto~~ *to the organizations' rates, systems, rules, or policy or bond forms.*

(2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistsntly or intermittently, the rates or rating systems made or adopted by a rating

organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization ~~shall~~ *is* not ~~be~~ sufficient in itself to support a finding that an agreement ~~to so adhere~~ *prohibited under subsection (1)* exists and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any ~~such~~ agreement."

Section 20. Section 33-16-403, MCA, is amended to read:

"**33-16-403. Examination of application and investigation of applicant — issuance of license — fee.** (1) The commissioner shall examine each application for license to act as a rating organization *pursuant to this part or a workers' compensation advisory organization pursuant to part 10* and the documents filed ~~therewith~~ *with the application* and may make such further investigation of the applicant, its affairs, and its proposed plan of business as ~~he deems~~ *the commissioner considers* desirable.

(2) The commissioner shall issue the license applied for within 60 days of its filing ~~with him~~ if, from ~~such~~ *the* examination and investigation, ~~he~~ *the commissioner* is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate ~~to~~ enable it to furnish the services it proposes to furnish;

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of ~~his~~ *the* decision and ~~his~~ *the* reasons therefor.

(4) The commissioner may grant an application in part only and issue a license to act as a rating *or workers' compensation advisory* organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) ~~Licenses~~ *(a) Except as provided in subsection (5)(b), licenses* issued pursuant to this section ~~shall~~ remain in effect until revoked as provided in this chapter. The fee for the license ~~shall be~~ *is* $100 annually ~~which shall~~ *and must* be deposited in the general fund.

(b) Each workers' compensation advisory organization is required to renew its license annually."

Section 21. Section 33-16-1002, MCA, is amended to read:

"**33-16-1002. Applicability of part.** This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22, *or related employer's liability insurance, but does not apply to reinsurance."*

Section 22. Section 33-16-1011, MCA, is amended to read:

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"33-16-1011. Classification and rating committee — membership — term. (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) two representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance producer who resides in Montana, appointed by the commissioner of insurance;

(c) one representative of the state compensation insurance fund who is an employee of the state fund and who is appointed by the executive director of the state fund; and

(d) one representative of an employer who is insured by either a private insurance carrier or the state compensation insurance fund, appointed by the commissioner of insurance.

(3) Each member shall hold office for a period of 3 years. An appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a), (2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance producers, and employers may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to the names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee must be staffed by the ~~rating~~ *advisory* organization *designated under [section 5]* and be funded from the operations budget of the ~~rating~~ *advisory* organization. Committee members may, if they request, be paid their actual and necessary travel expenses.

(6) Documents and other information concerning the committee's actions must be made available for public review in the office of the commissioner of insurance."

Section 23. Section 33-16-1012, MCA, is amended to read:

"33-16-1012. Functions and powers of classification and rating committee — hearings — rulemaking. (1) The classification and rating committee shall:

(a) meet not less than semiannually te conduct its business;

(b) make the final determination regarding the establishment of all classifications;

~~(c) establish the advisory premium rates as provided for in 33-16-1005;~~

~~(d)~~*(c)* publish material and pamphlets as it considers appropriate;

~~(e)~~*(d)* act as a review committee concerning objections filed hy employers in relation te classifications assigned to the employer by an insurer; and

~~(f)~~*(e)* make rules as may be necessary for the conduct of any business that is subject to notice and hearings. Tbe rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be puhlished in the Administrative Rules of Montana as part of tbe rules promulgated by the commissioner of insurance.

(2) (a) A hearing conducted by the committoe pursuant to subsection ~~(1)(e)~~ *(1)(d)* must be an informal proceeding as provided in 2-4-604.

(b) A party aggrieved by a decision of tbe committee rendered after a hearing conducted pursuant to subsection (2)(a) may petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

(3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."

Section 24. Section 39-71-435, MCA, is amended to read:

"**39-71-435. Workers' compensation and employers' liability insurance — optional deductibles.** (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with tbe standards contained in subsection (3).

(2) ~~A rating~~ *The advisory* organization *designated under [section 5]* may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

(3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.

(d) Recognition is given to policyholder characteristics, including hut not limited to size, financial capabilities, nature of activities, and number of employees.

(e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

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(g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.

(h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the *designated* ~~rating~~ *advisory* organization or adopt an optional deductible plan that meets the requirements of this section.

(5) For purposes of 39-71-201, liability for assessments must be ascertained based on premiums collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of policies written under plan No. 3, for which the policyholder would have been obligated without the deductible. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible."

Section 25. Section 39-71-2204, MCA, is amended to read:

"**39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure.** (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit te the department the notice of coverage stating the effective date of the policy insuring the employer and ~~such~~ other information as *that* may be required by the department.

(2) The department may:

(a) recognize the ~~national council on compensation insurance~~ *advisory organization designated under [section 5]* as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from ~~the national council on compensation insurance~~ *the advisory organization designated under [section 5]* as the insurer's notice of coverage.

(3) The department may, in its discretion, assess a penalty of no more than $200 against an insurer that as a general business practice does not comply with the 30-day notice requirement set forth in subsection (1)."

Section 26. Section 39-71-2205, MCA, is amended to read:

"**39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) The department may:

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(a) recognize ~~the national council on compensation insurance~~ *the advisory organization designated under [section 5]* as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of cancellation received from ~~the national council on compensation insurance~~ *the advisory organization designated under [section 5]* as the insurer's notice of cancellation.

(3)(a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 27. Section 39-71-2211, MCA, is amended to read:

"**39-71-2211. Premium rates for construction industry — filing required.** (1) With respect to each classification of risk in the construction industry under plan No. 2, the ~~rating organization described in 33-16-1005~~ *advisory organization designated under [section 5]* shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at one and one-half times the Montana average weekly wage as reported by the department.

(3) The ~~rating~~ *advisory* organization shall file a revenue neutral plan for new and renewed policies ~~by July 1, 1992,~~ for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the *designated* ~~rating~~ *advisory* organization or adopt a credit scale plan that meets the requirements of this section."

Section 28. Section 39-71-2316, MCA, is amended to read:

"**39-71-2316. Powers of ~~the~~ state fund.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(4) collect and disburse money received;

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(5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After ~~such~~ *the* rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case righta and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund ~~must~~ *is required to* belong to ~~the national council on compensation insurance~~ *a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4,* and ~~shall~~ *may* use the classifications of employment adopted by the ~~national council and corresponding rates~~ *designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates* as a basis for setting its own rates. *Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.*

(6) pay the amounts determined due under a policy of insurance issued by the state fund;

(7) bire personnel;

(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for tbe purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(9) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund."

Section 29. Repealer. Sections 33-16-1004 and 33-16-1005, MCA, are repealed.

Section 30. Coordination. If [this act] is passed and approved and if it amends 39-71-2316, then Senate Bill No. 21 is void.

Section 31. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 33, chapter 16, part 10, and the provisions of Title 33, chapter 16, part 10, apply to [sections 1 through 18].

Section 32. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 33. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Section 34. Applicability. [This act] applies to rato filings by the advisory organization on or after [the effective date of this act] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing.

Approved March 21, 1995

CHAPTER NO. 187

[HB 161]

AN ACT INCREASING THE PENALTY FOR SEXUAL ABUSE OF CHILDREN BY POSSESSING ANY VISUAL OR PRINT MEDIUM IN WHICH CHILDREN ARE ENGAGED IN ACTUAL OR SIMULATED SEXUAL CONDUCT; EXPANDING THE DEFINITION OF THE OFFENSE; AND AMENDING SECTIONS 45-5-620 AND 45-5-625, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-620, MCA, is amended to read:

"**45-5-620. Definitions.** As used in 45-5-625, the following definitions apply:

(1) "Sexual conduct" means actual or simulated:

(a) sexual intercourse, whether between persons of the same or opposito sex;

(b) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(c) hestiality;

(d) masturbation;

(e) sadomasochistic abuse;

(f) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimato parts of any person; or

(g) defecation or urination for the purpose of the sexual stimulation of the viewer.

(2) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(3) "Visual medium" means:

(a) any film, photograph, videotape, negative, slide, or pbotographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide*; or*

(b) any disc, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method."

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Section 2. Section 45-5-625, MCA, is amended to read:

"**45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person ~~knowingly~~:

(a) *knowingly* employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) *knowingly* photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) *knowingly* persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) *knowingly* processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with intent to sell,~~ exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) *knowingly* possesses ~~material referred to in subsection (1)(d)~~ *any visual or print medium in which children are engaged in sexual conduct, actual or simulated*; ~~or~~

(f) finances any of the activities described in subsections (1)(a) through (1)(d) *and (1)(g)*, knowing that the activity is of the nature described in those subsections*; or*

(g) possesses with intent to sell any visual or print medium in which children are engaged in sexual conduct, actual or simulated.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), a person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 50 years, or both.

(c) A person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed ~~$500~~ *$10,000* or be imprisoned in the ~~county jail~~ *state prison* for a term not to exceed ~~6 months~~ *10 years*, or both.

(3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ *(1)(g)* if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

Approved March 22, 1995

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CHAPTER NO. 188

[HB 204]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO SPECIALLY MARK A CERTIFICATE OF OWNERSHIP FOR A SALVAGE VEHICLE; AND AMENDING SECTION 61-3-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-212, MCA, is amended to read:

"61-3-212. Retitling salvage vehicles — penalty. (1) Prior to operating a salvage vehicle on the roads and highways of this state, the owner shall present the vehicle and the salvage certificate, if one has been issued, or the certificate of ownership, the appropriate receipts or bills of sale establishing ownership, and the source of component parts used to rebuild the vehicle to a department employee or designated peace officer for inspection at a regional inspection site authorized under 61-3-202(7). An owner may obtain a 72-hour temporary registration permit from the department or its designee for the purpose of moving a salvage vehicle to and from the designated inspection site.

(2) (a) The inspector shall inspect the vehicle to verify the identity of the vehicle.

(b) The inspector shall verify that the component parts used to rebuild the vehicle are evidenced by traceable receipts or bills of sale and that there are no indications *that* the vehicle or any of its parts are stolen. Documentation provided by the owner or employee of a wrecking facility licensed under the provisions of Title 75, chapter 10, part 5, is prima facie evidence of the facts stated in the documentation.

(3) Following inspection and prior to operating the vehicle on the roads and highways of this state, the owner shall apply for a new certificato of ownership by submitting the application, the salvage certificate, receipts or bills of sale, and a copy of tbe inspection report to the department.

(4) Upon receipt of the application, required documentation, and payment of the fee for a salvage vehicle required in 61-3-202(8), the department shall issue a new certificate of ownership *with the words "rebuilt salvage" on the face of the certificate.*

(5) A person failing to comply with the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $500. The salvage vehicle purchaser shall produce the salvage certificate upon request ot .. public official legally entitled to request the certificate. A person may not operate or use a salvage vehicle on the roads or highways of this state except when a permit has been issued."

Approved March 22, 1995

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CHAPTER NO. 189

[HB 212]

AN ACT REVISING CERTAIN PROVISIONS OF LAW REGARDING PESTICIDES AND AGRICULTURAL CHEMICALS; REVISING THE MONTANA PESTICIDES ACT REGARDING LICENSE AND PERMIT REVOCATION, INVESTIGATION AND ENFORCEMENT, THE ISSUANCE OF COMPLIANCE ORDERS, AND PENALTIES; MAKING UNIFORM THE PROCEDURES FOR CONTESTING AND APPEALING PENALTIES ASSESSED BY THE DEPARTMENT OF AGRICULTURE UNDER THE MONTANA PESTICIDES ACT; REVISING THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT BY REMOVING THE REQUIREMENT THAT CERTAIN CHEMICAL ANALYSES BE REPORTED; REMOVING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ASSESS CIVIL PENALTIES UNDER THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT; REVISING THE PROCESS FOR ISSUANCE OF COMPLIANCE ORDERS; AMENDING SECTIONS 80-8-211, 80-8-304, 80-8-305, 80-8-306, 80-15-202, 80-15-403, AND 80-15-412, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-211, MCA, is amended to read:

"**80-8-211. Revocation of licenses and permits.** (1) The department shall establish the policy and procedures on the revocation of licenses or permits. The department may refuse to grant~~,~~ *or* renew~~,~~ or may revoke or modify a license or permit, as the case may require, when the department is satisfied that the licensee or ~~holder of a permit~~ *permittee* is not qualified to sell, use, or apply pesticides under the conditions in the locality in which ~~he~~ *the licensee or permittee* operates or has operated or that ~~he~~ *the licensee or permittee* has committed any of the following acts, each of which is ~~declared to be~~ *considered* a violation of this chapter:

(a) made false or fraudulent claims or recommendations through any media misrepresenting the effect of materials or methods to be ~~utilized~~ *used*;

(b) applied or sold unapproved or illegal materials or applied or sold a pesticide without possessing a current and appropriate license or permit;

(c) operated in a faulty, careless, or negligent manner;

(d) operated faulty or unsafe equipment;

(e) refused or neglected to comply with the provisions of this chapter, ~~the~~ rules adopted ~~hereunder~~ *under this chapter*, or any lawful order of the department;

(f) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required;

(g) made false or fraudulent records or reports;

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(h) operated equipment for the commercial application of a pesticide without having a license or permit;

(i) used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit;

(j) used or applied a registered pesticide inconsistent with its labeling or the label or the department restrictions on the use of that pesticide;

(k) made false or misleading statements in connection with a pest inspection of land, crops, yards, or any premises in an attempt to induce any person to engage ~~his~~ *the licensee's or permittee's* services to eliminate, control, or mitigate the alleged pest or made false or misleading statements concerning the effectiveness of any pesticide or its application;

(l) failed to satisfy a judgment entered against the licensee or permittee as a result of a complaint concerning the use of a pesticide.

(2) Decisions of the department relating to the issuing of licenses or permits may be appealed."

Section 2. Section 80-8-304, MCA, is amended to read:

"**80-8-304. Investigation and enforcement authority.** (1) In enforcing this chapter, the department or its ~~duly~~ authorized agents, upon reasonable cause, may enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

(a) equipment used for applying pesticides;

(b) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;

(c) records on the selling or use of pesticides and the person's steck of pesticides;

(d) *handling, use, application,* storage, and disposal of pesticides by any person;

(e) pesticides being applied or te be applied and to sample the pesticides *or agricultural commodities*;

(f) the use and application of a pesticide; ~~or~~

(g) the environment alleged to have been exposed te pesticides and te collect and analyze environmental samples;

(h) a person's compliance with pesticide worker protection standards and labeling, including handlers and workers;

(i) a person's compliance with pesticide ground water and environmental protection agency endangered species standards and labeling; or

(j) a person's compliance with licensing, labeling, permitting, and certification requirements.

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(2) The department is authorized to investigate all incidents involving the application, *sale,* introduction, or ~~utilization~~ *use* of registered pesticides or compounds capable of acting in the manner of pesticides when the incidents have a reasonable potential to adversely affect the public environment or persons ~~other than the applicator~~.

(3) The investigation *or inspection* authority provided for in this section may be exercised over persons not possessing a required license or permit ~~only upon receipt of a complaint or report of an incident~~."

Section 3. Section 80-8-305, MCA, is amended to read:

"**80-8-305. General violations — compliance orders.** (1) Consistent with the provisions of Title 80, chapter 15, it is unlawful for ~~any~~ *a* person:

(a) to discard any pesticide or pesticide container in ~~such~~ a manner ~~as to cause~~ *that causes* injury to humans, domestic animals, or wildlife~~,~~ or to pollute any waterway in a way harmful to any wildlife ~~therein~~ *in the waterway* or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in ~~such~~ a manner ~~as to endanger man~~ *that endangers humans* or the environment or to endanger food or any other products that may be transported, stered, displayed, or distributed with ~~such~~ pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which ~~he~~ *the person* does not have an appropriate, complete, or legible label at hand;

(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the ~~label~~ *labeling*, as defined in 80-8-102; or

(e) to use any unregistered chemical or biological agent that is required to be registered as a pesticide by the Montana Pesticides Act.

(2) It is unlawful for ~~any~~ *a* person to manufacture, formulate, or store any registered pesticide or *a* component or byproduct ~~thereof~~ *of a registered pesticide* in ~~such~~ a manner that the pesticide, ~~or any~~ component, or byproduct cannot be contained or confined within the boundaries of the lands owned hy or under the appropriate control of the person involved. ~~Odor~~ *The containment or confinement of odor* is ~~specifically~~ exempted from the provisions of this subsection.

(3)*(a)* The department may issue a compliance order to ~~any~~ *a* person violating the provisions of ~~this section,~~ 80-8-211, *the provisions of this section,* or any other requirement estahlished pursuant to this chapter. ~~The compliance order may be issued to any person, including the person's employees, agents, or subcontractors.~~ *The compliance order may be issued to any person, including the person's employees, agents, or subcontractors.*

(b) The provisions of this subsection (3) are not intended to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site.

(4) A compliance order may require the cleanup of any pesticide that a person has accidentally or purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall allow the recipient of a

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compliance order to spread, treat, or dispose of soils contaminated by a pesticide if the person can document and prove to the satisfaction of the department that the soil will be beneficially used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the beneficial use of the soil nor *the* degradation of the pesticide in the soil will adversely affect agriculture, human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the department shall consult with the department of health and environmental sciences to ensure that the provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated hy a pesticide is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as determined by the department, the department of health and environmental sciences is responsible for regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or suspended pesticide without the specific approval of the department of health and environmental sciences or the U.S. environmental protection agency, or hoth, as required on a case-hy-case basis.

(5) When issuing a compliance order, the department may require a person who has violated a provision of this chapter to conduct monitering to assist in determining the presence or level of concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(6) A compliance order must specify the requirement of this chapter that has been violated and establish a time schedule for compliance. In establishing a time schedule for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

Section 4. Section 80-8-306, MCA, is amended to read:

"**80-8-306. Penalties.** (1) ~~Any~~ *A* person convicted of violating any of the provisions of this chapter or the rules issued ~~thereunder~~ *under this chapter* or who ~~may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt~~ *misrepresents, prevents, or attempts* to prevent the department or its ~~duly~~ authorized agent in performance of its duty in connection with the provisions of this chapter ~~shall be adjudged~~ *is* guilty of a misdemeanor and shall be fined not less than $100 but not more than $1,500.

(2) The department or its authorized representative ~~is hereby authorized to~~ *may* apply to the district court of the ~~county or any county wherein a violation is about to occur or has occurred~~ *county where a violation is about to occur or has occurred* to grant a temporary or permanent injunction restraining any person from violating or continuing te violate any of the provisions of this chapter or any rule promulgated under the chapter ~~notwithstanding the existence of other remedies of law~~ *notwithstanding the existence of other remedies of law*. ~~When a person makes pesticide applications in more than one county on a commercial basis without a license or permit or operates in violation of a lawful written order of the department in more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the district~~

~~court of any other county wherein a violation has occurred or is about to occur, and the department may select and proceed in the court most appropriate under the circumstances.~~ *When a person makes pesticide applications in more than one county on a commercial basis without a license or permit or operates in violation of a lawful written order of the department in more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the district court of another county where a violation has occurred or is about to occur and the department may select and proceed in the court that is most appropriate under the circumstances.* The injunction is to be issued without bond.

(3) Nothing in this chapter ~~is to be construed as requiring~~ *requires* the department or its authorized agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings when it believes *that* the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order~~; nor is any part of this~~. *This* chapter ~~to be construed to~~ *does not* apply to common carriers transporting shipments tendered to them by the general public.

(4) Any person who with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than $500 or *be* imprisoned for not more than 1 year, or both.

(5) (a) Any registrant, applicator, dealer, retailer, or other person who commits a major violation of this chapter as defined in subsection ~~(5)(d)~~ *(5)(e), in addition to other penalties provided in this chapter,* may be assessed a civil penalty by the department of not more than ~~$1,000~~ *$2,500* for each offense. However, farm applicators possessing a permit may not be assessed a civil penalty over ~~$200~~ *$500* for the first offense. Assessment of a civil penalty may be made in conjunction with any other department warning, order, or administrative action authorized by this chapter.

(b) ~~No~~ *A* civil penalty may *not* be assessed unless the person charged was given notice and opportunity for a hearing *and an appeal* pursuant to the Montana Administrative Procedure Act.

(c)(i) If after investigation the department determines that a major violation of this chapter has significantly harmed human life, welfare, or safety or affected agricultural commodities, livestock, or the environment in a manner that cannot be appropriately addressed by the penalties assessed in subsection (5)(a), the department may seek a civil penalty, not to exceed $25,000 for each offense, by filing a complaint in district court.

(ii) In addition to the civil penalty provided in subsection (5)(c)(i), a person who willfully commits a major violation of this chapter that results in significant harm to human life, welfare, or safety or to agricultural commodities, livestock, or the environment is guilty of a felony and shall, upon conviction, be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(d) In determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation ~~which~~ *that* occurred, the degree of care exercised by the offender, and

whether significant harm resulted to *human* health, ~~environment,~~ agricultural ~~crops~~ *commodities*, ~~or~~ livestock, *or the environment.*

~~(d)~~*(e)* A major violation of this chapter includes:

(i) misuse of a pesticide ~~which~~ *that* results in *proven exposure of humans, agricultural commodities, or livestock or results in* proven harm to human health, ~~the environment, or~~ agricultural ~~crops~~ *commodities*, ~~or~~ livestock, *or the environment*. *As used in this subsection (i), misuse means the use, handling, or release of a pesticide by a person in a manner inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing, and loading rules or pesticide and container disposal rules.*

(ii) selling of a restricted pesticide to a person not certified or authorized to purchase ~~such~~ *restricted* pesticides;

(iii) use or sale of unregistered pesticides;

(iv) failure to maintain any individual pesticide application and sales records;

(v) using or selling pesticides without having obtained the required license or permit; ~~or~~

(vi) *noncompliance with pesticide worker protection standards and labeling;*

(vii) noncompliance with pesticide ground water and environmental protection agency endangered species standards and labeling;

(viii) noncompliance with pesticide or pesticide container disposal, labeling, or handling requirements and standards; or

(ix) reoccurrence of any identical violation of this chapter within ~~the same calendar year~~ *2 years of the first violation.*

~~(e)~~*(f)* If the department is unable to collect ~~such~~ *the* civil penalty or if ~~any~~ *a* person fails to pay all or a ~~set~~ portion of the civil penalty as determined by the department, ~~it~~ *the department* may recover ~~such~~ *that* amount by action in the appropriate district court.

~~(6) Any person against whom the department has assessed a civil penalty under this section may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Appeal is by trial de novo, and a jury trial must be granted if requested. Where the provisions of this subsection conflict with 2-4-702 through 2-4-704, the provisions of this subsection govern.~~"

Section 5. Section 80-15-202, MCA, is amended to read:

"**80-15-202. Monitoring programs.** (1) The department or the department of health and environmental sciences shall conduct monitoring programs te determine:

(a) whether residues of agricultural chemicals are present in ground water; and

(b) the likelihood of an agricultural chemical to enter ground water, if either department detormines that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural chemical in the soil.

~~(2) Any person who receives a chemical analysis indicating the presence of an agricultural chemical in ground water shall notify the department of health and environmental sciences.~~

~~(3)~~ The department and the department of health and environmental sciences shall evaluate all information relating to this section that is received from any person, based upon standard procedures, protocols, and confirmatory procedures established by rule. Information found to be insufficient based on the adopted procedures and protocols, including analytical results, may be used only for informational purposes."

Section 6. Section 80-15-403, MCA, is amended to read:

"**80-15-403. Compliance orders.** (1) In furtherance of 80-15-402, the department may issue a compliance order to any person violating a standard, an intorim numerical standard, or any other requirement established pursuant to this chapter. The department shall coordinate its proposed actions pursuant to this section with proposed actions of the department of health and environmental sciences pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2)*(a)* The department may issue a compliance order to any person~~, including the person's employees, agents, and subcontractors, whether or not the person is subject to a specific management plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely dumped, spilled, or misused or unlawfully used that has a significant probability of entering ground water~~ *who violates any requirement established pursuant to this chapter.*

(b) The provisions of this subsection (2) are not intended to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site.

(3) When issuing a compliance order, the department may require a person who has violatod a provision of 80-15-402 to conduct monitoring te assist in determining tbe presence or level of concentration of an agricultural chemical in ground wator and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify tbe requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person bas made to comply with the requirement that bas been violated. A compliance order issued under this section must be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

Section 7. Section 80-15-412, MCA, is amended to read:

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"80-15-412. **Administrative civil penalty.** (1) A person who commits a violation of this chapter may be assessed an administrative civil penalty by ~~either~~ the department ~~or the department of health and environmental sciences, consistent with their respective responsibilities,~~ of not more than $1,000 for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more tban $500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action authorized by this cbapter or Title 75, chapter 5, that is issued or undertaken hy either the department or the department of healtb and environmental sciences.

(2) ~~No~~ *An* administrative civil penalty may *not* be assessed unless the person charged is given notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the ~~responsible~~ department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livesteck, or the environment.

(4) If the ~~responsible~~ department is unable to collect the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the ~~responsible~~ department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department ~~or the department of health and environmental sciences~~ has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure."

Section 8. Severability. If a part of [this act] is invalid, all valid parts tbat are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [Tbis act] is effective July 1, 1995.

Approved March 22, 1995

CHAPTER NO. 190

[HB 321]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

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"**17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~February 8, 1993~~ *[the effective date of this act]*."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 22, 1995

CHAPTER NO. 191

[HB 331]

AN ACT PROVIDING THAT THE CAPITOL RESTORATION COMMISSION MAY RETAIN AND USE THE INTEREST EARNED ON MONEY DEPOSITED TO ITS ACCOUNT; AMENDING SECTION 5-17-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-17-207, MCA, is amended to read:

"**5-17-207. Account established — use of funds.** (1) An account is established in the state special revenue fund, as provided in 17-2-102, into which all money raised by the commission must be deposited.

(2) The money deposited in the account *and the interest earned on the deposits* must be used only for the historical restoration and preservation of the capitol upon the commission's approval and for the administrative expenses of the commission."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 22, 1995

CHAPTER NO. 192

[SB 289]

AN ACT REVISING THE AUTHORITY OF THE DEPARTMENT OF AGRICULTURE IN ISSUING COMPLIANCE ORDERS THAT REQUIRE THE CLEANUP OF AGRICULTURAL CHEMICAL SPILLS TO EXCEPT SPILLS AT COMMERCIAL WOOD TREATMENT FACILITIES AND SPILLS THAT THREATEN A PUBLIC WATER SUPPLY SYSTEM; AND AMENDING SECTION 80-15-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-15-403, MCA, is amended to read:

"**80-15-403. Compliance orders.** (1) In furtherance of 80-15-402, the department may issue a compliance order to any person violating a standard, an interim numerical standard, or any other requirement established pursuant to this chapter. The department shall coordinate its proposed actions pursuant to this section with proposed actions of the department of health and

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environmental sciences pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) The department may issue a compliance order to any person, including the person's employees, agents, and subcontractors, whether or not the person is subject to a specific management plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely dumped, spilled, or misused or unlawfully used that has a significant probability of entering ground water. *This subsection does not apply:*

(a) to commercial wood treatment facilities; or

(b) when agricultural chemicals have caused or are likely to cause contamination of a public water supply system, as defined in 75-6-102.

(3) When issuing a compliance order, the department may require a person who has violated a provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

Approved March 22, 1995

CHAPTER NO. 193

[SB 365]

AN ACT CHANGING CRITERIA FOR APPROVAL OF RECLAIMED VEGETATION SEEDED USING INTRODUCED SPECIES APPROVED BY THE DEPARTMENT OF STATE LANDS; AMENDING SECTION 82-4-235, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

STATEMENT OF INTENT

This bill is intended to provide criteria for approving as successful reclamation reclaimed vegetation seeded in the 1970s and early 1980s using seed mixes that included grass species approved by the department of state lands. At that time, availability of native grass seed was very limited and introduced species in combination with native species were routinely approved. Because introduced grass species can be aggressive competiters, many of these lands are now dominated by introduced species. Current standards require dominance by native species as a condition for release of bond, and hence, mine operaters might be required to plow and reseed, restarting the 10-year bond liability period. Reclaimed vegetation dominated by introduced species has

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demonstrated its ability to withstand climatic extremes, support grazing of livestock, provide habitat for wildlife, and control erosion. The date of May 3, 1978, is the date on which reclamation performance standards of the federal Surface Mining Control and Reclamation Act of 1977 became effective on existing coal mining operations in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-235, MCA, is amended to read:

"**82-4-235. Inspection of vegetation — final bond release.** *(1)* Inspection and evaluation for permanent diverse vegetative cover ~~shall~~ *must* be made as soon as ~~it is~~ possible *following an application for final bond release* to determine if a satisfactory stand has been established. If the department determines tbat a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). ~~In no event shall such~~ *For land that was seeded using a seed mix that included a substantial component of introduced species approved by the department pursuant to 82-4-233(2) and on which reclaimed vegetation otherwise meets the requirements of 82-4-233(1), approval of reclaimed vegetation for release of bond may not be withheld on the basis that introduced species compose a major or dominant component. Except as provided in subsection (2)(b), the* remaining bond *may not* be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after ~~February 2~~ *May 2*, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(2) (a) Notwithstanding the provision in subsection (1), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232(8) and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (2)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (1)."

Section 2. Effective date. [This act] is effective on the date that it is approved hy the secretary of the United States department of the interier pursuant to 30 U.S.C. 1253. If the secretary disapproves any portion of [this act], those provisions that are approved become effective on the date of approval.

Approved March 22, 1995

CHAPTER NO. 194

[HB 62]

AN ACT REVISING RESTRICTIONS ON THE USE OF RIFLES FOR BIRD HUNTING TO CLARIFY THAT WILD TURKEY MAY NOT BE HUNTED WITH RIFLES DURING THE SPRING HUNTING SEASON; AND AMENDING SECTION 87-3-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-401, MCA, is amended to read:

"87-3-401. **Restrictions on rifles for bird hunting.** Rifles may not be used to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder. *The use of rifles to hunt or shoot wild turkey during the spring wild turkey season is prohibited.*"

Approved March 23, 1995

CHAPTER NO. 195

[HB 100]

AN ACT REVISING CERTAIN LAWS RELATING TO UNEMPLOYMENT INSURANCE; REQUIRING UNEMPLOYMENT INSURANCE COVERAGE FOR ELECTION JUDGES; REQUIRING OUT-OF-STATE EMPLOYING UNITS TO FURNISH BUSINESS RECORDS IN STATE OR TO PAY FOR AN AUDIT OCCURRING OUTSIDE MONTANA; LIMITING THE USE OF PENALTY AND INTEREST FUNDS TO THE DETECTION AND COLLECTION OF UNPAID TAXES AND BENEFIT OVERPAYMENTS AND FOR CERTAIN ADMINISTRATIVE COSTS; SUBJECTING LIABLE CORPORATE OFFICERS TO CIVIL ACTION AND LIEN; ESTABLISHING A PROFILING SYSTEM; ELIMINATING PENSION PLANS NEGOTIATED UNDER COLLECTIVE BARGAINING AGREEMENTS AS A DIRECT EMPLOYEE CONTRIBUTION; ESTABLISHING LIABILITY FOR LIMITED LIABILITY COMPANIES; AUTHORIZING ACCESS TO CERTAIN GOVERNMENTAL RECORDS; AUTHORIZING THE BOARD OF LABOR APPEALS TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR VIDEOCONFERENCE; AMENDING SECTIONS 13-4-106, 39-51-201, 39-51-203, 39-51-204, 39-51-603, 39-51-1105, 39-51-1109, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2104, 39-51-2203, 39-51-2307, 39-51-2403,

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39-51-2404, AND 39-51-2407, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-4-106, MCA, is amended to read:

"**13-4-106. Compensation of judges.** (1) Except as provided in subsection (2), election judges ~~shall~~ *must* be paid at the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. ~~Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter.~~

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for ~~such~~ *the* certification are received."

Section 2. Section 39-51-201, MCA, is amended to read:

"**39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first ~~four~~ *4* of the last ~~five~~ *5* completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period ~~shall be that~~ *is the period* applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state ~~due to~~ *because of* a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first ~~four~~ *4* quarters of the last ~~five~~ *5* quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which ~~such~~ *the* individual files a valid claim for benefits, except that the benefit year ~~shall be~~ *is* 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

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(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, ~~(~~including the state government, ~~)~~ *and* any of its political subdivisions or instrumentalities ~~)~~, ~~any~~ partnership, association, trust, estate, joint-stock company, insurance company, *limited liability company that has filed with the secretary of state*, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or *the trustee's* successor ~~thereof~~, or ~~the~~ legal representative of a deceased person ~~which~~ *that* has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(b). All individuals performing services within this state for any employing unit ~~which~~ *that* maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is ~~deemed~~ *considered* to be employed by ~~such~~ *the* employing unit for the purposes of this chapter, whether ~~such~~ *the* individual was hired or paid directly by ~~such~~ *the* employing unit or by ~~such~~ *the* agent or employee, provided *that* the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch ~~thereof~~ *of an office* operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter ~~shall~~ *must* be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct ~~which~~ *that* demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution ~~which~~ *that* has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under ~~his~~ *a* contract and in fact; and

(b) is engaged in an independently estahlished trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution ~~which~~ *that*:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of ~~such~~ a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program ~~which~~ *that* is acceptable for full credit toward ~~such~~ a *bachelor's or higher* degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding ~~any of the foregoing provisions of this~~ subsection *(15)(a)*, all ~~colleges and~~ universities in this state are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter ~~shall~~ *must* be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash ~~shall~~ *must* be estimated and determined ~~in accordance with~~ *pursuant to* rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of employees, te or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability under a workers' compensation law;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by ~~any~~ *a* county welfare office from public assistance funds for services performed at the direction and request of ~~such~~ *the* county welfare office; or

(iii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set fortb in department rules.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits *that* the individual would be entitled to receive for 1 week of total unemployment."

Section 3. Section 39-51-203, MCA, is amended to read:

"39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual, *by a manager or member of a manager-managed limited liability company that has filed with the secretary of state,* or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and ~~without~~ *outside* this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, ~~then~~ the place from which ~~such~~ *the* service is directed or controlled~~,~~ is in this state; or

(B) the base of operations or *the* place from which ~~such~~ *the* service is directed or controlled is not in any state in which some part of the service is performed, but tbe individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within ~~such~~ *the* state; or

(ii) the service is performed both within and ~~without such~~ *outside the* state, but tbe service performed ~~without such~~ *outside the* state is incidental to the individual's service within the state~~;~~ for example, *the out-of-state service* is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) ~~of this section~~ and performed entirely ~~without this~~ *outside the* state ~~with respect to no part of~~ *and on* which contributions are *neither* required ~~and~~ *nor* paid under an unemployment insurance law of any other state or of tbe federal government is considered to be employment subject to this cbapter if tbe individual performing ~~such~~ *the*

services is a resident of this state and the department approves the election of the employing unit for whom ~~such~~ *the* services are performed *in order* that the entire service of ~~such~~ *the* individual is considered to he employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter ~~unless and~~ until it is shown to the satisfaction of the department that the individual is an independent contracter.

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including ~~without limitations~~ those individuals who work for the state of Montana, its universities, ~~any of its colleges,~~ public schools, components or units ~~thereof~~ *of universities or public schools*, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United Statos, except in Canada, in the employ of an American employer, other than service ~~which~~ *that* is considered employment under the provisions of subsection (2) ~~of this section~~ or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this stato;

(B) the employer is a corporation ~~which~~ *that* is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of ~~sections~~ *subsections* (7)(a)(i) and (7)(a)(ii) ~~of this subsection~~ are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on ~~such~~ *the* service under the law of this state.

(b) An "American employer", for purposes of this subsection *(7)*, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United Statos;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state."

Section 4. Section 39-51-204, MCA, is amended to read:

"**39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law may not be entitled to exemption under this subsection and are subject to this chapter the same as state banks, provided that the service is excluded from employment as defined in *section 3306(c)(7) of* the Federal Unemployment Tax Act ~~by section 3306(c)(7) of that act~~;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department shall enter into agreements with the proper agencies under an act of congress, which agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential

rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, ~~college,~~ or university if the service is performed by a student who is enrolled and is regularly attending classes at a school, ~~college,~~ or university or by the spouse of a student if the spouse is advised, at the time *that* the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, ~~college,~~ or university and *that* the employment will not be covered hy any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if the service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon as defined in 37-31-101 or a harbershop as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for services from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or harber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in tho event of contract termination (the existence of a single license for the cosmetology salon or barbershop may not he construed as a lack of freedom from control or direction under this suhsection);

(m) casual lahor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed hy an individual who is regularly employed by the employer to perform the service. "Regularly employed" means *that* the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors ~~or~~, working members of a partnership, *or members of a member-managed limited liability company that has filed with the secretary of state*;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard er by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states *that* the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by ~~a duly~~ *an* ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or hy a member of a religious order in the exercise of duties required hy the order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired hy age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot he readily absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part hy a federal agency or any agency of a state or political subdivision of the state hy an individual receiving work relief or work training; or

(e) for a state prison or other state correctional or custodial institution hy an inmate of that institution.

(4) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(5) This section does not apply to a state or local governmental entity or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment as defined in the Federal Unemployment Tax Act."

Section 5. Section 39-51-603, MCA, is amended to read:

"**39-51-603. Employing unit to keep records and make reports.** (1) Each employing unit shall keep true and accurate work records containing ~~such~~ *the* information ~~as~~ *that* the department may prescribe. Those records ~~shall~~ *must* be open to inspection and audit and ~~shall be subject to being~~ *may be* copied by the department or its authorized representative at any reasonable time and as often as may be necessary. *An employing unit that maintains its records outside Montana shall furnish a copy of those records to the department at the employing unit's expense or shall pay the department for the costs associated with conducting the audit outside Montana.*

(2) The department and the ~~chairman~~ *presiding officer* of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it ~~which~~ *that* the department considers necessary ~~to~~ *for* the effective administration of this chapter.

(3) Information ~~thus obtained or~~ obtained from any individual under this chapter ~~shall~~ *must*, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and ~~shall~~ *may* not be published or he open to puhlic inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, hut any claimant or ~~his~~ *the claimant's* legal representative at a hearing before the hoard or appeal trihunal ~~shall~~ *must* be supplied with information from the records to the extent necessary for the proper presentation of ~~his~~ *the* claim.

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(4) Any employee or member of the department who violates any provision of this section shall be fined not less than $20 or more than $200 or *shall be* imprisoned for not longer than 90 days, or both."

Section 6. Section 39-51-1105, MCA, is amended to read:

"**39-51-1105. Liability of corporate officers, *managers, or members of limited liability company* for taxes, penalties, and interest owed by corporation *or company*.** *(1)* When a corporation subject to Montana corporate law *or a limited liability company* ~~has failed~~ *fails* to file the annual corporation *or company* report with the Montana secretary of state as required by law, the department shall hold the president, ~~vice-president~~ *vice president*, secretary, and treasurer *or the managers of a manager-managed limited liability company* jointly and severally liable for any taxes, penalties, and interest due for the period in which the corporation *or company* is delinquent in filing the annual corporation *or company* report. If the required annual corporation *or company* report is made and filed after the time specified, ~~such~~ *the* officers *or managers* may not, on account of prior failure to make report, be held liable for the taxes, penalties, and interest ~~thereafter~~ accruing *after making the report.*

(2) For determining liability for taxes, penalties, and interest owed, a member-managed limited liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending to each member."

Section 7. Section 39-51-1109, MCA, is amended to read:

"**39-51-1109. Tax appeals — *procedure*.** A decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, employment status, or the charging of benefit payments to employers making payment in lieu of contributions is final unless an interested party entitled to ~~notice thereof applies for an appeal to an appeals referee~~ *notification submits a written appeal of the decision, determination, or redetermination*. The appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to ~~hearings in~~ *a hearing on* the appeal. *A hearing may be conducted by telephone or by videoconference.* The decision of the appeals referee and any *subsequent* appeal ~~therefrom~~ must be made in the same manner as prescribed in 39-51-2403 through 39-51-2410."

Section 8. Section 39-51-1301, MCA, is amended to read:

"**39-51-1301. Penalty and interest on past-due taxes.** (1) Taxes unpaid on the date on which they are due and payable, as provided by ~~subsections (1) and (2) of~~ 39-51-1103 *(1) and (2)* and 39-51-1125, that are paid by the end of the month following the due date ~~shall be~~ *are* subject to a penalty assessment of $10 or 10% of the taxes due, whichever is greater. If the taxes are not paid by the end of the month following the due date, the employer ~~shall be~~ *is* subject to a penalty assessment of $15 or 15% of the taxes due, whichever is greater. All past-due taxes shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

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(2) A penalty of $40 ~~shall~~ *must* be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay taxes on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) There is an account in the federal special revenue fund. Penalties and interest collected under this section must be deposited in that account. Money deposited in that account and appropriated to the department may only he used by the department to administer this chapter, ~~to fund apprenticeship instruction programs pursuant to 39-6-103, and to detect~~ *including the detection* and ~~collect~~ *collection of* unpaid taxes and overpayments of benefits to the extont that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each ~~biennium~~ *fiscal year*.

(4) When failure to pay taxes on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 9. Section 39-51-1303, MCA, is amended to read:

"**39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer, *liable corporate officer, or liable member or manager of a limited liability company referred to in 39-51-1105* defaults in any payment of taxes, penalties, or interest ~~thereon~~, the department may ~~at its discretion~~ initiate a civil action in the name of the ~~Montana~~ department ~~of labor and industry~~ to collect the amount due~~,~~ and the employer, *liable corporate officer, or liable member or manager of a limited liability company referred to in 39-51-1105* adjudged in default shall pay the costs of ~~such~~ *the* action.

(2) An action for the collection of taxes due must be brought within 5 years after the due date of ~~such~~ *the* taxes or it is barred.

(3) The department may pursue its remedy under either ~~this section or~~ 39-51-1304 *or this section*, or both."

Section 10. Section 39-51-1304, MCA, is amended to read:

"**39-51-1304. Lien for payment of unpaid taxes — levy and execution.** (1) Unpaid taxes, including penalties and interest assessed ~~thereon~~ *on unpaid taxes*, have the effect of a judgment against the employer, *liable corporate officer, or liable member or manager of a limited liability company referred to in 39-51-1105,* arising at the time ~~such~~ *that the* payments are due. The department may issue a certificate ~~setting forth~~ *stating* the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time *that* the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment

pursuant to Title 25, chapter 13, except that the department may enforce the judgment at any time within 10 years of the creation of the lien.

(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against wbich the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer, *liable corporate officer, or liable member or manager of a limited liability company referred to in 39-51-1105* under ~~this section or~~ 39-51-1303 *or this section*, or both, to collect the delinquent taxes, penalties, and interest.

(4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitato the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

Section 11. Section 39-51-2104, MCA, is amended to read:

"**39-51-2104. General benefit eligibility conditions.** *(1)* An unemployed individual is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:

~~(1)~~*(a)* has filed a claim at and has continued to report at an employment office in accordance with rules as *that* the department may prescribe, except that the department may by rule prescribe that in cases in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies;

~~(2)~~*(b)* is able to work, is available for work, and is seeking work. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is ~~due to~~ *because of*:

~~(a)~~*(i)* an illness or disability that occurs after the claimant has registered for work and suitable work has not been offered to the claimant after the beginning of the illness or disability; or

~~(b)~~*(ii)* enrollment as a student as provided in 39-51-2307.

~~(3)~~*(c)* prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not countod as a week of total unemployment for the purposes of this subsection:

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~~(a)~~*(i)* if benefits have heen paid for that week;

~~(b)~~*(ii)* unless the individual was eligible for benefits during the week;

~~(c)~~*(iii)* unless it occurs within the benefit year of the claimant;

~~(d)~~*(iv)* unless it occurs after benefits first could become payable to any individual under this chapter.

(2) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.

(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection (2)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.

(c) The requirement for participation in reemploymcnt services may be waived if the department determines that:

(i) the individual has completed reemployment services; or

(ii) the individual's failure to participate in reemployment services is justifiable."

Section 12. Section 39-51-2203, MCA, is amended to read:

"39-51-2203. **Reduction of benefits because of amounts received from certain other sources.** (1) An individual's weekly benefit amount must be reduced (but not below zero) by the amount that the individual is receiving in the form of a governmental or other pension, retirement pay, annuity, or other similar periodic payment that is based on the previous work of the individual and that is reasonably attributable to the week if:

(a) the payment is made under a plan maintained or contributed to by a base-period or chargeable employer; and

(b) except in the case of payments made under the Social Security Act or the Railroad Retirement Act, the services performed for the employer by the individual after the beginning of the base period or the remuneration for services affect eligibility for or the amount of the pension, retirement pay, annuity, or other similar payment.

(2) The reduction required by subsection (1) does not apply in those instances in which the governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a fund to which the individual was required to make a direct contribution. ~~A pension plan negotiated under a collective bargaining agreement is considered a direct employee contribution under this section.~~"

Section 13. Section 39-51-2307, MCA, is amended to read:

"39-51-2307. **Disqualification because of student status.** (1) Except as provided in subsection (2) or (3), an individual is disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within the school year or during any prescribed school term

if the individual is a student regularly attending an established educational institution.

(2) An individual attending an adult basic education class 20 hours a week or less while laid off from a job is not disqualified from receiving benefits if the individual is willing to return to work when notified.

(3) An otherwise eligible individual may not be denied benefits for any week because the individual is in training approved by the department, nor may the individual be denied benefits with respect to any week in which the individual is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104~~(2)~~*(1)(b)*."

Section 14. Section 39-51-2403, MCA, is amended to read:

"**39-51-2403. ~~Decision~~ *Hearing — decision* of appeals referee.** *Upon appeal of a determination or redetermination under 39-51-2402, an appeals refcree shall hold a hearing, which may be conducted by telephone or by videoconference.* After a *the* hearing, an *the* appeals referee shall *promptly* make findings and conclusions ~~promptly~~ and ~~on the basis thereof~~ affirm, modify, or reverse the deputy's determination or redetermination. Each interested party ~~shall~~ *must* be *promptly* furnished ~~promptly~~ a copy of the decision and the supporting findings and conclusions. This decision ~~shall be~~ *is* final unless further review is initiated pursuant to 39-51-2404 within 10 days after ~~such~~ notification was mailed to the interested party's last-known address~~, provided that such~~. *The 10-day* period may be extended for good cause."

Section 15. Section 39-51-2404, MCA, is amended to read:

"**39-51-2404. Appeal to board *procedure*.** ~~Any~~ *An* interested party *who is* dissatisfied with a decision of an appeals referee ~~is entitled to~~ *may* appeal to the board. The department ~~will~~ *shall* promptly transmit all records pertinent to the appeal to the board. *The appeal hearing may be conducted by telephone or by videoconference.* When a decision is rendered by the board ~~with~~ *and* copies of ~~such~~ *the* decision *are mailed* to all interested parties, including the department, that decision ~~shall become~~ *is* final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of mailing of the board's decision to ~~his~~ *the party's* last-known address."

Section 16. Section 39-51-2407, MCA, is amended to read:

"**39-51-2407. Procedure for disputed claims to be prescribed by regulation — *conduct of hearing or appeal.*** *(1)* The manner in which disputed claims ~~shall~~ *must* be presented, the reports ~~thereon~~ *on disputed claims* required from the claimant and from employers, and the conduct of hearings and appeals ~~shall~~ *must* be in accordance with regulations prescribed by the department or the board for determining the rights of the parties, whether or not ~~such~~ *the* regulations conform to common law or statutory rules of evidence and other technical rules or procedure.

(2) A hearing or appeal may be conductcd by telephone or by videoconference."

Section 17. Access to governmental records. Upon request by the department, a state or local government agency, including the units of the

university system, or a state or local government official or employee shall cooperate hy supplying the department with information that would aid in the administration of this chapter. The department may use the information only for administration of this chapter. Any confidential information provided to the department remains confidential and may not be published or open te puhlic inspection unless specifically required in the performance of the employee's duties.

Section 18. Codification instruction. [Section 17] is intended to be codified as an integral part of Title 39, chapter 51, part 5, and the provisions of Title 39, chapter 51, apply te [section 17].

Section 19. Applicability. [This act] applies to hearings or appeals requested on or after [the effective date of sections 2 through 10 and 12 through 19].

Section 20. Effective dates. (1) [Section 1] is effective January 1, 1996.

(2) [Sections 2 through 10 and 12 through 19, 21, and this section] are effective on passage and approval.

(3) [Section 11] is effective October 1, 1995.

Section 21. Contingent termination. If 26 U.S.C. 3304 is amended to no longer require that election judges receive unemployment insurance coverage, then [section 1 of this act] terminates on the date on which the U.S.C. amendment is effective.

Approved March 23, 1995

CHAPTER NO. 196

[HB 135]

AN ACT REQUIRING THE ATTORNEY GENERAL TO REPRESENT THE STATE IN BANKRUPTCY PROCEEDINGS IN WHICH THE STATE'S INTEREST MAY BE AFFECTED; AMENDING SECTION 2-15-501, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-501, MCA, is amended to read:

"2-15-501. General duties. It is the duty of the atterney general:

(1) to prosecute or defend all causes in the supreme court in which the state or any officer of the state in ~~his~~ *the officer's* official capacity is a party or in which the state has an interest;

(2) to represent the state in all bankruptcy proceedings in which the state's interest may be affected;

~~(2)~~*(3)* after judgment in any of the causes referred to in ~~subsection~~ *subsections* (1) *and (2)*, te direct the issuing of a process as may be necessary to carry the judgment into execution;

~~(3)~~*(4)* to keep a register of all cases prosecuted or defended by ~~him~~ *the attorney general*~~, which~~. *The register* must ~~during business hours~~ be open to the inspection of the public *during business hours*. The attorney general ~~must~~ *shall* deliver the register to ~~his~~ *the attorney general's* successor in office.

~~(4)~~*(5)* to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

~~(5)~~*(6)* when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of ~~his~~ *the county attorney's* duties or to prosecuto or defend appropriate cases in which the state or any officer of the state in ~~his~~ *the officer's* official capacity is a party or in which the state has an interest;

~~(6)~~*(7)* to give ~~his~~ *an* opinion in writing, without fee, to the legislature or either house of the legislature, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, ~~and~~ *or* to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. ~~He~~ *The attorney general* shall give ~~any such~~ *the* opinion within 3 months following the date *that* it is requested unless ~~he~~ *the attorney general* certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion is controlling unless overruled by a state district court or the supreme court.

~~(7)~~*(8)* to discharge the duties of a member of the board of examiners and state board of land commissioners;

~~(5)~~*(9)* to perform all other duties as required by law."

Section 2. Effective date. [This act] is effective July 1, 1995.

Section 3. Coordination instruction. [This act] is void if House Bill No. 2 is not passed and approved with a line item or other specific appropriation to implement [section 1].

Section 4. Termination. [This act] terminates June 30, 1997.

Approved March 23, 1995

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CHAPTER NO. 197

[HB 137]

AN ACT GENERALLY REVISING WATER LAWS; PROVIDING FOR NOTICE OF AVAILABILITY OF DECREES TO BE SENT TO THE SUCCESSORS OF THE ORIGINAL OWNERS OF WATER RIGHTS; AMENDING SECTION 85-2-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-232, MCA, is amended to read:

"**85-2-232. Availability of temporary preliminary or preliminary decree.** (1) *(a)* The water judge shall send to the department a copy of ~~any~~ *a* temporary preliminary decree or preliminary decree issued for a basin~~, and the~~.

(b) The water judge shall serve by mail **a** notice of availability of the temporary preliminary decree or preliminary decree to each person who has filed a claim of existing right within the decreed basin *or to that person's successor as documented in the department's records.* ~~and~~

(c) The water judge shall also serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to the purchaser under contract for deed, as defined in 70-20-115, of property in connection with which a claim of existing right has been filed within the decreed basin. ~~or, in~~

(d) In the Powder River basin, *the water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree* to each person *or to that person's successor as documented in the department's records,* who has filed a declaration of an existing right.

(e) The water judge shall enclose with ~~the~~ *a* notice *required under subsections (1)(b) through (1)(d)* an abstract of the disposition of ~~such person's~~ *the* claimed or declared existing right *of a person identified in this section or that person's successor as documented in the department's records.*

(f) The notice of availability *required under this section* ~~shall~~ *must* also be served upon*:*

(i) those issued or having applied for and not having been denied a permit to beneficially use water within the decreed basin pursuant to Title 85, chapter 2, part 3~~;~~*;*

(ii) those granted a reservation within the decreed basin pursuant to 85-2-316~~;~~*;* or

(iii) other interested persons who request service of the notice from the water judge.

(2) The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the temporary preliminary decree or preliminary

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decree. ~~Such~~ *The* certificate ~~shall be~~ *is* conclusive evidence of ~~due and~~ legal notice of entry of decree.

~~(2)~~*(3)* Notice of the availability of a preliminary decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation ~~which~~ *that* cover the water division or divisions in which the decreed basin is located. This notice must be provided before the final decree for the basin is issued.

~~(3)~~*(4)* ~~Any~~ *A* person may obtain a copy of the temporary preliminary decree or preliminary decree upon payment of a fee of $20 or the cost of printing, whichever is greater, to the water judge."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 1995

CHAPTER NO. 198

[HB 169]

AN ACT PERMITTING DISPENSING OF DANGEROUS DRUGS UPON A PRESCRIPTION OF A PHYSICIAN OR DENTIST LICENSED TO PRACTICE IN ANOTHER STATE; AMENDING SECTION 50-32-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-32-101, MCA, is amended to read:

"50-32-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or ~~any~~ other means, to the body of a patient or research subject by:

(a) a practitioner ~~(or by his~~ *the practitioner's* authorized agent~~)~~; or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. ~~It~~ *The term* does not include a common or contract carrier, public ~~warehouseman~~ *warehouse operator*, or employee of the carrier or ~~warehouseman~~ *warehouse operator*.

(3) "Board" means the board of pharmacy provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United Statos department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug ~~which~~ *that* or the container or labeling of ~~which~~ *a dangerous drug* without authorization *that* bears the trademark, trade name, or other identifying mark, imprint, number,

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or device or ~~any~~ *a* likeness ~~thereof~~ *of an identifying mark, imprint, number, or device* of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V ~~hereinafter~~ set forth *in part 2*.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ *humans* or animals;

(iii) a substance ~~(~~other than food~~)~~, intended to affect the structure or ~~any~~ *a* function of the body of ~~man~~ *humans* or animals; and

(iv) a substance intended for use as a component of ~~any~~ *an* article specified in *subsection (13)*(a)(i), *(13)*(a)(ii), or *(13)*(a)(iii) ~~of this subsection~~

(b) ~~"Drug"~~ *Drug* does not include a device or its components, parts, or accessories.

(14) "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(15) "Immediate precursor" means a substance ~~which~~ *that* the board finds and by rule designates as being the principal compound commonly used or produced primarily for use and ~~which~~ *that* is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to provent, curtail, or limit manufacture.

(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from suhstances of natural origin, independently by means of chemical synthesis, or by a comhination of extraction and chemical

synthesis and includes ~~any~~ *the* packaging or repackaging of the drug or labeling or relabeling of its container.

(b) ~~"Manufacture"~~ *Manufacture* does not include the preparation or compounding of a dangerous drug by an individual for ~~his own~~ *personal* use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to ~~his~~ *the* administering or dispensing of a dangerous drug in the course of ~~his~~ *a* professional practice; or

(ii) by a practitioner or ~~his~~ *the practitioner's* authorized agent under ~~his~~ *the practitioner's* supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(17) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and ~~any~~ *a* salt, compound, derivative, or preparation of opium or opiate;

(b) ~~any~~ *a* salt, compound, isomer, derivative, or preparation ~~thereof which~~ *of a salt, compound, isomer, or derivative that* is chemically equivalent or identical with any of the drugs referred to in *subsection* (18)(a) ~~of this section~~, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and ~~any~~ *a* salt, compound, derivative, or preparation of coca leaves and ~~any~~ *a* salt, compound, isomer, derivative, or preparation ~~thereof which~~ *of a salt, compound, isomer, or derivative that* is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves ~~which~~ *that* do not contain cocaine or ecgonine.

(19) "Opiate" means ~~any~~ *a* drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. ~~It~~ *The term* does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). ~~It~~ *The term* does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum l., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

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(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; ~~and~~

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state*; and*

(c) a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state.

(24) ~~The term "prescription"~~ *"Prescription"* ~~is given~~ *has* the meaning *that* it has in 37-7-101.

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes ~~any~~ *a* state, district, commonwealth, territory, insular possession ~~thereof~~ *of the United States*, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for ~~his own~~ *personal* use or for the use of a member of ~~his~~ *the person's* household or for administering to an animal owned by ~~him~~ *the person* or by a member of ~~his~~ *the person's* household."

Section 2. Applicability. [This act] applies to prescriptions written on and after October 1, 1995.

Approved March 23, 1995

CHAPTER NO. 199

[HB 185]

AN ACT REVISING THE LAW REQUIRING A FIXED ALLOTMENT OF COUNTY LAND PLANNING FUNDS; AND AMENDING SECTION 90-1-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-108, MCA, is amended to read:

"90-1-108. County land planning assistance. (1) The department of commerce shall annually distribute the funds appropriated to it from the county land planning account. Each county ~~shall~~ *must* be allotted *an equal percentage of the funds, up to* $3,000. After this disbursement has been made, 40% of the balance in the account ~~shall~~ *must* be apportioned to the counties according to the ratio of each county's land area to the total land area of the state and 60%

of the balance ~~shall~~ *must* be apportioned to the counties according to each county's portion of the tetal population of the state. If a multijurisdictional planning board has been established in the county, it may receive and expend part or all of the funds allocated to that county.

(2) Counties, cities, or joint planning boards receiving funds under this section shall use ~~such~~ *the* funds for land planning purposes, which include but are not limited to comprehensive planning, economic development planning, and capital improvements planning.

(3) At the end of each fiscal year, ~~every~~ *each* local governing body and planning agency receiving funds under this section shall provide an accounting of how the money was spent, in a form acceptable to the department of commerce. Surplus funds may be accumulated and rebudgeted for the purposes stated in subsection (2), except that funds rebudgeted by a local governing body or planning agency may not exceed the total revenue received under subsection (1) in the year immediately prior to tbe budget year. Any excess funds ~~shall~~ revert to the state special revenue fund for state equalization aid to public schools of the state at the end of each odd-numbered fiscal year~~, beginning in June 1991~~."

Approved March 23, 1995

CHAPTER NO. 200

[HB 245]

AN ACT GENERALLY REVISING THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PROVIDE CHILD-CARE ASSISTANCE TO CERTAIN LOW-INCOME FAMILIES WHO ARE NOT CURRENTLY RECEIVING AID TO FAMILIES WITH DEPENDENT CHILDREN AND WHO NEED CHILD CARE IN ORDER TO WORK; REPEALING PROVISIONS RELATING TO A DEMONSTRATION PROGRAM AND SPECIAL GUARDIANSHIPS; AMENDING SECTION 53-4-707, MCA; AND REPEALING SECTIONS 53-4-203 AND 53-4-243, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. At-risk child-care assistance. The department may, as provided by rule, provide child-care assistance to low-income families who are not currently receiving assistance under the aid to families with dependent children program, who need child care in order to work, and who would be at risk of becoming eligible for the aid to families with dependent children program without child-care assistance, in accordance with section 402(i) of the Social Security Act (42 U.S.C. 602(i)). Child-care assistance may not be provided to families with incomes that exceed 133% of the federal poverty threshold.

Section 2. Section 53-4-707, MCA, is amended to read:

"**53-4-707. Exemptions.** (1) ~~An individual may not be required to participate~~ *Recipients of aid to families with dependent children are exempt from participation* in the JOBS program ~~if the individual:~~ *as provided by department rule.*

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(2) The department shall establish by rule categories of individuals who are exempt from participation in the JOBS program in accordance with the requirements of section 201 of the Family Support Act of 1988, 42 U.S.C. 602(a)(19)(C)(i) through (a)(19)(C)(vii). In establishing exemptions, the department shall take into consideration whether the individual:

(a) is ill, incapacitated, or of advanced age;

(b) is needed in the home because of the illness or incapacity of another member of the household;

(c) is the parent or other relative who is personally providing care for a child ~~under 3 years of age, except as otherwise provided in administrative rules adopted by the department~~ *of a very young age*;

(d) is employed ~~for 30 or more hours a week~~;

(e) is a child who is under the age of 16 or attends an elementary, secondary, or vocational school on a full-time basis;

(f) is pregnant ~~and it has been medically verified that the child is expected to be born in the month in which participation in the program would otherwise be required. Such individual may not be required to participate in the program within the 6 month period immediately following that month.~~;

(g) resides in an area of the state where the program is not available; or

(h) is for any other reason exempt from participating in the program pursuant to state or federal regulations.

~~(2)~~*(3)* If a family is eligible for aid to families with dependent children because of the unemployment of the parent who is the principal wage earner, ~~subsection (1)(c) applies to~~ only one parent *may be exempted to provide care for a very young child.*"

Section 3. Repealer. Sections 53-4-203 and 53-4-243, MCA, are repealed.

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 4, and the provisions of Title 53, chapter 4, apply to [section 1].

Approved March 23, 1995

CHAPTER NO. 201

[HB 253]

AN ACT ALLOWING A COURT TO ORDER THE PARTIES IN A PROCEEDING FOR DISSOLUTION OF MARRIAGE INVOLVING MINOR CHILDREN TO ATTEND AN EDUCATIONAL PROGRAM CONCERNING THE EFFECTS OF DISSOLUTION OF MARRIAGE ON CHILDREN.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Court-ordered educational program on effects of dissolution of marriage on children. (1) In a proceeding for dissolution of marriage involving a minor child or in a custody modification proceeding involving a minor child, a court shall inform the parties, excluding the minor child, of available educational programs concerning the effects of dissolution of marriage on children and, if the court finds that it would be in the best interest of the minor child, may order the parties to attend a program. The program may be divided into sessions. The program must be educational in nature and may not be designed for individual therapy.

(2) Any facts presented at an educational session resulting from a referral under this section may not be considered in a dissolution of a marriage or a custody modification proceeding, nor may a report resulting from an educational session become part of the record of the dissolution or proceeding unless the parties have stipulated in writing to the contrary.

(3) The fees or costs of an educational session under this section must be borne by the parties and may be assessed by the court in an equitable manner.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, part 2, apply to [section 1].

Approved March 23, 1995

CHAPTER NO. 202

[HB 318]

AN ACT ALLOWING AN ORGANIZATION THAT TRANSPORTS PERSONS WITH A DISABILITY TO APPLY FOR SPECIAL PARKING PERMITS; AND AMENDING SECTION 49-4-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-301, MCA, is amended to read:

"49-4-301. Who eligible for special parking permit. (1) The department of justice shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical disability that impairs mobility when not in a motor vehicle;

(b) regardless of whether the person holds a driver's license or owns a motor vehicle, has a permanent physical disability that impairs driving ability and impairs mobility when not in a motor vehicle to such an extent that the person needs to be driven by another person to a destination; or

(c) has a temporary physical disability that impairs driving ability or mobility when not in a motor vehicle to such an extent that the person needs to be driven by another person to a destination.

(2) *The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability.*

The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(3) ~~An~~ *Except as provided in subsection (2), an* applicant may not receive more than one permit."

Approved March 23, 1995

CHAPTER NO. 203

[HB 319]

AN ACT PROVIDING THAT ABSENTEE BALLOTS MAY BE PICKED UP IN PERSON; PROVIDING THAT AN ELECTOR MAY DESIGNATE ANOTHER PERSON TO PICK UP AN ABSENTEE BALLOT ON BEHALF OF THE ELECTOR; PROVIDING THAT A DESIGNATED PERSON MAY PICK UP A BALLOT FOR ONLY FOUR OTHER ELECTORS; AND AMENDING SECTIONS 13-13-213 AND 13-13-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) Except as provided in subsection (2), the elector shall forward the application by mail or deliver it in person to the election administrator. The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, ~~he~~ *the election administrator* shall deliver the ballot *to the elector in person or as otherwise provided in 13-13-214.*

(2) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(3) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector."

Section 2. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing ballot to elector. (1) *(a)* ~~As~~ *Except as provided in 13-13-213 and in subsection (1)(b) of this section, as* soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom ~~he~~ *the election administrator* has received a valid application whatever official ballots are necessary. Ballots ~~shall~~ *must* be sent immediately to electors submitting valid requests after the official ballots are printed.

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(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the hallots a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state ~~shall~~ *must* be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots ~~sent~~ *provided* to an absentee elector as provided in 13-13-116.

(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope ~~shall~~ *must* have printed across the face ~~such~~ *the* information and graphics and be of ~~such~~ *a* color as may be prescribed by the secretary of state consistent with the regulations established by the federal election commission, U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrater shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numhered or marked in any way so it can be identified as being used by any one elector.

(6) Instructions for voting ~~shall~~ *must* be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments which may be used to mark the absentee ballot.

(7) The return envelope ~~shall~~ *must* be self-addressed to the election administrator."

Approved March 23, 1995

CHAPTER NO. 204

[HB 381]

AN ACT AMENDING PERMITTING AND ENFORCEMENT PROCEDURES FOR THE METAL MINE RECLAMATION LAWS; AUTHORIZING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES; ALLOWING THE PERMIT REVIEW PERIOD TO BE INCREASED FOR CERTAIN OPERATIONS; AMENDING SECTIONS 82-4-304, 82-4-337, 82-4-341, 82-4-361, AND 82-4-362, MCA; AND PROVIDING EFFECTIVE DATES.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-304, MCA, is amended to read:

"**82-4-304. Exemption — works performed prior to promulgation of rules.** ~~No provision of this~~ *This* part ~~shall be~~ *is not* applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321 relating to exploration and mining. ~~No provision of this~~ *This* part is *not* applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at ~~such~~ a mill *that does not use cyanide ore-processing reagent and* that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules."

Section 2. Section 82-4-337, MCA, is amended to read:

"**82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision.** (1) (a) The board shall ~~cause~~ *review* all applications for operating permits ~~to be reviewed~~ for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond ~~which~~ *that* will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(6).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible ~~due to~~ *because of* extended adverse weather conditions, the department may extend the time

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period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) *If the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.*

(iii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. *The applicant may by written waiver extend this time period.*

~~(iii)~~*(iv)* If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

~~(iv)~~*(v)* Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so *that* they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(5) Applications for major amendments must be processed in the same manner as applications for new permits.

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(6) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The department may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(7) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for minor amendments and other revisions must be processed within 30 days of receipt of an application."

Section 3. Section 82-4-341, MCA, is amended to read:

"**82-4-341. Compliance ~~with reclamation plan~~ — reclamation by board.** (1) ~~Following receipt of the permittee's report and at any other reasonable time the board may elect, the~~ *The* board shall cause the permit area to be inspected *at least annually* to determine ~~if~~ *whether* the permittee has complied with ~~the reclamation plan and the board's~~ *this part, the* rules *adopted under this part, or the permit.*

(2) The permittee shall proceed with reclamation as scheduled in ~~his~~ *the* approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected~~, provided that deficiencies~~ *Deficiencies* that also violate other laws that require earlier rectification ~~shall~~ *must* be corrected in accordance with the applicable time provisions of ~~such~~ *those* laws. The board may extend performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the board, reclamation of a unit of disturbed land area is properly completed, the permittee ~~shall~~ *must* be notified in writing and ~~his~~ *the* bond on ~~said~~ *the* area ~~shall~~ *must* be released or decreased proportionately to the acreage included within the bond coverage.

(4) ~~If~~ *The board shall cause the bond to be forfeited if:*

(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the board; ~~or~~

(b) ~~if~~ reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or ~~such~~ *within a* longer period ~~as~~ *that* may have been authorized ~~hereunder~~ *under this part;* or ~~if;~~

(c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required ~~therefor, the board may, with the staff, equipment, and material under its control or by contract with others, take such actions as are necessary for required reclamation~~

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~~of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.~~

(5) The board shall notify the permittee and ~~his~~ *the* surety by order. ~~The order shall state the amount of neces~~ ~~ary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety.~~ If the ~~amount specified in the order~~ *bond* is not paid within 30 days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court.

(6) The board may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety ~~shall be~~ *is* liable to the state to the extent of the bond. The permittoe ~~shall be~~ *is* liable for the remainder of the cost. *Upon completion of the reclamation, the board shall return any amount not expended.*

~~(6)~~*(7)* In addition to the other liabilities imposed by this part, failure to commence *an* action to remedy specific deficiencies in reclamation within 30 days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years~~,~~ or ~~such~~ *within a* longer period ~~as~~ *that* the board may permit on *the* permittee's application ~~therefor~~ or on the board's own motion, after completion or abandonment of operations on any segment of the permit area, ~~shall constitute~~ *constitutes* sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant~~;~~. ~~provided, however, that such~~ *A cancellation* action ~~shall~~ *may* not he effected while an appeal is pending from any ruling requiring the ~~same~~ *cancellation of a permit or license.*"

Section 4. Section ~~82~~-4-361, MCA, is amended to read:

"**82-4-361. Violation — penalties — waiver.** (1) ~~A person who violates any of the provisions of this part, the rules or orders adopted under this part (except 82-4-339), the provisions of any license or permit, or the conditions of a small miner exemption shall pay a civil penalty of not less than $100 or more than $1,000 for the violations and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.~~ *(a) Except as provided in subsections (1)(b) and (2), a civil penalty of not less than $100 or more than $1,000 for each of the following violations, an additional civil penalty of not less than $100 or more than $1,000 for each day during which the violation continues, and an injunction from continuing the violation may be imposed against:*

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(i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is $5,000 for each day of violation.

(2) (a) The ~~attorney general shall, upon the request of the~~ department~~, sue for the recovery of the penalties provided for in this section and~~ may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

~~(3)~~*(b)* The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after notice of the violation. The person or operator, by filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and issue a written decision as to the occurrence of the violation and whether the amount of penalty is warranted. The board shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department."

Section 5. Section 82-4-362, MCA, is amended to read:

"82-4-362. Suspension of permits — hearing. (1) If any of the requirements of this part, *of* the rules adopted under this part, or *of* a license~~,~~ *or* permit~~, or reclamation plan~~ has not been complied witb, the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the commissioner shall order the suspension of the permit. *The permit may be suspended for failure to comply with an order to pay a civil penalty if the order is not subject to administrative or judicial review.* The commissioner may order immediate suspension of a permit whenever the commissioner makes a finding that a violation of this part, *of* the rules adopted under this part, or *of* a license or permit~~, including the reclamation plan,~~ is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served by certified mail addressed to the permanent address shown on the application for a license or

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permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, *or* the permit~~, or the reclamation plan~~ and must, if the violation has not been abated, order abatement within a specified time period.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set in the notice or order, the permit may be revoked by order of the board and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance."

Section 6. Effective dates. (1) [Section 1] and this section are effective on passage and approval.

(2) [Sections 2 through 5] are effective October 1, 1995.

Approved March 23, 1995

CHAPTER NO. 205

[HB 474]

AN ACT PROVIDING FOR JUVENILE PROBATION OFFICER TRAINING; AND AMENDING SECTION 41-5-702, MCA.

STATEMENT OF INTENT

Rules adopted under [section 1] should establish standards, procedures, and subject and content requirements for training programs and courses. The rules should also establish attendance, examination, and certification requirements.

Be it enacted by the Legislature of the State of Montana:

Section 1. Juvenile probation officer training. (1) The department of justice may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers. A 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers may be offered hy another public agency or by a private entity if the program or course is approved by the board of crime control. If funding is available, the department shall conduct a 40-hour basic training program once a year.

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(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the board.

(3) A juvenile probation officer is entitled to the officer's salary while attending a program or training course and must be paid, by the district court, expenses as provided in 2-18-501. The court shall also pay any program or course registration fee.

(4) The board may adopt rules to implement this section.

Section 2. Section 41-5-702, MCA, is amended to read:

"41-5-702. Qualifications of probation officers. (1) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences and at least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in 41-5-703; or

(c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties of a probation officer as set forth in 41-5-703.

(2) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer, provided preference ~~shall~~ *must* be given to persons with the qualifications set forth in subsection (1).

(3) Each person appointed as a chief probation officer or probation officer under this section or as a deputy probation officer under 41-5-705 must~~, through a source approved by his employer,~~ obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers *in a program or course conducted by the department of justice or approved by the board of crime control under [section 1].*"

Approved March 23, 1995

CHAPTER NO. 206

[HB 520]

AN ACT GENERALLY REVISING THE LAWS RELATING TO LIVESTOCK BY CLASSIFYING OSTRICHES, RHEAS, AND EMUS AS LIVESTOCK; AMENDING SECTIONS 15-1-101, 15-24-921, 20-25-234, 23-2-633, 27-1-222, 39-3-402, 67-1-204, 81-2-702, 81-4-201, 81-5-104, 81-6-302, 81-7-401, AND 87-3-130, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"15-1-101. **Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means ~~any~~ property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) "Department" means the department of revenue provided for in 2-15-1301.

(h) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

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(i) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term "leasehold improvements" means improvements te mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasebold improvements.

(k) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, *ostriches, rheas, emus,* and domestic ungulates.

(l) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(m) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(n) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(o) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed te authorize the taxation of the stocks of ~~any~~ *a* company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(p) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining to the mines, minerals, quarries, and timber.

(q) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

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(r) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, *or* drainage district~~,~~ or ~~any~~ *a* person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board."

Section 2. Section 15-24-921, MCA, is amended to read:

"**15-24-921. Per capita tax levy to pay expenses of enforcing livestock laws.** (1) In addition to appropriations made for those purposes, a per capita tax is authorized and directed to be levied by the department on all poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as provided in 81-7-104.

(2) As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, *ostriches, rheas, and emus,* and domestic ungulates."

Section 3. Section 20-25-234, MCA, is amended to read:

"**20-25-234. Purpose.** The purpose of 20-25-233 through 20-25-236 is to promote more research and education on sustainable agricultural practices, such as crop rotations, green manuring, integrated pest management, and maintenance of livestock health and quality with reduced use of growth hormones and antibiotics. Sections 20-25-233 through 20-25-236 are intended te foster economically and ecologically beneficial means of soil improvement, pest management, irrigation, cultivation, harvesting, animal husbandry, transportation, and marketing for Montana agriculture, based on methods designed to accomplish the following:

(1) control pests and diseases of agricultural importance through management practices and alternatives that reduce or eliminate dependence on pesticides and petrochemicals;

(2) improve soil fertility and tilth through the use of practices that reduce dependence on synthetically compounded petrochemical-based fertilizers;

(3) produce, process, and distribute food and fiber in ways that consider the interactions among soil, plants, water, air, animals, tillage, machinery, labor, energy, and transportation to enhance resource efficiency, conservation, and public health; and

(4) provide Montana farmers and ranchers with useful agriculture production and marketing information on alternative and specialty crops and livestock, *including ostriches, rheas, and emus.*"

Section 4. Section 23-2-633, MCA, is amended to read:

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"**23-2-633. Other unlawful operation.** ~~No~~ *A* person while operating a snowmobile may *not* ~~use the same~~:

(1) *Use the snowmobile* for the purpose of driving, rallying, or harassing ~~any of the~~ game animals, game birds, or fur-bearing animals of the state or ~~any~~ livestock, *including ostriches, rheas, and emus.* An owner of livestock is not prohibited from managing or driving ~~his own~~ *the owner's* livestock by the use of snowmobiles and may direct other persons to ~~so~~ manage or drive ~~his~~ *the owner's* livesteck; *by use of snowmobiles.* ~~and the~~ *The* department of fish, wildlife, and parks, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds, or fur-bearing animals by the use of snowmobiles.

(2) ~~to~~ discharge a firearm from or upon a snowmobile;

(3) *operate the snowmobile* without a lighted headlight and taillight between the hours of dusk and dawn."

Section 5. Section 27-1-222, MCA, is amended to read:

"**27-1-222. Exemplary damages for inhumane injuries to animals.** *(1)* For wrongful injuries to animals, being subjects of property, committed willfully or by gross negligence in disregard of humanity, exemplary damages may be given.

(2) As used in this section, "animals" includes ostriches, rheas, and emus."

Section 6. Section 39-3-402, MCA, is amended to read:

"**39-3-402. Definitions.** As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Employ" means te suffer or permit to work.

(3) "Employee" means an individual employed by an employer.

(4) *(a)* "Farm or ranch" means ~~any~~ *an* endeavor primarily engaged in cultivating the soil or in connection with raising or harvesting ~~any~~ *an* agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

(b) As used in this subsection (4), "livestock" includes ostriches, rheas, and emus.

(5) "Farm worker" means a person employed to do ~~any~~ *a* service performed on a farm or ranch.

(6) "Occupation" means ~~any~~ *an* occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(7) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to an allowance as

may be permitted hy regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or other facility if the lodging or other facility is customarily furnished by the employer to ~~his~~ employees~~; however~~. *However*, the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the employee. The term "wage" does not include the cost to the employer of providing meals or a meal allowance to the employee or the value of ~~any~~ tips received hy an employee as a gratuity for service."

Section 7. Section 67-1-204, MCA, is amended to read:

"**67-1-204. Lawfulness of flight and landings.** (1) Flight in aircraft over the lands and waters of this state is lawful, unless *it is* at such a low altitude as te interfere with the then-existing use to which the land or water or the space over the land or water is put by the owner or unless ~~so~~ conducted as to be imminently dangerous to persons or property lawfully on the land or water or in violation of the air commerce regulations ~~which~~ *that* have been or may be promulgated hy the department of transportation of the United States.

(2) Aircraft landings and takeoffs from the public waters of this state are lawful if proper safety precautions regarding public waters, as prescribed in ~~Title 14~~ *14 CFR*, part 91, ~~Code of Federal Regulations,~~ are taken prior to ~~such~~ *the* landing or takeoff, except as otherwise provided by this section.

(3) Aircraft landings and takeoffs from public roads in this state are lawful if proper safety precautions, as approved by the governing jurisdiction of ~~such~~ *the* roads, are taken prior to ~~such~~ *the* landing or takeoff, except as otherwise provided in this section. However, the local governing jurisdiction ~~shall~~ *may not* incur ~~no~~ liability as a result of an approval under this subsection.

(4) ~~No~~ *A* person ~~shall~~ *may not* operate an aircraft, as pilot ~~thereof~~ *of the aircraft*, either in the air, on the water, or on the ground, in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried ~~therein~~ *in the aircraft*.

(5) The willful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them ~~shall be deemed~~ *is* an unlawful use ~~thereof~~ *of aircraft*, and actual and punitive damages, in addition to the penalties provided by this part, may be recovered in an action for damages caused ~~therefrom~~ *by the willful and malicious use of the aircraft. As used in this subsection, "livestock" includes ostriches, rheas, and emus.*

(6) The landing of an aircraft on the private lands or waters of another without ~~his~~ consent is unlawful, except in the case of a forced landing. For damages caused hy a forced landing, however, the owner or lessee of the aircraft or the pilot ~~shall be~~ *is* liable for actual damage caused by ~~such~~ *the* forced landing.

(7) ~~No~~ *A* person may *not* knowingly operate, attempt te operato, or be in actual physical control of an aircraft while under the influence of alcohol or drugs. "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination ~~thereof~~ *of alcohol and drugs,* a person's ability to safely operate the aircraft has been diminished to the slightest degree.

(8) A person having information regarding a violation of subsection (7) shall report ~~such~~ *the* information to the department."

Section 8. Section 81-2-702, MCA, is amended to read:

"81-2-702. Definitions. As used in this part, the following definitions apply:

(1) "Animals" means livestock, dogs, cats, rabbits, rodents, game animals, game farm animals, fur-bearing and wild animals, and poultry and other birds.

(2) "Biologics" means medicinal preparations made from living organisms and their products. ~~It~~ *The term* includes but is not limited to serums, vaccines, antigens, and antitoxins.

(3) "Department" means the department of livestock.

(4) "Health certificate" means a legible record written on an official health certificate form of the state of origin or on an equivalent form of the U.S. department of agriculture attesting that the animals, animal semen, or animal biologics described on the certificate have been visually inspected by a federally accredited veterinarian and found to meet the entry requirements of the state of Montana.

(5) "Livestock" means cattle, horses, mules, asses, sheep, llamas, alpacas, bison, swine, *ostriches, rheas, emus,* and goats.

(6) "Permit" means an official document issued by the department after proper application that allows the movement of animals, animal semen, or animal biologics into Montana.

(7) "Poultry" means domesticated birds, including but not limited to chickens, turkeys, ducks, geese, guinea fowl, pigeons, and pheasants."

Section 9. Section 81-4-201, MCA, is amended to read:

"81-4-201. ~~Swine, sheep, llamas, alpacas, bison, and goats~~ *Animals* running at large. It is unlawful for ~~any~~ *an* owner or person in control of swine, sheep, llamas, alpacas, bison, *ostriches, rheas, emus,* or goats to willfully permit the animals to run at large."

Section 10. Section 81-5-104, MCA, is amended to read:

"81-5-104. Stolen livestock — seizure and forfeiture of vehicle and certain other property used in theft or transportation. (1) The use of ~~any~~ *a* vehicle, money, equipment, or personalty for the theft or transportation of ~~any~~ *a* stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, llama, alpaca, bison, hogs, poultry, *ostrich, rhea, emu,* or the products of ~~any~~ stolen livestock is unlawful. Any vehicle, money, equipment, or personalty used for the theft or unlawful transportation or upon probable cause believed to be devoted wholly or in part to the theft or unlawful transportation must be seized and held.

(2) Within 45 days after the seizure, ~~any~~ *a* peace officer or officer of the agency that seizes ~~any~~ *the* property shall file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall ~~cause~~ *serve* the summons ~~to be served~~ upon all owners or claimants of the property by one of the following methods:

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(a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(h) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no newspaper of general county circulation, by publication in one issue of a newspaper of general circulation in an adjoining county; and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for unlawful transportation; or

(b) the vehicle owner is not in collusion with the party or parties guilty of the theft."

Section 11. Section 81-6-302, MCA, is amended to read:

"**81-6-302. Definitions.** As used in this part, the following definitions apply:

(1) "Commission" means the livestock crimestoppers commission created in 2-15-3104.

(2) "Department" means the department of livestock created in Title 2, chapter 15, part 31.

(3) "Livestock" includes ostriches, rheas, and emus in addition to other livestock.

~~(3)~~*(4)* "Program" means the livestock crimestoppers program created under 81-6-313."

Section 12. Section 81-7-401, MCA, is amended to read:

"**81-7-401. Killing of dogs harassing, destroying, or injuring stock — notice to owner — penalty.** (1) As used in this section, "harasses" means worries, chases, or runs after livestock, *including ostriches, rheas, and emus,* in a manner that may lead to subsequent injury to the livestock.

(2) A dog, whether licensed or not, that, while off the premises owned or under control of its owner and on property owned, leased, or controlled hy the livestock owner, harasses, kills, wounds, or injures livestock not belonging to the owner of the dog is considered a puhlic nuisance and:

(a) may be killed immediately by the owner of the livestock or an agent or employee of the owner; or

(b) the owner of the dog, when reasonably notified after due process, shall kill the dog within 24 hours of notification. If the owner fails to do so, an officer may be notified and shall kill the dog or cause the dog to be killed.

(3) A dog may not be killed in a manner that will endanger a person.

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(4) This section does not apply to a dog herding livestock under the direction of its owner or the agents or employees of its owner.

(5) This section does not apply to a dog engaged in legitimate sport hunting or predator control activities under the direction of its owner or the agents or employees of its owner.

(6) The owner of a dog that harasses, kills, wounds, or injures livestock is guilty of a misdemeanor and upon conviction shall be fined not more than $500."

Section 13. Section 87-3-130, MCA, is amended to read:

"87-3-130. **Taking of wildlife to protect persons or livestock.** *(1)* ~~Nothing in this~~ *This* chapter may *not* be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this chapter if ~~such~~ *the* wildlife is molesting, assaulting, killing, or threatening to kill ~~any~~ *a* person or livestock. ~~Any~~ *A* person who so takes ~~any~~ wildlife protected by this chapter shall notify the department within 72 hours.

(2) As used in this section, "livestock" includes ostriches, rheas, and emus."

Section 14. Applicability. [This act] applies to tax years beginning after December 31, 1995.

Approved March 23, 1995

CHAPTER NO. 207

[SB 19]

AN ACT INCLUDING GREYHOUND RACES AS RACES THAT MAY BE SIMULCAST UNDER THE BOARD OF HORSERACING'S AUTHORITY; AMENDING SECTION 23-4-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4-101, MCA, is amended to read:

"23-4-101. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-1881.

(2) "Board of stewards" means a board composed of three stewards who supervise race meets.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(5) "Minor" means a person under 18 years of age.

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(6) "Persons" means individuals, firms, corporations, fair boards, and associations.

(7) *(a)* "Race meet" means racing of registered horses or mules ~~where~~ *at which* the parimutuel system of wagering is used. The term includes *horseraces, mule races, and greyhound races that are* simulcast ~~races~~.

(b) The term does not include live greyhound racing.

(8) "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

~~(8)~~*(9)* "Simulcast" means a live broadcast of an actual horserace, *mule race, or greyhound race* at the time it is run. The term includes races of local or national prominence.

~~(9)~~*(10)* "Simulcast facility" means a facility at which horseraces, *mule races, or greyhound races* are simulcast and wagering on the outcome is permitted under the parimutuel system.

~~(10)~~*(11)* "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 1995

CHAPTER NO. 208

[SB 87]

AN ACT REVISING THE MUNICIPAL FINANCE CONSOLIDATION ACT TO ALLOW THE STATE AND STATE ENTITIES TO PARTICIPATE IN THE ISSUANCE OF BONDS; AND AMENDING SECTIONS 17-5-1602, 17-5-1604, 17-5-1606, 17-5-1607, 17-5-1609, 17-5-1611, 17-5-1623, 17-5-1643, 17-5-1644, 17-5-1645, 17-5-1646, 17-5-1647, 17-5-1650, AND 17-5-1651, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1602, MCA, is amended to read:

"**17-5-1602. Policy and purpose.** (1) It is the policy of the state of Montana to:

(a) foster and promote, by all reasonable means, the provision of efficient capital markets and facilities for borrowing money by ~~counties, cities, towns, school districts, special taxing districts, and other public bodies~~ *eligible government units* to pay for capital improvements and other needs as otherwise authorized by law; and

(b) reduce, to the extent possible, costs of ~~local~~ public indebtedness to taxpayers and residents by affording public bodies an appropriate degree of flexibility and choice in the marketing of their debt securities so as to minimize marketing costs and interest rates.

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(2) It is the purpose of this part to promote the policies stated in subsection (1) by:

(a) creating a means for ~~public bodies~~ *eligible government units* to pool, in effect, the debt instruments they are otherwise authorized to offer for sale to the investment community in order to obtain economies of scale and reduce marketing and interest costs; and

(b) providing additional security for the payment of bonds and notes held by investors and thereby further reducing interest costs."

Section 2. Section 17-5-1604, MCA, is amended to read:

"**17-5-1604. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "~~Local~~ *Eligible* government unit" means:

(a) any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, *or* other special taxing district~~, an~~ *or* assessmen or service district authorized by law to borrow money~~;~~ *; or*

(b) the state, any board, agency, or department of the state, or the board of regents of the Montana university system *when authorized by law to borrow money.*

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630."

Section 3. Section 17-5-1606, MCA, is amended to read:

"**17-5-1606. Bonds, bond anticipation notes, and notes of the board.** (1) The board may by resolution, from time to time, issue negotiable notes and bonds to finance loans or refinance its loans to ~~local~~ *eligible* government units and its purchases of ~~their~~ *eligible government unit* bonds, registered warrants, and tax or revenue anticipation notes and other notes, to establish or replenish reserves securing the payment of its bonds and notes, and to finance all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time:

(a) issue notes to renew notes and bonds to pay notes, including interest;

(b) whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured; and

(c) issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

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(3) The board may by resolution, from time to time, in anticipation of the sale of its securities under this part, issue temporary notes and renewal notes.

(4) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds ~~shall be~~ *is* an obligation of the board payable out of any ~~revenues~~ *revenue*, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular ~~revenues~~ *revenue*, assets, or money.

(5)*(a)* The notes and bonds must be authorized by resolutions of the board, ~~shall~~ *must* bear a date, and ~~shall~~ *must* mature at times as *provided in* the resolutions ~~provide~~. The bonds may be issued as serial bonds payable in annual installments, ~~or~~ as term bonds, or as a combination ~~thereof~~ *of serial and term bonds*. The notes and bonds ~~shall~~ *must:*

(i) bear interest at a rate or rates;

(ii) be in denominations;

(iii) be in a form, either coupon or registered;

(iv) carry registration privileges;

(v) be executed in a manner;

(vi) be payable in a medium of payment, at places inside or outside the state; and

(vii) be subject to terms of redemption as provided in resolutions of the board.

(b) The notes and bonds of the board may be sold at public or private sale at ~~such~~ prices, which may be above or below par, ~~as~~ *that* are determined by the board."

Section 4. Section 17-5-1607, MCA, is amended to read:

"**17-5-1607. Participation voluntary.** Use of the financing mechanism created by this part is entirely voluntary, and ~~no local~~ *an eligible* government unit ~~may be~~ *is not* required to sell its bonds, bond anticipation notes, or notes to the board."

Section 5. Section 17-5-1609, MCA, is amended te read:

"**17-5-1609. Purchase of anticipation notes.** Notwithstanding any other provision of law, ~~a local~~ *an eligible* government unit may issue and the board may purchase notes in anticipation of an otherwise authorized sale of ~~municipal~~ *eligible government unit* securities. In connection with any purchase of anticipation notes, the board may by agreement with the ~~local~~ *eligible* government unit impose terms, conditions, and limitations that in the board's opinion are proper under the circumstances and for the purposes and security of the board and the holders of its bonds or notes."

Section 6. Section 17-5-1611, MCA, is amended to read:

"**17-5-1611. Additional powers of the board.** In addition to all other powers conferred on the board by this part or any other law, the board has the power:

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(1) to purchase or hold ~~municipal~~ *eligible government unit* bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes at prices and in a manner *that* the board considers advisable;

(2) to sell ~~municipal~~ *eligible government unit* bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes acquired or held by it at prices without relation to cost and in a manner *that* the board considers advisable;

(3) to invest funds or money acquired by the board as provided in 17-5-1641;

(4) *with regard to an eligible local government unit,* to:

(a) prescribe the form of application or procedure required ~~of a local government unit~~ for a loan or purchase of ~~its municipal~~ *eligible government unit* bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes;

(b) fix the terms and conditions of the loan or purchase; and

(c) enter into agreements with ~~local~~ *eligible* government units with respect to loans or purchases;

(5) to render services to ~~local~~ *eligible* government units in connection with public or private sales of their ~~municipal~~ bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes that are eligible for purchase by the board under this part, including advisory and other services, and charge the ~~local~~ *eligible* government units for ~~such~~ *the* services;

(6) to charge for its costs and services in reviewing or acting upon a proposed loan to ~~a local~~ *an eligible* government unit or a proposed purchase by the board of ~~municipal~~ bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes of the ~~local~~ *eligible* government unit, whether or not the loan is made or the ~~municipal~~ bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes are purchased;

(7) to fix and establish terms, interest rates, and provisions with respect to a purchase of ~~municipal~~ *eligible government unit* bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes by the board, including:

(a) the date and maturities of the bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes;

(b) provisions as to redemption or payment before maturity; and

(c) any other matters judged by the board to be necessary, desirable, or advisable for the purchase or loan;

(8) in connection with any loan to ~~a local~~ *an eligible* government unit or purchase of ~~municipal~~ bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes of ~~a local~~ *an eligible* government unit, to consider:

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(a) the lawfulness and validity of the purpose to be served by the loan or purchase;

(b) the ability of the ~~local~~ *eligible* government unit to secure borrowed money from other sources and the costs ~~thereof~~ *of borrowing*;

(c) the ability of the ~~local~~ *eligible* government unit to repay the loan, notes, or bonds;

(d) the priority of need for the particular public improvement or purpose to be financed; and

(e) varying the terms and conditions of its loans or purchases as between various ~~local~~ *eligible* government units in accordance with their respective priorities and credit worthiness;

(9) to conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material to its information and necessary to carry out this part;

(10) to issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before the board;

(11) to appoint, employ, or contract for the services of officers, employees, agents, financial or professional advisers, and attorneys and to pay ~~such~~ compensation for their services as the board ~~may determine~~ *determines*;

(12) to procure insurance against any losses in connection with its property, operations, or assets in ~~such~~ amounts and from ~~such~~ insurers as it considers desirable;

(13) to the extent permitted under its contracts with the holders of bonds or notes of the board, to consent to modification of the rato of interest, the time for payment of any installment of principal or interest, or the security for any other term of a bond, bond anticipation note, note, contract, or agreement of any kind to which the board is a party; and

(14) to do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this part."

Section 7. Section 17-5-1623, MCA, is amended to read:

"**17-5-1623. Nonimpairment by ~~the~~ state.** In accordance with the constitutions of the United States and the stato of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and ~~a local~~ *an eligible* government unit or between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of honds and to employ a staff sufficient and competent for this purpose."

Section 8. Section 17-5-1643, MCA, is amended to read:

"**17-5-1643. Sale or exchange of ~~municipal~~ securities.** (1) Notwithstanding any law applicable to or constituting any limitation on the maximum rate of interest per year payable on honds or notes or to annual interest cost to maturity of money borrowed or received upon issuance of bonds

or notes, ~~every local~~ *an eligible* government unit is authorized to contract to pay interest on or an interest cost per year for money borrowed from the board and evidenced by ~~its municipal~~ *the eligible government unit* securities purchased by the board without regard to any statutory limitations as to rate of interest per year payable or as to annual interest cost to maturity of money borrowed by the ~~local~~ *eligible* government unit. ~~Every local~~ *An eligible* government unit is authorized to contract with the board with respect to the loan or purchase, and the contract must contain the terms and conditions of ~~such~~ *the* loan or purchase. ~~Every local~~ *An eligible* government unit is authorized to pay fees and charges required to be paid to the board for its services.

(2) Notwithstanding any law applicable to or constituting any limitation on the sale of bonds or notes except the limitation on amount of bonded indebtedness, ~~any local~~ *an eligible* government unit may sell bonds or notes to the board by private negotiated sale, without limitation as te denomination. The bonds or notes may be fully registered or registerable as to principal only or in bearer form or may bear interest at the rato or rates, all in accordance with this section. The bonds or notes may be evidenced in the manner and may contain other provisions not inconsistent with this part and may be sold to the board without advertisement at the price or prices as may be determined, all as provided in the proceedings of the governing body of the ~~local~~ *eligible* government unit pursuant to which the bonds or notes are authorized to be issued. The governing body of the ~~local~~ *eligible* government unit may provide for the exchange of coupon bonds for fully registered bonds and of fully registered bonds for coupon bonds and for the exchange of any such bonds after issuance for bonds of larger or smaller denominations, all in the manner provided in the proceedings authorizing their issuance. The bonds in changed form or denominations must be exchanged for the surrendered bonds in the same aggregate principal amounts and in ~~such~~ *a* manner that no overlapping interest is paid and the bonds in changed form or denominations bear interest at the same rate or rates and mature on the same date or dates as the bonds for which they are exchanged. If any exchange is made under this subsection, the bonds surrendered by the holders at the time of the exchange must be canceled. The exchange may be made only at the request of the holders of the bonds to be surrendered. The ~~local~~ *eligible* government unit may require all expenses incurred in connection with the exchange to be paid by the holders."

Section 9. Section 17-5-1644, MCA, is amended to read:

"**17-5-1644. Care and custody of bonds purchased by the board.** The board may:

(1) enter into agreements or contracts with a bank, trust company, or financial institution, inside or outside the state, as may be necessary, desirable, or convenient, in the opinion of the board, for rendering services in connection with:

(a) the care, custody, or safekeeping of ~~municipal~~ bonds or other investments held or owned by the board pursuant to this part;

(b) the payment or collection of amounts payable as to principal or interest; and

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(c) the delivery to the board of ~~municipal~~ bonds or other investments purchased by it or sold by it pursuant to this part;

(2) pay the cost of those services; and

(3) ~~also,~~ in connection with any of the services to be rendered by a bank, trust company, or financial institution as to the custody and safekeeping of its ~~municipal~~ bonds or investments, require security in the form of collateral bonds, surety agreements, or security agreements in ~~such~~ *a* form and amount as, in the opinion of the board, is necessary or desirable."

Section 10. Section 17-5-1645, MCA, is amended to read:

"**17-5-1645. Insurance or guaranty.** The board may obtain, from a department or agency of the United States or a nongovernmental insurer, insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal on bonds or notes issued by the board or on ~~municipal~~ bonds, bond anticipation notes, or notes of ~~local~~ *eligible* government units purchased or held by the board."

Section 11. Section 17-5-1646, MCA, is amended to read:

"**17-5-1646. Default in payment.** If the board or ~~local~~ *eligible* government unit defaults in the payment of principal or interest on an issue of notes or bonds after they become due, whether at maturity or upon call for redemption, and the default continues for 30 days, or if the board or ~~local~~ *eligible* government unit fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of notes or bonds, the holders of 25% of the aggregate principal amount of the outstanding notes or bonds of that issue have the right, upon proper application to a court of competent jurisdiction, to have a trustee appointed to represent the holders of those notes or bonds for the purposes provided in this part."

Section 12. Section 17-5-1647, MCA, is amended to read:

"**17-5-1647. Powers and duties of trustee on default.** (1) A trustee appointed under 17-5-1646 may:

(a) by civil action enforce all rights of the noteholders or bondholders, including the right to require the board or ~~local~~ *eligible* government unit to collect rates, charges, and other fees and to collect interest and amortization payments on bonds and notes held by them adequate to carry out a pledge of or an agreement as to the rates, charges, and other fees and of the interest and amortization payments, and *the right* to require the board or ~~local~~ *eligible* government unit to carry out any other agreements with the holders of the notes or bonds and to perform their duties under this part;

(b) bring a civil action upon the notes or bonds;

(c) by civil action require the board or ~~local~~ *eligible* government unit to account as if it were the trustee of an express trust for the holders of the notes or bonds;

(d) by civil action enjoin anything that may be unlawful or in violation of the rights of the holders of the notes or bonds;

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(e) declare all the notes or honds due and payable and, if all defaults are made good, then, with the consent of the holders of 25% of the principal amount of the outstanding notes or bonds, annul the declaration and its consequences.

(2) The trustee, in addition to the powers stated in suhsection (1), has all the powers necessary for the exercise of functions specifically set out or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(3) Before declaring the principal of notes or honds due and payable, the trustee ~~must~~ *shall* give 30 days' notice in writing to the governor, the attorney general, and the hoard or ~~local~~ *eligible* government unit defaulting."

Section 13. Section 17-5-1650, MCA, is amended to read:

"**17-5-1650. Annual report.** By Decemher 31 of each year, the board shall publish a financial report for distribution to the governor, the legislature, and tbe public. Distribution to the legislature is accomplished by providing two copies to the office of the legislative fiscal analyst, two copies to the legislative council, and a copy to a legislator on request. The report must include a statement of the board's current financial position with respect to its activities under this part, a summary of its activities pursuant to this part during the previous year (including a listing of the ~~local~~ *eligible* governmental securities purchased by the board, a l:sting of the honds and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under this part), an estimate of the levels of activities for the next year, and a comparison of the activities during tbe previous year with the estimates of those activities tbat were made in the previous annual report."

Section 14. Section 17-5-1651, MCA, is amended to read:

"**17-5-1651. Limitations on board's power.** Under this part the hoard may not:

(1) make loans of money to any person, firm, or corporation other than a ~~local~~ *an eligible* government unit or purchase securities issued by any person, firm, or corporation other than ~~a local~~ *an eligible* government unit as provided in this part;

(2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial hanking business, or act as a savings bank or savings and loan association;

(3) be or constitute a bank or trust company within the jurisdiction or under the control of the state banking hoard, the department of commerce, or the comptroller of the currency of the United States department of the treasury;

(4) he or constitute a bank, hanker, or dealer in securities within the meaning of or suhject to the provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state."

Approved March 23, 1995

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CHAPTER NO. 209

[SB 205]

AN ACT INCREASING THE ALLOWABLE LENGTH FOR CERTAIN VEHICLES; AND AMENDING SECTION 61-10-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-104, MCA, is amended to read:

"**61-10-104. Length — definitions.** (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 45 *55* feet.

(2)(a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 1/2 feet each in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided hy 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer comhination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination must be equipped with breakaway hrakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), nor may this combination have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have a length in excess of 65 feet.

(5) (a) The length of a vehicle combination consisting of a truck or truck-tractor and one trailer, pole trailer, or semitrailer hauling raw logs may not exceed 75 feet in overall length. As used in this subsection (a), the term "length" means the total length of the vehicle combination beginning at the front of the front bumper of the truck or truck-tractor and extending to the most distant end of the logs being hauled. A term permit for an overlength vehicle

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combination, as provided in 61-10-124(3), does not apply to the vehicle combination described in this subsection (a). A vehicle combination exceeding 75 feet must have a trip permit.

(b) The maximum overhang of any log may not exceed 15 feet, except hy special, single-trip permit. Overhang is measured from the center of the rear-most axle te the most distant end of the logs being hauled.

(c) The provisions in subsections (5)(a) and (5)(h) do not apply to a vehicle combination hauling utility poles.

(6) As used in this chapter, the following definitions apply:

(a) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(b) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the hack of the last trailer, including the connection tongues and loads.

(c) "Length", except as provided in subsection (5)(a), means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

(d) "Rocky Mountain double" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer."

Approved March 23, 1995

CHAPTER NO. 210

[SB 268]

AN ACT REVISING THE RESTRICTIONS ON OPERATING A SNOWMOBILE WITHOUT A MONTANA DRIVER'S LICENSE BY ALLOWING THE OPERATION BY A PERSON WHO HAS COMPLETED AN APPROVED SNOWMOBILE SAFETY EDUCATION COURSE AND WHO IS ACCOMPANIED AND SUPERVISED BY A PERSON WHO IS 18 YEARS OF AGE OR OLDER; AND AMENDING SECTION 23-2-631, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-631, MCA, is amended to read:

"**23-2-631. Operation on public roads, and streets, *and highways*.** (1) ~~No~~ *A* person ~~shall~~ *may not* operate a snowmobile upon a controlled access highway or facility at any time. Snowmobile operation ~~may be~~ *is* permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that:

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(a) the street, road, or highway is drifted or covered by snow to such an extent that travel ~~thereon~~ *on the street, road, or highway* hy other motor vehicles is impractical or impossible;

(b) the operator has received permission or is otherwise authorized for ~~such~~ *that* travel by the municipality in the case of town or city streete, the hoard of county commissioners for county roads, or the state highway patrol for all other highways; or ~~such~~

(c) operation has been ~~specifically so~~ authorized on municipal streets hy a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever ~~such~~ *the* crossing is necessary to get to another authorized area of operation. ~~Such~~ *The* crossing ~~shall~~ *must* be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmohile ~~shall~~ *must* make a complete stop hefore entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) ~~No~~ *A* snowmobile may *not* be operated upon a public street or highway when permitted to do so by 23-2-601 through 23-2-644 unless equipped with at least one headlamp and one taillamp, which ~~shall~~ *must* be lighted at all times during ~~such~~ operation, and unless equipped with a suitable braking device ~~which may be operated~~ *operable* by either hand or foot.

(4)*(a)* ~~The~~ *Unless opcration is otherwise allowed under subsection (4)(b) or (4)(c), the* operator of a snowmobile who operates ~~his vehicle~~ *the snowmobile* upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601 through 23-2-644 ~~shall~~ *must* have in ~~his~~ possession a license to drive a motor vehicle as required by the laws of the state of Montana.

(b) The operator of a snowmobile may operate the snowmobile upon a public roadway, street, or highway whcn allowed to do so under the provisions of 23-2-601 through 23-2-644 if the operator:

(i) has in possession a certificate showing the successful completion of a Montana-approved snowmobile safety education course; and

(ii) is in the physical prescnce and under the supervision of a person who is 18 years of age or older.

(c) An operator who crosses a street, road, or highway, ~~or~~ who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to such an extent that travel ~~thereon~~ *on the street, road, or highway* hy other motor vehicles is impractical or impossible, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana."

Approved March 23, 1995

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CHAPTER NO. 211

[HB 117]

AN ACT REQUIRING DEVELOPMENT OF A TREATMENT PLAN FOR REGAINING FITNESS OF A DEFENDANT WHO HAS BEEN FOUND UNFIT TO PROCEED IN A CRIMINAL PROCEEDING; PROVIDING FOR PETITION TO THE COMMITTING COURT FOR AN ORDER OF COMPLIANCE WITH THE TREATMENT PLAN; AND AMENDING SECTION 46-14-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-221, MCA, is amended to read:

"**46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.** (1) The issue of the defendant's fitness to proceed may be raised by the court, *by* the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor *the defendant's* counsel ~~for the defendant~~ contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and te offer evidence upon the issue.

(2) *(a)* If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the directer of the department of corrections and human services to be placed in an appropriate institution of the department of corrections and human services for so long as the unfitness endures.

(b) The institution shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the institution may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proven an overriding justification for the order and that the treatment being ordered is medically appropriate.

(c) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4), and the prosecutor shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

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(3) If the court determines that the defendant lacks fitness to proceed because the defendant is developmentally disabled as provided in 53-20-102(4), the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and *that is made* without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of corrections and human services to be placed in an appropriate institution of the department of corrections and human services, of keeping the defendant there, and of bringing the defendant back are chargeable to the state and payable according to procedures established under 3-5-902(1)."

Approved March 22, 1995

CHAPTER NO. 212

[HB 166]

AN ACT ALLOWING FIRE SERVICE AREAS TO ADOPT A FIRE CODE AND PLAN FOR ENFORCEMENT UPON CERTIFICATION BY THE DEPARTMENT OF JUSTICE; PROVIDING FOR FIRE INSPECTIONS IN FIRE SERVICE AREAS; AND AMENDING SECTIONS 7-33-2402, 50-61-102, 50-61-114, AND 50-63-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2402, MCA, is amended to read:

"**7-33-2402. Area services.** *(1)* A fire service area created pursuant to 7-33-2401 may provide residents of the area with adequate and standard:

~~(1)(a)~~*(a) (i)* fire and emergency response equipment, personnel, facilities, and maintenance, for a fire service agency providing service to the area; or

~~(b)~~*(ii)* fire protection by contracting for the services of a fire service agency; and

~~(2)~~*(b)* emergency medical services and equipment, licensed by the department of health and environmental sciences, and related personnel, facilities, and maintenance.

(2) A fire service area may, pursuant to 50-61-102, submit a fire code and a plan for enforcement to the department of justice in order to be certified for local enforcement. However, an appointed board of trustees of a fire service area shall obtain approval of the county commissioners prior to submitting a fire code and a plan of enforcement to the department of justice."

Section 2. Section 50-61-102, MCA, is amended to read:

"**50-61-102. Department of justice to administer chapter.** (1) The department of justice has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under ita

general charge and supervision, shall assist the department in giving effect to this chapter, and are subject to its direction and the rules adoptod under 50-3-102 and 50-3-103 for the enforcement of 50-61-120 and 50-61-121 and this chapter.

(2) Upon its approval of a fire code and a plan for enforcement of the code filed by a municipality, ~~or~~ district, *or fire service area,* the department may certify a municipal, ~~or~~ district, *or fire service area* fire inspection program for local enforcement."

Section 3. Section 50-61-114, MCA, is amended to read:

"**50-61-114. Fire chief and fire inspector to make inspections.** The chief of the fire department of each municipality, ~~or~~ district, *or fire service area,* when a fire inspection program is established, or a fire inspector of the department of justice, when ~~no~~ *a* fire inspection program ~~exists~~ *does not exist,* for the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter:

(1) shall enter into school buildings at least once each 12 months; and

(2) may enter into all other buildings and upon all other premises within ~~his~~ *the* jurisdiction, according to priority schedules established by the department for conducting inspections of buildings and premises."

Section 4. Section 50-63-202, MCA, is amended to read:

"**50-63-202. Fire chief or sheriff to conduct investigation.** If the fire occurs within a municipality, ~~or~~ organized fire district, *or fire service area,* the chief of the fire department shall make the investigation. If the fire occurs outside a municipality, ~~or~~ organized fire district, *or fire service area,* the county sheriff shall make the investigation."

Approved March 22, 1995

CHAPTER NO. 213

[HB 11]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from the treasure state endowment special revenue account. (1) There is appropriated to the department of commerce the interest earnings of the treasure state endowment special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the local government entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 1 through 3] and described in the treasure state endowment program January 1995 report to the 54th legislature. The legislature, pursuant to 90-6-710, approves the grants listed in subsection (3), in the order indicated in the list of projects. The department shall award funds up to the amounts approved in this section in order of priority until available funds are expended. The department shall provide funds not accepted or used by local governments with higher-ranked projects to local governments whose projects are in lower positions on the priority list and that would not otherwise receive funding. When additional funds become available for the grants listed in subsection (3), they must be awarded to projects in the order of the projects' priority when the lower-ranked projects meet the startup conditions of the department's grant agreement and are ready to proceed to construction.

(3) The following are the authorized projects in the order of their priority:

Applicant/Project	Matching Grant
1. Hill County Water Dist. (water)	$500,000
2. East Glacier Wtr. & Sewer Dist. (water)	306,555
3. City of Lewistown (water)	500,000
4. City of Troy (sewer)	500,000
5. City of Conrad (water)	180,000
6. City of Whitehall (water)	500,000
7. Seeley Lake Water Dist. (water)	464,364
8. City of Hamilton (sewer)	137,632
9. Gardiner Water Dist. (water)	300,000
10. City of Thompson Falls (sewer)	400,644
11. Butte-Silver Bow (sewer)	500,000
12. Beaverhead County (bridge)	23,000
13. Powell County (bridge)	51,334
14. Town of Fairview (water)	500,000
15. Town of Hysbam (sewer)	127,500

(4) This section constitutes a valid obligation of funds to the entities listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds received during the 1997 biennium under 17-7-302.

Section 2. Approval of grants — completion of appropriation. (1) The legislature, pursuant to 90-6-701, approves grants for the projects identified in [section 1(3)].

(2) The approval of these grants completes an appropriation from the special revenue account provided for in 17-5-703(4)(b).

Section 3. Conditions and manner of disbursement of grant funds. (1) The disbursement of grant funds under [sections 1 through 3] for the grants specified in [section 1(3)] is subject to the following conditions:

(a) The department must have approved a scope of work and hudget for the project. The department may not approve amendments to the scope of work or hudget affecting priority activities or improvements that would materially alter the intent and circumstances under which the application was originally ranked by the department and approved by tho legislature.

(b) The grantee shall document that other matching funds required for completion of the project have been firmly committed prior to the proposed expenditure of the funds appropriated in [section 1].

(c) The grantee must bave satisfactorily complied with any conditions described in the recommendation section of tbe project narrative in the treasure state endowment program project evaluations and recommendations report submitted to the 54th legislature and with conditions specified by the department in the notification of grant approval.

(d) The grantee must have executed a grant agreement with the department.

(e) The grantee must have satisfied other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced by the application to the department or the proposal to the legislature.

(2) The department shall disburse grant funds in the order of priority listed in [section 1] as treasure state endowment special revenue account interest income is received during the 1997 biennium.

(3) A project approved in [section 1] may not receive grant funds until sufficient revenue has been deposited in the treasure stato endowment special revenue account and is available for that purpose.

(4) If the commencement of a project is delayed more than 120 days from the date set for startup in the implementation scbedule established by the executed grant agreement between the department and the local government entity, tbe department may distribute grant funds to the next local government on the priority list that is ready to proceed with its project and has met the startup conditions established by the department. In such a circumstance, the reallocation of the funds does not affect the bigher ranked project's eligibility to receive funds at a later date when sufficient funds are available.

(5) In the event that construction bids received for a project are for an amount lower than the projected cost of the project, the department shall establish a final project budget at the bid price, plus a 10% contingency. The department may, at its discretion, reduce the amount of funding to be provided in proportion to all other project funding sources. In the alternative, the department may authorize the construction of additional, directly related project components to enhance the overall project, in amounts not te exceed the originally approved project budget.

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(6) The department shall disburse grant funds on a reimbursement basis as grantees incur eligible project costs.

Section 4. Effective dates. (1) [Sections 2 and 3] and this section are effective on passage and approval.

(2) [Section 1] is effective on July 1, 1995.

Approved March 24, 1995

CHAPTER NO. 214

[HB 77]

AN ACT REQUIRING A SCHOOL DISTRICT TO WAIVE TUITION FOR A CHILD WHO IS DEFINED AS A HOMELESS CHILD UNDER THE FEDERAL STEWART B. MCKINNEY ACT; AMENDING SECTION 20-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-101, MCA, is amended to read:

"**20-5-101. Admittance of child to school.** (1) The trustees shall assign and admit ~~any~~ *a* child to a school in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but ~~has not yet reached his 19th birthday~~ *is not yet 19 years of age*;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of ~~any~~ *a* district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section.

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Act (P.L. 100-77), to a school in the district regardless of residence. *The trustees may not require an out-of-district attendance agreement or tuition for a homeless child.*

(5) ~~Tuition~~ *Except for the provisions of subsection (4), tuition* for a nonresident child ~~shall~~ *must* be paid in accordance with the tuition provisions of this title."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1995

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CHAPTER NO. 215

[HB 154]

AN ACT ALLOWING THE GOVERNING BODY OF A COUNTY TO HOLD, IN CONJUNCTION WITH A GENERAL ELECTION OR A SCHOOL ELECTION, AN ELECTION TO EXCEED THE MAXIMUM LEVY FOR THE ERECTION, MAINTENANCE, AND OPERATION OF CERTAIN COUNTY-OWNED OR COUNTY-OPERATED HOSPITALS, NURSING HOMES, OR OTHER HOSPITAL FACILITIES; AMENDING SECTION 7-6-2531, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2531, MCA, is amended to read:

"**7-6-2531. County may exceed maximum mill levy — election required.** The governing body of a county may raise money by taxation for the support of county government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body ~~must~~ *shall* pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific amount to be raised;

(c) the approximate number of mills required; and

(d) the specific mill levy limitation to be exceeded.

(2)*(a)* ~~The~~ *Except as provided in subsection (2)(b), the* governing body ~~must~~ *shall* submit the question of the additional mill levy to the qualified electors of the county at the next regular primary election held in ~~the~~ *an* even-numbered ~~years~~ *year*.

(b) If the purpose of the special levy designated pursuant to subsection (1)(a) is for the support of a hospital facility as described in 7-6-2512, the governing body may submit the question of the additional mill levy to the qualified electors of the county at a general election, a school election held pursuant to 20-3-304, or at a regular primary election held in an even-numbered year.

(c) If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1995

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CHAPTER NO. 216

[HB 165]

AN ACT ALLOWING THE GOVERNING BODY TO SET OFFICE HOURS FOR COUNTY OFFICES BY RESOLUTION AFTER A PUBLIC HEARING AND WITH THE CONSENT OF ANY AFFECTED ELECTED COUNTY OFFICER; AND AMENDING SECTIONS 7-3-181, 7-4-102, 7-4-2211, 7-4-2611, 7-21-3426, 7-21-3452, AND 20-3-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-181, MCA, is amended to read:

"**7-3-181. Conduct of business.** (1) Meetings of the study commission ~~shall~~ *must* be held upon the call of the ~~chairman~~ *presiding officer*, the ~~vice-chairman~~ *vice presiding officer* in the absence or inability of the ~~chairman~~ *presiding officer*, or a majority of the members. The ~~chairman~~ *presiding officer* shall announce the time and place of the meetings of the study commission.

(2) The study commission shall maintain a written record of its proceedings and its finances. This record is open to inspection by ~~any~~ *a* person at the office of the study commission during ~~regular~~ *the* office hours *determined by the governing body by resolution after a public hearing and only if consented to by the presiding officer.*

(3) A majority of the members of the study commission constitutes a quorum for the transaction of business, but ~~no~~ *a* recommendation of a study commission ~~may~~ *does not* have ~~any~~ legal effect unless adopted by a majority of the whole number of members of the study commission.

(4) The study commission may adopt rules for its own organization and procedure."

Section 2. Section 7-4-102, MCA, is amended to read:

"**7-4-102. Office hours.** (1) Unless otherwise provided by law, ~~every~~ *each* officer shall keep ~~his~~ *the officer's* office open for the transaction of business ~~continuously from 8 a.m. until 5 p.m.~~ *during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer* each day except Saturdays and legal holidays. ~~Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires.~~

(2) County and city treasurers may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

(3) The governing body of a third-class city or town may establish days and times when municipal offices are open to conduct business ~~that are different from the days and times required by subsection (1)~~."

Section 3. Section 7-4-2211, MCA, is amended to read:

"**7-4-2211. County offices.** (1) All county officers, except justices of the peace as set forth in 3-10-101, must keep their offices at the county seat.

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(2) (a) The sheriff, the county clerk, the clerk of the district court, the treasurer, the county attorney, the county auditor in counties ~~where such~~ *in which that* officer is maintained, and the county assessor ~~must~~ *shall* keep their offices open for the transaction of business ~~from 8 a.m. until 5 p.m. continuously~~ *during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer,* every day in the year except *legal* holidays and Saturdays~~; provided, however, that the offices enumerated herein shall be kept open on Saturdays and on holidays and at other times when the business of said offices requires them to be kept open~~.

(b) This subsection *(2)* ~~shall~~ *does* not apply to counties operating under the county manager plan."

Section 4. Section 7-4-2611, MCA, is amended to read:

"7-4-2611. Role and duties of county clerk and election administrator. (1) The county clerk of ~~any~~ *a* county is also clerk of the county commissioners and ex officio recorder. ~~Any~~ *A* duty imposed by law upon ~~such~~ *the* officer, ~~either~~ *whether* as county clerk, clerk of the county commissioners, or recorder, ~~shall~~ *must* be performed by the county clerk, and any official act performed or certified by the county clerk ~~shall be~~ *is* as valid and effectual as if performed and certified ~~to~~ by ~~him as~~ *the* clerk of the county commissioners or ~~as~~ *the* recorder.

(2) The county clerk ~~must~~ *shall*:

(a) take charge of and safely keep or dispose of according to law all books, papers, maps, and records ~~which~~ *that* may be filed or deposited in ~~his~~ *the county clerk's* office;

(b) record all the proceedings of the board;

(c) make full entries of all its resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

(d) record the vote of each member on ~~any~~ *a* question upon which there is a division or at the request of any member present;

(e) sign all orders made and warrants issued by order of the board for the payment of money and certify the ~~same~~ *orders and warrants* to the county treasurer;

(f) record the reports of the county treasurer of the receipts and disbursements of the county;

(g) preserve and file all accounts acted upon by the board;

(h) preserve and file all petitions and applications for franchises and record the action of the board ~~thereon~~ *on the petitions and applications*;

(i) record all orders levying taxes;

(j) designate upon ~~every~~ *each* account allowed by the board the amount allowed and deliver to any person who may demand it a certified copy of any record ~~in his office~~ or any account on file ~~therein~~ *in the county clerk's office*;

(k) ~~as often as~~ *when* a new township is organized or the boundaries of ~~any~~ *a* township are altered, immediatoly make out and transmit to the secretary of state a certified statement of the names and boundaries ~~and the boundaries~~ of ~~any~~ *the* township *organized or* altered;

(l) keep ~~such~~ other records and books and perform ~~such~~ other duties ~~as~~ *that* are prescribed by law or by rule or order of tbe board.

(3) An election administrator shall file, code, and cross-index all reports and statements filed as prescribed by tbe commissioner of political practices.

(4) An election administrator shall make statements and other information filed under the provisions of Title 13, chapters 35, 36, and 37, ~~in his office~~ available for public inspection and copying during ~~regular~~ *the* office hours *determined by the governing body by resolution after a public hearing* and make copying facilities available free of charge or at a charge not to exceed actual cost."

Section 5. Section 7-21-3426, MCA, is amended to read:

"**7-21-3426. Organization of board and conduct of business.** (1) The board of directors shall meet at the place of business, established under 7-21-3427, during the month of December of each year and organize, electing a ~~chairman~~ *presiding officer*, ~~vice-chairman~~ *vice presiding officer*, and secretary for the board.

(2) ~~Such subsequent~~ *Subsequent* meetings ~~shall~~ *must* be held as may be found necessary for the conduct of the district fair.

(3) The board of directors shall have power to employ a secretary, whom they may vest with managerial powers, and they shall also appoint a treasurer. The office of secretary may be combined with that of treasurer.

(4) The board of directors shall see that:

(a) all records and accounts are properly kept, supervised, and approved;

(b) proper vouchers evidence all disbursements of money; and

(c) the records are ~~at all reasonable hours~~ open te the public *during the office hours determined by the governing body by resolution after a public hearing.*"

Section 6. Section 7-21-3452, MCA, is amended to read:

"**7-21-3452. Organization of joint fair and civic center commission.** (1) The members of the county fair commission and county building commission ~~shall~~ constitute the joint fair and civic center commission and shall act as a unified board.

(2) The joint fair and civic center commission shall meet during the month of December of each year. The commission shall elect a ~~chairman~~ *presiding officer*, ~~vice-chairman~~ *vice presiding officer*, and secretary for the commission.

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(3) Subsequent meetings may be held as necessary for the conduct of the duties outlined in 7-21-3454.

(4) The joint fair and civic center commission ~~shall have power to~~ *may* employ a secretary, whom they may vest with managerial powers, and they shall also appoint a treasurer. The office of secretary may be combined with that of treasurer.

(5) The commission shall ensure that:

(a) all records and accounts are properly kept, supervised, and approved;

(b) proper vouchers accompany all disbursements of money; and

(c) the records are open to the public ~~at all reasonable hours~~ *during the office hours determined by the governing body by resolution after a public hearing.*"

Section 7. Section 20-3-204, MCA, is amended to read:

"**20-3-204. Office hours.** (1) Except for a part-time county superintendent provided for under 20-3-201(4), the county superintendent of schools shall, *during the office hours determined by the governing body,* keep the office of the county superintendent open ~~from 8 a.m. until 5 p.m. every~~ *each* day when the county superintendent is not engaged in the supervision of schools, except on *legal* holidays and on Saturdays~~, provided that~~. *However,* when the county superintendent has a deputy or clerk, the office must be kept open ~~from 8 a.m. until 5 p.m. every~~ *during the hours determined by the governing body by resolution after a public hearing and consented to by the county superintendent, each* day except *legal* holidays and ~~except~~ Saturdays. ~~The office must be kept open at all times as business may require.~~

(2) This section does not apply to counties operating under the county manager plan."

Approved March 24, 1995

CHAPTER NO. 217

[HB 188]

AN ACT REQUIRING A PUBLIC HEARING BEFORE THE LOCAL OPTION TAX ON LIGHT VEHICLES MAY BE CHANGED; EXTENDING THE CURRENT DISPOSITION OF THE LOCAL OPTION TAX REVENUE BETWEEN THE COUNTY AND CITIES WITHIN THE COUNTY; AMENDING SECTION 61-3-537, MCA, SECTION 4, CHAPTER 749, LAWS OF 1991, AND SECTION 1, CHAPTER 217, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-537, MCA, is amended to read:

"**61-3-537. (Temporary) Local option vehicle tax.** (1) A county may impose a local vehicle tax on vehicles subject to a property tax under 61-3-504(2)

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at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504(2).

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504(2). The *first priority of the* local vehicle tax *is for district court funding, and the tax* is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(3) The governing body of a county may impose, *revise, or revoke* a local vehicle tax ~~for a fiscal year~~ by adopting a resolution before July 1 ~~of the fiscal year~~, after conducting a public hearing on the proposed resolution. The resolution may provide for the distribution of the local vehicle tax. ~~(Terminates June 30, 1995—sec. 1, Ch. 217, L. 1993.)~~

61-3-537. (Effective July 1, ~~1995~~ *2005*) Local option vehicle tax. (1) A county may impose a local vehicle tax on vehicles subject to a property tax under 61-3-504(2) at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504(2).

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504(2) and is distributed in the same manner, based on the registration address of the owner of the motor vehicle.

(3) The governing body of a county may impose, *revise, or revoke* a local vehicle tax ~~for a fiscal year~~ by adopting a resolution before July 1 ~~of the fiscal year~~, after conducting a public hearing on the proposed resolution."

Section 2. Section 1, Chapter 217, Laws of 1993, is amended to read:

"Section 1. Section 4, Chapter 749, Laws of 1991, is amended to read:

"Section 4. **Termination.** [This act] terminates June 30, ~~1993~~ ~~1995~~ *2005*.""

Section 3. Section 4, Chapter 749, Laws of 1991, is amended to read:

"Section 4. **Termination.** [This act] terminates June 30, ~~1993~~ *2005*."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1995

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CHAPTER NO. 218

[HB 215]

AN ACT AMENDING THE REQUIREMENTS FOR A HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA FOR THE DENIAL OR CONDITIONING OF A PERMIT; AND AMENDING SECTION 75-10-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-403, MCA, is amended to read:

"**75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

~~(4)~~*(5)* "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, sterage, or disposal operational units.

~~(5)~~*(6)* "Generation" means the act or process of producing waste material.

~~(6)~~*(7)* "Generator" means any person, hy site, whose act or process produces hazardous waste or whose act first causes a hazardous waste te become subject to regulation under this part.

~~(7)~~*(8)* (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

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(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

~~(8)~~*(9)* "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

~~(9)~~*(10)* "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and otber similar areas, used for the transfer and temporary storage of hazardous wastes and where sbipments of hazardous wasto are temporarily held for a period of 10 days or less during the normal course of transportation up te hut not including the point of ultimate treatment, storage, or disposal.

~~(10)~~*(11)* "Manifest" means the shipping document originated and signed hy the generator and ~~which~~ *that* is used to identify the hazardous wasto, its quantity, origin, and destination during its transportation.

~~(11)~~*(12)* "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any otber governmental or private entity, wbetber organized for profit or not.

~~(12)~~*(13)* "Regulated suhstance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction ~~thereof~~ *of crude oil*, ~~which~~ *that* is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch ahsolute);

(b) does not include a substance regulated as a hazardous waste under this part.

~~(13)~~*(14)* "Storage" means the actual or intended containment of regulated substances, hazardous wastes, or both, either on a temporary hasis or for a period of years.

~~(14)~~*(15)* "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(15)~~*(16)* "Transporter" means a person engaged in the offsite transportation of bazardous waste hy air, rail, highway, or water.

~~(10)~~*(17)* "Treatment" means a method, tecbnique, or process, including neutralization, designed to change the physical, chemical, or hiological character or composition of any hazardous waste so as to neutralize tbe waste or so as to render it nonhazardous, safer for transportation, amenahle for recovery, amenable for storage, or reduced in volume.

~~(17)~~*(18)* "Underground storage tank":

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(a) means, except as provided in subsections ~~(17)(b)(i)~~ *(18)(b)(i)* through ~~(17)(b)(viii)~~ *(18)(b)(viii)*:

(i) any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or

(C) state law comparable to the provisions of law referred to in subsection ~~(17)(b)(ii)(A)~~ *(18)(b)(ii)(A)* or ~~(17)(b)(ii)(B)~~ *(18)(b)(ii)(B)*, if the facility is intrastate;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections ~~(17)(b)(i)~~ *(18)(b)(i)* through ~~(17)(b)(vi)~~ *(18)(b)(vi)*."

Section 2. Disclosure statement required. (1) Subject to the provisions of subsection (4), a permit that is required for a hazardous wasto management facility under 75-10-406 may not be issued, reissued, renewed, or modified without tbe filing of a disclosure statement as required under this section. Before an application for the issuance, reissuance, renewal, or modification of a permit under 75-10-406 for a hazardous waste management facility may be approved, the applicant shall submit to the department a disclosure statement containing tbe following information:

(a) the name, business address, and social security number of the applicant;

(b) a description of any civil complaint filed and administrative enforcement action taken within 5 years before the date of the application against the applicant for the violation of an environmental protection law and a statement regarding whether the complaint or action resulted in a civil or administrative penalty;

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(c) a description of all judgments of criminal conviction entered against the applicant for the violation of an environmental protection law within 5 years before the date of the application; and

(d) a description of all judgments of criminal conviction for activities directly associated with a hazardous waste management facility entered against the applicant for the violation of an environmental protection law of another state within 5 years before the date of the application. For the purposes of this subsection (d), "environmental protection law of another state" means a law or administrative rule adopted pursuant to a law:

(i) regulating solid or hazardous waste or underground storage tanks; or

(ii) protecting the air or water resource.

(2) A disclosure statement, as required in subsection (1), must be executed under oath or affirmation and is subject to the penalty for perjury. The department may verify and investigate the information containod in a disclosure statement required under this section.

(3) A person required to file a disclosure statement under this section shall provide assistance or information requested by the department that is relatod to the statement and shall cooperate in an inquiry or investigation conducted by the department under subsection (2).

(4) (a) This section does not apply to the issuance of a temporary emergency permit under 75-10-406(5) or to the modification of a permit that does not reflect a change in the owner or operator of the hazardous waste management facility.

(b) A person is not required to comply with the provisions of [section 3] or this section for:

(i) the reissuance, renewal, or modification of a valid hazardous waste management facility permit issued prior to January 1, 1995; or

(ii) an application for a new hazardous waste management facility permit for a facility when a permit was issued prior to January 1, 1995, if the new permit is not because of a change in the owner or operater at that facility.

(5) For the purposes of this section, "applicant" includes a subsidiary or successor in interest with respect to the applicant.

Section 3. Denial or modification of permit — mitigating factors. (1) The department may deny an application for the issuance, reissuance, renewal, or modification of a permit for a hazardous waste management facility or impose additional conditions on a permit pursuant to subsection (2) if within 5 years before the date of the application:

(a) a civil complaint or administrative enforcement action for a violation of an environmental protection law has resulted in the assessment of a penalty against the applicant;

(b) a judgment of criminal conviction of an environmental protection law has been entered against the applicant;

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(c) the applicant has a history of repeated violations of environmental protection laws; or

(d) a judgment or criminal conviction for a violation described in [section 2(1)(d)] has heen entered against the applicant.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the number, nature, and gravity of the violations of environmental protection laws or violations described in [section 2(1)(d)];

(b) the degree of culpahility of the applicant;

(c) the applicant's cooperation with the state or federal agencies involved in the complaints, enforcement actions, and convictions referred to in [section 2]; and

(d) the applicant's dissociation from other persons or entities involved in the complaints or enforcement actions or convicted of acts referred to in [section 2].

(4) For the purposes of this section, "applicant" includes a subsidiary or successor in interest with respect to the applicant.

Section 4. Codification instruction. [Sections 2 and 3] are intended to he codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [sections 2 and 3].

Approved March 24, 1995

CHAPTER NO. 219

[HB 226]

AN ACT GRANTING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES AUTHORITY TO RETAIN AND SPEND MONEY FORFEITED UNDER FEDERAL LAW FOR CRIMINAL JUSTICE PURPOSES; AMENDING SECTION 44-13-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Federal forfeiture funds — use. (1) Money forfeited under federal law and provided to the department of corrections and human services may be deposited in an account in the federal special revenue fund.

(2) Money from federal forfeiture funds deposited in the account may be used for training probation and parole officers, for the purchase of equipment for probation and parole officers, or for other criminal justice purposes upon appropriation hy the legislature.

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Section 2. Section 44-13-102, MCA, is amended to read:

"**44-13-102. Federal forfeitures deposited in account.** ~~Property~~ *Except as provided in [section 1], property* and money forfeited under federal law and provided to the state by the federal government to support state and local law enforcement programs must be deposited to the special law enforcement assistance account established in 44-13-101. An amount up to $125,000 each fiscal year is statutorily appropriated, as provided in 17-7-502, to the attorney general for the support of state and local law enforcement programs. Any expenditure in excess of $125,000 each fiscal year requires approval through budget amendment, as provided in Title 17, chapter 7, part 4."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 1995.

Approved March 24, 1995

CHAPTER NO. 220

[HB 235]

AN ACT GENERALLY REVISING THE FUNDING OF CERTAIN DEPARTMENT OF AGRICULTURE PROGRAMS; ALLOWING ADMINISTRATIVE COSTS AS A PERMISSIBLE USE OF REVENUE FROM THE NOXIOUS WEED MANAGEMENT PROGRAM; CREATING A STATE SPECIAL REVENUE ACCOUNT FOR THE NOXIOUS WEED MANAGEMENT PROGRAM; ALLOWING THE DEPARTMENT OF AGRICULTURE TO INVEST THE FUNDS IN THE ANHYDROUS AMMONIA ACCOUNT AND DEPOSIT THE INCOME IN THE ACCOUNT; REQUIRING THE DEPARTMENT OF AGRICULTURE TO DEPOSIT INVESTMENT INCOME IN THE ALFALFA SEED ACCOUNT; ELIMINATING STATUTORY REFERENCES TO THE TERMINATED SURCHARGE ON THE RETAIL SALE OF HERBICIDES; ELIMINATING THE STATE'S IMMUNITY FROM LIABILITY FOR ACTIONS OF THE ALFALFA SEED COMMITTEE; AMENDING SECTIONS 80-7-801, 80-7-811, 80-7-813, 80-7-814, 80-7-815, 80-10-207, AND 80-11-310, MCA; REPEALING SECTIONS 80-7-812, 80-7-821, AND 80-11-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-801, MCA, is amended to read:

"**80-7-801. Definitions.** As used in this part, the following definitions apply:

(1) "Crop weed" means any plant commonly accepted as a weed and for which grants for management research, evaluation, and education under 80-7-814(3)(g) may be given.

~~(1)~~*(2)* "Department" means the department of agriculture established in 2-15-3001.

~~(2) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed, as defined in 80-8-102. The term does not include herbicides labeled only for home, yard, or garden use and sold in containers of less than 10 pounds or 1 gallon.~~

(3) "Noxious weed" means any weed defined ~~and designated as a noxious weed by rule of the department~~ *in 7-22-2101(7)(a).*

~~(4) "Retail value" means the suggested or retail price to the consumer of a given herbicide as established by the registrant, or as determined by a survey of dealers conducted by the department.~~

~~(5) "Sale" includes only the sale of a herbicide to an applicator or consumer. Sales between or to distributors, dealers, or retailers are not included.~~"

Section 2. Section 80-7-811, MCA, is amended to read:

"**80-7-811. Noxious weed management trust fund.** There is a noxious weed management trust fund~~, which must be funded from revenue collected under 80-7-812 and 80-7-813~~ *of $2.5 million*. The department shall administer the trust fund in accordance with this part."

Section 3. Section 80-7-813, MCA, is amended to read:

"**80-7-813. Acceptance and expenditure of gifts and other funds.** The department may accept gifts, grants, contracts, or other funds designated for noxious weed management. ~~Such~~ *The* funds ~~may be expended to support any weed management project or may~~ *must* be deposited in the noxious weed management trust fund *or in the account established in [section 6] and may be expended to support a noxious weed management project.*"

Section 4. Section 80-7-814, MCA, is amended to read:

"**80-7-814. Administration and expenditure of funds.** (1) Money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches ~~$2,500,000~~ *$2.5 million*, except ~~as provided by 80-7-815~~ in case of a noxious weed emergency *as provided in 80-7-815*. Once this amount is accumulated, ~~any~~ interest or revenue generated by the trust fund and by other funding measures provided by this part must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, ~~so~~ *as* long as the principal of the trust fund remains at least ~~$2,500,000~~ *$2.5 million*.

(2) The department may expend funds under this section through grants or contracts to communities, weed control districts, or other entities it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than $100,000 for ~~first-class~~ *first-class* counties, as defined in 7-1-2111.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

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(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. ~~Such~~ *The* expenditures must be on a cost-share basis with ~~such~~ *the* organizations.

(b) cost-share noxious weed management programs with local weed control districts;

(c) special grants to local weed control districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may he issued without matching funds from the district.

(d) ~~costs of collecting the surcharge imposed by 80-7-812, not to exceed 3% of the total surcharge proceeds;~~ *administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.*

(e) administrative expenses incurred hy the noxious weed management advisory council;

(f) ~~any~~ *a* project recommended by the noxious weed management advisory council, if the department determines the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(4) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to tbe noxious weed management advisory council.

(5) In making expenditures under subsections (2) and (3), the department ~~must~~ *shall* give preference to weed control districts and community groups.

(6) If the noxious weed management trust fund is terminated hy law, the money in the fund must he divided between all counties according to rules adopted by the department for that purpose."

Section 5. Section 80-7-815, MCA, is amended to read:

"80-7-815. Noxious weed emergency — expenditure authorized. (1) If a new and potentially harmful noxious weed is discovered growing in the state and is verified hy the department, the governor may declare a noxious weed emergency. In the absence of necessary funding from other sources, this declaration authorizes the department to allocate up to $150,000 of the principal of the noxious weed management trust fund to government agencies for emergency relief to eradicate or confine the new noxious weed species.

(2) If ~~such~~ *the* expenditure causes the principal of the trust fund to fall below ~~$2,500,000~~ *$2.5 million*, it must be replenished ~~by proceeds of the surcharge imposed in 80-7-812 or, if the surcharge has been terminated as provided in 80-7-812(5),~~ hy the interest or revenue generated hy the trust fund, hy the other

revenue provided by this part, or by revenue obtained from the fee imposed by 61-3-510, as determined by the department."

Section 6. Account — deposit — investment. (1) There is an account in the stata special revenue fund established in 17-2-102. The interest from the noxious weed trust fund and the fee imposed in 61-3-510 must be deposited in the account and must be expended as provided in 80-7-814.

(2) The department may direct tbe board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund.

Section 7. Section 80-10-207, MCA, is amended to read:

"**80-10-207. Fees.** (1) (a) A manufacturer registering under 80-10-201(1) shall pay to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers and unmanipulated animal and vegetable manures, provided that sales to manufacturers or exchanges between them are exempt. The fees are:

(i) inspection of fertilizers other tban anhydrous ammonia, 20 cents per ton. The department may by rule after hearing adjust the inspection fee not to exceed a maximum of 25 cents per ton to maintain adequate funding for the administration of this part. ~~Any~~ *A* change in fee becomes effective on the first day of a reporting period. All manufacturers ~~shall~~ *must* be given notice of ~~any~~ *a* change in fees before the effective date.

(ii) inspection of anhydrous ammonia, 20 cents per ton. The department may by rule after hearing adjust the anhydrous ammonia inspection fee not to exceed a maximum of 65 cents per ton to maintain adequate funding for the administration and enforcement of part 5 of this chapter. ~~Any~~ *A* change in fee becomes effective on the first day of a reporting period. All registrants and manufacturers of anhydrous ammonia ~~shall~~ *must* be given notice of ~~any~~ *a* change in fees before the effective date of the fee adjustment.

(iii) assessment, the fee prescribed in 80-10-103. The assessment fee ~~shall~~ *must* be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(b) If fertilizer or soil amendment material is added to fertilizer for which a fee has been paid under subsection (1)(a), a fee must be paid under that subsection, but only on the added fertilizer or soil amendment.

(2) There ~~shall~~ *must* be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of registered soil amendment is sold ~~per~~ *in a* 6-month period, there ~~shall~~ *must* be paid to the department a fee of $5 ~~per~~ *for each* soil amendment ~~per~~ *for each* 6-month period in lieu of the *fee of* 10 cents per ton ~~fee~~. Inspection fees ~~shall~~ *must* be used by the department for administration of this part.

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(3) (a) (i) ~~Every~~ *Each* licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer and unmanipulated manures, to an unlicensed or unregistered person in this state shall file with the department on forms furnished or approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer ~~and/or~~ *or* soil amendment distributed in this state during the 6-month period. The report is due on or before the 30th day of the month following the close of each period.

(ii) ~~Every~~ *Each* manufacturer who registers *or a person who registers on the manufacturer's behalf* a soil amendment or commercial fertilizer in this state ~~or a person who registers on the manufacturer's behalf~~, except specialty fertilizer and unmanipulated manures, shall file with the department on forms furnished or approved by the department a monthly statement setting forth the numher of net tons of each registered commercial fertilizer and soil amendment distributed in this state during the month and to whom it was distributed. The report is due on or before the 30th day of the following month. The manufacturer or person registering on hehalf of the manufacturer shall pay the fees set forth in subsection (1) at that time.

(b) If the tonnage report required by subsection (3)(a)(ii) is not filed and the payment of fees is not made within 30 days after the end of the period, a collection fee amounting to 10% of the amount due but not less than $10 ~~shall~~ *must* be assessed against the manufacturer and the amount of fees due ~~shall constitute~~ *constitutes* a debt and ~~become~~ *becomes* the basis of a judgment against the manufacturer.

(4) Except as provided in subsection (5), all fees collected for licenses, registration, and inspection and ~~moneys~~ *money* collected as penalties ~~shall~~ *must* be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund.

(5) All fees collected under subsection (1)(a)(ii) ~~shall~~ *must* be deposited in the state treasury to the credit of the state special revenue fund, anhydrous ammonia account, for the administration and enforcement of part 5 of this chapter and the rules adopted ~~thereunder~~ *under part 5. The department may direct the board of investments to invest the funds collected under subsection (1)(a)(ii) pursuant to the provisions of 17-6-201. The incomc from thc investment must be deposited in the anhydrous ammonia account in the state special revenue fund.*"

Section 8. Section 80-11-310, MCA, is amended to read:

"**80-11-310. Deposit and disbursement of funds — records — investment.** (1) As soon as possible after receipt, all money received by the department from the assessment levied under 80-11-307 and all other money received ~~shall~~ *must* be deposited in the state special revenue fund.

(2) All money referred te in subsection (1) is statuterily appropriated, as provided in 17-7-502, to the committee and may be used only for the payment

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of expenses incurred in carrying out the provisions of this part. The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121~~; however, the~~. *The* costs charged must have a substantial relationship to the cost of services supplied.

(3) Money received under ~~this section,~~ 80-11-312, ~~and~~ 80-11-313, *and this section that is* not immediately required for the purposes of this part must be invested under provisions of the unified investment program estahlished in Title 17, chapter 6, part 2. *The income from the investment must be deposited in the alfalfa seed account in the state special revenue fund.*

(4) Money received under ~~this section,~~ 80-11-312, ~~and~~ 80-11-313, *and this section* is appropriated to the committee for the purposes of this part."

Section 9. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 80, chapter 7, part 8, and the provisions of Title 80, chapter 7, part 8, apply to [section 6].

Section 10. Repealer. Sections 80-7-812, 80-7-821, and 80-11-306, MCA, are repealed.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1995

CHAPTER NO. 221

[HB 252]

AN ACT REQUIRING A MEDICAL GAS PIPING INSTALLATION ENDORSEMENT TO INSTALL PIPE USED SOLELY FOR TRANSPORTING GASES USED FOR MEDICAL PURPOSES; AND AMENDING SECTION 37-69-320, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Medical gas piping installation endorsement. (1) A medical gas piping installation endorsement entitles the holder to install pipe used solely for transporting gases used for medical purposes.

(2) To be eligible for endorsement under this section, a person must meet all requirements for endorsements established by the board by rule.

(3) A person with a valid medical gas piping installation endorsement from another state may install medical gas piping in this state.

(4) The board shall by rule establish the requirements for obtaining a medical gas piping installation endorsement. Fees must be established by rule and must be commensurate with the costs of administering the medical gas piping installation endorsement program.

Section 2. Requirements for installation of medical gas piping. (1) After April 1, 1996, a person may not install pipe used solely to transport gases used for medical purposes unless the person holds a valid medical gas piping installation endorsement pursuant to [section 1].

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(2) A violation of this section is punishable pursuant to 37-69-324.

Section 3. Section 37-69-320, MCA, is amended to read:

"**37-69-320. License *and endorsement* discipline.** (1) The board may revoke, suspend, restrict, censure, or apply any other disciplinary treatment contemplated by 37-1-136 to any occupational licensee *or endorsee* under this chaptor for any one or more of the following causes:

(a) performance of plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(b) inadequato supervision that causes or allows plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(c) material deceit in procuring, attempting to procure, or aiding and abetting the procurement of an occupational license *or endorsement* te practice in the field of plumbing;

(d) unfitness to provide services in the field of plumbing by reason of negligence or addiction to the use of habit-forming drugs;

(e) physical or mental incompetence ~~which~~ *that* impairs the licensee's *or endorsee's* ability to deliver adequate service in the field of plumbing;

(f) willful or repeated violation of this chaptor or rules adopted ~~hereunder~~ *under this chapter* or willful or repeated violation of Title 50, chapter 60, part 5, or rules adopted ~~thereunder~~ *under that part*; or

(g) unprofessional practice-related conduct as defined by rules adopted by the board.

(2) Any licensee *or endorsee* disciplinary action under the jurisdiction of tbe board ~~shall~~ *must* be conducted as a contested case under the provisions of the Montana Administrative Procedure Act."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 69, and the provisions of Title 37, chapter 69, apply to [sections 1 and 2].

Section 5. Coordination instruction. If [this act] and House Bill No. 518 are both passed and approved and if House Bill No. 518 repeals 37-69-320, then the repeal of 37-69-320 in House Bill No. 518 is void.

Approved March 24, 1995

CHAPTER NO. 222

[HB 263]

AN ACT CLARIFYING THE TRUST RESPONSIBILITIES OF THE BOARD OF LAND COMMISSIONERS; AND AMENDING SECTION 77-1-202, MCA.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 77-1-202, MCA, is amended to read:

"77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding ~~rule and~~ principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state *as provided in The Enabling Act*. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

(2) It is consistent with the powers and duties provided in subsection (1) that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation.

(3) When acquiring land for the state, the board shall determine the value ~~thereof~~ *of the land* after an appraisal by a qualified land appraiser."

Approved March 24, 1995

CHAPTER NO. 223

[HB 274]

AN ACT GRANTING THE DEPARTMENT OF STATE LANDS BROADER DISCRETION TO EXPEDITE SALES OF STATE TIMBER IN EMERGENCY SITUATIONS AND LIMITED ACCESS OPPORTUNITY SITUATIONS; EXEMPTING CERTAIN LIMITED ACCESS OPPORTUNITY TIMBER SALES FROM THE BID PROCESS REQUIREMENTS; EXEMPTING CERTAIN EMERGENCY AND LIMITED ACCESS OPPORTUNITY TIMBER SALES FROM THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING SECTION 77-5-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-201, MCA, is amended to read:

"77-5-201. Sale of timber. (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under ~~such~~ *any* rules ~~as may be~~ established by the board.

(2) Timber proposed for sale in excess of 100,000 board feet ~~shall~~ *must* be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department ~~shall~~ *must* receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3)*(a)* In cases of emergency due to fire, insect, fungus, parasite, or blowdown *or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner*, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any or all bids,

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upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of 1 million board feet without offering the timber for bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3)."

Approved March 24, 1995

CHAPTER NO. 224

[HB 292]

AN ACT REQUIRING A REVIEWING AUTHORITY TO PREPARE A WRITTEN STATEMENT AS TO THE CONDITIONS SURROUNDING A SUBDIVISION APPROVAL OR CERTIFICATION DENIAL OR CONDITION IMPOSITION RELATED TO SANITARY RESTRICTIONS; AND AMENDING SECTION 76-4-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement. (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards ~~shall~~ *must* provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and ~~shall~~ *must* be related to size of lots~~,~~*;* contour of land~~,~~*;* porosity of soil~~,~~*;* ground water level~~,~~*;* distance from lakes, streams, and wells~~,~~*;* type and construction of private water and sewage facilities~~,~~*;* and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules ~~shall~~ *must* provide for the review of the following divisions of land by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to review these divisions of land:

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(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and

(h) divisions of land proposed to connect to existing municipal water and ~~waste water~~ *wastewater* systems previously approved by the department~~,~~ if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or hoard of health is competent to review the divisions of land described in subsection (3).

(5) The department shall review those divisions of land described in subsection (3) if:

(a) a proposed division of land lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to he certified.

(6) The rules ~~shall~~ *must* further provide for:

(a) ~~the furnishing to~~ *providing* the reviewing authority ~~of~~ *with* a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicahle to storm drainage plans and related designs, in order to ~~insure~~ *ensure* proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicahle to solid wasto disposal;

(i) ~~requiring~~ evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations ~~which~~ *that* are in effect at the time of submission of the preliminary or final plan or plat.

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(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect at the time plans and specifications are submitted to the department, except *that* in cases ~~where~~ *in which* current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time ~~such~~ *the* lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality ~~will~~ apply.

(9) The reviewing authority may not deny or condition a certification that a division of land is not subject to sanitary restrictions under this part unless it provides a written statement to the applicant detailing the circumstances of the certification denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition."

Section 2. Review requirements — written statement. In addition to the requirements of 76-3-604 and 76-3-609, a governing body may not deny or condition a subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the subdivision denial or condition imposition. The statement must include:

(1) the reason for the denial or condition imposition;

(2) the evidence that justifies the denial or condition imposition; and

(3) information regarding the appeal process for the denial or condition imposition.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 2].

Approved March 24, 1995

CHAPTER NO. 225

[HB 329]

AN ACT ALLOWING A STUDENT FROM A TRIBALLY CONTROLLED COMMUNITY COLLEGE OR A STATE-FUNDED, 2-YEAR POSTSECONDARY INSTITUTION TO PARTICIPATE IN THE LEGISLATIVE INTERN PROGRAM; REQUIRING TRIBAL GOVERNMENTS TO BE NOTIFIED; AND AMENDING SECTIONS 5-6-102 AND 5-6-106, MCA.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-6-102, MCA, is amended to read:

"**5-6-102. Establishment of program.** It is the public policy of this state that there be a legislative intern program open to students attending the university of Montana - *Missoula*, Montana state university - *Bozeman*, ~~eastern Montana college~~ *Montana state university - Billings, Montana state university* - northern ~~Montana college~~, western Montana college of the university of Montana, and ~~the~~ Montana ~~college of mineral science and technology~~ *tech of the university of Montana or a state-funded, 2-year postsecondary institution*. ~~Any~~ *A* private college of higher education *or a tribally controlled community college* in the state may also establish an intern program for the purposes of this chapter."

Section 2. Section 5-6-106, MCA, is amended to read:

"**5-6-106. Intern qualifications.** (1) The legislative interns must have the following qualifications:

(a) at least one course of "government" or its equivalent as a course of study at an institution of higher learning;

(b) attainment of at least the level of a junior at ~~an~~ *a 4-year* institution of higher learning *or attainment of at least the level of a sophomore at a 2-year postsecondary institution*; and

(c) the necessary degree of scholastic achievement, leadership, and involvement in community affairs.

(2) Preference must be given to Montana high school graduates."

Section 3. Notification of tribal governments. The secretary of state shall send a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal chairperson of the Little Shell tribe.

Approved March 24, 1995

CHAPTER NO. 226

[HB 342]

AN ACT REVISING THE CONTRACTUAL RELATION BETWEEN SUPPLIERS AND DISTRIBUTORS OF TABLE WINE; REFERENCING THE APPLICABILITY OF MONTANA STATUTORY PROVISIONS; PROHIBITING PRICE CONTROL; AMENDING SECTIONS 16-3-416 AND 16-3-419, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-416, MCA, is amended to read:

"**16-3-416. Table wine distributor provisions.** (1) A supplier or table wine distributor ~~may not fail or refuse to reduce to writing an~~ *must have a written* agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor.

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(2) An agreement of distributorship must provide that:

(a) a supplier shall notify a table wine distributor in writing at least 60 days prior ta termination of an agreement of distributorship unless a termination without notice is permitted as provided in 16-3-417. The written notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice, the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection.

(b) a supplier may not unreasonably withhold or delay approval of a sale or transfer of the ownership, management, or control of a table wine distributorship~~; however~~. *However*, a table wine distributor shall give a supplier no less than 60 days' prior written notice of any material change in ownership, management, or control.

(3) Within 60 days after entering into an agreement of distributorship, the supplier shall advise the department of the agreement by filing a copy of the agreement that must include the sales area or areas designated for the table wine distributor.

(4) If a supplier terminates an agreement of distributorship under the provisions of subsection (2)(a), the table wine distributor subject to the termination is entitled to compensation for the laid-in cost of ~~his~~ inventory. In the event of any termination of the agreement by the supplier other than termination for good cause or for any reason set forth in 16-3-417(3), the distributor is entitled to compensation for the laid-in cost of ~~his~~ inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this section.

(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the tormination is in the best interest of the table wine brand concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5.

(6) All agreements of distributorship are interpreted and governed by the laws of Montana.

(7) A provision in an agreement of distributorship that is inconsistent with the requirements of this section is void."

Section 2. Section 16-3-419, MCA, is amended to read:

"16-3-419. Suppliers' prohibitions. A supplier may not:

(1) coerce, induce, or attempt to coerce or induce a table wine distributor to engage in an illegal act or course of conduct;

(2) require a table wine distributor to accept delivery of a product or other item or commodity that was not ordered by the wine distributor;

(3) fix or maintain the price at which a distributor shall resell table wine."

Section 3. Applicability. [Section 1] applies to all contracts entered into or renewed after October 1, 1995.

Approved March 24, 1995

CHAPTER NO. 227

[HB 527]

AN ACT PROVIDING THAT THE MAXIMUM VIDEO GAMBLING MACHINE PAYOUT IS $800; AND AMENDING SECTION 23-5-608, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-608, MCA, is amended to read:

"23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash. (1) A video gambling machine may not allow more than $2 to be played on a game or award free games or credits in excess of the following amounts:

(a) ~~$100~~ *$800* a game for a video draw poker machine; and

(b) $800 a game for a video keno or bingo machine.

(2) A licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher."

Approved March 24, 1995

CHAPTER NO. 228

[HB 549]

AN ACT REVISING THE LAWS RELATING TO RETAIL BEER AND TABLE WINE RETAIL LICENSES FOR OFF-PREMISES CONSUMPTION; PROVIDING FOR THE ISSUANCE OF CONDITIONAL LICENSES TO ACCOMMODATE NEW OR REMODELED FACILITIES; AMENDING SECTIONS 16-4-105 AND 16-4-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Beer and wine licenses for off-premises consumption. (1) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption may be issued only to a person, firm, or corporation that is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of licenses that the department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its

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sound discretion grant or deny an application for any such license or suspend or revoke any license for cause.

(2) Upon receipt of a completed application for a license under this section, accompanied by the necessary license fee as provided in 16-4-501, the department shall request that the department of justice make a thorough investigation of all matters relating to the application. Based on the results of the investigation, the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business; and

(c) the requirements of this code and the rules promulgated by the department are met and complied with.

(3) License applications submitted under this section are not subject to the provisions of 16-4-203 and 16-4-207.

(4) If the premises proposed for licensing under this section are a new or remodeled structure, the department may issue a conditional license prior to completion of the premises upon reasonable evidence that the premises will be suitable for the carrying on of business as a bona fide grocery store or a drugstore licensed as a pharmacy.

Section 2. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordanco with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of ~~such~~ *the* cities and towns ~~shall~~ *must* be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of ~~such~~ *the* towns, not more than one retail beer license, which may not be used in conjunction witb a retail all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of ~~such~~ *the* cities or towns, one retail beer license for each 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of ~~such~~ *the* cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitanta or major fraction ~~thereof~~ *of 2,000 inhabitants*, and one additional

retail beer license for each additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in ~~such~~ cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits ~~thereof~~ *of the cities or towns*, ~~shall govern~~ *governs* the number of retail beer licenses that may be issued for use within ~~such~~ *the* cities and towns and within a distance of 5 miles from the corporate limits ~~thereof~~. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both ~~of such~~ municipalities and within a distance of 5 miles from their respective corporate limits ~~shall~~ *must* be determined on the basis of the combined populations of both ~~of such~~ municipalities and may not exceed the ~~foregoing~~ limitations *in this section*. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town ~~shall~~ *must* be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporato boundary of such city or town.

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110, which are in excess of the ~~foregoing~~ limitations *in this section* ~~shall be~~ *are* renewable, but ~~no~~ new licenses may *not* be issued in violation of ~~such~~ *the* limitations;

(d) ~~such~~ *the* limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted ~~men's~~ *persons'*, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if ~~such~~ *the* veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits ~~thereof~~ or for use at premises situated within any unincorporated town ~~shall~~ *must* be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of ~~such~~ *the* license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue ~~such~~ *an* amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, ~~shall mean~~ *means* automatic loss of the wine amendment license.

~~(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed~~

~~for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause.~~"

Section 3. Section 16-4-402, MCA, is amended to read:

"**16-4-402. Application — investigation.** (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department. The application must be verified by the affidavit of the person making it before a person authorized to administer oaths.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the department of justice make a thorough investigation of all matters relating to the application. Based on the results of the investigation, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), *a retail beer and wine license for off-premises consumption as provided in [section 1],* or a special permit provided in 16-4-301.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) If, within 30 days of receiving the completed application, the department finds no basis for denying the application, the department shall proceed to publish the notice of the application as required by 16-4-207."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1995

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CHAPTER NO. 229

[SB 2]

AN ACT GENERALLY REVISING THE LAWS CONCERNING THE FINANCING OF SPECIAL IMPROVEMENT DISTRICTS AND RURAL SPECIAL IMPROVEMENT DISTRICTS; REVISING THE INFORMATION THAT MUST BE INCLUDED IN THE NOTICE OF INTENTION TO CREATE AN IMPROVEMENT DISTRICT; ALLOWING A BOARD OF COUNTY COMMISSIONERS OR A MUNICIPAL GOVERNING BODY TO CREATE A SPECIAL IMPROVEMENT DISTRICT RESERVE ACCOUNT; ALLOWING A BOARD OF COUNTY COMMISSIONERS OR A MUNICIPAL GOVERNING BODY TO IMPOSE AN ADDITIONAL INTEREST RATE ON UNPAID ASSESSMENTS; REQUIRING THAT 5 PERCENT OF THE PRINCIPAL AMOUNT OF BONDS OR WARRANTS BE DEPOSITED IN THE REVOLVING FUND FOR BONDS AND WARRANTS SECURED BY THE REVOLVING FUND; LIMITING THE DURATION OF THE REVOLVING FUND OBLIGATION; ESTABLISHING FACTORS TO BE CONSIDERED BEFORE PLEDGING THE REVOLVING FUND; AMENDING SECTIONS 7-12-2105, 7-12-2153, 7-12-2176, 7-12-2182, 7-12-2183, 7-12-2185, 7-12-4106, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, 7-12-4225, 7-14-4712, AND 7-14-4732, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2105, MCA, is amended to read:

"7-12-2105. Notice of resolution of intention to create district — hearing. (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners ~~must~~ *shall* publish notice of the passage of ~~such~~ *the* resolution of intention as provided in 7-1-2121.

(2) ~~The board shall also cause a copy of such notice to be posted in three public places within the boundaries of such special improvement district.~~ A copy of ~~such~~ *the* notice ~~shall~~ *must* be mailed, as provided in 7-1-2122, to ~~every~~ *each* person, firm, or corporation or the agent of ~~such~~ *the* person, firm, or corporation owning real property within the proposed district listed in ~~his~~ *the owner's* name upon the ~~last completed~~ *last-completed* assessment roll for state, county, and school district taxes.

(3) *(a)* ~~Such~~ *The* notice must describe the general character of the improvement or improvements ~~so~~ proposed to be made or acquired by purchase, state the estimated cost ~~thereof~~ *of the improvements*, describe generally the method ~~or methods~~ *or methods* by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of ~~such~~ *the* improvements or the creation of ~~such~~ *the* district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

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(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice ~~shall~~ *must* refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice ~~shall~~ *must* state the exact purchase price of ~~such~~ *the* existing improvement."

Section 2. Section 7-12-2153, MCA, is amended to read:

"7-12-2153. Incidental expenses considered as cost of improvements — *costs for bonds or warrants secured by revolving fund — district reserve account.* (1) ~~The cost and expense~~ *Incidental expenses* connected with ~~and incidental to~~ the formation of ~~any~~ *a* special improvement district, including the cost of preparation of plans, specifications, maps, or plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-2101(7) ~~shall be~~ *are* considered a part of the cost ~~and expenses~~ of making the improvements within ~~such~~ *the* special improvement district.

(2) ~~The~~ *If the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, the* original costs of any improvement ~~may, at the option of the board of county commissioners,~~ *must* include an amount ~~not to exceed~~ *equal to* 5% of the principal amount of any bonds or warrants to be issued, which ~~shall~~ *must* be deposited in the revolving fund created in 7-12-2181.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the board of county commissioners may create a district reserve account.

(b) As part of the original costs of the improvements, the board of county commissioners may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any rural special improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-2183.

(e) Money remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund.

(4) The establishment of a district reserve account does not preclude the board of county commissioners from requiring additional security from the owners of real property in the district."

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Section 3. Section 7-12-2176, MCA, is amended to read:

"7-12-2176. Interest rate on unpaid assessments. *(1)* The installments of assessments remaining unpaid bear simple interest at an annual rate ~~of~~ *equal to* the sum of:

(a) 1/2 of 1% a year; plus

(b) the average interest rate payable on the outstanding bonds or warrants of the *rural* special improvement district; *plus*

(c) at the option of the board of county commissioners, up to an additional 1/2 of 1% a year.

(2) The board of county commissioners may subsequently reduce or eliminate the additional interest rate allowed under subsection (1)(c). If the additional interest rate is reduced or eliminated, it may not be subsequently increased or reimposed."

Section 4. Section 7-12-2182, MCA, is amended to read:

"7-12-2182. Sources of money for revolving fund. (1) For the purpose of providing funds for ~~such~~ *the* revolving fund, the board of county commissioners:

(a) shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, include in the cost of the improvements to be defrayed from the proceeds of the bonds or warrants an amount equal to 5% of the principal amount of the bonds or warrants to be issued as provided in 7-12-2153(2);

~~(a)~~*(b)* may, ~~in its discretion and~~ from time to time, transfer to the revolving fund from the general fund of the county ~~such~~ *an* amount ~~or amounts~~ as may be ~~deemed~~ necessary~~;~~ ~~which~~. *The* amount ~~or amounts so~~ transferred ~~shall be considered and shall be loans~~ *is a loan* from ~~such~~ *the* general fund to the revolving fund~~; and~~.

~~(b)~~*(c)* shall, in addition to ~~such~~ *a* transfer or transfers from the general fund or in lieu ~~thereof~~ *of a transfer*, levy ~~and collect~~ for ~~such~~ *the* revolving fund ~~such~~ a tax, ~~hereby~~ declared to be for a public purpose, on all ~~the~~ taxable property in ~~such~~ *the* county as ~~shall be~~ *is* necessary to meet the financial requirements of ~~such~~ *the revolving* fund. ~~However, a~~ *A* tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding rural special improvement district bonds and warrants secured ~~thereby~~ *by the revolving fund*. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds and warrants secured ~~thereby~~ *by the revolving fund.*

(2) Whenever there ~~shall be~~ *is* money in the district fund ~~which~~ *that* is not required for payment of any bond or warrant of ~~such~~ *the* district secured by the revolving fund or of interest ~~thereon~~ *on the bond or warrant*, ~~so~~ *as* much of ~~such~~ *the* money as may be necessary to pay the loan provided for in 7-12-2183 ~~shall~~ *must*, by order of the board, be transferred to the revolving fund and the balance of ~~such~~ *the* money or, if there is no outstanding loan, ~~so~~ *as* much of ~~such~~ *the* money as the board considers necessary may be transferred to the improvement

district's maintenance fund. After all the bonds and warrants secured by the revolving fund issued on any rural special improvement district have been fully paid, all money remaining in ~~such~~ *the* district fund ~~shall~~ *must*, by ~~the~~ order of the board, be transferred to and become part of the revolving fund or the improvement district's maintonance fund."

Section 5. Section 7-12-2183, MCA, is amended to read:

"**7-12-2183. Loan from revolving fund to meet payments on bonds and warrants or to make emergency repairs.** (1) ~~Whenever~~ *During the period described in 7-12-2185(2), when* any rural special improvement district bond or warrant secured by the revolving fund ~~and~~ or any interest ~~thereon shall~~ *on the bond or warrant* ~~become~~ *becomes* due and payable and there ~~shall then be~~ *is* either no money or ~~not sufficient~~ *insufficient* money in the appropriate district fund *after a transfer from the appropriate district reserve account, if established,* with which to pay the ~~same~~ *bond, warrant, or interest*, an amount sufficient to make up the deficiency ~~may, by order of the board of county commissioners,~~ *must* be loaned by the revolving fund to ~~such~~ *the* district fund. ~~Thereupon, such~~ *The* bond, ~~or~~ warrant, or ~~such~~ interest ~~thereon shall~~ *must* be paid from the money ~~so~~ loaned ~~or from the money so loaned when added to such insufficient amount, as the case may require~~ *and money available in the district fund.*

(2) ~~Whenever any~~ *If there is insufficient money in the* rural special improvement district maintenance fund ~~does not have sufficient money~~ to pay the cost of emergency repairs, the board of county commissioners, by order or resolution, may loan money from the revolving fund to ~~such~~ *the* district maintenance fund. ~~Such~~ *The* loan ~~shall~~ *must* be repaid in annual installments in not more than 3 years. ~~In no event may the~~ *The* loans *may not* ~~interfere with~~ *cause a default in* the payments of *the principal of the* bonds or warrants *or the interest on the bonds or warrants.* The loan ~~shall~~ *must* be repaid by an assessment as provided by 7-12-2120 if other funds are not available. If there are ~~not sufficient~~ *insufficient* funds in the revolving fund to make the loans without ~~interfering with~~ *causing a default in* the payment of *the principal of the* bonds or warrants *or the interest on the bonds or warrants* secured ~~thereby~~ *by the revolving fund*, then the loans may not be made."

Section 6. Section 7-12-2185, MCA, is amended to read:

"**7-12-2185. Covenants to ~~utilize~~ *use* revolving fund — *duration of revolving fund obligation — factors to be considered.*** (1) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree:

(a) to ~~issue orders annually authorizing~~ *make* loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts ~~thereof~~, to the extent that funds are available; and

(b) to provide funds for ~~such~~ *the* revolving fund pursuant to the provisions of 7-12-2182 by annually making ~~such~~ *a* tax levy (or, in lieu ~~thereof~~ *of the tax levy*, ~~such~~ *a* loan from the general fund) ~~as the board may so agree to and undertake~~, subject to the maximum limitations imposed by 7-12-2182.

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(2) *(a)* The undertakings and agreements ~~shall be~~ *are* binding upon ~~said~~ *the* county ~~so long as any of said~~ *with respect to the rural* special improvement district bonds or warrants ~~so offered or any interest thereon remain unpaid~~ *until the earlier of:*

(i) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid; or

(ii) the date that is the later of:

(A) the final stated maturity date of the bonds or warrants; or

(B) the date on which all special assessments levied in the district have been either paid or discharged.

(b) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to occur upon:

(i) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law; or

(ii) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(3) Prior to entering into the undertakings and agreements set forth in subsection (1), the board of county commissioners shall take into consideration the following factors, including other circumstances that the board may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;

(d) the amount of any outstanding special assessments against the property in the district;

(e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(f) the public benefit of the improvements proposed to be financed; and

(g) in the case of a district created to make improvements in a newly platted subdivision:

(i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and

(ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.

(4) Any findings or determinations with respect to the factors contained in subsection (3) made by the board of county commissioners in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the board has taken into consideration the factors required by subsection (3).

~~(3)~~*(5)* In lieu of the undertakings and agreements set forth in subsection (1), the board of county commissioners may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund ~~shall~~ *does* not secure the bonds or warrants and that the bonds or warrants ~~shall be~~ *are* payable solely from the district fund created ~~therefor~~ *for the bonds or warrants* and ~~shall~~ *do not* have ~~no~~ *a* claim against the revolving fund."

Section 7. Section 7-12-4106, MCA, is amended to read:

"7-12-4106. Notice of passage of resolution of intention. (1) Upon having passed ~~such~~ *the* resolution *of intention pursuant to 7-12-4104*, the council ~~must~~ *shall* give notice of the passage of ~~such~~ *the* resolution of intention.

(2) The notice must be published ~~for 5 days in a daily newspaper or in some one issue of a weekly paper published in the city or town or, in case no newspaper be published in such city, then by posting for 5 days in three public places in the city or town~~ *as provided in 7-1-2121*. A copy of ~~such~~ *the* notice ~~shall~~ *must* be mailed to ~~every~~ *each* person, firm, or corporation or the agent of ~~such~~ *the* person, firm, or corporation having real property within the proposed district listed in ~~his~~ *the owner's* name upon the ~~last completed~~ *last-completed* assessment roll for state, county, and school district taxes, at ~~his~~ *the owner's* last-known address, upon the same day ~~such~~ *that the* notice is first published or posted.

(3) *(a)* ~~Such~~ *The* notice must describe the general character of the ~~improvement or the~~ *proposed* improvements ~~so proposed to be made~~, state the estimated cost ~~thereof~~ *of the improvements*, describe generally the method ~~or methods~~ by which the costs of the improvements will be assessed, and designate the time when and the place where the council will hear and pass upon all written protests that may be made against the making or acquisition of ~~such~~ *the* improvements or the creation of ~~such~~ *the* district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-4222:

(i) the general fund of the city or town may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the city or town to meet the financial requirements of the revolving fund.

(c) The notice ~~shall~~ *must* refer to the resolution on file in the office of the city clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement."

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Section 8. Section 7-12-4169, MCA, is amended to read:

"**7-12-4169. Incidental expenses considered as cost of improvements — *costs for bonds or warrants secured by revolving fund — district reserve account.*** (1) ~~The costs and expenses~~ *Incidental expenses* connected with ~~and incidental to~~ the formation of ~~any~~ *a* special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-4101(7) ~~shall be~~ *are* considered a part of the cost ~~and expenses~~ of making the improvements within ~~such~~ *the* special improvement district.

(2) ~~The~~ *If the bonds or warrants are secured by the revolving fund under 7-12-4225, the* costs of any improvement ~~may, at the option of the municipal governing body,~~ *must* include an amount ~~not to exceed~~ *equal to* 5% of the principal amount of any bonds or warrants to be issued, which ~~shall~~ *must* be deposited in the revolving fund created in 7-12-4221.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the city or town council may create a district reserve account.

(b) As part of the original costs of the improvements, the city or town council may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any special improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-4223.

(e) Money remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund.

(4) The establishment of a district reserve account does not precludes the city or town council from requiring additional security from owners of real property in the district."

Section 9. Section 7-12-4189, MCA, is amended to read:

"**7-12-4189. Simple interest on assessments.** (1) Upon all special assessments and taxes levied and assessed in accordance with any of the provisions of this part, simple interest shall *must* be charged at an annual rate ~~not exceeding~~ *equal to* the sum of:

(a) 1/2 of 1% a year; plus

(b) the average interest rate payable on the outstanding bonds or warrants of the special improvement district; *plus*

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(c) at the option of the city or town council, up to an additional 1/2 of 1% a year.

(2) The city or town council may subsequently reduce or eliminate the additional interest rate allowed under subsection (1)(c). If the additional interest rate is reduced or eliminated, it may not be subsequently increased or reimposed.

~~(2)~~*(3)* The treasurer, in collecting ~~such~~ *the* special assessment taxes if the ~~same~~ *taxes* are payable in one installment, shall collect ~~such~~ *the* interest as may be shown to be due ~~thereon~~ *on the taxes* by the resolution levying ~~such~~ *the* assessment. If ~~such~~ *the* assessment ~~be~~ *is* payable in installments, the treasurer shall, at the time of collecting the first installment, collect ~~such~~ *the* interest as may be shown to be due on ~~such~~ *the* assessment by the resolution levying ~~such~~ *the* assessment, and ~~thereafter he~~ *the treasurer* shall collect with each subsequent installment interest on the ~~whole~~ amount remaining unpaid."

Section 10. Section 7-12-4222, MCA, is amended to read:

"7-12-4222. Sources of money for revolving fund. (1) For the purpose of providing funds for ~~such~~ *the* revolving fund, the city or town council:

(a) ~~(i)~~ may, ~~in its discretion and~~ from time to time, transfer to the revolving fund from the general fund of the city or town ~~such~~ *an* amount ~~or amounts~~ as may be ~~deemed~~ necessary~~, which~~. *The* amount ~~or amounts so~~ transferred ~~shall be deemed and considered and shall be loans~~ *is a loan* from ~~such~~ *the* general fund to the revolving fund~~; and~~.

~~(ii)~~*(b)* ~~may~~ *shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-4225,* include in the cost of the improvement to be defrayed from the proceeds of the bonds or warrants an amount ~~up~~ *equal* to 5% of the principal amount of the bonds or warrants ~~and deposit it in the revolving fund upon receipt of such proceeds~~ *as provided in 7-12-4169*; and

~~(b)~~*(c)* shall, in addition to ~~such~~ *a* transfer or transfers from the general fund or in lieu ~~thereof~~ *of a transfer*, levy ~~and collect~~ for ~~such~~ *the* revolving fund ~~such~~ a tax, ~~hereby~~ declared to be for a public purpose, on all ~~the~~ taxable property in ~~such~~ *the* city or town as ~~shall be~~ *is* necessary to meet the financial requirements of ~~such~~ *the revolving* fund. ~~However, a~~ *A* tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding special improvement district bonds and warrants secured ~~thereby~~ *by the revolving fund.* If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding special improvement district bonds and warrants secured ~~thereby~~ *by the revolving fund.*

(2) Whenever there ~~shall be~~ *is* money in the district fund ~~which~~ *that* is not required for payment of any bond or warrant of ~~such~~ *the* district secured by the revolving fund or of interest ~~thereon~~ *on the bond or warrant,* ~~so~~ *as* much of ~~such~~ *the* money as may be necessary to pay the loan provided for in 7-12-4223 ~~shall~~ *must,* by order of the council, be transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants secured by the revolving fund have been fully paid, all money remaining in ~~such~~ *the* district fund ~~shall~~ *must,* by order of the council, be transferred to and become part of the revolving fund."

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Section 11. Section 7-12-4223, MCA, is amended to read:

"7-12-4223. Loans from revolving fund to meet payments on bonds and warrants. ~~Whenever~~ *During the period described in 7-12-4225(2), when* any special improvement district bond or sidewalk, curb, and alley approach warrants ~~which~~ *that* are secured by the revolving fund or any interest ~~thereon shall be~~ *on the bond or warrants becomes* due and payable and tbere ~~shall then be~~ *is* either no money or ~~not sufficient~~ *insufficient* money in the appropriate district fund *after a transfer from the appropriate district reserve account, if established,* with which to pay the ~~same~~ *bond, warrant, or interest*, an amount sufficient to make up the deficiency ~~may, by order of the council,~~ *must* be loaned by the revolving fund to ~~such~~ *the* district fund. ~~Thereupon, such~~ *The* bond, ~~or~~ warrant, or ~~such~~ interest ~~thereon shall~~ *must* be paid from tbe money ~~so~~ loaned or from tbe money ~~so~~ loaned ~~when added to such insufficient amount, as the case may require~~ *and money available in the district fund.*"

Section 12. Section 7-12-4225, MCA, is amended to read:

"7-12-4225. Covenants to utilize *use* revolving fund — *duration of revolving fund obligation — factors to be considered.* (1) In connection with ~~any public offering of~~ *the issuance of* special improvement district bonds or sidewalk, curb, and alley approach warrants, the city or town council may undertake and agree:

(a) to ~~issue orders annually authorizing~~ *make* loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts ~~thereof~~, to the extont that funds are available; *and*

(b) to provide funds for ~~such~~ *the* revolving fund pursuant to the provisions of 7-12-4222(1) by annually making ~~such~~ *a* tax levy (or, in lieu ~~thereof~~ *of the tax levy*, ~~such~~ *a* loan from the general fund) ~~as the city or town council may so agree to and undertake~~, subject to the maximum limitations imposed by 7-12-4222(1).

(2) The undertakings and agreements referred to in subsection (1) ~~shall be~~ *are* binding upon ~~said~~ *the* city or town ~~so long as any of said~~ *with respect to the* special improvement district bonds or sidewalk, curb, and alley approach warrants ~~so offered or any interest thereon remain unpaid~~ *until the earlier of:*

(a) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the special improvement district is the debtor; or

(b) the date that is the later of:

(i) the final stated maturity date of the bonds or warrants; or

(ii) the date on which all special assessments levied in the district have been either paid or discharged.

(3) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to have occurred upon:

(a) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the

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property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law;

(b) the discharge of the trust pursuant to 15-17-318 or upon the sale or lease of the property under 15-17-319 if the property in the district has been assigned to the city or town under Title 15, chapter 17, part 3; or

(c) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(4) Prior to entering into the undertakings and agreements set forth in subsection (1), the city or town council shall take into consideration the following factors, including other circumstances that the city or town council may dstermine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that thc district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvemcnts are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to bc lcvied against each lot, parcel, or tract in the district in comparison to the estimatcd market value of the lot, parcel, or tract after the improvements are made;

(d) the amount of any outstanding special assessments against the property in the district;

(c) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(f) the public benefit of the improvements proposed to be ftnanced; and

(g) in the case of a district created to make improvements in a newly platted subdivision:

(i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and

(ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.

(5) Any findings or determinations with respect to the factors contained in subsection (4) made by the city or town council in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the city or town council has taken into consideration the factors required by subsection (4).

~~(3)~~*(6)* In lieu of the undertakings and agreements set forth in subsection (1), the city or town council may determine in the resolution authorizing the issuance of the bonds or warrants tbat the revolving fund ~~shall~~ *does* not secure the bonds or warrants and that the bonds or warrants ~~shall be~~ *are* payable solely from the district fund created ~~therefor~~ *for the bonds or warrants* and ~~shall~~ *do not* have ~~no~~ *a* claim against the revolving fund."

Section 13. Section 7-14-4712, MCA, is amended to read:

"**7-14-4712. Procedure upon receipt of petition from all property owners within proposed district.** If a petition for the formation of an improvement district under the provisions of 7-14-4711 is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying ~~such~~ *the* ownership and making a finding of the fact, shall adopt a resolution of intention to order the improvement, as provided in 7-12-4104, and 7-12-4117, and ~~shall have immediate jurisdiction to~~ *may* adopt the resolution ordering the improvement pursuant to ~~the following provisions~~ *7-14-4711 through 7-14-4723* without ~~the necessity of~~ the publication ~~and posting~~ of the resolution of intention provided for in 7-12-4106. *However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106 through 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225 must be met by the governing body.*"

Section 14. Section 7-14-4732, MCA, is amended to read:

"**7-14-4732. Procedure upon receipt of petition for creation of offstreet parking district.** (1) If a petition for the formation of an improvement district for the leasing, improvement, or operation and maintenance of an offstreet parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying ~~such~~ *the* ownership and making a finding of ~~such~~ fact, shall adopt a resolution of intention to order the improvement, pursuant to the provisions of 7-12-4104 and 7-12-4117, and ~~shall have immediate jurisdiction to~~ *may* adopt the resolution ordering the improvement pursuant to ~~provisions of~~ 7-12-4114 without ~~the necessity of~~ the publication ~~and posting~~ of the resolution of intention provided for in 7-12-4106. *However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106 through 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225 must be met by the governing body.*

(2) If a petition for the formation of an improvement district for offstreet parking purposes and for the leasing of sites and improvement, operation, and maintenance ~~thereof~~ *of sites* is ~~presented to the governing body~~ signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district *and is presented to the governing body*, the governing body shall adopt a resolution of intention ordering the proposed improvement and ~~cause same to be published and posted~~ *publish the resolution* pursuant to the provisions of 7-12-4104 and 7-12-4106."

Section 15. Coordination instruction. If Senate Bill No. 8 is approved, then in [section 6(2)(a)(i) of the first reading copy of this act], amending 7-12-2185, the following language must be inserted following the word "paid": "or discharged in a bankruptcy case in which the special improvement district is the debtor".

Section 16. Applicability. [This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants

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issued after [the effective date of this act], if the district was created before [the effective date of this act].

Section 17. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1995

CHAPTER NO. 230

[SB 82]

AN ACT CHANGING THE DATE FOR SETTING THE SALARIES OF COUNTY OFFICERS; AMENDING SECTIONS 7-4-2503 AND 7-4-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended te read:

"**7-4-2503. Salary schedule for certain county officers.** (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties where the office is authorized~~, for the fiscal year beginning July 1, 1991, and each year thereafter~~ must be established by the county governing body at no less than 80% of the annual base salary of:

(i) $25,000 for the counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction ~~thereof~~ *of 100 persons* included in the county's population as determined by the 1990 federal decennial census; or

(ii) $18,000 for counties of tbe sixth and seventh class added to the population increment of $10 per 100 persons or major fraction ~~thereof~~ *of 100 persons* in the county's population as determined by the 1990 federal decennial census.

(b) The annual base established by the county governing body in subsection (1) must be uniform for all county officers referred to in subsection (1).

(2) (a) An elected county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up te $2,000 per year.

(b) The ceunty sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(c) The county sheriff shall receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary

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was set at the level of the salary of the prior fiscal year may not he included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not he included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary for the fiscal year beginning July 1, 1991, is $50,000 per year. In counties with a population less than 30,000, the county attorney wbo is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1991, is the same as that established for full-time county attorneys in subsection (3)(a).

(c) ~~Beginning July 1, 1991, and on July 1~~ *On August 1* of each ~~succeeding~~ year, each county attorney is entitled to an increase in salary calculated by adding to the annual salary on July 1, 1991, the percentage change in the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), any cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county atterney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attornoy and for each year of service thereafter up to completion of the 11th year of service, each deputy county atterney is entitled te an additional annual increase in salary of $500.

(ii) Tbe years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant te 7-4-2504(2), the years of service during any year in which the salary was set at the level of the salary of

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the prior fiscal year may not be included in any calculation of longevity increases.

(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year is based on the most current calendar year's estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 2. Section 7-4-2504, MCA, is amended to read:

"7-4-2504. **Salaries to be fixed by resolution — cost-of-living increments.** (1) The county governing body shall by resolution on or before ~~July 1, 1992, and on or before July~~ *August* 1 of each year ~~thereafter~~ adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, ~~and the~~ clerk of the district court; ~~the~~, county auditor (if there is one); and ~~the~~ county surveyor (if the surveyor receives a salary). Except as provided in subsection (3), the salaries fixed may be no less than 80% of the annual base salary provided for in 7-4-2503(1) plus a cost-of-living increment based on the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The county governing body may, however, for all or the remainder of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, county attorney, and coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for ~~the fiscal year beginning July 1, 1992, and for~~ each ~~subsequent~~ fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such a case, the cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(2) The county governing body may, in any subsequent fiscal year, restore for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1). If cost-of-living increments are restored, the longevity increases provided for sheriffs in 7-4-2503, for deputy county attorneys in 7-4-2503(3)(d)(i), and for undersheriffs and deputy sheriffs in 7-4-2510 must also be restored for the years for which the cost-of-living increment was restored.

~~(3) If the application of 7-4-2503 does not qualify a county official for a salary increase, the salary base for the fiscal year beginning July 1, 1991, must be the fiscal year 1990-91 salary plus 100% of the last previous calendar year's consumer price index for all urban consumers, as set forth in subsection (1).~~

~~(4)~~*(3)* The county governing body shall by resolution, prior to ~~July~~ *August* 1 of each year, establish the salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as

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provided in subsection (1), set the salary at the prior fiscal year level. The salary must be in effect ~~upon~~ *on* the first day of each ensuing fiscal year."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1995

CHAPTER NO. 231

[SB 103]

AN ACT REVISING THE DEFINITION OF "FEDERAL-AID SYSTEMS" TO CONFORM TO CURRENT LAW; CLARIFYING THE STATE'S RESPONSIBILITY FOR COSTS ASSOCIATED WITH THE RELOCATION OF UTILITIES FOR HIGHWAY CONSTRUCTION; AND AMENDING SECTIONS 60-4-401 AND 60-4-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-4-401, MCA, is amended to read:

"60-4-401. Relocation — definitions. For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows:

(1) "Utility" includes publicly, privately, and cooperatively owned utilities.

(2) "Cost of relocation" includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) "Federal-aid systems" includes the ~~federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them~~*:*

(a) national highway system;

(b) primary highway system;

(c) secondary highway system; and

(d) urban highway system.

(4) "Interstate system" includes any highway now included or which may hereafter be included as a part of the national system of interstate and defense highways provided for in Title 23, U.S.C."

Section 2. Section 60-4-403, MCA, is amended to read:

"60-4-403. Relocation — costs. Seventy-five percent of all costs of relocation, including the costs of acquisition of new right-of-way, of dismantling, and of removal, ~~shall~~ *must* be paid by the department as a cost of ~~highway~~ *federal-aid systems* construction."

Approved March 24, 1995

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CHAPTER NO. 232

[SB 114]

AN ACT REVISING THE VALUE THRESHOLD AT WHICH THE DEPARTMENT OF TRANSPORTATION SHALL OFFER REAL PROPERTY AT PUBLIC AUCTION; ELIMINATING THE PROVISION ALLOWING A LANDOWNER FROM WHOM THE DEPARTMENT OF TRANSPORTATION ACQUIRES REAL PROPERTY TO REDEEM THE PROPERTY AT THE SALE PRICE WITHIN 10 DAYS AFTER THE SALE; AMENDING SECTIONS 60-4-202 AND 60-4-203, MCA; AND REPEALING SECTION 60-4-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-4-202, MCA, is amended to read:

"60-4-202. **Sale of interest in real property.** The department may sell an interest in real property~~, however acquired by it, which it~~ *if the department* determines *that the property* is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. If the interest is reasonably of a value in excess of ~~$100~~ *$2,500*, sale ~~shall~~ *must* be made to the highest bidder at public auction. The sale ~~shall~~ *of an interest at auction must* be conducted as provided in 77-2-321."

Section 2. Section 60-4-203, MCA, is amended to read:

"60-4-203. **Conduct of sale.** (1) The department shall publish notice of the sale *once a week for 4 successive weeks* in a newspaper published in the county in which the interest is located ~~once a week for 4 successive weeks~~. The notice of sale ~~shall~~ *must* contain the information required by 77-2-322. Sale ~~shall~~ *must* be held in the county ~~wherein~~ *where* the property is locatod.

(2) Before the sale of an interest having a value in excess of ~~$100~~ *$2,500*, the department ~~shall~~ *must* have ~~it~~ *the interest* appraised at a price representing a fair market value. The appraised value ~~shall~~ *must* be statod in the published notice.

(3) A sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."

Section 3. Repealer. Section 60-4-204, MCA, is repealed.

Approved March 24, 1995

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CHAPTER NO. 233

[SB 117]

AN ACT ALLOWING COUNTY COMMISSIONERS TO SET THE COST-OF-LIVING INCREMENT FOR SALARIES AT A PERCENTAGE OF THE CONSUMER PRICE INDEX; AMENDING SECTIONS 7-4-2503 AND 7-4-2504, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended to read:

"**7-4-2503. Salary schedule for certain county officers.** (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, ~~and~~ county sheriff~~; the~~, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812~~;~~, and ~~the~~ county auditor in all counties where the office is authorized~~, for the fiscal year beginning July 1, 1991, and each year thereafter~~ must be established by the county governing body at no less than 80% of the annual base salary of:

(i) $25,000 for ~~the~~ counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction ~~thereof~~ *of 100* included in the county's population as determined by the 1990 federal decennial census; or

(ii) $18,000 for counties of the sixth and seventh class added to the population increment of $10 per 100 persons or major fraction ~~thereof~~ *of 100* in the county's population as determined by the 1990 federal decennial census.

(b) The annual base established by the county governing body in subsection (1) must be uniform for all county officers referred to in subsection (1).

(2) (a) An elected county superintendent of schools ~~shall~~ *must* receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.

(b) The county sheriff ~~shall~~ *must* receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(c) The county sheriff ~~shall~~ *must* receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

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(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary ~~for the fiscal year beginning July 1, 1991,~~ is $50,000 per year. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney ~~for the fiscal year beginning July 1, 1991,~~ is the same as that established for full-time county attorneys in subsection (3)(a).

(c) ~~Beginning July 1, 1991, and on~~ *On* July 1 of each ~~succeeding~~ year, each county attorney is entitled to an increase in salary calculated by adding to the annual salary ~~on July 1, 1991, the percentage change in~~ *a percentage of up to 100% of* the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for ~~the fiscal year beginning July 1, 1983, and for~~ each ~~subsequent~~ fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), ~~any~~ *a* cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during ~~any~~ *a* year in which the salary was set at the level of the salary of the prior fiscal year may not be included in ~~any~~ *a* calculation of longevity increases.

(4) ~~For each 10th year after the fiscal year beginning July 1, 1981, the~~ *The* latest federal decennial census statistics are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year is based

on the most current calendar year's estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 2. Section 7-4-2504, MCA, is amended to read:

"7-4-2504. Salaries to be fixed by resolution — cost-of-living increments. (1) The county governing body shall by resolution on or before ~~July 1, 1992, and on or before~~ July 1 of each year ~~thereafter~~ adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, ~~and the~~ clerk of the district court~~; the~~, county auditor (if there is one)~~;~~ and ~~the~~ county surveyor (if the surveyor receives a salary). ~~Except as provided in subsection (3), the~~ *The* salaries fixed may be no less than 80% of the annual base salary provided for in 7-4-2503(1) plus a cost-of-living increment based on *a percentage of up to 100% of* the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The county governing body may, however, for all or the remainder of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, *the* county attorney, and *the* coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for ~~the fiscal year beginning July 1, 1992, and for~~ each ~~subsequent~~ fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such a case, the cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(2) The county governing body may, in any subsequent fiscal year, restore for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1). If cost-of-living increments are restored, the longevity increases provided for sheriffs in 7-4-2503, for deputy county attorneys in 7-4-2503(3)(d)(i), and for undersheriffs and deputy sheriffs in 7-4-2510 must also be restored for the years for which the cost-of-living increment was restored.

~~(3) If the application of 7-4-2503 does not qualify a county official for a salary increase, the salary base for the fiscal year beginning July 1, 1991, must be the fiscal year 1990-91 salary plus 100% of the last previous calendar year's consumer price index for all urban consumers, as set forth in subsection (1).~~

~~(4)~~*(3)* The county governing hody shall hy resolution, prior to July 1 of each year, establish tbe salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in subsection (1), set the salary at the prior fiscal year level. The salary must be in effect upon the first day of each ensuing fiscal year."

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved March 24, 1995

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CHAPTER NO. 234

[SB 151]

AN ACT REVISING THE DEFINITIONS OF TEMPORARY SERVICE CONTRACTOR AND TEMPORARY WORKER; AND AMENDING SECTION 39-71-116, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions hy the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of henefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) ~~utilization~~ *use* of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (3)(a) through (3)(d), does not exist; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (3)(a) through (3)(e), does not exist.

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(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular hasis in the provision of physical labor at a construction or renovation site.

(7) "Days" means calendar days, unless otherwise specified.

(8) "Department" means the department of labor and industry.

(9) "Disahility" means a condition in which a worker's ahility to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition.

(10) "Fiscal year" means the period of time hetween July 1 and the succeeding June 30.

(11) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting husiness under compensation plan No. 2, or the state fund under compensation plan No. 3.

(12) "Invalid" means one who is physically or mentally incapacitated.

(13) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(14) "Medical stahility", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not he reasonably expected from primary medical treatment.

(15) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(16) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(17) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operatod a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not availahle. This estimate must he adjusted hy additional payment by the employer or refund hy the department, as the case may actually he, on Decemher 31 of the current year. An employer's payroll must

be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(18) "Permanent partial disability" means a condition, after a worker has reached maximum medical healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in some capacity but the physical restriction impairs tbe worker's ability to work.

(19) "Permanent total disability" means a condition resulting from injury, as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediato joh openings is not a factor to be considered in determining if a worker is permanently totally disahled.

(20) The "plant of the employer" includes the place of business of a third person while tbe employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

(21) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(22) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(23) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(24) "Reasonably safe tools and appliances" are tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(25) "Secondary medical services" means those medical services or appliances considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work bardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(26) "Temporary partial disability" means a condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

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(27) "Temporary service contractor" means ~~any~~ *a* person, firm, association, *partnership, limited liability company,* or corporation conducting business that ~~employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others~~ *hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.*

(28) "Temporary total disability" means a condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(29) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis ~~to substitute for a permanent employee on leave or to meet an emergency or short-term workload~~ *to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.*

(30) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection (30)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

(31) "Year", unless otherwise specified, means calendar year."

Approved March 24, 1995

CHAPTER NO. 235

[SB 233]

AN ACT REQUIRING THE RETURN OF ATTORNEY FEES AND COSTS PAID BY AN INSURER TO AN ATTORNEY FOR A WORKERS' COMPENSATION CLAIMANT CONVICTED OF OBTAINING BENEFITS THROUGH FRAUD OR DECEPTION; ALLOWING BENEFITS TO BE MODIFIED WHEN THEY WERE OBTAINED BY FRAUD OR DECEPTION; AMENDING SECTIONS 39-71-613 AND 39-71-2909, MCA; AND PROVIDING AN EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-613, MCA, is amended to read:

"39-71-613. Regulation of ~~attorneys'~~ *attorney* fees — forfeiture of fee for noncompliance — *return of fee when claimant received benefits through fraud or deception.* (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The department may regulate the amount of the ~~attorney's fee~~ *attorney fees* in any workers' compensation case. In regulating the amount of the fee, the department shall consider:

(a) the benefits the claimant gained due to the efforts of the attorney;

(b) the time the attorney was required to spend on the case;

(c) the complexity of the case; and

(d) any other relevant matter the department may consider appropriate.

(3) ~~If an~~ *An* attorney *who* violates a provision of this section, a rule adopted under this section, or an order fixing ~~an attorney's fee~~ *attorney fees* under this section, ~~he shall forfeit~~ *forfeits* the right to any fee ~~which he may have~~ *that the attorney* collected or ~~been~~ *was* entitled to collect.

(4) If, after an attorney receives attorney fees and costs assessed against an insurer, the claimant is convicted of having obtained benefits through fraud or deception, the attorney fees and costs for obtaining the benefits must be returned to the insurer by the attorney."

Section 2. Section 39-71-2909, MCA, is amended to read:

"39-71-2909. Authority to review, diminish, or increase awards. The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed *or that the claimant received benefits through fraud or deception*, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge. *An insurer's petition alleging that the claimant received benefits through fraud or deception must be filed within 2 years after the insurer discovers the fraud or deception."*

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved March 24, 1995

CHAPTER NO. 236

[SB 245]

AN ACT REVISING THE MAXIMUM ALLOWABLE WEIGHT ON AXLES EQUIPPED WITH SINGLE TIRES OR WITH WIDE-BASE TIRES;

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REPEALING OBSOLETE STATUTORY LANGUAGE RELATING TO PERMISSIBLE WEIGHT LOADS; AMENDING SECTIONS 61-10-101, 61-10-107, 61-10-108, 61-10-109, 61-10-110, 61-10-121, 61-10-124, 61-10-126, 61-10-128, 61-10-141, 61-10-144, 61-10-145, AND 61-10-201, MCA; REPEALING SECTION 61-10-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-101, MCA, is amended to read:

"61-10-101. Standards of maximum dimensions, weights, etc. The standards provided for in 61-10-102 through *61-10-104 and 61-10-106 through* 61-10-110 govern the maximum dimensions, weights, and other characteristics of motor vehicles operating over the highways in the state to the exclusion of other standards or other requirements respecting the subject matter."

Section 2. Section 61-10-107, MCA, is amended to read:

"61-10-107. Maximum gross weight — when permit required. (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. An axle load is the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. For purposes of this section, axles 40 inches or less apart are considered ~~as~~ *to be* a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles must be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) *(a)* Notwithstanding a vehicle's conformance with the requirements of subsection (1), ~~its maximum load per inch of tire width, excluding the steering axle, may not exceed 500 pounds, based on the table in 61-10-105(3)~~ *except for the steering axle, all axles weighing over 11,000 pounds must have at least four tires or have wide-base tires. The maximum load on an axle, other than a steering axle, equipped with wide-base tires is limited to 500 pounds per inch of tire width.*

(b) The provisions of subsection (2)(a) do not apply to passenger buses.

(c) For the purposes of this section, wide-base tires are tires that are 14 or more inches in nominal width. The maximum tire weight limit is computed for wide-base tires based on the number of inches shown on the tire marking, or if the tire marking is shown by metric size, the tire weight limit is computed by conversion of the metric size.

(3) If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit~~, which~~. *The permit* may be issued in the discretion of the department of transportation based on evaluation of safety, highway capacity, and economics of highway maintonance

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and vehicle operation. The fee is $20 per trip permit or $100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. Permits may specify and permits issued under 61-10-124(6) must specify highway routing.

(4) A special permit issued under subsection (3) for the transportation of agricultural products by farm vehicles from a harvesting combine or other harvesting machinery to the point of first unloading is for the full term of the harvest season of the agricultural product transported.

(5) This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Section 3. Section 61-10-108, MCA, is amended to read:

"**61-10-108. Reduction under special circumstances.** The maximum axle and axle group loads stated in ~~61-10-105~~ *61-10-107* are subject to reasonable reduction in the discretion of the department of transportation during periods when road subgrades have been weakened by water saturation or other causes."

Section 4. Section 61-10-109, MCA, is amended to read:

"**61-10-109. Operation without special permits prohibited.** The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits specified in 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-108 is permitted only if authorized hy special permit issued by the department of transportation or its agents or the highway patrol."

Section 5. Section 61-10-110, MCA, is amended to read:

"**61-10-110. Federal law.** Sections 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-109 do not authorize, without a permit issued as provided by law, the operation of a combination of vehicles having a gross weight, axle load, or size in excess of that authorized in those sections~~,~~ or the operation *on the national system of interstate and defense highways* of a combination of vehicles ~~on the national system of interstate and defense highways~~ having a gross weight or size in excess of ~~that~~ *the maximum weight and size* permitted by law in this state before July 1, 1956, or *permitted* by federal law or regulation ~~in excess thereof, which is adopted~~. If federal law allows establishment of ~~size and~~ weight *and size* limits in excess of ~~those~~ *the allowable limits* permitted in ~~those sections~~ *61-10-101 through 61-10-104 and 61-10-106 through 61-10-109*, without penalty or denial of federal funds for highway purposes, the department of transportation may, hy permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a ~~size or~~ weight *or size* in excess of the limits provided for in those sections, but within the limits necessary to qualify for federal-aid highway funds."

Section 6. Section 61-10-121, MCA, is amended to read:

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"**61-10-121. Permits for excess size and weight.** (1) *(a)* Upon application and with good cause shown, the department of transportation and local authorities in their respective jurisdictions may issue telephonically or in writing a special permit authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department may issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through ~~61-10-110~~ *61-10-104 and 61-10-106 through 61-10-110*. This permit must be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period greater than the period for which the GVW license is valid, including grace periods, as provided in this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(b) The department may issue to dealers in implements of husbandry and self-propelled machinery oversize permits~~, which~~. *The permits* may be transferred from unit to unit by the dealer, for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday and expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the stato. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation."

Section 7. Section 61-10-124, MCA, is amended to read:

"**61-10-124. Special permits — fee *fees* — cranes.** (1) As used in this section, "crane" means a self-propelled, single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

(2) Except as provided in subsections (3)(b), (3)(d), and (6), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-110 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(3) (a) Except as provided in subsections (3)(b), (3)(d), (6), and (7), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle,

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combination of vehicles, load, object, or other thing in excess of 95 feet; ~~and~~ *or* an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length, and the long semitrailer cargo unit of the combination may not exceed 48 feet in length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used te carry a load are not permitted except as provided in subsections (6) and (7). Special permits for vehicle combinations may specify and special permits under subsections (6) and (7) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (3)(a). The fee for this permit is $75. This permit ~~covers a period of 1 year and~~ expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (2), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tracter-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(4) Except as provided in subsection (3)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits te expire with their registration. A license required by the state governs the issuance of a special permit.

(5) The owner or operater of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for ~~overweight~~ *excess weight* if the crane has a current special mobile equipment identification plate and if the department of transportation has approved the configuration of the crane through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is $200.

(6) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tracter-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius

of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(h) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a restricted route permit under 61-10-107(3) and a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(7) The department of transportation may issue special permits under subsection (6) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations."

Section 8. Section 61-10-126, MCA, is amended to read:

"61-10-126. Deposit of fees. All fees collected under 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-125 ~~shall~~ *must* be forwarded to the state treasurer for deposit in the state highway account in the state special revenue fund."

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Section 9. Section 61-10-128, MCA, is amended to read:

"61-10-128. When authorities may restrict right to use roadway. (1) A local authority may not alter the limitations provided in 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of transportation by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of transportation or the authority that enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order, ~~or~~ ordinance, or resolution is not effective until the signs are erected. The department of transportation, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles or impose limitations on their weight on designated highways, subject te the provisions of subsection (3). These prohibitions and limitations must be designated by appropriate signs placed on the highways.

(3) Neither the department of transportation nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable seed potatoes that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight;

(b) a permit has been issued under 61-10-107(3), regardless of the vehicle's gross weight, specifying the route from point of loading to the nearest nonrestricted road; and

(c) the driver possesses a federal-state inspection certificate issued for the load.

(4) A permit referred to in subsection (3) may he revoked for violating any condition of the permit."

Section 10. Section 61-10-141, MCA, is amended to read:

"61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds. (1) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-110, except recreational vehicles as defined in 61-1-132, ~~either~~ by means of *either* portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload at a designated facility that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-110. If the excess weight does

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not exceed 10,000 pounds, an excess weight permit may be issued in accordance with 61-10-121. The permit authorizes the driver of the excess weight load to proceed to a designated facility where the load can be safely reduced to legal limits.

(2) Commodities and material unloaded as required by this section must be cared for by the owner or operator of the vehicle at the risk of that owner or operator. Commodities or matorial unloaded as required by this section may not be left on the highway right-of-way.

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 14,000 pounds ~~G.V.W.~~ *GVW* and recreational vehicles as defined in 61-1-132 (that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer), to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements. The department may require vehicles over 10,000 pounds to be inspected and weighed by portable scale crews.

(4) Tbe department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of the joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of transportation shall cooperato to ~~assure~~ *ensure* minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the motor carrier services functions of the department of transportation. Each employee designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles ~~utilized~~ *used* by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of the commercial motor vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of transportation has:

(a) the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203; and

(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120 that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was ohtained."

Section 11. Section 61-10-144, MCA, is amended to read:

"61-10-144. Violation of standards — tolerance. (1) It is a misdemeanor for a person, firm, or corporation to violato any provision of 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-110.

(2) However, the operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations hy more than 5%, or 7% if the vehicle or combination of vehicles is transporting livestock, and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than 5%, or 7% if the vehicle or combination of vehicles is transporting livestock. In the event *that* the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than 5%, or 7% if the vehicle or comhination of vehicles is transporting livestock, the department may issue a single trip permit for the fee of $10, ~~for~~ allowing the vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of 5%, or 7% if the vehicle or combination of vehicles is transporting livestock, are subject to the fines provided in 61-10-145, and all loads in excess of 5% of the total gross or axle weight limitations, or 7% if the vehicle or combination of vehicles is transporting livestock:

(a) may be required to be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing; or

(b) may be issued a permit as authorized by 61-10-141.

(3) An operator of a vehicle or combination of vehicles subject to the provisions of 61-10-107(4) may move over a highway, except any highway that is part of the federal-aid interstato system, within a 50-mile radius of the harvested field to the point of first unloading without incurring the excess weight penalties set forth in 61-10-145 if the tetal gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% per axle, but the maximum load per inch of tire width may not exceed 670 pounds. The vehicle or combination of vehicles may not exceed 40 miles per hour. A single trip permit as required in subsection (2) is not applicable to the vehicle or combination of vehicles. When a vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed applies to that portion of the load above the legal limit."

Section 12. Section 61-10-145, MCA, is amended to read:

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"**61-10-145. Penalties.** (1) A person, firm, or corporation convicted of violating 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-110 shall be punished by a fine of not less than $30 or more than $100. A person, firm, or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) $30 for any excess weight up to and including 2,000 pounds;

(b) $75 for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) $125 for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) $175 for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) $250 for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) $275 for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) $300 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) $400 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) $500 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) $600 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) $1,000 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) $2,000 for any excess weight more than 25,000 pounds.

(2) If a motor vehicle is equipped with a retractable axle that is not fully extended and carrying its proportionate share of the load while the motor vehicle is operated upon the highways of this state, the weight penalties in subsection (1) apply to all weight over the legal maximum allowed by the fixed axles regardless of whether the axle is extended at the time of weighing. In addition to the penalties in subsection (1), the owner or operator shall be fined $100 for failure to have the retractable axle fully extended while the gross weight of the vehicle exceeds the legal maximum allowed by the fixed axles.

(3) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-110 must specify the amount of the excess weight

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that the defendant is alleged to have had upon the vehicle or combination of vehicles.

(4) The penalties in subsection (1) do not apply to an operator who fails to secure a special permit as provided for in 61-10-107(3) if the vehicle or combination of vehicles is not overweight with that permit. The failure to obtain the special permit is punishable under 61-10-146 and under this section as provided in 61-10-146, and the operator is required to purchase the permit. If the vehicle or combination of vehicles exceeds the weight limitations allowed by special permit and the operator fails to obtain a permit under 61-10-107(3), the penalties of subsection (1) apply to the weight exceeding 80,000 pounds.

(5) It is a misdemeanor, punishable as provided in 46-18-212, for a person, firm, or corporation to violate any of the provisions of 61-10-123, 61-10-141, or 61-10-142."

Section 13. Section 61-10-201, MCA, is amended to read:

"61-10-201. Gross weight fees on motortrucks, truck tractors, and buses. In addition to other fees for the licensing of vehicles and except as provided in 61-10-203, there must be paid and collected annually for each truck, truck tractor, and bus, based upon the maximum gross loaded weight and the maximum gross weight of any towed unit of each truck and truck tractor as set by the licensee in the licensee's application, the following fees:

Schedule I

Up to 6,000 lbs.	$ 7.50
6,001 through 8,000 lbs.	9.50
8,001 through 10,000 lbs.	13.25
10,001 through 12,000 lbs.	15.00
12,001 through 14,000 lbs.	17.00
14,001 through 16,000 lbs.	21.00
16,001 through 18,000 lbs.	28.00
18,001 through 20,000 lbs.	37.50
20,001 through 22,000 lbs.	47.00
22,001 through 24,000 lbs.	70.00
24,001 through 26,000 lbs.	90.00
26,001 through 28,000 lbs.	110.00
28,001 through 30,000 lbs.	130.00
30,001 through 32,000 lbs.	150.00
32,001 through 34,000 lbs.	170.00
34,001 through 36,000 lbs.	190.00
36,001 through 38,000 lbs.	215.00
38,001 through 40,000 lbs.	235.00
40,001 through 42,000 lbs.	255.00
42,001 through 44,000 lbs.	275.00
44,001 through 46,000 lbs.	300.00
46,001 through 48,000 lbs.	320.00
48,001 through 50,000 lbs.	340.00
50,001 through 52,000 lbs.	360.00
52,001 through 54,000 lbs.	380.00
54,001 through 56,000 lbs.	400.00
56,001 through 58,000 lbs.	420.00

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58,001 through 60,000 lbs. 440.00
60,001 through 62,000 lbs. 460.00
62,001 through 64,000 lbs. 482.50
64,001 through 66,000 lbs. 502.50
66,001 through 68,000 lbs. 522.50
68,001 through 70,000 lbs. 545.75
70,001 through 72,000 lbs. 566.50
72,001 through 74,000 lbs. 607.50
74,001 through 76,000 lbs. 655.00
76,001 through 78,000 lbs. 695.00
78,001 through 80,000 lbs. 750.00
Over 80,000 lbs. and within the weight limits specified in 61-10-101 through *61-10-104 and 61-10-106 through* 61-10-110 . . . . . 750.00
plus an additional 46.00 for each ton or fraction of a ton in excess of 80,000 lbs."

Section 14. Repealer. Section 61-10-105, MCA, is repealed.

Section 15. Date of compliance. All equipment existing on or after [the effective date of this act] must comply with the provision of 61-10-107(2) by January 1, 1996.

Section 16. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1995

CHAPTER NO. 237

[SB 253]

AN ACT CREATING AN INSURANCE FRAUD PROTECTION ACT; AMENDING SECTION 45-6-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title — purpose. (1) [Sections 1 through 8] may be cited as the "Insurance Fraud Protection Act".

(2) The purpose of [sections 1 through 8] is to facilitate the detection of insurance fraud and reduce the occurrence of insurance fraud through the development of fraud prevention programs, improved investigative and prosecutorial services, and increased consumer awareness.

Section 2. Insurance fraud. A person commits the act of insurance fraud when the person:

(1) for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, purported insurer, broker, or agent any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to,

as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;

(2) assists, abets, solicits, or conspires with another to prepare or make any written or oral statement containing false, incomplete, or misleading information concerning any fact that is intended to be presented to any insurer or purported insurer or in connection with, material to, or in support of any claim for payment or other benefit pursuant to an insurance policy or contract;

(3) presents or causes to be presented to or by an insurer, purported insurer, broker, or agent a materially false or altered application of insurance;

(4) accepts premium money knowing that coverage will not be provided;

(5) as a health care provider, submits a false or altered bill or report of physical condition to an insurer; or

(6) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent of deceiving an insurer.

Section 3. Powers and duties of commissioner — confidentiality of documents. (1) The commissioner may:

(a) initiate independent inquiries and conduct independent investigations when the commissioner has reason to believe that insurance fraud may be, has been, or is currently being committed;

(b) respond to notice or complaints generated by federal, state, county, and local law enforcement officers, other entities with law enforcement responsibilities, or governmental agencies or units;

(c) review and respond to notices or reports of insurance fraud submittod by any person, select the incidents of suspected fraud that in the commissioner's judgment require further and more detailed investigation, and conduct the investigations;

(d) conduct independent examinations of insurance fraud to determine the extent of insurance fraud, deceit, or intentional misrepresentation;

(e) after investigation, report any meritorious alleged violation of the law to the appropriate prosecuting authority or licensing agencies; and

(f) assemble evidence, prepare charges, and prosecute, if requested, or otherwise assist any prosecuting authority that has jurisdiction, including the attorney general.

(2) Papers, records, documents, reports, materials, or other evidence relative to the subject of an insurance fraud investigation must remain confidential and must be treated as confidential criminal justice information as defined in 44-5-103. Evidence procured pursuant to this section may not be disseminated, except as provided in 44-5-303.

(3) The commissioner shall notify the person who or the entity that has given notice of an alleged insurance fraud pursuant to [section 5(2)] of receipt of the notice by the commissioner and of the disposition of the notice and any resulting investigation.

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Section 4. Cooperation with law enforcement, licensing authorities, and other fraud agencies. (1) The commissioner shall cooperate with law enforcement authorities and all other authorized agencies and related insurance and professional licensing boards of this and other states. As used in this section, the term "authorized agencies" means:

(a) the attorney general of the state of Montana;

(b) the prosecuting attorney responsible for prosecution;

(c) the department of insurance of other jurisdictions;

(d) the United States attorney's office when that office is charged with investigation of the fraud; or

(e) the federal bureau of investigation or any other federal agency charged with investigation of the fraud.

(2) The commissioner shall cooperate to the extent allowed by law with insurance fraud investigators, related organizations of this and other states, and insurance commissioners of other states.

(3) If the commissioner determines that sufficient evidence of the commission of an act of insurance fraud exists, the commissioner shall inform the appropriate prosecuting authority and professional licensing boards.

Section 5. Duties of authorized insurers, adjusters, administrators, consultants, and producers. (1) Each insurer, independent adjuster, independent administrator, independent consultant, and independent producer shall cooperato fully with the commissioner with respect to the provisions of [sections 1 through 8].

(2) An insurer, an officer, employee, or producer of the insurer, an independent adjuster, an independent administrator, an independent consultant, or an independent producer who has reason to believe that an insurance fraud has been or is being committed shall provide notice of the alleged insurance fraud to the commissioner within 60 days.

(3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud has been committed in connection with an insurance claim, application, or policy tolls any applicable time period, for the commissioner, in any applicable insurance statute, related insurance regulation, or applicable sections of the criminal code and tolls any time period arising under 33-18-232 or 33-18-242 regarding unfair claims settlement practices.

Section 6. Persons not connected with insurance industry — reward fund. (1) Any person who has knowledge of or who believes that an act of insurance fraud is being or has been committed may provide the commissioner with a report or information pertinent to the knowledge and belief and may provide additional information that the commissioner requests.

(2) The commissioner, in cooperation with authorized insurers, producers, and other interested parties, may establish a fund to reward persons who are not connected with the insurance industry and who provide information or furnish evidence leading to the arrest and conviction of persons responsible for insurance fraud. Participation in the fund must be purely voluntary. The books

and records of the fund must be open and subject to review by the legislative auditor.

Section 7. Immunity from liability. (1) In the absence of malice, an insurer, an officer, employee, or producer of the insurer, an independent adjuster, an administrator, a consultant, or any private person is not subject to civil liability for filing reports, providing information, or otherwise cooperating with an investigation or examination of insurance fraud conducted by the commissioner.

(2) A person listed in subsection (1) receives immunity if the person:

(a) cooperates with, furnishes evidence to, or provides information regarding any suspected insurance fraud to the commissioner, the national association of insurance commissioners, any nonprofit organization established to detect and prevent insurance fraud, or other insurer or producer; or

(b) complies with an order issued by a court of competent jurisdiction acting in response to a request by the commissioner to furnish evidence or provide testimony.

Section 8. Penalties. (1) If, after a hearing conducted under 33-1-701, the commissioner determines that a person has committed insurance fraud, the commissioner may:

(a) impose any penalty provided for in 33-1-317; or

(b) require the person to pay the costs of the proceeding.

(2) Any person who purposely or knowingly commits insurance fraud commits the offense of theft under 45-6-301.

(3) In addition to any other penalties, the commissioner shall require a person who commits insurance fraud to make restitution to the insurer or to any other person for all financial loss sustained as a result of the insurance fraud.

Section 9. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

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(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statoment, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in [section 2].

~~(6)~~*(7)* (a) A person convictod of the offense of theft of property not exceeding $500 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding $500 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

~~(7)~~*(8)* Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 8].

Section 12. Effective date. [This act] is effective July 1, 1995.

Approved March 24, 1995

CHAPTER NO. 238

[SB 287]

AN ACT ALLOWING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES AUTHORIZING A WORKERS' COMPENSATION INSURER OR THE DEPARTMENT, UNDER CERTAIN CONDITIONS, TO WAIVE THE REQUIREMENT THAT AN EMPLOYER HAVE A SAFETY COMMITTEE; AMENDING SECTION 39-71-1505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-1505, MCA, is amended to read:

"**39-71-1505. Rulemaking authority.** The department shall adopt rules, including but not limited to rules that require:

(1) each employer to conduct an educational-based safety program, including but not limited to:

(a) a safety training program to provide:

(i) new employee general safety orientation;

(ii) job- or task-specific safety training; and

(iii) continuous refresher safety training, including periodic safety meetings;

(b) periodic hazard assessment, with corrective actions identified; and

(c) appropriate documentation of performance of the activities; and

(2) an employer of more than five employees to have a comprehensive and effective safety program, including but not limited to:

(a) *subject to subsection (3),* a safety committee composed of employee and employer representatives that holds regularly scheduled meetings;

(b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and illnesses; and

(c) policies and procedures that assign specific safety responsibilities and safety performance accountability.

(3) The department may adopt rules authorizing :

(a) a plan No. 2 or plan No. 3 insurer to waive the requirement in subsection (2)(a) for a safety committee if the employer presents sufficient evidence of an effective written safety plan and has a satisfactory modification factor, if applicable, or has a low ineident record of injuries; or

(b) the department to waive the requirement in subsection (2)(a) for a safety committee if a plan No. 1 insurer approved by the department presents sufficient evidence of an effective safety program, including a written safety plan. A waiver granted under this subsection (3)(b) to a member of the self-insurers guaranty fund must be made with the concurrence of the fund."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1995

CHAPTER NO. 239

[SB 317]

AN ACT CLARIFYING THE EXCLUSION OF LAWYERS AND ACCOUNTANTS FROM THE DEFINITION OF INVESTMENT ADVISER; AND AMENDING SECTION 30-10-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-103, MCA, is amended to read:

"**30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) *(a)* "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. ~~"Broker-dealer"~~

(b) The term does not include:

~~(a)~~*(i)* a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

~~(b)~~*(ii)* a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means *the* securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stene, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a privato sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name as amended on the effective date of this subsection.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediato or subsequent delivery or whether delivery is intonded hy the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

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(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(9) (a) "Investment adviser" means ~~any~~ *a* person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (9)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (9)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer~~,~~ *or* accountant~~, engineer, or teacher~~ whose performance of these services is solely incidental to the practice of the person's profession *or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes*;

(iv) a registered broker-dealer whose performance of services described in subsection (9)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); ~~or~~

(vii) an engineer or teacher whose performance of the services described in subsection (9)(a) is solely incidental to the practice of the person's profession; or

~~(vii)~~*(viii)* other persons not within the intent of this subsection (9) as the commissioner may by rule or order designate.

(10) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministorial personnel, who:

(i) makes any recommendation or otberwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(iv) supervises employees who perform any of the foregoing.

(b) Investment adviser representative does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in suhsection (10)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser.

(11) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificatos of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(12) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(13) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust ~~where~~ *in which* the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(14) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(15) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(16) (a) "Sale" or "sell" includes ~~every~~ *each* contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes ~~every~~ *each* attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered te constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. ~~Every~~ *Each* sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as ~~every~~ *each* sale or offer of a security ~~which~~ *that* gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(17) "Salesperson" means ~~any~~ *an* individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition. Salesperson does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by ~~subsection (1), (2), (3), (8), (9), (10), or (11) of~~ 30-10-104 *(1), (2), (3), (8), (9), (10), or (11)*;

(b) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(18) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(19) *(a)* "Security" means any note; steck; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificato; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe te or purchase any of the foregoing.

(b) ~~"Security"~~ *Security* does not include ~~any~~ *an* insurance or endowment policy or annuity contract under which an insurance company promises to pay

a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(20) "State" means any state, territery, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(21) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Approved March 24, 1995

CHAPTER NO. 240

[SB 329]

AN ACT REVISING CERTAIN PROVISIONS OF LONG-TERM HEALTH CARE INSURANCE; PROHIBITING THE ISSUANCE OF A REFUND TO A PERSON WHO IS NOT THE OWNER OF THE POLICY; INCREASING FROM 10 TO 30 DAYS THE PERIOD DURING WHICH A DISSATISFIED CONSUMER MAY RETURN A LONG-TERM CARE INSURANCE POLICY AND RECEIVE A REFUND OF THE PREMIUM; REQUIRING THAT POLICIES WITH NONFORFEITURE BENEFITS BE OFFERED; REQUIRING APPROPRIATE SALE CRITERIA TO ACCOMPANY EACH APPLICATION FOR A LONG-TERM CARE POLICY; ALLOWING THE INSURANCE COMMISSIONER TO ADOPT RULES PERTAINING TO NONFORFEITURE BENEFITS AND APPROPRIATE SALE CRITERIA; AND AMENDING SECTIONS 33-22-1107, 33-22-1114, 33-22-1119, AND 33-22-1121, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because it expands the rulemaking authority of the insurance commissioner to include the promulgation of rules concerning nonforfeiture benefits and appropriate sale criteria in relation to long-term care insurance policies.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1107, MCA, is amended to read:

"33-22-1107. **Definitions.** As used in this part, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for the insurance; and

(b) in the case of a group long-term care insurance policy, tbe proposed certificate holder.

(2) "Appropriate sale criteria" means the set of conditions that an insurance company is required to address with an applicant that help to determine whether or not a particular insurance policy or contract offered for sale is appropriate to the applicant. These conditions must include but are not limited to any insurance

premium involved in the policy, the income of the applicant, and the savings and investments of the applicant.

~~(2)~~*(3)* "Certificate" means a document issued to a member of the group covered under a group insurance policy that has been delivered or issued for delivery in this state as evidence that the individual named in the certificato is covered under the policy.

~~(3)~~*(4)* "Group long-term care insurance" means a long-torm care insurance policy that is delivered or issued for delivery in this state and issued to:

(a) (i) an employer;

(ii) a lahor organization;

(iii) a trust estahlished hy an employer or labor organization; or

(iv) a trustee of a fund established by an employer or lahor organization or a combination ~~thereof~~ *of employers and labor organizations* for:

(A) employees or former employees or a comhination ~~thereof~~ *of employees and former employees*; or

(B) members or former members of the lahor organization or a combination ~~thereof~~ *of members and former members*;

(h) a professional, trade, or occupational association for its current, former, or retired members or *a* combination ~~thereof~~ *of current, former, and retired members*, if the association:

(i) is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(ii) has been maintained in good faith for purposes other than obtaining insurance; or

(c) an association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations.

(i) Prior to advertising, marketing, or offering the policy within this state, the association or the insurer of the association shall file evidence with the commissioner that the association has:

(A) a minimum of 100 persons at the outset;

(B) been organized and maintained in good faith for purposes other than obtaining insurance;

(C) been in active existence for at least 1 year; and

(D) a constitution and bylaws requiring that the association hold regular meetings at least annually to further purposes of the membership; except for credit unions, the association ~~collect~~ *collects* dues or ~~solicit~~ *solicits* contributions from members; and the members have voting privileges and representation on the governing board and committees.

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(ii) Thirty days after filing, the association is considered as having satisfied the organizational requirements unless the commissioner finds after hearing that the association does not satisfy the organizational requirements.

(d) a group other than as described in subsections ~~(3)(a)~~ *(4)(a)* through ~~(3)(c)~~ *(4)(c)* if the commissioner determines that the:

(i) issuance of the group policy is not contrary to the best interests of the public;

(ii) issuance of the group policy would result in economies of acquisition or administration; and

(iii) benefits are reasonable in relation to the premiums charged.

~~(4)~~*(5)* (a) "Long-term care insurance":

(i) means a policy as defined in subsection ~~(5)~~ *(6)* that is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for a covered person, on an expense-incurred, indemnity, prepaid, or other basis, for a necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care service provided in a setting other than an acute care unit of a hospital;

(ii) includes group and individual insurance policies or riders, whether issued by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintonance organization, or similar organization;

(iii) includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance; and

(iv) includes any product advertised, marketed, or offered as long-torm care insurance regardless of any exceptions to the definition included in this section.

(b) Long-term care insurance does not include an insurance policy that is offered primarily to provide basic medicare supplement coverage, hasic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limitod benefit health coverage.

(c) Long-term care insurance does not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement and that provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(d) An insurance policy that is offered primarily to provide basic medicare supplement coverage, hasic hospital expense coverage, hasic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage and that also contains long-term care insurance benefits of a duration of at least 6 months is not required to meet the requirements of this part unless

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the premium allocable to the long-term care insurance benefits contained in the policy is greater than 25% of the total policy premium.

~~(5)~~*(6)* "Policy" means a policy as defined in 33-15-102, a membership contract as defined in 33-30-101, a health care services agreement as defined in 33-31-102 delivered or issued for delivery in this state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization.

~~(5)~~*(7)* "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person."

Section 2. Section 33-22-1114, MCA, is amended to read:

"33-22-1114. **Prohibited practices and policy provisions.** *(1) An insurance company may not issue a refund to a person other than the owner of the policy or certificate.*

(2) A long-term care insurance policy may not:

~~(1)~~*(a)* be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of an insured or a certificate holder;

~~(2)~~*(b)* contain a provision establishing a new waiting period if existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

~~(3)~~*(c)* provide coverage for only skilled nursing care or provide substantially more coverage for skilled nursing care in a facility than coverage for lower levels of care."

Section 3. Section 33-22-1119, MCA, is amended to read:

"33-22-1119. **Right to return policy — free look.** (1) A person insured under an individual long-term care insurance policy has the right to return the policy within ~~10~~ *30* days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason. An individual long-term care insurance policy must have a notice prominently printed on the first page of the policy or attached to it stating that the insured has the right to return the policy within ~~10~~ *30* days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason.

(2) A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason. A long-term care insurance policy or certificate issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to it stating that the insured has the right to return the policy within

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30 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason."

Section 4. Nonforfeiture benefits — availability. An insurance company offering a long-term care insurance policy or certificate shall offer to each prospective purchaser the choice between a policy that includes nonforfeiture benefits to the defaulting or surrendering policyholder or certificate holder and one that does not include nonforfeiture benefits.

Section 5. Appropriate sale criteria. (1) Appropriate sale criteria must be established and communicated to the consumer prior to the insurance company's acceptance of a person's application for long-term care insurance.

(2) This section may not preclude the purchase of a long-term care insurance policy by a consumer.

Section 6. Section 33-22-1121, MCA, is amended to read:

"**33-22-1121. Rules ~~—loss ratio standards.~~** ~~(1)~~ The commissioner may adopt rules necessary to implement this part~~.~~*, including but not limited to rules that:*

~~(2) The commissioner may by rule~~ *(1)* establish loss ratio standards for long-term care insurance policies~~.~~*; and*

(2) specify the requirements for offering the sale of a policy with nonforfeiture benefits and the types of appropriate sale criteria to be communicated at the time of application."

Section 7. Codification instruction. [Sections 4 and 5] are intended to be codified as an integral part of Title 33, chapter 22, part 11, and tbe provisions of Title 33, chapter 22, part 11, apply to [sections 4 and 5].

Approved March 24, 1995

CHAPTER NO. 241

[SB 337]

AN ACT REVISING THE DEFINITION OF "BUILDING"; CLARIFYING LEGISLATIVE CONSENT TO BUILDING COSTS; AND AMENDING SECTIONS 18-2-101 AND 18-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-101, MCA, is amended to read:

"**18-2-101. Definitions of building, costs, and construction.** In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-112, 18-2-114, and 18-2-122:

(1) "huilding" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state moneys *money*;

(b) at a state institution;

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(c) owned or to be owned by a state agency, including the department of transportation;

(d) constructod for the use or benefit of the state with federal or privaie ~~moneys~~ *money* as provided in 18-2-102(2)(d);

(2) "building" does not include a building, facility, or structure:

(a) owned or to be owned by a county, city, town, school district, or special improvement district;

(b) used as a component part of a highway or water conservation project;

(c) leased or to be leased by a state agency;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in 17-5-401 and 17-5-801."

Section 2. Section 18-2-102, MCA, is amended to read:

"**18-2-102. Authority to construct buildings.** (1) Except as provided in subsection (2), a building costing more than $50,000 may not be constructed without the consent of the legislature. *Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's consent.* When a building costing more than $50,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state."

Approved March 24, 1995

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CHAPTER NO. 242

[SB 364]

AN ACT REVISING MONTANA MILK PRICE CONTROL PROVISIONS BY REMOVING THE AUTHORITY OF THE BOARD OF MILK CONTROL TO FIX THE FORMULA ESTABLISHING MINIMUM WHOLESALE, JOBBER, AND RETAIL PRICES OF MILK; REQUIRING MILK DISTRIBUTORS WHO HAVE MILK PROCESSING FACILITIES IN THIS STATE TO MAKE A FIRST CALL OR REQUEST FOR MILK FROM MONTANA SOURCES AND, WHENEVER POSSIBLE, TO PURCHASE FROM MONTANA SOURCES IF MILK IS AVAILABLE FROM THE MONTANA PRODUCER AT THE PRICE SET BY THE BOARD; EXCEPTING PROVISIONS FROM THE BOARD'S RULES OF FAIR TRADE PRACTICES; AMENDING SECTIONS 81-23-101, 81-23-102, 81-23-202, 81-23-302, AND 81-23-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, the Legislature finds it appropriate to decontrol minimum wholesale, jobber, and retail milk prices; and

WHEREAS, it is necessary for the Board of Milk Control to adopt additional procedures and fair trade practices to promote the sale of Montana milk at competitive prices; and

WHEREAS, the Legislature encourages the use of Montana milk by Montana processors and the elimination of practices that encourage the purchase of Montana milk out of state for subsequent resale in Montana at a price lower than that established by the Board.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-23-101, MCA, is amended to read:

"**81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-1802.

(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chaptor, whether raw, pastourized, homogenized, storile, or aseptic.

(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "Class III milk" includes milk used in the manufacture of buttor, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

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(g) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(h) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

~~(i) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.~~

~~(j)~~ "Licensee" means a person who holds a license from the department.

~~(k)~~*(j)* "Market" means an area of the state designated by the department as a natural marketing area.

~~(l)~~*(k)* "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority and also includes those secretions ~~which~~ *that* are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

~~(m)~~*(l)* "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections and human services at the Montana state prison.

~~(n)~~*(m)* "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

~~(o)~~*(n)* "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

~~(p)~~*(o)* "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

~~(q) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail or for consumption on the premises.~~

~~(r)~~*(p)* "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

~~(s) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.~~

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class which in its discretion it determines to be proper."

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Section 2. Section 81-23-102, MCA, is amended to read:

"**81-23-102. Policy.** (1) It is hereby declared that:

(a) milk is a necessary article of food for human consumption;

(b) the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(c) the production, transportation, processing, storage, distribution, and sale of milk in the state of Montana is an industry affecting the public health and interest;

(d) unfair, unjust, destructive, and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk and products manufactured ~~therefrom~~ *from milk*, which trade practices constituto a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of contont and purity of milk;

(e) health regulations alone are insufficient to prevent disturbances in the milk industry and to safeguard the consuming public from further inadequacy of a supply of this necessary commodity;

(f) it is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of milk and cream and products manufactured ~~therefrom~~ *from milk and cream*, to eliminato speculation and waste, *and* to make tbe distribution ~~thereof~~ *of milk and cream and products manufactured from milk and cream* between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of ~~such~~ *those* commodities;

(g) investigations have revealed and experience has shown that, due to the nature of milk and the conditions surrounding the production and marketing of milk and due to the vital importanco of milk to the health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions and trade practices within the industry which have in tbe past affected the industry and which constantly threaten to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state;

(h) milk is a perishable commodity ~~which~~ *that* is easily contaminated with harmful bacteria, ~~which~~ *that* cannot be stored for any great length of time, ~~which~~ *that* must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;

(i) the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors shall produce and carry on band a surplus of milk in order to guarantee and ~~insure~~ *ensure* to the consuming public an adequate supply at all times, which surplus

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must of necessity be converted into byproducts of milk at great expense and ~~ofttimes~~ *often* at a loss to the producer and distributor;

(j) this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the milk industry, which causes producers to relax their diligence in complying with the provisions of the health authorities and ~~ofttimes~~ *often* to produce milk of an inferior and unsanitary quality;

(k) investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless the producers~~, distributors, and others engaged in the marketing of milk~~ are guaranteed and ~~insured~~ *ensured* a reasonable profit on milk, both the supply and quality of milk are affectod to the detriment of and against the best interest of the citizens of this state whose health and well-being are thereby vitally affected;

(l) where no supervision and regulation are provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of both producers and distributors of milk is adversely affectod to a serious degree, thereby entailing loss and hardship upon all within the community with whom these prqducers and distributors carry on business relations;

(m) due te the nature of milk and the conditions surrounding its production and distribution, the natural law of supply and demand bas been found inadequate to protect the industry in this and other states and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state.

(2) The general purpose of this chapter is te protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state."

Section 3. Section 81-23-202, MCA, is amended to read:

"**81-23-202. Licenses — disposition of income.** (1) A producer, producer-distributor, distrihutor, or jobber may not engage in the business of producing or sellin[illegible] milk subject to this chapter in this state without first having obtained a license from the department of livestock or, in the case of milk entering this state from another stato or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chaptor hy the department. The annual fee for the license from the department is $2 and is due before July 1 and must be deposited by the department to the credit of the general fund. The license required by this chapter is in addition te any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the tetal volume of all milk subject to this chapter produced and sold hy a producer-distributor;

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(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) In addition to the fees established in subsections (1) through (3), the department shall assess a fee of 14.97 cents per hundredweight on the volume of class I milk produced and sold by a producer to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department of livestock. The board shall include this fee in its formulas for fixing by rule the minimum producer~~, wholesale, jobber, and retail~~ prices for class I milk in 81-23-302.

(5) The assessments upon producer-distributors, producers, and distributors must be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the assessments must be computed by applying the fee designated by the department and the fee established in subsection (4) to the volume of milk sold in the preceding calendar quarter.

(6) Failure of a producer, producer-distributor, or distributor to pay an assessment when due is a violation of this chapter, and a license under this chapter automatically terminates and is void. A terminated license must be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment which was due.

(7) Except for the assessment provided for in subsection (4), all assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this chapter, must be paid out of the board money in that fund.

(8) The assessment provided for in subsection (4) must be deposited by the department in an account in the state special revenue fund. Money in the account must be used to carry out the purposes of Title 81, chapter 22.

(9) The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

Section 4. Section 81-23-302, MCA, is amended to read:

"**81-23-302. Establishment of minimum prices.** (1) The board shall fix minimum producer~~, wholesale, jobber, and retail~~ prices for class I ~~milk and minimum producer prices only for~~, class II, and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish ~~such~~ prices by means of flexible formulas ~~which shall~~ *that must* be devised so that they bring about ~~such~~ automatic changes in

all minimum prices ~~as~~ *that* are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices ~~which~~ *that* are fair and equitable to producers~~, distributors, jobbers, retailers,~~ and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors ~~which shall~~ *that must* be taken into consideration in establishing the formulas and, in particular, in determining costs of production ~~and distribution~~ and of the actual dollars and cents costs of production ~~and distribution which~~ *that* preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut ~~such~~ *the* considerations as a matter of record.

(5) ~~Such specific~~ *Specific* factors may include but ~~shall~~ *are* not ~~be~~ limited to the following items:

(a) current and prospective supplies of milk in relation te current and prospective demands for ~~such~~ milk for all purposes;

~~(b) the ability and willingness of consumers to purchase, which shall include among other things per capita disposable income statistics, consumer price indexes, and wholesale price indexes;~~

~~(c)~~*(b)* the cost facters in producing milk, which ~~shall~~ include among other things the prices paid by farmers generally ~~(~~as used in parity calculations of the United States department of agriculture~~)~~, prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

~~(d)~~*(c)* the alternative opportunities, both farm and nonfarm, open to milk producers, which ~~shall~~ include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

~~(e)~~*(d)* the prices of butter, nonfat dry milk, and cheese;

~~(f) the cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;~~

~~(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;~~

~~(h)~~*(e)* the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

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(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence ~~which~~ *that* may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge ~~which~~ *that* it will consider, so that all interested parties will have opportunity to be heard and to question or rebut ~~such~~ *the* facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula ~~whereby~~ *under which* minimum:

~~(a)~~ producer prices for milk in classes I, II, and III ~~shall~~ *must* be computed;

~~(b) wholesale prices for milk in class I shall be computed;~~

~~(c) jobber prices for milk in class I shall be computed;~~

~~(d) retail prices for milk in class I shall be computed~~.

(8) This section ~~shall~~ *may* not be construed as requiring the board to promulgate any specific number of formulas, but ~~shall~~ *must* be construed liberally so that the hoard may adopt any reasonable method of expression to accomplish the objective set forth in subsection (7). ~~If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.~~

(9) Each rule establishing or revising any milk pricing formulas ~~shall~~ *must* classify milk by forms, classes, grades, or uses as the board ~~may deem~~ *considers* advisable and ~~shall~~ *must* specify the minimum prices ~~therefor~~ *for the milk*.

(10) *Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state, provided that milk is available from Montana producers at the price set by the board.*

(11) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates ~~which~~ *that* distributors, contract haulers, and others charge producers for ~~both farm-to-plant and~~ interplant transportation of milk. ~~No~~ *An* allowance for transportation of milk between plants may *not* be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. *The board may promulgate rules regarding the requirement for first call on Montana milk supplies, as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.*

~~(11)~~*(12)* All milk purchased by a distributor ~~shall~~ *must* be purchased on a uniform basis. The basis to be used ~~shall~~ *must* be established by the board after the producers and the distributors have been consulted.

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~~(12)~~*(13)* The board may amend any official rule in the same manner provided ~~herein~~ *in this section* for the original establishment of milk pricing formulas. The board may in its discretion, when it determines *that* the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

~~(12)~~*(14)* Upon petition of a distributor or a majority of ~~his~~ *a distributor's* producers, the board shall ~~hold~~ a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices~~; and if~~. *If* the board finds that the evidence ~~adduced~~ *provided* at ~~such~~ *the* hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the ~~same~~ *base or quota plan*.

~~(14)~~*(15)* (a) Upon petition hy 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by any licensed producer-distributor or distributor, the board shall ~~hold~~ a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at ~~such~~ *the* hearing, the board shall among other things specifically receive and consider evidence concerning production and marketing practices ~~which~~ *that* have historically prevailed statewide. If tbe board finds that the evidence ~~adduced~~ *provided* at ~~such~~ *the* hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by official order to establish the ~~same; but such~~ *arrangement. An* official order ~~shall be of no force or effect~~ *is not effective* until it is approved in a referendum conducted by the board by mail and by secret ballot among affected producers, producer-distributors, and distributors. The board shall keep confidential the vote of each producer, producer-distributor, and distributor voting in the referendum. The official order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the reforendum. If the hoard finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions as *that* the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide hase or quota plan contemplatod in subsection ~~(13)~~ *(14)*;

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operato and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

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(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves te fund a pool settlement fund and a pool expense fund, but any withdrawals from tbe cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of tlie order under subsection ~~(14)(a)~~ *(15)(a)*. ~~Such~~ *The* order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing as required under the Montana Administrative Procedure Act.

~~(15)~~*(16)* The requirements ~~hereinabove~~ set forth *in this section* concerning notices of hearings for the establishment of milk pricing formulas ~~shall~~ apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment ~~thereof~~ *of base or quota plans or statewide pooling arrangements.*

~~(16)~~*(17)* Rules adopted pursuant to this section ~~shall~~ *must* be enforced and audited for compliance by the milk control bureau of the department of commerce."

Section 5. Section 81-23-303, MCA, is amended to read:

"**81-23-303. Rules of fair trade practices.** The department may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. ~~Those~~ *Except for provisions regarding the requirement for first call on Montana milk supplies, as provided in 81-23-302(10), and rules adopted pursuant to 81-23-302(10), fair trade practice* rules ~~shall~~ *must* contain but are not limited to provisions prohibiting the following methods of doing business ~~which~~ *that* are unfair, unlawful, and not in the public interest:

(1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts hy a person, whether in the form of money or otherwise;

(2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

(3) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions;

~~(4) the purchasing, processing, bottling, packaging, transporting, delivering, or otherwise handling of milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board;~~

~~(5)~~*(4)* the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk ~~which~~ *that* is distributed to any person, including agencies of the federal, state, or local government."

Section 6. Effective date. [This act] is effective January 1, 1996.

Approved March 24, 1995

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CHAPTER NO. 243

[SB 375]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; AUTHORIZING PAYMENT OF MEDICAL CLAIMS WITHOUT ACCEPTANCE OF LIABILITY; REQUIRING INSURERS TO ACT PROMPTLY ON CLAIMS; DEFINING "OBJECTIVE MEDICAL FINDINGS" AND REQUIRING INJURY AND DISABILITY TO BE ESTABLISHED BY OBJECTIVE MEDICAL FINDINGS; REVISING THE DEFINITION OF "INJURY"; DEFINING "ACTUAL WAGE LOSS"; REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY BENEFITS; REVISING PROVISIONS REGARDING TERMINATION OF BENEFITS UPON RETIREMENT; REVISING PROVISIONS FOR LUMP-SUM CONVERSIONS; ALLOWING SUSPENSION OF BENEFITS WHILE A CLAIMANT IS INCARCERATED FOR A MISDEMEANOR; REVISING THE DEFINITION OF DISABLED WORKER; EXEMPTING PAYMENT AGREEMENTS BETWEEN A PREFERRED PROVIDER ORGANIZATION AND AN INSURER FROM PRESCRIPTION DRUG PAYMENT LIMITS; REVISING REHABILITATION BENEFITS; AUTHORIZING THE WORKERS' COMPENSATION COURT JUDGE TO STAY PROCEEDINGS IN CERTAIN CIRCUMSTANCES; REVISING THE DEFINITION OF "WAGES"; AUTHORIZING A REDUCTION IN BENEFITS FOR THIRD-PARTY RECOVERIES; AUTHORIZING THE TERMINATION OF TEMPORARY TOTAL BENEFITS UPON NOTIFICATION OF A WORKER'S RELEASE TO RETURN TO WORK; REQUIRING A SOLE PROPRIETOR, PARTNER, CORPORATE OFFICER, OR MANAGER OR MEMBER OF A LIMITED LIABILITY COMPANY OR A DESIGNEE TO PROVIDE NOTICE OF INJURY WITHIN 30 DAYS; AUTHORIZING TERMINATION OF CERTAIN BENEFITS FOR NONCOOPERATION WITH A REHABILITATION PROVIDER; REVISING THE FILING TIME FOR OCCUPATIONAL DISEASE CLAIMS; REVISING PROVISIONS FOR PAYMENT OF MEDICAL EXPENSES IN OCCUPATIONAL DISEASE CLAIMS; EXTENDING TEMPORARY PARTIAL DISABILITY BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123, 39-71-407, 39-71-603, 39-71-609, 39-71-701, 39-71-702, 39-71-703, 39-71-710, 39-71-711, 39-71-712, 39-71-721, 39-71-723, 39-71-727, 39-71-741, 39-71-744, 39-71-1011, 39-71-1032, 39-71-2001, 39-72-403, AND 39-72-704, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] authorizes the department of labor and industry to adopt rules to provide for prompt claims handling practices for injured workers, for employers, and for providers who are the customers of the workers' compensation system. It is the intent of the legislature that the department of labor and industry adopt rules providing claimants with written explanations of claims and the methodology of benefit calculation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Stay pending determination by district court. Upon a motion and filing of an affidavit by either party and after a hearing, the workers' compensation judge may grant a stay of proceedings in the workers'

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compensation court if a criminal action involving workers' compensation insurance fraud by a claimant has been filed in district court.

Section 2. Benefit reduction for third-party recovery. (1) If an employee is injured or dies and obtains a third-party recovery, settlement, or award, an insurer may reduce by 30% the benefits paid or that are required to be paid to the employee or beneficiary pursuant to chapter 71 or 72 as a result of the injury or death. The reduction applies to any recovery, settlement, or award regardless of the form of action or the nature of damages. The total of any reductions may not exceed 30% of any third-party recovery, settlement, or award.

(2) This section does not limit or prohibit an insurer's right to pursue subrogation pursuant to 39-71-414.

(3) If an insurer is entitled to subrogation pursuant to 39-71-414, the amount subrogated must be offset by any reduction in benefits pursuant to subsection (1).

Section 3. Payment of medical claims without acceptance of liability. (1) An insurer may pay a medical claim that is based upon the report of a nonwage loss injury or occupational disease without the payments being construed as an acceptance of liability for the claim.

(2) An insurer shall, within 10 days of making payment under subsection (1), notify the worker of the payment of the medical claim without acceptance of liability.

(3) Upon written request by a worker for the payment of indemnity benefits or for a determination of liability, the insurer shall investigate the claim to determine liability for the injury or occupational disease under 39-71-606 or 39-71-608.

Section 4. Insurers to act promptly on claims. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with an explanation of the calculation used te compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(3) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that

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the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(4) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:

(a) written consent of the claimant; or

(b) approval of the department.

(5) The department may adopt rules to implement this section.

Section 5. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases ~~employed~~ *used* in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

~~(1)~~*(2)* "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) ~~the~~ investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) ~~utilization~~ *use* of actuarial, audit, accounting, vocational rehabilitation, and legal services.

~~(2)~~*(3)* "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(3)~~*(4)* "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under ~~the age of~~ 18 years *of age*;

(c) an unmarried child under ~~the age of~~ 22 years *of age* who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over ~~the age of~~ 18 years *of age* who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections ~~(3)(a)~~ *(4)(a)* through ~~(3)(d)~~ *(4)(d)*, does not exist; and

(f) a brother or sister under ~~the age of~~ 18 years *of age* if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections ~~(3)(a)~~ *(4)(a)* through ~~(3)(e)~~ *(4)(e)*, does not exist.

~~(4)~~*(5)* "Casual employment" means employment not in the usual course of *the* trade, business, profession, or occupation of the employer.

~~(5)~~*(6)* "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(5)~~*(7)* "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listod in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(7)~~*(8)* "Days" means calendar days, unless otherwise specified.

~~(5)~~*(9)* "Department" means the department of labor and industry.

~~(9) "Disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition.~~

(10) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(11) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the stato fund under compensation plan No. 3.

(12) "Invalid" means one who is physically or mentally incapacitated.

(13) "Maintenance care" means treatment designed te provide the optimum state of health while minimizing recurrence of the clinical status.

(14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in tbe healing process when further material improvement would not be reasonably expected from primary medical treatment.

(15) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strcngth, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

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~~(15)~~*(16)* "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(15)~~*(17)* "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(17)~~*(18)* "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(18)~~*(19)* "Permanent partial disability" means a *physical* condition~~, after~~ *in which* a worker, ~~has reached~~ *after reaching* maximum medical ~~healing, in which a worker~~ *healing*:

(a) ~~has a medically determined physical restriction as a result of an injury as defined in 39-71-119~~ *has a permanent impairment established by objective medical findings*; ~~and~~

(b) is able to return to work in some capacity but the ~~physical restriction~~ *permanent impairment* impairs the worker's ability te work*; and*

(c) has an actual wage loss as a result of the injury.

~~(18)~~*(20)* "Permanent total disability" means a *physical* condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(20)~~*(21)* The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

~~(21)~~*(22)* "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(22)~~*(23)* "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(20)~~*(24)* "Reasonably safe place te work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(24)~~*(25)* "Reasonably safe tools and appliances" are tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(25)~~*(26) (a)* "Secondary medical services" means those medical services or appliances considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (26), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

~~(26)~~*(27)* "Temporary partial disability" means a *physical* condition resulting from an injury as defined in 39-71-119 in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(27)~~*(28)* "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(26)~~*(29)* "Temporary total disability" means a *physical* condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(29)~~*(30)* "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

~~(30)~~*(31)* "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the stato of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropracter licensed by the stato of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection ~~(30)(a)~~ *(31)(a)*, in the area where the physician assistant-certified is located;

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(d) an osteopath licensed hy the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

~~(31)~~*(32)* "Year", unless otherwise specified, means calendar year."

Section 6. Section 39-71-119, MCA, is amended to read:

"**39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body *that is established by objective medical findings*;

(b) damage to prostbetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) *(a)* A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical ~~harm~~ *condition* in relation to otber factors contributing to the physical ~~harm~~ *condition*.

(b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition."

Section 7. Section 39-71-123, MCA, is amended to read:

"**39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d). Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

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(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value;

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement; and

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprieter or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and otber gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) ~~For~~ *(a) Except as provided in subsection (3)(b), for* compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except *that* if:

~~(a)~~ the term of employment for the same employer is less than four pay periods, ~~in which case~~ the employee's wages are the hourly rato times the number of hours in a week for which the employee was hired to work~~; or~~.

(b) ~~for~~ *For* good cause shown, ~~by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods~~ *if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.*

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). *As used in this subsection, "coneurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.*

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

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(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118 must be based upon a wage of not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 8. Section 39-71-407, MCA, is amended to read:

"39-71-407. **Liability of insurers — limitations.** (1) ~~Every~~ *Each* insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, *if the injury is established by objective medical findings and* if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chaptor unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that

contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

~~(6)~~*(7)* As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

Section 9. Section 39-71-603, MCA, is amended to read:

"**39-71-603. Notice of injuries other than death to be submitted within thirty days.** ~~No~~ *(1) A* claim to recover benefits under the Workers' Compensation Act~~,~~ for injuries not resulting in death~~,~~ may *not* be considered compensable unless, within 30 days after the occurrence of the accident ~~which~~ *that* is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work ~~upon~~ *in* which the injured employee was engaged at the time of the injury is equivalent to notice.

(2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member of a member-managed limited liability company, or corporate officer covered under this chapter is injured in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed designee shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the injury."

Section 10. Section 39-71-609, MCA, is amended to read:

"**39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer — fourteen days' notice required — *exception*.** ~~If~~ *(1) Except as provided in subsection (2), if* an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

(2) Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity."

Section 11. Section 39-71-701, MCA, is amended to read:

"**39-71-701. Compensation for temporary total disability — exception.** (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits:

(a) when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing; *or*

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(b) until the worker has been released to return to the employment in which the worker was engaged at the time of the injury or to employment with similar physical requirements.

(2) The determination of temporary total disability must be supported by a preponderance of *objective* medical ~~evidence~~ *findings*.

(3) Weekly compensation benefits for injury producing temporary total disability are 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the werker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available for any reason to the worker and the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases ~~where~~ *in which* it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for ~~such~~ *the* week, which amount is to be calculated from the date of the disability social security entitlement.

(6) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

(7) A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 12. Section 39-71-702, MCA, is amended to read:

"39-71-702. **Compensation for permanent total disability.** (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent tetal disability, subject to 39-71-710.

(2) The determination of permanent tetal disability must be supported by a preponderance of *objective* medical ~~evidence~~ *findings*.

(3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 2/3% of the wages received at the time of the injury. The

maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury.

(4) In cases ~~where~~ *in which* it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

(7) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan."

Section 13. Section 39-71-703, MCA, is amended to read:

"**39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award: *if that worker:*

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is established by objective medical findings; and

(ii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

~~(2)~~*(3)* The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection ~~(3)~~ *(4)* by 350 weeks.

~~(3) An~~ *(4) A permanent partial disability* award granted an injured worker may not exceed a permanent partial disability rating of 100%. ~~The criteria for the rating of disability must be calculated using the medical impairment rating~~

~~as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.~~

(5) The percentage to be used in subsection ~~(2)~~ *(3)* must be determined by adding *all of* the following applicable percentages to the impairment rating:

(a) if the claimant is ~~30~~ *40* years of age or younger at the time of injury, 0%; if the claimant is over ~~30~~ *40* years of age ~~but under 56 years of age~~ at the time of injury, ~~2%~~ *1%*; ~~and if the claimant is 56 years of age or older at the time of injury, 3%;~~

(b) for a worker who has completed less than ~~9~~ *12* years of education, ~~3%~~ *1%*; for a worker who has completed ~~9 through~~ 12 years *or more* of education or who has received a graduate equivalency diploma, ~~2%~~ *0%*; ~~for a worker who has completed more than 12 years of education, 0%;~~

(c) if a worker has no *actual* wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%~~; and~~. *Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.*

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, ~~20%~~ *5%*; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, ~~15%~~ *3%*; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, ~~10%~~ *2%*.

~~(4)~~*(6)* The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

~~(5)~~*(7)* If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

~~(5)~~*(9)* As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

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(c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 14. Section 39-71-710, MCA, is amended to read:

"**39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive *or is receiving* full social security *retirement benefits or retirement benefits from a system that is an alternative to social security* retirement ~~benefits~~, the claimant is considered to be retired. When the claimant is ~~considered~~ retired, the liability of the insurer is ended for payment of ~~wage supplement~~ *permanent partial disability benefits other than the impairment award, payment of* permanent total disability *benefits*, and *payment of* rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible *under subsection (1)* to receive ~~social security~~ retirement benefits and ~~is~~ *while* gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 15. Section 39-71-711, MCA, is amended to read:

"**39-71-711. Impairment evaluation — ratings.** (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and

(c) must be expressed as a percentage of the whole person*; and*

(d) must be established by objective medical findings.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of this chapter must be followed.

(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.

(4) Disputes over impairment ratings are not subject to 39-71-605."

Section 16. Section 39-71-712, MCA, is amended to read:

"**39-71-712. Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured worker has a physical restriction and is approved

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to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Temporary partial disability benefits are limited to a total of 26 weeks. *The insurer may extend the period of temporary partial disability payments.*

(4) A worker requalifies for temporary total disability benefits if the modified position is no longer available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

(5) Temporary partial disability may not be ~~considered an element of permanent partial disability and may not be~~ credited against any ~~permanent impairment or any~~ permanent partial disability award or settlement ~~achieved after the injured worker reaches maximum healing~~ *under 39-71-703.*"

Section 17. Section 39-71-721, MCA, is amended to read:

"**39-71-721. Compensation for injury causing death — limitation.** (1) (a) If an injured employee dies and the injury was the proximate cause of ~~such~~ *the* death, ~~then~~ the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116~~(3)(a)~~*(4)(a)* through ~~(3)(d)~~ *(4)(d)*, weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116~~(3)(e)~~*(4)(e)* and ~~(3)(f)~~ *(4)(f)*, weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such heneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After henefit payments cease to a surviving spouse, death henefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~*(4)(b)* through ~~(3)(d)~~ *(4)(d)*.

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, hut in no event may it exceed the decedent's actual wages at the time of death."

Section 18. Section 39-71-723, MCA, is amended to read:

"39-71-723. **How compensation to be divided among beneficiaries.** Compensation due to beneficiaries ~~shall~~ *must* be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases ~~where~~ *in which* beneficiaries are a surviving spouse and stepchildren of ~~such~~ *the* spouse, the compensation ~~shall~~ *must* be divided equally among all beneficiaries. Compensation due to heneficiaries as defined in 39-71-116~~(3)(e)~~*(4)(e)* and ~~(3)(f)~~ *(4)(f)*, ~~where~~ *if* there is more than one, ~~shall~~ *must* be divided equitably among them, and the question of dependency and amount ~~thereof shall~~ *must* be a question of fact for determination by the department."

Section 19. Section 39-71-727, MCA, is amended to read:

"39-71-727. **Payment for prescription drugs — limitations.** (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may ~~only~~ bill the insurer *only* for the reimbursement rate of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itomized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When hilling for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.

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(5) Reimbursement rates payable by an insurer ~~subject to an agreement pursuant to 39-71-1102~~ are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee not to exceed $5.50 per product.

(6) The pharmacist may not dispense more than a 30-day supply at any one time.

(7) For purposes of this section, average wholesale prices must be updated weekly.

(8) For purposes of this section, the terms "brand name", "drug product", and "generic name" have the same meaning as provided in 37-7-502.

(9) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy.

(10) The provisions of this section do not apply to an agreement between a preferred provider organization and an insurer."

Section 20. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements and lump-sum payments. (1) (a) Benefits *under this chapter* may be converted in whole *or in part* to a lump sum:

(i) if a claimant and an insurer dispute the initial compensability of an injury; and

(ii) if the claimant and insurer agree to a settlement.

(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

(2) (a) ~~If an insurer has accepted initial liability for an injury, permanent~~ *Permanent* partial disability benefits may be converted in whole or in part to a lump-sum payment *if:*

(i) an insurer has accepted initial liability for an injury; and

(ii) the claimant and the insurer agree to a lump-sum conversion.

(b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703 ~~or $20,000, whichever is less~~.

(c) An agreement is subject to department approval. The department may disapprove an agreement only if the department determines that the ~~settlement~~ *lump-sum conversion* amount is inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

(d) Upon approval, ~~the agreement constitutes~~ a compromise and release settlement ~~and~~ may not be reopened by the department.

(3) Permanent total disability benefits may be converted in whole or in part to a lump sum. The total of all lump-sum conversions in part that are awarded to a claimant may not exceed $20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department. The approval or award of a lump-sum payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture that is considered feasible under criteria set forth by the department; or

(b) arises subsequent te the dato of injury or arises because of reduced income as a result of the injury.

(4) Any lump-sum conversion of benefits under ~~subsection (3)~~ *this section* must be converted to present value using the rato prescribed under subsection (5)(b).

(5) (a) An insurer may recoup any lump-sum payment amortized at the rato established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year~~, rounded to the nearest whole number~~.

(c) If the projectod compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national centor for health statistics.

(6) Subject to the other provisions of this section, the department ~~has full power, authority, and jurisdiction to allow,~~ *shall* approve~~, or condition~~ *or deny in writing* compromise settlements ~~for any type of benefits provided for under this chapter~~ *and* ~~er~~ lump-sum payments agreed te by workers and insurers. ~~All such compromise settlements and lump sum payments are void without the approval of the department. Approval by the department must be in writing.~~ The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.

(7) A disputo between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request tbe workers' compensation court to review the department's decision."

Section 21. Section 39-71-744, MCA, is amended to read:

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"**39-71-744. Benefits not due while claimant is incarcerated — exceptions.** (1) Except as provided in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated *for a period exceeding 30 days* in a correctional institution~~, such as the Montana state prison or the Montana women's correctional center~~ *or jail*, as the result of conviction of a felony *or a misdemeanor*. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payablo while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)."

Section 22. Section 39-71-1011, MCA, is amended to read:

"**39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means ~~one~~ *a worker* who has a ~~medically determined restriction~~ *permanent impairment, established by objective medical findings,* resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury *or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.*

(3) "Rehabilitation benefits" means benefits provided in 39-71-1003, 39-71-1025, and 39-71-2001.

(4) "Rehabilitation plan" means an individualized plan ~~to assist~~ *that assists* a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification *and that reasonably reduces the worker's actual wage loss.*

(5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation certification and designated by the insurer to the department or a department of social and rehabilitation services counselor when a worker has been certified by the department of social and rehabilitation services under 39-71-1003.

(6) "Rehabilitation services" ~~consists of~~ *means* a program of evaluation, planning, and ~~delivery of goods and services~~ *implementation of a rehabilitation plan* to assist a disabled worker to return to work."

Section 23. Section 39-71-1032, MCA, is amended to read:

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"39-71-1032. Termination of benefits for noncooperation with rehabilitation provider — department hearing and appeal. (1) If an insurer helieves *that* a worker is refusing unreasonahly to cooperate with the rehabilitation provider, the insurer, with 14 days' notice to the worker and department on a form approved hy the department, may terminate any ~~rehabilitation~~ benefits, *except medical benefits and the impairment award, that* the worker is receiving ~~under this part~~ until the worker cooperates.

(2) The worker may contest the insurer's termination of benefits by filing a written oxception to the department within 20 working days after the date of the 14-day notice. The worker or insurer may request a hearing before the department. Tho department shall hold a hearing within 30 days of receipt of the request. The department shall issue an order within 15 days of the hearing.

(3) If the worker prevails at a hearing before tho department, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within 30 days after the department mails its order te the party's last-known address, a party may appeal to the workers' compensation court."

Section 24. Section 39-71-2001, MCA, is amended to read:

"39-71-2001. Rehabilitation benefits. (1) ~~An injured~~ *A disabled* worker *as defined in 39-71-1011* is eligible for rehabilitation benefits if:

(a) ~~the injury results in permanent partial disability or permanent total disability as defined in 39-71-116~~ *the worker has an actual wage loss as a result of the injury*;

~~(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;~~

~~(c) a rehabilitation plan completed by~~ *(b)* a rehabilitation provider, ~~and~~ *as* designated by the insurer, certifies that the injured worker has reasonahle vocational goals and a reemployment ~~and wage potential~~ *opportunity and will have a reasonable reduction in the worker's actual wage loss* with rehabilitation.~~;~~ *and* ~~The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests.~~

~~(d)~~*(c)* a rehabilitation plan ~~between~~ *agreed upon by* the injured worker and the insurer is filed with the department. *The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning and completion date.* If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) After filing the rehabilitation plan with the department, the ~~injured~~ *disabled* worker is entitled to receive ~~rehabilitation~~ *biweekly compensation* benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. ~~Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed upon rehabilitation plan.~~ *The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan.* Rehabilitation benefits must be paid

biweekly while the worker is satisfactorily ~~completing~~ *progressing in* the agreed-upon rehabilitation plan. *Benefits under this section are not subject to the lump-sum provisions of 39-71-741.*

~~(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.~~

~~(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that the worker cannot return to the job held at the time of injury, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).~~

~~(5)~~*(3)* A worker may not receive temporary total ~~or biweekly permanent partial disability~~ benefits and ~~rehabilitation~~ *the* benefits *under subsection (2)* during the same period of time.

~~(6) The~~ *(4) A* rehabilitation provider~~,~~ as authorized by the insurer~~,~~ shall continue to ~~work with and~~ assist the injured worker until the rehabilitation plan is completed.

(5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

~~(7)~~*(6)* A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 25. Section 39-72-403, MCA, is amended to read:

"**39-72-403. Time when claims must be presented.** (1) When a claimant seeks benefits under this chapter, ~~his~~ *the claimant's* claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within ~~2 years~~ *1 year* from the date the claimant knew or should have known that ~~his total disability~~ *the claimant's* condition resulted from an occupational disease. When a beneficiary seeks benefits under this chaptor, ~~his~~ claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the dato the beneficiaries knew or should have known that tbe decedent's death was related to an occupational disease.

(2) The department may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was relatod to an occupational disease, waive the claim time requirement up to an additional 2 years."

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Section 26. Section 39-72-704, MCA, is amended to read:

"39-72-704. Medical and hospital expenses. In addition to the compensation provided by this chaptor, an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive, for treatment of the occupational disease, ~~without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the department~~ *payment of medical expenses under Title 39, chapter 71.*"

Section 27. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 28. Codification instructions. (1) [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 29, and the provisions of Title 39, chapter 71, part 29, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 6, and the provisions of Title 39, chapter 71, part 6, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chaptor 71, part 1, apply to [section 4].

(5) Section 39-71-2001 is intended to be renumbered and codified as an integral part of Title 39, chapter 71, part 10.

Section 29. Effective date. [This act] is effective July 1, 1995.

Approved March 24, 1995

CHAPTER NO. 244

[SB 394]

AN ACT INCLUDING THE GRAY WOLF IN THE DEFINITION OF PREDATORY ANIMAL FOR PURPOSES OF PREDATORY ANIMAL CONTROL IF THE GRAY WOLF IS REMOVED FROM THE LIST OF THREATENED OR ENDANGERED ANIMALS BY THE FEDERAL GOVERNMENT; REVISING THE APPLICABLE DEFINITION; AMENDING SECTIONS 81-7-101, 81-7-102, 81-7-104, 81-7-118, 81-7-501, AND 81-7-505, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-7-101, MCA, is amended to read:

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"81-7-101. **Definition.** For the purpose of this part, the term "~~wild~~ *predatory* animal" ~~shall include~~ *includes gray wolf,* coyote, lynx, and any other animal causing depredations upon livestock."

Section 2. Section 81-7-102, MCA, is amended to read:

"81-7-102. **Department to supervise destruction of predatory animals — cooperation with other agencies — administration of ~~moneys~~ *money.*** (1) The department of livestock shall conduct the destruction, extermination, and control of ~~wild~~ *predatory* animals ~~predatory in nature and~~ capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry, and the protection and safeguarding of livestock and poultry in this state against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state and for carrying out the programs in an efficient and practical manner responsive to the need for control in each area of this state.

(2) The department shall adopt rules applicable to predatory animal control which are necessary and proper for the systematic destruction of the ~~wild~~ *predatory* animals by hunting, trapping, and poisoning operations and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, which are appropriate in the various areas at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals and their attacks on livestock and poultry, either singly or in packs or bands.

(3) The department shall cooperate with authorized representatives of the federal government, including the biological survey and the fish and wildlife service, the department of fish, wildlife, and parks, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of ~~wild~~ *predatory* animals by hunting, trapping, and poisoning operations.

(4) This section and 81-7-103 do not interfere with or impair the power and duties of the department of fish, wildlife, and parks in the control of predatory animals by the department of fish, wildlife, and parks as authorized by law, or the obligation of the department of fish, wildlife, and parks to expend its funds in cooperation with the department for predatory animal control as required hy law. Funds of the department of fish, wildlife, and parks for the cooperative predatory animal control ~~shall~~ *must* be administered and expended by the department of fish, wildlife, and parks."

Section 3. Section 81-7-104, MCA, is amended to read:

"81-7-104. **Predator control ~~moneys~~ *money* — use of proceeds.** (1) The department of livestock shall allocate a portion of the money from the levy under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by ~~wild~~ *predatory* animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal

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destruction, extermination, and control, including systematic hunting and trapping and payment of bounties.

(2) Money ~~shall~~ *must* be paid out only on claims duly and regularly presented to the department of livestock and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures necessary and proper for predatory animal control by means and methods other than payment of bounties, as determined by tbe department. Money designated for predator control ~~shall~~ *must* be availahle for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction, extermination, and control of predatory ~~wild~~ animals, as determined by the department and its advisory committee. ~~No claims~~ *Claims* may *not* be approved in excess of ~~moneys~~ *money* available for ~~such~~ *those* purposes, and ~~no~~ warrants may *not* be registered against the ~~moneys~~ *money*."

Section 4. Section 81-7-118, MCA, is amended to read:

"81-7-118. **Levy of tax for purpose of paying bounty claims — limitation on levy.** The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes for paying for the destruction of ~~wild~~ *predatory* animals killed in this state. The tax in any 1 year may not exceed 7.5 mills on the taxable value of the livestock. The money received ~~shall~~ *must* be used only for the payment of claims approved by the department for the destruction of ~~wild~~ *predatory* animals and for the administration of 81-7-111 through 81-7-122. The money received for the taxes levied ~~shall~~ *must* be sent annually with other taxes to the stato treasurer by the county treasurer of each county. When the money is received by the state treasurer, it ~~shall~~ *must* be placed in the state special revenue fund and may then be paid out on claims approved under the law governing the payment of claims."

Section 5. Section 81-7-501, MCA, is amended to read:

"81-7-501. **Aerial bunting probibited — exceptions.** (1) Except as provided in 81-7-505, no person except an employee of the state, its subdivisions, or the federal government, acting within tbe scope of his employment, may engage in the aerial hunting of ~~wild~~ *predatory* animals, as defined in 81-7-101, without first obtaining a permit from the department of livestock. The permit must specify the species of ~~wild~~ *predatory* animals to be hunted and the geographic areas over which aerial hunting may take place.

(2) ~~No~~ *A* person issued a permit as required by this section may *not* engage in aerial hunting of ~~wild~~ *predatory* animals in violation of the terms of his permit, the rules promulgated by the board of livesteck, or the terms of this part."

Section 6. Section 81-7-505, MCA, is amended to read:

"81-7-505. **Resident landowners authorized to aerially hunt over tbeir own lands without permit — conditions.** Any landowner having residence and domicile in Montana may engage in the aerial hunting of ~~wild~~ *predatory* animals, as defined in 81-7-101, over ~~his~~ *that person's* own land without a permit, provided ~~he~~ *the landowner* annually notifies the department in writing that ~~he~~ *the landowner* will be engaged in aerial hunting and gives an

adequate description of the location of the land over which ~~he~~ *the landowner* will aerially hunt. ~~Such~~ *Aerial* hunting must he in accordance with all rules of the department of livestock."

Section 7. Contingent effective date. [This act] is effective whenever the gray wolf is removed from the list of threatened or endangered species by the appropriate agency of the United Statos government.

Approved March 24, 1995

CHAPTER NO. 245

[HB 270]

AN ACT ALLOWING AN OWNER OF REAL PROPERTY TO PETITION TO BE INCLUDED IN A TRANSPORTATION DISTRICT; AND AMENDING SECTION 7-14-241, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-241, MCA, is amended to read:

"**7-14-241. Procedure to enlarge district *or be included in district.*** (1) The boundaries of any transportation district may be enlarged if 51% of the qualified electors of the area to be added to the existing district sign a petition requesting addition to ~~such~~ *the* district.

(2) A real property owner may petition to have that owner's property included in a district.

~~(2)~~*(3)* ~~However, each~~ *Each* addition must be approved by a majority vote of the transportation board.

~~(3)~~*(4)* The area added to a district pursuant to subsection (1) may be removed if the area does not directly receive transportation services from the district and 51% of the qualified voters in the area sign a petition requesting to be removed from the district. The removal of the area is effective 60 days after submission of the petition to the transportation board unless within that time, it is determined that tbe petition contains insufficient signatures for removal of ~~territory~~ *the area*. An insufficient petition must be returned to the petitioners, who may ~~submit it again~~ *resubmit a corrected version* within 90 days.

~~(4)~~*(5)* (a) All property within any addition to the district ~~shall be~~ *is* subject to all existing indebtedness of the district.

(b) Property within an area removed from the district is not subject to the district's existing indebtodness if the area was added te the district within 5 years of the date *on which* the petition for removal was submitted to the transportation board."

Approved March 27, 1995

CHAPTER NO. 246

[HB 320]

AN ACT CLARIFYING THE EXEMPTION FROM THE REQUIREMENTS OF THE OLD FUND LIABILITY TAX TO EXPLICITLY EXCLUDE AN EMPLOYER OR EMPLOYEE WHO IS SUBJECT TO THE EQUIVALENT OF FEDERAL WORKERS' COMPENSATION LEGISLATION; AMENDING SECTIONS 39-71-2501 AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2501, MCA, is amended to read:

"**39-71-2501. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

(3)(a) "Employer" means, except as provided in subsection (3)(b), the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.

(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term employer means the person who has control of the payment of wages.

(4) "Employer's payroll" means wages paid for each of the calendar quarters ending March 31, June 30, September 30, and December 31.

(5) "Federal workers' compensation legislation" means federal legislation that provides an employee with compensation or remuneration for accidental injury or death. This legislation includes but is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base Act.

~~(5)~~*(6)* "State fund" means the state compensation insurance fund.

~~(5)~~*(7)* "Tax" means the workers' compensation old fund liability tax provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~(7)~~*(8)* "Tax account" means the workers' compensation tax account created by 39-71-2504.

~~(8)~~*(9)* "Wages" means all remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection ~~(8)(a)~~ *(9)(a)*, an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ *(9)(a)(i)*, by the employer in the performance of service during the preceding calendar quarter;

(b) for services not in the course of the employer's trade or business, to the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at the request of and for the convenience of the employer;

(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club activities;

(d) as wages or compensation, the taxation of which is prohibited by federal law."

Section 2. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer, *except an employer whose employees are covered by federal workers' compensation legislation,* a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal te 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding week.

(b) There is imposed on each employee, except ~~workers~~ *an employee* ~~engaged in the rail industry~~ who ~~are under the jurisdiction of the federal railroad administration, United States department of transportation,~~ *is covered by federal workers' compensation legislation,* an old fund liability tax, as provided in 39-71-2505, on tbe employee's wages in the preceding calendar quarter.

(c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of

each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager.

(d) A corporato officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rato. The subchapter S. corporation is not liable for the tax on tho corporato officer's wages.

(e) A corporate officer of a closely held corporation who meets the stock ownership test under section 542(a)(2) of the Intornal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporato officer's wages.

(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rato for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicatod to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

(g) Each employer shall maintain the records *that* the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the stato the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limitod liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, sbareholder, partner, or member or manager fails te remit to the stats the old fund liability tax required by this section.

(2) All collections of the tax must be deposited as received in the tax account. The tax is in addition te any other tax or fee assessed against persons subject te the tax.

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's

payroll for the preceding calendar quarter and in addition shall remit withholdings for employees' old fund liability taxes at the same time.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings for employees' old fund liability taxes at the same time.

(c) Tax payments required by subsections (1)(a) and (1)(b) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(d) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made witb and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and sball then credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with tbe duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to tbat amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose tbe information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of tbe information.

(6) The department of labor and industry and the stato fund sball~~, on July 1, 1991, or as soon after that date as possible,~~ give tbe department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. ~~After the lists have been given to the department, the~~ *The* department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, te employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

Section 3. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxes payable beginning June 30, 1993.

Approved Marcb 27, 1995

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CHAPTER NO. 247

[HB 355]

AN ACT CHANGING THE PERIOD OF TIME WITHIN WHICH A PROSECUTION FOR THEFT MUST BE COMMENCED; AND AMENDING SECTION 45-1-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-1-205, MCA, is amended to read:

"**45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches the age of 18 if the victim was less than 18 years old at the time *that* the offense occurred.

(2) Except as *provided in subsection (7)(b) or as* otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must he commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extonded in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and

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guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) *(a)* An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Approved March 27, 1995

CHAPTER NO. 248

[HB 424]

AN ACT CLARIFYING THAT THE 24-MONTH REDEMPTION PERIOD FOR A PROPERTY TAX LIEN APPLIES ONLY TO PROPERTY ON WHICH THERE ARE DELINQUENT SPECIAL IMPROVEMENT DISTRICT ASSESSMENTS OR DELINQUENT RURAL SPECIAL IMPROVEMENT DISTRICT ASSESSMENTS; AND AMENDING SECTION 15-18-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-18-111, MCA, is amended to read:

"**15-18-111. Time for redemption — interested party.** (1) Except as provided in subsection (2), redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, or any interested party within 36 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(2) For property subdivided as a residential or commercial lot upon which ~~taxes or~~ special *improvement district assessments or rural special improvement district* assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within 24 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

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(3) For the purposes of this chapter, an "interested party" includes a mortgagee, vendor of a contract for deed or ~~his~~ *the vendor's* successor in interest, lienholder, or other person who has a properly recorded interest in the property. A person ~~having~~ *who has* an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party for the purposes of this chapter."

Approved March 27, 1995

CHAPTER NO. 249

[HB 436]

AN ACT REVISING CERTIFICATION REQUIREMENTS FOR CHEMICAL DEPENDENCY COUNSELORS; PROVIDING FOR THE ESTABLISHMENT OF REQUIREMENTS BY RULE; AND AMENDING SECTION 53-24-215, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-215, MCA, is amended to read:

"**53-24-215. Certification of chemical dependency counselors.** (1) The department shall grant certification to practice as a certified chemical dependency counselor to any person who ~~successfully completes a competency examination that must include a written exam, an oral exam, and a review of a taped work sample, as~~ *meets the eligibility requirements and competency standards* defined in rules adopted under 53-24-204.

(2) A person may apply for certification as a certified chemical dependency counselor if ~~he~~ *the person*:

~~(a)~~ has:

(a) (i) received a baccalaureate degree in alcohol and drug studies, psychology, sociology, social work, counseling, or a related field from an accredited college or university;

(ii) received an associate of arts degree in alcohol and drug studies, chemical dependency, or substance abuse from an accredited institution; or

(iii) successfully completed at least 1 year of formalized training in chemical dependency counseling in a program approved by the department or recognized under the laws of another state; and

(b) ~~has~~ completed ~~2,000 hours of~~ supervised work experience ~~in chemical dependency counseling~~ in a state-approved chemical dependency treatment program *defined in rules under 53-24-204, in* an internship ~~supervised by the college or university and endorsed~~ *approved* by the department, or *in* a similar program recognized under the laws of another state. ~~Work experience must include experience in 12 core function areas, including screening, intake, orientation, assessment, treatment planning, individual and group counseling, case management, crisis intervention, client education, referral, recordkeeping,~~

~~and consultation with other professionals in regard to client treatment and services~~

(3) The department shall require an applicant to successfully complete a competency examination process defined in rules adopted under 53-24-204.

(4) The department may provide by rule for certification without examination of a person certified under the laws of another state if the person meets the minimum eligibility requirements and competency standards for certification in Montana."

Approved March 27, 1995

CHAPTER NO. 250

[HB 475]

AN ACT ESTABLISHING AN INTEREST ON TRUST ACCOUNTS PROGRAM FOR NOMINAL OR SHORT-TERM DEPOSITS OF CUSTOMER FUNDS BY TITLE INSURERS OR TITLE INSURANCE PRODUCERS; PROVIDING THAT THE PROGRAM BE ADMINISTERED BY THE MONTANA LAND TITLE ASSOCIATION FOUNDATION; AND AMENDING SECTION 33-25-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-25-201, MCA, is amended to read:

"33-25-201. Escrow, closing, or settlement services — title indemnification — maintenance of accounts — *maintenance of nominal or short-term accounts* — rules. (1) A title insurer or title insurance producer may provide escrow, settlement, or closing services, or any combination ~~thereof~~ *of those services*, and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2) ~~and (3)~~ *through (9)*.

(2) A title insurer or title insurance producer shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled ~~thereto~~ *to the funds* under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title insurance producer. A title insurer or *title* insurance producer may use ~~such~~ *the* funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) *except as provided in subsections (3) through (7),* pay any interest received on funds deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the depositing person or as otherwise provided by the terms ~~thereof~~ *of the escrow, settlement, closing, or title indemnification*;

(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

(d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or title indemnification transactions.

(3) In the absence of written instructions to the contrary, a title insurer or title insurance producer may maintain a pooled, interest-bearing, depository account for deposit of trust funds that are nominal in amount or expected to be held for a short period of time. The account must comply with the following provisions:

(a) The account may include only trust funds that are nominal in amount or that are expected to be held for a short period of time.

(b) Interest from the account may not be made available to the title insurer or title insurance producer.

(c) The determination of whether trust funds are nominal in amount or to be held for a short period of time is to be determined by each title insurer or title insurance producer.

(d) Notification to parties whose funds are nominal in amount or to be held for a short period of time is not required.

(4) An interest-bearing account established pursuant to subsection (3) may be established with any financial institution that is authorized by federal or state law to do business in the state in which the title insurer's or title insurance producer's office is situated and that is a member of the federal deposit insurance corporation. Funds deposited in the accounts must be subject to withdrawal upon request and without delay.

(5) (a) The Montana land title association shall establish the Montana land title foundation for the administration of the funds generated by the interest on trust accounts program for the following purposes:

(i) to support montana nonprofit charitable organizations;

(ii) to provide continuing education programs for licensed title insurance agents; and

(iii) to promote knowledge and awareness of the real estate and title insurance industries.

(b) The foundation shall establish bylaws for the administration of the foundation in accordance with subsections (5)(a)(i) through (5)(a)(iii).

(6) A title insurer or title insurance producer depositing funds in an account created pursuant to subsections (3) and (4) shall direct the depository institution to:

(a) at least quarterly, remit interest and dividends, less any service charges or fees, on the average monthly balance on the account or as otherwise computed in accordance with the institution's standard accounting practice for other depositors to the Montana land title association foundation; and

(b) transmit with each remittance to the foundation a statement showing the name of the title insurer or title insurance producer for whom the remittance is sent and the rate of interest applied.

(7) The Montana land title association foundation shall maintain records of each remittance and statement received from depository institutions for a period of at least 3 years and shall, upon request, promptly make available to a title insurer or title insurance producer the records and statements pertaining to the title insurer's or title insurance producer's account.

(8) All interest transmitted to the Montana land title association foundation must, after deductions for necessary and reasonable administrative expenses of the foundation for operating the interest on trust accounts program, be distributed by the foundation for the purposes set forth in subsections (5)(a)(i) through (5)(a)(iii) in whatever proportion the foundation determines is appropriate.

(9) A title insurance producer ~~must~~ *shall* keep books of account, records, and vouchers pertaining to any escrow, closing, settlement, or title indemnification business transacted, in ~~such~~ a manner that *allows* the commissioner or ~~his~~ *the commissioner's* authorized representative ~~may~~ *to* readily ascertain, under the authority of 33-1-402, whether the title insurance producer has complied with all applicable provisions of this title."

Approved March 27, 1995

CHAPTER NO. 251

[HB 551]

AN ACT REQUIRING CERTAIN SEXUAL AND VIOLENT OFFENDERS TO PROVIDE DNA SAMPLES; PROVIDING THAT DNA RECORDS ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; ESTABLISHING A DNA IDENTIFICATION INDEX WITHIN THE DEPARTMENT OF JUSTICE TO MAINTAIN DNA RECORDS; ESTABLISHING USES FOR DNA RECORDS; PROVIDING THAT DNA RECORDS ARE NOT SEALED UNDER THE MONTANA YOUTH COURT ACT; AMENDING SECTION 41-5-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance concerning rules adopted for the withdrawal of blood samples for DNA testing.

It is the intent of the legislature that rules adopted by the department of justice will ensure that blood collections under this bill will be conducted in a manner that will not compromise the health and welfare of the donor and testing personnel.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

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(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under [section 2].

(4) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discreto allele assignment numbers.

(5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with [sections 1 through 7].

(6) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

(7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

(8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

(9) "Violent offense" means an offense contained in 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103 or an equivalent offense under federal law or the law of another state.

Section 2. Establishment of DNA identification index. (1) The department shall establish a computerized DNA identification index for the receipt, storage, and exchange of DNA records. The DNA identification index is the central repository for DNA records in the state of Montana.

(2) The DNA identification index must include:

(a) DNA records for an individual convicted of a sexual or violent offense; and

(b) analyses of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains. For purposes of identification of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.

(3) The DNA identification index and the DNA testing done by a forensic DNA laboratory must be compatible with the systems of DNA identification used by other criminal justice agencies or private testing laboratories to the extent necessary to permit the exchange of DNA information.

(4) The DNA records collected and stored in the DNA identification index may contain only information relating to the identification of individuals. Information that identifies a person that is the subject of a record must be

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limited to the information that is necessary to pursue criminal investigations and to support statistical interpretation of results.

(5) The DNA identification index may be used:

(a) by law enforcement agencies for purposes of identification in the course of criminal investigations and proceedings;

(b) to assist in the identification of human remains, including identification of missing persons; and

(c) if information allowing a person to be identified is removed, for a population statistics data base and for identification, research, and protocol development for forensic DNA analysis and quality control.

Section 3. Collection of samples and maintenance of data. (1) Following entry of judgment, a person convicted of a sexual or violent offense or a youth found under 41-5-521 to have committed a sexual or violent offense shall provide to a person or entity designated by the county attorney a sample of blood for DNA analysis to determine identification characteristics specific to the person.

(2) The blood sample must be collected, stored, and sent by the person or entity designated by the county attorney under subsection (1) to the department for entry in the DNA identification index in accordance with rules adopted by the department with the advice of the department of health and environmental sciences.

(3) The forensic DNA laboratory may perform DNA analysis only for those markers that have value for law enforcement identification purposes.

Section 4. Release of DNA records. (1) The DNA records contained in the DNA identification index may be released only for the following purposes:

(a) to federal, state, and local law enforcement agencies for law enforcement identification purposes;

(b) for criminal defense purposes, to a defendant for whom there is a DNA record, who is also entitled to samples and analyses held as part of the record;

(c) to assist in the identification of human remains, including missing persons; and

(d) if information allowing a person to be identified is removed, for a population statistics data base and for identification, research, and protocol development for forensic DNA analysis and quality control.

(2) Requests for DNA records must be in writing, signed by the requesting party, and maintained on file in the DNA identification index in accordance with rules adopted by the department.

(3) A defendant in a criminal proceeding is entitled to information in the DNA identification index relating te the number of requests previously made for comparison searches relating to the defendant and the names of the requesting parties.

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Section 5. Expungement of DNA records. If a conviction of a sexual or violent offense is reversed, the record relating to the offense must be expunged from the DNA identification index. The county attorney of the county in which the conviction occurred shall notify the department of a reversal of a conviction for a sexual or violent offense.

Section 6. Confidentiality of records of DNA testing. Except as provided in [sections 1 through 7] or unless the person that they relate to consents to their release, records, findings, and results of DNA testing are confidential criminal justice information subject to the dissemination provisions of Title 44, chapter 5.

Section 7. Rulemaking authority. The department shall adopt rules for the handling, collection, transportation, sampling, and storage of blood samples and to further define the term "marker". The rules concerning the handling of blood samples must ensure protection of the health of persons who may come into contact with the samples.

Section 8. Section 41-5-604, MCA, is amended to read:

"**41-5-604. Disposition of records.** (1) All youth court records and law enforcement records, except fingerprints, *DNA records,* and photographs pertaining to a youth ~~coming under~~ *covered by* this chapter, ~~shall~~ *must* be physically sealed when the youth reaches ~~the age of~~ 18 years *of age.*

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the ~~above~~ records and files ~~shall~~ *listed in subsection (1) must* be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records ~~so sealed~~ shall also seal or destroy ~~such~~ *the* copies of records. Anyone violating the provisions of this subsection ~~shall be~~ *is* subject to contempt of court.

(4) Nothing ~~herein~~ contained *in this section* ~~shall prohibit~~ *prohibits* the destruction of ~~such~~ records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall~~ *do* not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601."

Section 9. Report to legislature. The department of justice shall report to the 56th legislature on the success of the program created by [sections 1 tbrough 7], including tbe number of samples analyzed and the number of cases successfully prosecuted using the DNA identification index created by [sections 1 through 7].

Section 10. Coordination instruction. If the 54th legislature does not appropriate money to fund administration of [this act] by a line item or other appropriation specifically referring to the program contained in [this act], then [this act] is void.

Section 11. Effective date. [This act] is effective on passage and approval.

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Approved March 27, 1995

CHAPTER NO. 252

[HB 553]

AN ACT ELIMINATING THE STATE-SPONSORED CREDIT CARD; AMENDING SECTION 17-1-504, MCA; REPEALING SECTIONS 31-1-601, 31-1-602, AND 31-1-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-504, MCA, is amended to read:

"**17-1-504. Effect of termination.** (1) If the legislature has appropriated the revenue from an account provided for in 15-1-501~~,~~ *or* 20-9-343, ~~and 31-1-602,~~ the appropriation is considered to have been made from the general fund.

(2) All assets, liabilities, and fund balances of accounts terminated by 15-1-501~~,~~ *and* 20-9-343~~, and 31-1-602~~ accrue to the general fund."

Section 2. Repealer. Sections 31-1-601, 31-1-602, and 31-1-603, MCA, are repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 27, 1995

CHAPTER NO. 253

[SB 171]

AN ACT REVISING PHYSICAL THERAPY LAWS; AUTHORIZING LICENSURE OF PHYSICAL THERAPIST ASSISTANTS AND ESTABLISHING STANDARDS FOR LICENSURE; CLARIFYING REQUIREMENTS FOR SUPERVISING PHYSICAL THERAPIST ASSISTANTS, AIDES, AND STUDENTS; ESTABLISHING CONTINUING EDUCATION REQUIREMENTS FOR PHYSICAL THERAPISTS AND ASSISTANTS BY RULE; AND AMENDING SECTIONS 37-11-101, 37-11-105, 37-11-201, 37-11-203, 37-11-301, 37-11-303, 37-11-304, 37-11-305, 37-11-306, 37-11-307, 37-11-308, 37-11-309, 37-11-320, AND 37-11-321, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants the board of physical therapy examiners rulemaking authority to establish continuing education requirements for a physical therapist and a physical therapy assistant to obtain a license renewal. In adopting rules, the board should conform to continuing education standards for similar professions.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-11-101, MCA, is amended to read:

"37-11-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of physical therapy examiners provided for in 2-15-1858.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

(4) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(5) "Physical therapist assistant" *or "assistant"* means a person who*:*

(a) is a graduate of an accredited *physical therapist assistant* curriculum approved by the board*;* ~~and who~~

(b) assists a physical therapist in the practice of physical therapy *but who may not make evaluations or design treatment plans;* and ~~whose activities require an understanding of physical therapy~~

(c) is supervised by a licensed physical therapist as described in 37-11-105.

(6) *"Physical therapist assistant student" means a person who is enrolled in an accredited physical therapist assistant curriculum and who as part of the clinical and educational training is practicing under the supervision of a licensed physical therapist as described in 37-11-105.*

(7) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

~~(7)~~*(8)* "Physical therapy aide" *or "aide"* means a person who aids in the practice of physical therapy, ~~and~~ whose activities require on-the-job training, and ~~supervision~~ *who is supervised* by a licensed physical therapist ~~who must be available for periodic checks during any procedure or treatment involving a patient~~ *or a licensed physical therapist assistant as described in 37-11-105.*

~~(8)~~*(9)* "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the above or any letters implying the above are equivalent terms~~; any~~. *Any* reference to any one of ~~them~~ *the terms* in this chapter includes the others but does not include certified corrective therapists or massage therapists.

~~(9)~~*(10)* "Physical therapy student" or "physical therapy intern" means an individual *who is* enrolled in an accredited physical therapy curriculum, ~~and~~ who, as part of ~~his~~ *the individual's* professional, educational, and clinical training, is practicing in a pbysical therapy setting ~~under the direction,~~

~~guidance, and observation of~~, *and who is supervised by* a licensed physical therapist *as described in 37-11-105.*

~~(10)~~*(11)* "Topical medications" means medications applied locally to the skin and includes only medications listed in 37-11-106(2) for which a prescription is required under state or federal law."

Section 2. Section 37-11-105, MCA, is amended to read:

"37-11-105. Supervision of physical therapist ~~assistants~~ *assistant, physical therapy aide, physical therapy student, or physical therapist assistant student.* *(1)* A physical therapist assistant ~~must~~ *shall* practice under the ~~direct~~ supervision of a licensed physical therapist who is responsible for and participates in a patient's care. *This supervision requires the licensed physical therapist to make an onsite visit to the client at least once for every six visits made by the assistant or once every 2 weeks, whichever occurs first.*

(2) A licensed physical therapist may not concurrently supervise more than two full-time assistants or the equivalent. This supervision does not require the presence of the assistant.

(3) A physical therapy aide shall practice under the onsite supervision of a licensed physical therapist or a licensed assistant. A licensed assistant may not concurrently supervise more than one full-time aide or the equivalent. A licensed physical therapist may not concurrently supervise more than four aides or the equivalent or two assistants and two aides or the equivalent.

(4) A physical therapy student or physical therapist assistant student shall practice with the onsite supervision of a licensed physical therapist."

Section 3. Section 37-11-201, MCA, is amended to read:

"37-11-201. General powers — rulemaking power — records. (1) The board may:

(a) adopt rules to carry this chapter into effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers; ~~and~~

(d) take any other disciplinary action necessary te protect the public.

(2) The board shall:

(a) examine applicants for licenses three times a year at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure; ~~and~~

(c) conduct written examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate.~~;~~ *; and*

(d) adopt rules to establish continuing education requirements of at least 20 hours biennially for license renewal for physical therapists and assistants.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register must show the name of every ~~living~~ licensed physical therapist *and licensed assistant*, ~~his~~ *the therapist's or assistant's* last-known place of business~~,~~ *and* last-known place of residence, and the date *of issue* and *the* number of ~~his~~ *every* license and certificate ~~as a~~ *issued to a* licensed physical therapist *or licensed assistant.*

(4) Tbe department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized te practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list ~~so furnished~~.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee."

Section 4. Section 37-11-203, MCA, is amended to read:

"**37-11-203. Travel expense — deposit of fees.** (1) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(2) All fees collected by the department ~~shall~~ *must* be deposited in the state special revenue account for the use of the board, subject te 37-1-101(6). The department shall keep an accurate account of funds received and expenditures made from the account.

~~(3) The board of medical examiners shall transfer funds in the state special revenue account collected after January 1, 1979, which were derived from the examination and licensure or relicensure of physical therapists in this state to the state special revenue account designated as the "physical therapist account".~~"

Section 5. Section 37-11-301, MCA, is amended to read:

"**37-11-301.** ***License required for physical therapist and assistant —*** **~~Unauthorized~~** ***unauthorized*** **representation as licensed therapist.** *(1) A person may not practice or purport to practice physical therapy without first obtaining a license under the provisions of this chapter.*

(2) A person who is not licensed under this chapter as a physical therapist, ~~or~~ whose license has been suspended or revoked, or whose license has lapsed and has not been revived *and* who uses ~~in connection with his name~~ the words or letters "L.P.T.", "Licensed Physical Therapist", "P.T.", "Physical Therapist", "R.P.T.", "Registered Physical Therapist", or any other letters, words, or insignia indicating or implying that ~~he~~ *the person* is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, ~~represents himself as~~ *purports to be* a physical therapist ~~shall be~~ *is* guilty of a misdemeanor.

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(3) A person who is not licensed as a physical therapist assistant in accordance with this chapter may not assist a physical therapist in the practice of physical therapy."

Section 6. Section 37-11-303, MCA, is amended to read:

"**37-11-303. Qualifications of applicants for license.** *(1)* To be eligible for a license as a physical therapist, an applicant must:

~~(1)~~*(a)* be of good moral character and at least 18 years of age;

~~(2)~~*(b)* have graduated from an accredited school of physical therapy approved by the board; *and*

~~(3)~~*(c)* either:

~~(a)~~*(i)* pass to the satisfaction of the board a written examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist; or

~~(b)~~*(ii)* be entitled to a license without examination under 37-11-307.

(2) To be eligible for a physical therapist assistant license, an applicant must:

(a) be of good moral character and at least 18 years of age;

(b) have graduated from an accredited physical therapist assistant curriculum approved by the board; and

(c) have passed a written examination prescribed by the board."

Section 7. Section 37-11-304, MCA, is amended to read:

"**37-11-304. Application for examination — fee.** (1) Unless entitled to a license under 37-11-307, a person who desires to be licensed as a physical therapist *or a physical therapist assistant* shall apply to the department in writing, on a form furnished by the department. ~~He~~ *The person* shall:

(a) ~~embody in that application~~ *provide* evidence under oath, satisfactory to the board, of ~~his possessing~~ *having* the qualifications preliminary to the examination required by 37-11-303; and

(b) pay to the department at the time of filing ~~his~~ *the* application a fee ~~as~~ established by the board by rule. The fee must be commensurate with the cost of the examination and its administration and must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) Anyone failing to pass the required examination on ~~his~~ *the* first attempt is entitled to ~~sit for~~ *take* a second examination and, if ~~he~~ *the person* fails the second examination, to ~~sit for~~ *take* a third examination. *A person who fails the third examination is required to successfully complete additional education as required by the board before retaking the examination."*

Section 8. Section 37-11-305, MCA, is amended to read:

"**37-11-305. Examination — scope.** The department shall, subject to 37-1-101, examine applicants for licenses as physical therapists *and physical*

therapist assistants, at times and places the board determines. The examinations ~~shall~~ *must* embrace subjects the board considers necessary to determine the applicant's fitness."

Section 9. Section 37-11-306, MCA, is amended to read:

"**37-11-306. Issuance of licenso — certificate as evidence.** The department shall ~~license as a physical therapist~~ *issue a license to* each applicant who proves to the satisfaction of the board ~~his~~ *the applicant's* fitness for a *physical therapist or physical therapist assistant* license under this chapter. The department shall *also* issue to each ~~person~~ licensed *person* a license certificate, which is prima facie evidence of ~~the~~ *that person's* right ~~of the person to whom it is issued to represent himself~~ *to practice and advertise* as a licensed physical therapist *or a physical therapist assistant,* subject to the conditions and limitations of this chapter."

Section 10. Section 37-11-307, MCA, is amended to read:

"**37-11-307. Applicants licensed in other states.** The board may, in its discretion, authorize the department to *issue a physical therapist or physical therapist assistant* license ~~as a physical therapist~~, without examination, on the payment of the required fee ~~as~~ established by the board, *to* an applicant ~~for license~~ who is a physical therapist *or physical therapist assistant* licensed under the laws of another state or territory if the applicant has met the same requirements as applicants licensed by examination under this chapter. ~~Those applicants who have been~~ *An applicant* licensed in another state or territory by examination other than the examination recognized under this chapter may be considered for licensure by the board if the requirements for a physical therapy license *or a physical therapist assistant license* in the state or territory in which the applicant was tested were at least equal to those requirements in force in this state at that time. However, the board may require a written, oral, or practical examination and may require continued study or refresher courses."

Section 11. Section 37-11-308, MCA, is amended to read:

"**37-11-308. Annual renewal of license — fee.** A licensed physical therapist *and a licensed physical therapist assistant* shall, during January, apply to the department for a *license* renewal ~~of his license~~ and pay a fee ~~which shall be~~ set by board rule. A license that is not renewed before April every year automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee."

Section 12. Section 37-11-309, MCA, is amended to read:

"**37-11-309. Temporary license.** (1) On payment to the department of a fee ~~which shall be~~ set by board rule and the submission of a written application on forms provided by ~~it~~ *the board,* the department shall issue, without examination, a temporary license to practice physical therapy in this state for a period not to exceed 1 year to a person who meets the qualifications set forth in 37-11-303, on submission by the person of evidence satisfactory to the board that ~~he~~ *the person* is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project.

(2) The board may, upon receipt of an application for examination and upon receipt of a temporary license fee not to exceed $100, issue a temporary license

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to a person who has applied for a license under this chapter and who is, in the judgment of the board, eligible to take the examination provided for in 37-11-303. This applicant ~~must~~ *shall* work under the ~~direction, guidance, and observation~~ *onsite supervision* of a licensed physical therapist. This temporary license is available to an applicant only with respect to ~~his~~ *the applicant's* first application. The temporary license ~~shall expire~~ *expires* when the board makes a final determination on the applicant's examination scores.

(3) The board may require an oral interview of all persons applying for a temporary license.

(4) The board shall adopt necessary and reasonable rules governing the procedures for applying and issuing temporary licenses."

Section 13. Section 37-11-320, MCA, is amended to read:

"**37-11-320. Duty to report violations — immunity from liability.** (1) Notwithstanding any provision of state law regarding the confidentiality of health care information, a physical therapist *or physical therapist assistant* shall report to the board any information that appears to show that another physical therapist *or physical therapist assistant* is:

(a) mentally or physically unable to engage safely in the practice of physical therapy; or *practice as an assistant; or*

(b) guilty of any act, omission, or condition that is grounds for disciplinary action under 37-11-321.

(2) There is no liability on the part of and no cause of action may arise against a physical therapist *or a physical therapist assistant* who in good faith provides information to the board as required by subsection (1)."

Section 14. Section 37-11-321, MCA, is amended to read:

"**37-11-321. Refusal to issue or renew license.** The board, after due notice and hearing, may refuse to license any applicant, and may refuse to renew, may suspend, may revoke, or *may* take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2, of this title;

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, of this title;

(5) is guilty, in the judgment of the board, of gross negligence in ~~his~~ *the* practice ~~as a physical therapist~~ *of physical therapy or practice as an assistant*;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been declared to be seriously mentally ill by a court of competent jurisdiction and has not ~~thereafter~~ been released from treatment and declared not to be seriously mentally ill;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist *or assistant* or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy *or has practiced as an assistant* beyond the scope and limitation of ~~his~~ *the person's* training and education."

Approved March 27, 1995

CHAPTER NO. 254

[SB 255]

AN ACT PROVIDING FOR THE WITHHOLDING OF TAX FROM WAGES RECEIVED BY MEMBERS OF THE NATIONAL GUARD AND RESERVES WHILE PARTICIPATING IN DRILLS AND TRAINING; AMENDING SECTIONS 15-30-201 AND 15-30-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" ~~includes~~ *means* all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" ~~includes~~ *means* an officer, employee, or elected puhlic official of the United States, the state of Montana, or any political subdivision ~~thereof~~ *of the state* or any agency or instrumentality of the United States, the state of Montana, or a political subdivision ~~thereof~~ *of the state*. The torm "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person~~:~~. ~~except that~~ *However,* if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "employer" means the person ~~having~~ *who has* control of the payment of wages.

(4) "Wages" means all remuneration, ~~(~~other than fees paid to a public official~~)~~, for services performed by an employee for ~~his~~ *the* employer, including

the cash value of all remuneration paid in any medium other than cash, except that the term does not include remuneration paid:

(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(b) for agricultural labor, as defined in subsection (1);

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during a quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, ~~(~~as determined under subsection (4)(d)(i)~~)~~, by the employer in the performance of service during the preceding calendar quarter~~;~~.

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by ~~a duly~~ *an* ordained, commissioned, or licensed minister of a church in the exercise of ~~his~~ *the* ministry or by a member of a religious order in the exercise of duties required by the order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by ~~him~~ *the individual* at a fixed price, ~~his~~ *with* compensation being based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged to ~~him~~ *the individual*, whether or not ~~he~~ *the individual* is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when the payments are in the form of lodgings or meals and the services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program ~~which~~ *that* benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

(j) ~~for national guard and reserve training as provided in 5 U.S.C. 5517(d);~~

~~(k)~~ as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

~~(l)~~*(k)* by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection ~~(4)(k)~~ *(4)(j)* terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 2. Section 15-30-202, MCA, is amended to read:

"**15-30-202. Withholding of tax from wages.** ~~Every~~ *Each* employer making payment of wages shall ~~deduct and~~ withhold ~~upon such~~ *from* wages a tax determined in accordance with the withholding tax tables ~~which shall be~~ prepared and issued by the department. Persons on active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33), ~~and members of the national guard and reserves participating in training as provided in 5 U.S.C. 5517(d) shall~~ *are* not be subject to the provisions of this section."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 27, 1995

CHAPTER NO. 255

[HB 65]

AN ACT GENERALLY REVISING THE LAWS GOVERNING COMMITMENT TO RESIDENTIAL FACILITIES FOR PERSONS WHO ARE SERIOUSLY DEVELOPMENTALLY DISABLED; SETTING QUALIFICATIONS FOR A PERSON TO BE COMMITTED TO A RESIDENTIAL FACILITY; AMENDING SECTIONS 53-20-102, 53-20-104, 53-20-106, 53-20-107, 53-20-112, 53-20-113, 53-20-114, 53-20-116, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-127, 53-20-128, 53-20-129, 53-20-130, 53-20-133, 53-20-146, AND 53-20-161, MCA; REPEALING SECTIONS 53-20-105 AND 53-20-111, MCA, AND SECTION 27, CHAPTER 381, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-102, MCA, is amended to read:

"**53-20-102. ~~(Temporary)~~ Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" ~~includes~~ *means* those ~~services~~ *facilities* and ~~facilities which~~ *services that* are available for

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the evaluation, treatment, and habilitation of ~~the developmentally disabled~~ *persons with developmental disabilities* in a community setting~~, including but not limited to outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community based services and facilities~~.

(3) "Court" means a district court of the state of Montana.

(4) ~~"Developmentally disabled"~~ *"Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:*

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of social and rehabilitation services and the department of corrections and human services.

(5) "Developmental disability" means ~~suffering from~~ a disability *that is* attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and ~~requiring~~ *that requires* treatment similar to that required by mentally retarded individuals. ~~if the~~ *A developmental* disability *is a disability that* originated before the individual attained age 18, *that* has continued or can be expected to continue indefinitely, and *that* constitutes a substantial handicap of ~~such~~ *the* individual.

~~(5)~~*(6)* "Habilitation" means the process by which a person who ~~is developmentally disabled~~ *has a developmental disability* is assisted ~~to acquire~~ *in acquiring* and ~~maintain~~ *maintaining* those life skills ~~which~~ *that* enable ~~him~~ *the person* to cope more effectively with *personal needs and* the demands of ~~his own person and~~ *the* environment and ~~to raise~~ *in raising* the level of ~~his~~ *the person's* physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

~~(6)~~*(7)* "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a ~~person committed to~~ *resident* ~~a residential facility~~. The ~~committed person~~ *resident* is a member of the team.

~~(7)~~*(8)* "Next of kin" includes but ~~need~~ *is* not ~~be~~ limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:~~

~~(a) has training and experience in psychometric testing and evaluation;~~

~~(b) has experience in the field of developmental disabilities; and~~

~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of corrections and human services.~~

(9) "Qualified mental retardation professional" means a ~~person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:~~

~~(a) a licensed physician or osteopath;~~

~~(b) a registered nurse; or~~

~~(c) a~~ professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person ~~admitted~~ *committed* to a residential facility ~~for a course of evaluation, treatment, or habilitation~~.

(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.

(12) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, *who are responsible for screening a respondent to determine if the commitment of the respondent to a residential facility is appropriate.*

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be *seriously* developmentally disabled and in need of developmental disability services *in a residential facility.*

(14) "Responsible person" means ~~any~~ *a* person willing and able to assume responsibility for a person who is *seriously* developmentally disabled or alleged to be *seriously* developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

(a) ~~is developmentally disabled~~ *has a developmental disability*;

(b) is impaired in cognitive functioning; and

(c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and *who* because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services. ~~(Terminates September 30, 1995--sec. 27, Ch. 381, L. 1991.)~~

~~**53-20-102. (Effective October 1, 1995) Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.~~

~~(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community-based services and facilities.~~

~~(3) "Court" means a district court of the state of Montana.~~

~~(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such individual.~~

~~(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.~~

~~(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed to a residential facility. The committed person is a member of the team.~~

~~(7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.~~

~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:~~

~~(a) has training and experience in psychometric testing and evaluation;~~

~~(b) has experience in the field of developmental disabilities; and~~

~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of corrections and human services.~~

~~(9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:~~

~~(a) a licensed physician or osteopath;~~

~~(b) a registered nurse; or~~

~~(c) a professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.~~

~~(10) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.~~

~~(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.~~

~~(12) "Residential facility screening team" means a team of persons appointed as provided in 53-20-133.~~

~~(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.~~

~~(14) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.~~

~~(15) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community based setting and which has resulted in self inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health.~~"

Section 2. Section 53-20-104, MCA, is amended to read:

"**53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board of inquiry and review *established* to ensure that the treatment of all persons ~~admitted~~ *committed* to a residential facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons ~~admitted~~ *committed* to a residential facility to ensure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required hy the United States department of health and human services. An experimental research project involving persons ~~admitted~~ *committed* to a residential facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility that is providing a course of residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. Tbe board shall inquire concerning all habilitation programs being implemented by the facility.

(5) The board shall inspect the file of each person ~~admitted~~ *committed* to a residential facility pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist a resident at a residential facility in resolving ~~any~~ *a* grievance the resident may have concerning the resident's ~~admission~~ *commitment* or course of treatment and habilitation in the facility.

(7) If the board believes tbat a facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of ~~any~~ *a* resident, it shall report its findings at once to the superintendent of the facility and the director of the department of corrections and human services. If appropriate, after waiting a reasonable time for a response from the superintendent or tbe director, the board may notify the parents or guardian of the resident involved,

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the next of kin, if known, the responsible person appointed by the court for the resident involved, and the district court that has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning the status of the residential facilities and habilitation programs that it has inspected."

Section 3. Section 53-20-106, MCA, is amended to read:

"**53-20-106. Certification of ~~professional persons~~ *developmental disabilities professionals.*** (1) ~~The~~ *A developmental disabilities professional must be certified by the* department of social and rehabilitation services and the department of corrections and human services ~~shall certify professional persons for purposes of this part~~.

(2) The department of social and rehabilitation services and the department of corrections and human services shall adopt rules governing the certification of ~~professional persons~~ *developmental disabilities professionals*. The rules must establish the appropriate combination of education, skills, and experience necessary for certification and set forth qualifications developed by reference to recognized national standards in the field of developmental disabilities."

Section 4. Section 53-20-107, MCA, is amended to read:

"**53-20-107. Department to compile list of qualified ~~visitors~~ *developmental disabilities professionals.*** The department *of corrections and human services* shall compile and provide to each district court within the state a list of ~~professional persons within the region where the district court is located~~ *developmental disabilities professionals* who possess competencies in the evaluation and habilitation of persons with developmental disabilities ~~and who may be available to the court to act as visitors or to otherwise provide evaluation services in guardianship proceedings involving developmentally disabled persons, together with an indication of the particular competencies the professional person possesses~~."

Section 5. Section 53-20-112, MCA, is amended to read:

"**53-20-112. Procedural rights.** (1) A ~~person subject to emergency admittance to a residential facility or to any hearing held pursuant to this part~~ *respondent* has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of the seriously mentally ill, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a ~~person alleged to be seriously developmentally disabled and in need of developmental disabilities services~~ *respondent* have the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional ~~person~~ of their choice when ~~such~~ *a* professional ~~person~~ is reasonably available, unless the person so

chosen is objected to by the respondent or by a responsible person appointed by the court."

Section 6. Section 53-20-113, MCA, is amended to read:

"53-20-113. Waiver of rights. (1) A ~~person~~ *respondent* may waive ~~his~~ *the respondent's* procedural rights provided that the waiver is knowingly and intentionally made.

(2) The right to counsel in a hearing held pursuant to 53-20-125 may not be waived.

(3) The right to habilitation provided for in this part may not be waived.

~~(2)~~*(4)* A ~~person admitted to a residential facility for evaluation and treatment or for an extended course of habilitation~~ *respondent* may knowingly and intentionally waive ~~his~~ *the respondent's* rights only with the concurrence of the ~~person's~~ *respondent's* counsel, if any, or, if ~~he~~ *the respondent* has no counsel, ~~his~~ *the respondent's* parents, guardian, or other responsible person appointed by the court.

~~(3) (a) In the case of a minor, the waiver of rights may be knowingly and intentionally made:~~

~~(i) when the minor is under the age of 12, by the parents of the minor with the concurrence of the responsible person, if any;~~

~~(ii) when the minor is over the age of 12, by the minor and his parents;~~

~~(iii) when the minor is over the age of 12 and the minor and his parents do not agree, the minor may make an effective waiver of his rights only with the advice of counsel.~~

~~(b) If the court believes that there may be a conflict of interest between a minor and his parents or guardian, the court may appoint a responsible person or guardian ad litem for the minor.~~"

Section 7. Section 53-20-114, MCA, is amended to read:

"53-20-114. Appointment of responsible person. ~~Whenever, in any~~ *(1) In a* proceeding under this part, the court ~~believes~~ *shall appoint a responsible person to protect the interests of the respondent if the court determines:*

(a) that a conflict of interest may exist between ~~a person who is developmentally disabled or alleged to be developmentally disabled and his~~ *the respondent and the respondent's* parents or guardian; ~~or~~

(b) that the parents or guardian are unable to protect the interests of ~~such person~~ *the respondent;* or

(c) ~~whenever there is~~ *that the respondent has* no parent or guardian~~, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled~~.

(2) The responsible person may not be an employee of a residential facility.

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(3) Only one person ~~shall at any one time~~ *may* be the responsible person within the meaning of this part.

(4) In appointing a responsible person, the court shall consider the preference of the respondent ~~or patient~~. The court may at any time, for good cause shown, change its designation of who is the respensible person.

(5) The appointment of the responsihle person must terminate at the time of the resident's discharge from the residential facility. ~~However, the~~ *The* appointment of the responsible person ~~shall~~ *may* not terminate during any period of conditional release from the facility."

Section 8. Section 53-20-116, MCA, is amended to read:

"**53-20-116. ~~Professional person to attend~~ *Residential facility screening team member — testimony at* hearing.** In ~~any~~ *a* hearing held pursuant to this part, a member of the residential facility screening team ~~or the professional person who evaluated the person must be present at the hearing and subject to cross-examination~~ *may be required to testify with regard to a determination made by the residential facility screening team.*"

Section 9. Section 53-20-118, MCA, is amended to read:

"**53-20-118. Venue for hearing.** *(1)* Hearings held pursuant to this part ~~shall~~ *must* be held in the district court for the district ~~where~~ *in which* the respondent resides~~, except that at the request of any party or the professional person, who must be present at the hearing, a hearing may be held in the district court for the district where the respondent is undergoing evaluation, treatment, or habilitation in a residential facility or is undergoing community-based evaluation, treatment, or habilitation.~~ *or in which the residential facility is located to which the respondent is or is to be committed.*

(2) The cost of any hearing held pursuant to this part ~~shall~~ *must* be borne by tbe county where the respondent resides."

Section 10. Section 53-20-121, MCA, is amended to read:

"**53-20-121. Petition for involuntary treatment — contents of.** (1) ~~Any~~ *A* person who believes that there is a person who is seriously developmentally disabled and in need of ~~placement in~~ *commitment to* a residential facility may request the county attorney to file a petition alleging that the person is seriously developmentally disabled and in need of ~~placement in~~ *commitment to* a residential facility.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and ~~their~~ *the person's* interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

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(d) the name and address of the respondent's next of kin, to the extont known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed *as a* responsible person; and

(f) a statoment of the rights of the respondent and ~~his~~ *the respondent's* parents or guardian that must be in conspicuous print and identified by a suitable heading.

(3) A copy of the petition must be sent to the residential facility screening team."

Section 11. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening — recommendation for ~~treatment~~ at *commitment to* residential facility — hearing. (1) *A person may be committed to a residential facility only if the person:*

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the ~~person~~ *respondent who has been* evaluated is seriously developmentally disabled and recommends *that the respondent be committed to a residential facility for* treatment and habilitation ~~in a residential facility~~ on an extended basis, the team shall file its written recommendation and report with the court ~~and request that the court order the admission~~. The report ~~shall~~ *must* include the factual basis for the recommendation and ~~shall~~ *must* describe any tests or evaluation devices that have been employed in evaluating the ~~patient~~ *respondent.*

~~(2) If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian, the court shall appoint a responsible person.~~

(3) At the request of the respondent, ~~his~~ *the respondent's* parents or guardian, or the responsible person, the court shall appoint counsel for the respondent. If the parents ~~(or guardian)~~ are indigent and if they request it *or if a guardian is indigent and requests it*, the court shall appoint counsel for the parents or guardian.

(4) Notice of the ~~recommendation~~ *determination of the residential facility screening team* must be mailed or delivered to*:*

(a) the respondent~~, his~~*;*

(b) the respondent's parents ~~or~~, guardian~~,~~ *or next of kin, if known;*

(c) the responsible person~~, next of kin, if known,~~*;*

(d) the respondent's advocate, if any;

(e) the county attorney;

(f) the residential facility; ~~and~~

(g) the attorney for the respondent, if any~~,~~*;* and

(h) the attorney for the parents or guardian, if any.

(5) The respondent, ~~his~~ *the respondent's* parents or guardian, the responsible person, *the respondent's advocate, if any,* or the attorney for any party may request that a hearing be held on the recommendation *of the residential facility screening team.* ~~If a hearing is requested, the court shall mail or deliver notice of the date, time, and place of the hearing~~

(6) Notice of the hearing must be mailed or delivered to each of the parties listed ~~at the beginning of this~~ *in* subsection *(5).*

(7) The hearing must be held before the court without jury. The rules of civil procedure ~~must~~ apply.

~~(6)~~*(8)* If the court finds that the respondent is seriously developmentally disabled *and in need of commitment to a residential facility,* it shall order the respondent ad~~mitted~~ *committed* to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent ~~is developmentally disabled~~ *has a developmental disability* but *is* not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent ~~is not developmentally disabled~~ *does not have a developmental disability* or is not in need of developmental disability services, it shall dismiss the petition.

~~(7)~~*(9)* If none of the parties notified of the recommendation request a hearing, the court may issue an order ~~authorizing the person to be admitted~~ *for the commitment of the respondent* to the residential facility for an extended period of treatment and habilitstion or the court may initiate its own inquiry as to whether the order should be granted.

(10) The court may refuse to authorize ~~admission~~ *commitment* of a ~~person~~ *respondent* to a residential facility for an extonded period of treatment and habilitation if ~~admission~~ *commitment* is not in the best interests of the ~~person~~ *respondent.*

(11) An order for commitment must be accompanied by findings of fact.

(12) A court order entered in a proceeding under this part must be provided to the residential facility screening team."

Section 12. Section 53-20-126, MCA, is amended to read:

"53-20-126. Maximum period of ~~admission~~ *commitment* to residential facility. ~~(1) No person shall be admitted to a residential facility for longer than 30 days except on approval of the court. Whenever a person is admitted to a residential facility for longer than 30 days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person.~~

~~(2)~~ The court order approving the ~~admission~~ *commitment* ~~shall~~ *must* specify the maximum period of time for which the person is ~~admitted~~ *committed* to the residential facility. ~~In no case shall this~~ *The* maximum period *may not* exceed 1 year."

Section 13. Section 53-20-127, MCA, is amended to read:

"53-20-127. Transfer to another ~~residential~~ facility — release to community-based altornative — hearing. (1) If, at any time during the period for which a ~~person~~ *resident* is ~~admitted~~ *committed* to a residential facility for an extended period of habilitation and treatment, the qualified mental retardation professional ~~in charge of~~ *responsible for* the ~~resident~~ *resident's habilitation* decides that the ~~person~~ *resident* no longer requires placement in a residential facility and that there exist sufficient community-based altornatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others ~~or that it is in the best interests of the resident that he be transferred to another residential facility~~, ~~then he~~ *the qualified mental retardation professional* may release the resident to the community-based alternative ~~or transfer the resident to the other residential facility no less than 15 days after sending~~.

(2) ~~notice~~ *Notice* of the proposed release ~~or transfer~~ *must be sent at least 15 days prior to the date of release* to:

(a) the resident~~, his~~;

(b) the resident's parents or guardian~~,~~;

(c) the attorney who most recently represented the resident, if any~~,~~;

(d) the responsible person appointed by the court, if any~~, and~~;

(e) the resident's advocate, if any; and

(f) the court that ordered the ~~admission~~ *commitment*. ~~If the resident has been found unfit to proceed to trial, notice must be sent to the court that found the resident unfit to proceed to trial and to the county attorney and the attorney who represented the resident at the time the resident was found unfit to proceed to trial.~~

~~(a)~~*(3)* If ~~any of the parties so~~ *a party that was* notified objects to the release ~~or transfer~~, ~~they~~ *the party* may petition the court for a hearing to determine whether the release ~~or transfer~~ should be allowed. The hearing must comply with the procedures set forth in 53-20-125. The court may on its own initiative inquire concerning the propriety of the release ~~or transfer~~.

~~(b)~~*(4)* ~~Nothing in this subsection (1) prevents the transfer of a~~ *A* resident *may be transferred without the notice provided in subsection (2)* to a hospital or other medical facility for necessary medical treatment or ~~emergency transfer of a resident~~ to a mental health facility *for emergency treatment* provided *that* the emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice must be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

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~~(2)~~*(5)* If a person is ~~admitted~~ *committed* to a residential facility for an extended course of habilitation without a hearing and if subsequent to ~~admission~~ *commitment* one of the parties who could have requested a hearing learns that an alternative course of treatment is available that is more suitable to the needs of the resident, the party may request the qualified mental retardation professional ~~in charge of~~ *responsible for* the ~~resident~~ *resident's habilitation* to release the resident to the alternative if it is a community-based alternative ~~or transfer the resident to the alternative if it is a residential alternative~~. ~~Any transfer or~~ *A* release must comply with the requirements of ~~subsection~~ *subsections* (1) *through (4)*. If the qualified mental retardation professional in charge of the resident refuses to authorize the release ~~or transfer~~, ~~then~~ the party may petition the court for a hearing to determine whether the ~~present residential alternative~~ *resident's commitment* should be continued. The hearing must comply with the procedures set forth in 53-20-125."

Section 14. Section 53-20-128, MCA, is amended to read:

"**53-20-128. ~~Extension of admission period — hearing~~ *Recommitment.*** (1) If the qualified mental retardation professional ~~in charge of the resident~~ *responsible for a resident's habilitation* determines that the ~~admission to the residential facility should continue beyond the period specified in the court order, he shall, at least 15 days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court that issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request must be accompanied by a written report describing the habilitation plan that has been undertaken for the resident and the future habilitation plan that is anticipated by the qualified mental retardation professional.~~ *resident continues to be seriously developmentally disabled and in need of commitment to a residential facility beyond the term of the current commitment order, the qualified mental retardation professional shall request that a petition for recommitment be filed.*

(2) A petition for recommitment must be filed with the district court before the end of the current period of commitment.

(3) The recommendation of the qualified mental retardation professional must be presented in a written report that includes a summary of the current habilitation plan for the resident.

(4) The resident must be screened in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified mental retardation professional must be sent to:

(a) the court that issued the current order;

(b) the residential screening team;

(c) the resident;

(d) the resident's parents or guardian or next of kin, if any;

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(e) the attorney who most recently represented the resident, if any;

(f) the responsible person appointed by the court, if any; and

(g) the resident's advocate, if any.

(6) If the residential facility screening team recommends that the resident be recommitted, the court may enter an order for recommitment without hearing unless a person notified as provided in subsection (5) requests that a hearing be held or the court determines that it would be in the best interest of the resident to hold a hearing.

~~(2)~~*(7)* If ~~any person so notified requests~~ *the court sets* a hearing, the court shall ~~set a time and place for the hearing and shall mail or deliver~~ *provide* notice to all of the persons ~~informed of the recommendation. The hearing must be conducted in the manner set forth in 53-20-125. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility.~~ *notified pursuant to subsection (5).*

(8) A court may order a resident's recommitment to a residential facility if the court determines that the resident continues to be seriously developmentally disabled and in need of continued commitment to the residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require ~~treatment in~~ *commitment to* a residential facility or if all parties are willing for the resident to participate in a community-based program of babilitation, it shall refer the ~~respondent~~ *resident* to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209. If the ~~person~~ *resident* is placed in community-based services or if the need for developmental disabilities services no longer exists, tbe court shall dismiss the petition. ~~The~~

(9) The court may not order ~~continuation of admission~~ *recommitment* to a residential facility that does not have an individualized habilitation plan for the resident. ~~In its order, the court shall make findings of fact on which its order is based.~~

(10) At a hearing, the ~~The~~ court may ~~on its own initiative~~ inquire concerning the suitability of continuing ~~an admission~~ *a resident's commitment* to a residential facility."

Section 15. Section 53-20-129, MCA, is amended to read:

"53-20-129. Emergency admission *and commitment.* *(1)* A ~~professional person may admit a~~ person believed to be seriously developmentally disabled ~~to~~ *may be admitted in* a residential facility on an emergency basis when necessary ~~to~~ protect the person or others from death or serious bodily harm.

(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities professional.

(3) An emergency admission may not proceed unless the residential facility and the department of social and rehabilitation services are given reasonable

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notice of the need for placement by the developmental disabilities professional responsible for emergency admission.

(4) A petition ~~as set out in 53-20-121 and 53-20-125~~ *for emergency commitment* must be filed on the next judicial day *after an emergency admission* by the county attorney of the county where the person resides. ~~If a petition is filed, the~~

(5) The residential facility screening team shall report back to the court on the ~~fifth~~ *seventh* judicial day following the filing of the petition *for emergency commitment.*

(6) Once ~~a petition is filed~~ *the report of the residential facility screening team is received by the court,* continued ~~detention~~ *placement* in the residential facility may ~~be allowed only on~~ *not continue without an* order of the court *for emergency commitment.*

(7) A court may order an emergency commitment only when *the court determines that the emergency commitment is* necessary to protect the respondent or others from death or serious bodily harm. ~~In no case may an~~

(8) An order for emergency commitment may be entered without a hearing before the court, if the court finds that the record supports the ordsr.

(9) An emergency ~~admission~~ *commitment* to a residential facility *may not* continue for longer than 30 days ~~without subsequent proceedings~~ *after placement in the residential facility unless a petition for an extended commitment to the residential facility has been filed* before the court.

(10) The residential facility screening team may recommend that the respondent under a petition for emergency commitment be committed by court order to the residential facility on an extended basis."

Section 16. Section 53-20-130, MCA, is amended to read:

"53-20-130. Patient transfers from mental health facilities. If ~~any~~ *a* person is a patient in a mental health facility and the professional person, *as defined in 53-21-102,* in charge of the patient determines that the patient is suffering from a developmental disability rather than mental illness and should more properly be ~~admitted~~ *committed* to a residential facility or an appropriate less restrictive alternative, ~~then~~ the professional person shall commence proceedings to effect ~~such admission~~ *a commitment,* consistent with the procedures set forth in this part for ~~admissions~~ *commitments* generally."

Section 17. Section 53-20-133, MCA, is amended to read:

"53-20-133. Residential facility screening team — referral by court — membership — rules. (1) When the district court ~~considers a person~~ *receives a petition* for commitment to a residential facility under this part, the court, *prior to proceeding,* shall refer the ~~person~~ *respondent* to the residential facility screening team for screening to determine whether placement and habilitation in a residential facility are appropriate for the ~~person~~ *respondent.*

(2) A court may not commit a ~~person~~ *respondent* to a residential facility under 53-20-125, *53-20-128, or 53-20-129* unless the residential facility

screening team determines that placement and habilitation in a residential facility are appropriate for the ~~person~~ *respondent*.

(3) The residential facility screening team may not determine that placement and habilitation in a residential facility are appropriate *on an extended basis* unless the residential facility screening team determines that the ~~person~~ *respondent* is seriously developmentally disabled.

(4) The residential facility screening team shall provide the court *and the county attorney* with the social and placement information relied upon by the residential facility screening team in making its determination.

(5) For purposes of this part, the department of social and rehabilitation services and the department of corrections and human services shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team."

Section 18. Section 53-20-146, MCA, is amended to read:

"**53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a residential facility have a right not to be subjected to ~~any~~ unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give consent, and of ~~his~~ *the resident's* parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. ~~Such proposed~~ *Proposed* procedures must first have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

(2) Physical restraint may be employed only when absolutely necessary to protect the resident from injury ~~to himself~~ or to prevent injury to others. Mechanical supports used to achieve proper body position and balance that are ordered by a physician are not considered a physical restraint. Restraint may not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least possible restriction consistent with its purpose. Use of restraints may he authorized by a physician, *a developmental disabilities* professional ~~person~~, or *a* qualified mental retardation professional. Orders for restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort and physical needs of the ~~person~~ *resident* restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, may not be employed. Legitimate "time out" procedures may be ~~utilized~~ *used* under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli must be reviewed and approved by the mental disabilities board of visitors and may be conducted only with the express and informed consent of the affected resident, if the resident is able to give consent, and of ~~his~~ *the resident's* parents or guardian or the responsible person appointed by the court

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after opportunities for consultation with independent specialists and with legal counsel. ~~Such~~ *These* behavior modification programs may be conducted only under the supervision of and in the presence of a qualified mental retardation professional who has had proper training ~~in such techniques~~.

(5) A resident may not be subjected to a behavior modification program that attempts to extinguish socially appropriate behavior or to develop new behavior patterns when ~~such~~ *the* behavior modifications serve only institutional convenience.

(6) Electric shock devices are considered a research technique for the purpose of this part. ~~Such~~ *Electric shock* devices may be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of ~~such~~ *electric shock* devices is subject to the conditions prescribed by this part for experimental research generally and may be used only under the direct and specific order of a physician and the superintendent of the residential facility."

Section 19. Section 53-20-161, MCA, is amended to read:

"**53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records must be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if the resident is capable of giving informed consent, or by ~~his~~ *the resident's* parents or guardian or the responsible person must be permitted access to the resident's records. Information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if ~~he~~ *the resident* is over the age of majority and is capable of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or ~~his~~ *the superintendent's* designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal gnardian has been appointed;

(g) the superintendent of the residential facility or ~~his~~ *the superintendent's* designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or ~~his~~ *the superintendent's* designee as custodian of a resident of that facility whenever release is required by federal or state law or department of social and rehabilitation services rules.

(2) Information may not be released by a superintendent or ~~his~~ *the superintendent's* designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, ~~his~~ *the resident's* parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, *the resident's advocate, if any,* and the court that ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to determine whether the release of information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may not be released pursuant to ~~these subsections~~ *subsection (1)(f), (1)(g), or (1)(h)* except in accordance with written policies consistent with the requirements of this part adopted by the facility. Persons receiving notice of a proposed release of information ~~shall~~ *must* also receive a copy of the written policy of the facility governing release of information.

(3) These records must include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record;

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, including mode of communication;

(e) a record of each physical examination that describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications ~~thereto~~ *to the plan* and an appropriate summary ~~that will~~ *to* guide and assist the resident care workers in implementing the resident's ~~program~~ *habilitation plan*;

(g) the findings made in monthly reviews of the habilitation plan, ~~which findings must include~~ *including* an analysis of the successes and failures of the habilitation program and ~~direct~~ whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications ~~thereto~~ *to the postinstitutionalization plan* and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a *qualified mental retardation* professional ~~person~~ with a resident;

(k) a summary of the resident's response to ~~his~~ *the resident's* habilitation plan, prepared by a qualified mental retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, ~~such~~ *the* response must be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of the activity upon the resident's progress in the habilitation plan;

(m) a signed order by a qualified mental retardation professional~~,~~ ~~professional person,~~ or physician for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of *the* resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures~~,~~; illnesses~~,~~; injuries~~,~~ ~~and~~ treatments ~~thereof~~ *of seizures, illnesses, and injuries;* and immunizations."

Section 20. Repealer. Sections 53-20-105 and 53-20-111, MCA, and Section 27, Chapter 381, Laws of 1991, are repealed.

Section 21. Phrase change — directions to code commissioner. Wherever a reference te a person who is developmentally disabled or to a developmentally disabled person appears in the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is directed to change the reference to a person with developmental disabilities. The phrase "seriously developmentally disabled" should remain.

Section 22. Effective date. [Sections 1 through 21 and this section] are effective on passage and approval.

Approved March 28, 1995

CHAPTER NO. 256

[HB 84]

AN ACT CLARIFYING THE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO PLACE A DEFENDANT SUFFERING FROM A MENTAL DISEASE OR DEFECT; AND AMENDING SECTION 46-14-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-312, MCA, is amended to read:

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"46-14-312. **Sentence to be imposed.** (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed, *after consideration of the recommendations of the professionals providing treatment to the defendant,* in an appropriate *correctional or mental health* ~~institution~~ *facility* for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could he imposed under subsection (1). *The director may, after considering the recommendations of the professionals providing treatment to the defendant, subsequently transfer the defendant to another correctional or mental health facility that will better serve the defendant's custody, care, and treatment needs.* The authority of the court with regard to sentencing is the same as authorized in Title 46, chaptor 18, if the treatment of the individual and the protection of the puhlic are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;

(c) the defendant suffers from a mental disease or defect but is not a danger te the defendant or others; or

(d) the defendant suffers from a mental disease or defect that makes the defendant a danger te the defendant or others, but:

(i) there is no treatment available for the mental disease or defect;

(ii) the defendant refuses to cooperate with treatment; or

(iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority, except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Approved March 28, 1995

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CHAPTER NO. 257

[HB 219]

AN ACT ALLOWING A MONTANA RESIDENT ON ACTIVE MILITARY DUTY AND LIVING OUTSIDE OF MONTANA TO PURCHASE LICENSE PLATES AND REGISTER A MOTOR VEHICLE FOR THE COST OF REGISTRATION ALONE; AMENDING SECTIONS 15-6-201 AND 61-3-303, 61-3-502, AND 61-3-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana. (1) An owner of a motor vehicle who is a Montana resident on active military duty and stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must he sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification numher and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registored under this section is not subject to:

(a) the taxes described in 61-3-303(2)(h);

(b) assessment under 15-8-202 or 61-3-503; or

(c) any of the fees provided in part 5 of this chapter.

Section 2. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the stato to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

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(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land tbey occupy and furnishings in the huildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that ~~meets the following conditions~~:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the stato of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

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(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property *that is* owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101~~, which~~ *and that* is not operated for gain or profit~~,~~ and property owned and used by an organization owning and operating facilities *that are* for the care of the retired, aged, or chronically ill~~, which~~ *and that* are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) beginning January 1, 1994, timber as defined in 15-44-102; ~~and~~

(v) all trailers and semitrailers with a licensed gross weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

(w) all vehicles registered under [section 1].

(2) (a) The term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Intsrnal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatery. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 3. Section 61-3-303, MCA, is amended te read:

"61-3-303. Application for registration. (1) ~~Every~~ *Each* owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file or cause te be filed in the office of the county treasurer where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned, an application for registration or reregistration upon a blank form to be prepared and furnished by the department. The application must contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxahle;

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(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, and type of body and, if a truck, rated capacity; and

(d) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 *or [section 1]*; and

(b) *except as provided in [section 1] or* unless it has been previously paid:

(i) the personal property taxes assessed against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department of revenue may not assess and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department of revenue may make full and completo investigation of the tax status of the vehicle. ~~Any~~ *An* applicant for registration or reregistration shall submit proof from the tax or other appropriate records of the proper county at the request of the department of revenue."

Section 4. Section 61-3-502, MCA, is amended te read:

"61-3-502. Sales tax on new motor vehicles — exemptions. (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must he paid by the purchaser when the purchaser applies for an original Montana license through the county treasurer.

(2) Except as provided in subsections (4) and (5), the sales tax is:

(a) 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 1/8% of the list price during the second quarter of the year;

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(c) 3/4 of 1% during the third quarter of the year;

(d) 3/8 of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.h. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 1/2% of the f.o.b. factory list price or f.o.h. port-of-entry list price regardless of tbe month in which the new vebicle is purchased.

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.h. factory list price or f.o.b. port-of-entry list price.

(6) The proceeds from this tax must he remitted to the state treasurer every 30 days for credit to the state bighway account of tbe state special revenue fund. The county treasurer shall retain 5% of the taxes collected to pay for tbe cost of administration.

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vebicle furnisbed witbout charge by a dealer to a school district for use as a traffic education motor vehicle hy a school district operating a state-approved traffic education program within tbe state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in tbe state of Montana on January 1 of the year.

(b) A motor vehicle may not be registored or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin te be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a francbise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving te or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business.

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(d) A vehicle registered under [section 1] is exempt from the provisions of subsection (1)."

Section 5. Section 61-3-504, MCA, is amended to read:

"**61-3-504. Computation of tax.** (1) The amount of taxes on a motor vehicle, other than an automobile, truck having a rated capacity of 1 ton or less, motorcycle, quadricycle, motor home, travel trailer, camper, or mohile home, is computed and determined hy the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration.

(2) The amount of tax on an automobile or truck having a ratod capacity of 1 ton or less, except for vehicles *registered under [section 1] or* owned by disabled veterans qualifying for special license plates under 61-3-332(10)(c)(i)(A), and on a motorcycle or quadricycle is 2% of the value determined under 61-3-503.

(3) The amount of tax on fleet vehicles subject to the provisions of 61-3-318 is 1% of the value determined under 61-3-503.

(4) For all taxahle motor vehicles, the amount of tax is entered on the application form in a space provided therefor."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chaptor 3, part 4, apply to [section 1].

Approved March 28, 1995

CHAPTER NO. 258

[HB 259]

AN ACT INCREASING THE PENALTY FOR VIOLATION OF A CURFEW ORDINANCE; AND AMENDING SECTION 7-32-2302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2302, MCA, is amended to read:

"**7-32-2302. Establishment of curfew — *penalty.*** (1) ~~The boards~~ *A board* of county commissioners ~~of the respective counties shall have:~~

~~(a) power to establish, by general order and from time to time,~~ *may adopt an ordinance that establishes* a curfew hour after which minors will not be allowed abroad on the public streets within the confines of unincorporated cities and towns of ~~any such~~ *the* county~~; and~~

~~(b) authority to make all proper and necessary administrative rules for the purpose of carrying into effect the provisions of this section.~~

(2) The enforcement of the provisions of this section is enjoined upon ~~every~~ *each* officer and official whose duty it is to enforce the laws of the state.

(3) ~~Any~~ *A* person *convicted of* violating ~~any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof~~ *a curfew*

ordinance adopted under subsection (1) shall be punished by a fine ~~in any sum~~ not exceeding ~~$10~~ *$75 or by a sentence of up to 10 hours of community service, or both.*"

Approved March 28, 1995

CHAPTER NO. 259

[HB 335]

AN ACT CREATING THE MONTANA WHEELCHAIR WARRANTY ACT; PROVIDING FOR WHEELCHAIR WARRANTIES; PROVIDING PROCEDURES TO CORRECT NONCONFORMITIES TO WARRANTIES; AND PROVIDING FOR CONSUMERS' RIGHTS; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be known as the "Montana Wheelchair Warranty Act".

Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Collateral costs" mean the expenses incurred by a consumer for the repair of a nonconformity, including the costs of obtaining an alternative wheelchair.

(2) "Consumer" means a person:

(a) who purchases a wheelchair from a wheelchair dealer or manufacturer for purposes other than resale;

(b) to whom the wheelchair is transferred for purposes other than resale if the transfer occurred before the expiration of an express warranty applicable to the wheelchair;

(c) who may enforce the warranty; or

(d) who leases a wheelchair from a wheelchair lessor under a written lease.

(3) "Manufacturer" means a person or an agent of a person who manufactures or assembles wheelchairs. The term includes an importer, factory branch, and any warrantor of the manufacturer's wheelchairs. The term does not include a wheelchair dealer.

(4) "Nonconformity" means a defect that substantially impairs the use, value, or safety of a wheelchair or that is covered by an express warranty applicable to the wheelchair or to components of a wheelchair. The term does not include a condition that is the result of abuse, neglect, or unauthorized modification or alteration of the wheelchair by the consumer.

(5) "Wheelchair" means a manually powered or motor-driven wheelchair, scooter, or other motorized device that is used for mobility assistance, that costs $500 or more, and that a consumer purchases or accepts by transfer.

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(6) "Wheelchair dealer" means a person who is in the retail business of selling wheelchairs.

Section 3. Express written warranty for wheelchairs — failure to furnish — implied warranty. (1) A manufacturer who sells a wheelchair to a consumer, either directly or through a wheelchair dealer, shall furnish the consumer with an express written warranty against nonconformity.

(2) The duration of the express written warranty may not be less than 1 year after the date of delivery of the wheelchair to the consumer.

(3) If a manufacturer fails to furnish an express written warranty, the wheelchair is covered by a warranty as if the manufacturer had furnished an express written warranty to the consumer under subsection (1). The implied warranty is for a period of 2 years following the date of delivery of the wheelchair to the consumer.

Section 4. Replacement for nonconformity to warranty. (1) If, after a reasonable number of attompts to repair the nonconformity during the warranty period, the manufacturer or the wheelchair dealer is unable to conform the wheelchair to the warranty by repairing or correcting the nonconformity, the manufacturer shall, at the direction of the consumer either:

(a) replace the wheelchair with a new wheelchair of the same model and style and of comparable value, unless the replacement is impossihle because of lack of availability, in which case the manufacturer shall replace it with a wheelchair of similar functional benefit and comparable value. Additionally, the manufacturer shall refund any finance charges and collateral costs to the consumer.

(b) accept return of the wheelchair from the consumer and refund the full purchase price or the total of all lease payments, plus any finance charges, collateral costs, and incidental damages, less a reasonable allowance for the consumer's use of the wheelcbair. A reasonable allowance for use may not exceed an amount obtained by multiplying the purchase price by a fraction with a denominator of 1,825 and a numerator of the number of days the wheelchair was useable before the consumer first reported the nonconformity to the wheelchair dealer. A person may not enforce a lease against the consumer after the consumer returns a wheelchair under this subsection.

(2) A manufacturer who replaces a wheelchair in accordance with subsection (1)(a) or refunds the purchase price of a wheelchair in accordance with subsection (1)(b) shall also refund to the dealer the dealer's reasonable costs of the exchange or refund.

(3) A wheelchair returned by a consumer in this state pursuant to this section or by a consumer in another state under a similar law of the other stato may not be sold or leased again in this stato unless a full disclosure is made to a prospective consumer of the reasons for the return.

Section 5. Reasonahle number of attempts to conform — presumption. A reasonable number of attempts to conform a new wheelchair to the applicable warranty is presumed te have been made for the purposes of [section 4] if:

(1) the same nonconformity has been subject to repair two or more times by the manufacturer or the wheelchair dealer during the warranty period and the nonconformity continues to exist; or

(2) the wheelchair is out of service because of a nonconformity for a cumulative total of 45 days during the warranty period after notification of the manufacturer or wheelchair dealer.

Section 6. Liability to manufacturer — wheelchair dealer exemption. A wheelchair dealer is not liable to a manufacturer for a refund or wheelchair replacement in the absence of evidence that indicates that the repairs made by the dealer were carried out in a manner inconsistent with the manufacturer's instructions.

Section 7. Consumer's rights. (1) [Sections 1 through 7] may not be considered to limit the rights or remedies available to a consumer under any other law or contract.

(2) A waiver of rights under [sections 1 through 7] by a consumer is void.

(3) A consumer's rights and remedies under [sections 1 through 7] are in addition to the rights and remedies provided in chapter 2A.

(4) If the manufacturer fails to comply with [section 4(1)(a) or (1)(b)], a consumer may bring an action to recover for damages caused by a violation of [sections 1 through 7]. The court may award a consumer who prevails in an action triple the amount of any pecuniary loss. A court may also award costs, disbursements, reasonable attorney fees, and any equitable relief that the court determines is appropriate.

Section 8. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 7].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Applicability. [This act] does not apply to a wheelchair as defined by [section 2] sold to a consumer as defined by [section 2] before October 1, 1995.

Approved March 28, 1995

CHAPTER NO. 260

[HB 368]

AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY ELIMINATING CERTAIN COUNTY TREASURER SCHOOL BUDGETING FUNCTIONS; ELIMINATING THE REQUIREMENT THAT THE COUNTY TREASURER PREPARE A STATEMENT SHOWING THE AMOUNT OF THE

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OUTSTANDING OBLIGATIONS FOR EACH FUND; ELIMINATING THE REQUIREMENT THAT THE COUNTY SUPERINTENDENT DELIVER A FINAL BUDGET TO THE COUNTY TREASURER; ELIMINATING THE REQUIREMENT THAT THE COUNTY TREASURER RECEIVE A COPY OF A BUDGET AMENDMENT; ELIMINATING THE REQUIREMENT THAT A PURCHASE OF ORDERED PERSONAL PROPERTY BE RECORDED WITH THE COUNTY TREASURER; ELIMINATING THE REQUIREMENT THAT WARRANTS BE ENDORSED BY HOLDERS; ELIMINATING THE REQUIREMENT THAT THE COUNTY TREASURER INCLUDE OUTSTANDING WARRANTS IN AN ITEMIZED REPORT TO TRUSTEES; AUTHORIZING MONEY FROM THE SALE OF BONDS TO BE CREDITED IN A UNIFIED INVESTMENT PROGRAM WITH THE COUNTY TREASURER; REVISING THE PROCEDURE FOR ISSUANCE OF WARRANTS; ELIMINATING THE REQUIREMENT THAT THE COUNTY TREASURER RECEIVE A COPY OF AN EMERGENCY BUDGET; AMENDING SECTIONS 20-9-121, 20-9-134, 20-9-165, 20-9-209, 20-9-212, 20-9-213, 20-9-221, 20-15-210, 20-15-325, 20-15-326, AND 20-15-404, MCA; REPEALING SECTIONS 20-9-206, 20-9-222, AND 20-9-224, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-121, MCA, is amended to read:

"**20-9-121. County treasurer's statement of cash balances and bond information.** (1) By July 10, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district ~~and the amount of the outstanding obligations against each fund~~ at the close of the ~~last completed~~ *last-completed* school fiscal year. The county treasurer shall also include on each district's statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information ~~shall~~ *must* be prescribed by the superintendent of public instruction.

(2) By July 10, the county treasurer shall prepare a statement for each county school fund supported by countywide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement ~~shall~~ *must* be prescribed by the superintendent of public instruction.

(3) On or before July 10, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each district to the county superintendent, who shall attach ~~such~~ *the* district statements to the applicable district's preliminary budget."

Section 2. Section 20-9-134, MCA, is amended to read:

"**20-9-134. Completion, filing, and delivery of final budgets.** After the final budget of the elementary, high school, or community college district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

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(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before September 1; *and*

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before September 1~~; and~~

~~(3) deliver a copy of the final budget for the district to the county treasurer on or before September 1~~."

Section 3. Section 20-9-165, MCA, is amended to read:

"20-9-165. Budget amendment limitation, preparation, and adoption procedures. (1) The meeting of the trustees to consider and adopt a budget amendment must be open to the public, and any taxpayer in the district bas the right to appear and be heard. If at tbe meeting a majority of the trustees present find that there is sufficient need for a budget amendment, the trustees may make and adopt a preliminary budget amendment, setting forth fully the facts constituting the need for the budget amendment. In adopting the preliminary budget amendment, the trustees may budget for any fund that was included on the final budget of tbe district for the current school fiscal year. The budget must be itemized to show the amount appropriated for each item.

(2) When the budget amendment is tbe result of increased enrollment, the maximum amount of the budget amendment for all funds must be determined in the following manner:

(a) Determine the total amount in tbe final budget for the current school fiscal year of all funds affected by the enrollment increase, less any amounts appropriated as capital outlay and any amount appropriated for addition to the operating reserve.

(b) Divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in the district during the immediately preceding school fiscal year. The resulting cost per pupil is the maximum permissible per-pupil expenditure in the budget amendment.

(c) Determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from tbe number of pupils enrolled for the current school year. The result is the enrollment increase for the current school fiscal year.

(d) Multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result is the maximum limitation on a budget amendment for amendments resulting from increased enrollment.

(3) For other types of budget amendments, the budget amendment is limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the budget amendment and the preliminary budget amendment must include the details of the proposed expenditures.

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(4) Whenever the trustees adopt a preliminary budget amendment for the transportation fund, the trustees shall attach to the budget amendment a copy of each transportation contract that is connected with the budget amendment and that has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the budget amendment by a majority vote of the trustees, it must be signed by the ~~chairman~~ *presiding officer* of the trustees and the clerk of the district and copies must be sent to the county superintendent~~, the county treasurer,~~ and the superintendent of public instruction."

Section 4. Section 20-9-209, MCA, is amended to read:

"20-9-209. **Lapse of budgeted appropriations and provision for unpaid claims.** (1) All appropriations for a budgeted fund in the regular budget or for a budget amendment for a given school fiscal year lapse on the last day of the school fiscal year, except the appropriations for:

(a) uncompleted improvements in progress of construction; and

(b) an obligation for the purchase of personal property ordered but not paid for during the current fiscal year ~~and recorded with the county treasurer in the manner and on forms prescribed by the superintendent of public instruction~~.

(2) A lawful claim presented to the district for payment under a lapsed appropriation is an obligation of the budget for the next ~~ensuing~~ school fiscal year."

Section 5. Section 20-9-212, MCA, is amended to read:

"20-9-212. **Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary BASE aid;

(b) the basic special tax for high schools in support of the high school BASE aid;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners.

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on

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deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money ~~and properly endorsed by their holders~~;

(5) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) invest the money of any district as directed by the trustees of the district within 3 working days of the direction;

(10) each month give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, ~~outstanding warrants,~~ registered warrants, *interest distribution,* amounts and types of revenue received, and the cash balance;

(11) remit promptly to the state treasurer receipts for the county tax for a vocational-technical ~~center~~ *program within a unit of the university system* when levied by the board of county commissioners under the provisions of 20-16-202;

(12) invest the money received from the basic county tax, the basic special tax, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required te be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) remit on a monthly basis te the state treasurer, in accordance with the provisions of 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned and excluding

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any amount required for high school out-of-county tuition under the provisions of 20-9-334, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must he used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 6. Section 20-9-213, MCA, is amended to read:

"**20-9-213. Duties of trustees.** The trustees of each district have the ~~sole power and~~ authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurato, detailed accounting of all receipts and expenditures of school money for each fund maintained hy the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspectiou at any meeting of the trustoes.

(2) authorize all expenditures of district money and cause warrants to be issued for the payment of lawful obligations;

(3) issue warrants on any budgeted fund in anticipation of budgetod revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government; in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state; or in a repurchase agreement, as authorized in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the hoard of trustees. The placement of the investment by the county treasurer is not subject te ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6, *or in a unified investment program with the county treasurer that meets the requirements of this subsection (4).*

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the ~~last completed~~ *last-completed* school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted not later than September 1 to the county superintendent of each county in which part of the joint district is situated.

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(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district."

Section 7. Section 20-9-221, MCA, is amended to read:

"**20-9-221. Procedure for issuance of warrants.** (1) The trustees of each district shall issue all warrants, and the warrants must identify:

~~(a)~~ the ~~budgeted~~ fund ~~or nonbudgeted fund~~ on which the warrant is drawn; ~~and~~

~~(b) the warrant as a budget amendment warrant if it is drawn on a budget amendment.~~

(2) All warrants issued by a district must be countersigned by the ~~chairman~~ *presiding officer* of the trustees and the clerk of the district before the warrants are negotiable. Facsimile signatures may be used in accordance with the provisions of 2-16-114. A facsimile signature device used under authority of this section may not be available to the other countersigner of the warrant, or the device must have a nonresettable metering control that can provide a positive reconciliation between the number of warrants issued and the number of signatures applied. Either split signature plates or a double signature plate may be used according to the requirements of the district. The signature plates and the device keys must be kept secure by the district clerk under the supervision of the board of trustees of the district.

(3) The trustees ~~shall~~ *may* issue warrants in ~~single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant must be delivered to the payee, the duplicate must be sent immediately to the county treasurer, and the triplicate must be retained by the district for accounting record purposes. The duplicate and triplicate~~ *multiple copies. If multiple copies are issued, the* copies must be identified on the face of the warrant as "Not Negotiable—Copy of Original".

(4) However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period."

Section 8. Section 20-15-210, MCA, is amended to read:

"**20-15-210. Qualification and organization of board of trustees.** (1) Newly elected members of the board of trustees of the community college district ~~shall~~ *must* be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of regents, the

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board of trustees ~~shall~~ *must* be organized hy the election of a ~~chairman~~ *presiding officer* and a secretary.

(2) Tho treasurer of the community college district is the county treasurer of the county in which the community college facilities are located. The duties of tbe county treasurer are referenced in ~~20-9-206,~~ 20-9-212~~, 20-9-222, and 20-9-224~~."

Section 9. Section 20-15-325, MCA, is amended to read:

"**20-15-325. Emergency budget limitation, preparation, and adoption procedures.** (1) The meeting of the trustees of a community college district to consider and adopt an emergency budget must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustoes present find that an emergency exists, the trustees may make and adopt a preliminary emergency budget, on the regular budget form, setting forth fully tbe facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund that was included on the final budget of the district for the current fiscal year. The budget must be itemized to show the amount appropriatod for each item as required on the budget form.

(2) When the emergency is the result of increased enrollment, the maximum amount of the emergency budget for all funds must be detormined by budget amendment.

(3) If another type of emergency occurs, the budget must be limited to tho expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the emergency, and the preliminary emergency budget must include the details of the proposed expenditures.

(4) After a majority of the trustees have voted to adopt the emergency budget, it must be sigued hy tbe ~~chairman~~ *presiding officer* of the trustees and the clerk of tbe district and copies must be sent to the county superintendent~~, the county treasurer,~~ and the board of regents."

Section 10. Section 20-15-326, MCA, is amended to read:

"**20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget.** (1) After the last day of the fiscal year for which an emergency budget has been adopted, the ~~county treasurer~~ *board of trustees* sball determine the amount of the cash balance that is available to finance the emergency budget's outetanding warrants or registered warrante for each fund included on the emergency budget. The available amount of the cash balance of each fund must be determined by deducting from the county treasurer's year-end cash balance for the fund the outstanding warrants or registered warrants issued under the regularly adopted final budget for the fund and the cash reserve for the fund that the trustees have established, within the limitations of law, for the following fiscal year.

(2) Tbe county treasurer shall prepare and deliver a statoment on the financial *cash* status of each fund included on an emergency budget for a district that had an emergency budget during the preceding year to the board of county

commissioners by the first Monday in August. The statement for each district emergency budget must include:

(a) the total amount of emergency warrants that are ~~outstanding or~~ registered against each fund of the district; *and*

(b) ~~the amount of the cash balance in each fund included on the emergency budget that is available to finance the outstanding warrants or registered warrants; and~~

~~(c) after consideration of the available money in subsection (2)(b),~~ the additional amount of money that is required to finance the ~~outstanding warrants or~~ registered warrants and interest on the warrants and that must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection (2)(c), the board of county commissioners shall, at the time all other district and county taxes are fixed and levied, levy a tax on the taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer."

Section 11. Section 20-15-404, MCA, is amended to read:

"20-15-404. **Trustees to adhere to certain other laws.** Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

(1) the teachers' retirement provisions of Title 19, chapter 20;

(2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;

(3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;

(4) the adult education provisions of 20-7-701 through 20-7-713;

(5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, ~~through 20-9-224~~ *20-9-223*, and 20-9-512;

(6) the school bond provisions of 20-9-401 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465;

(7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;

(8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;

(9) the school elections provisions of Title 20, chapter 20;

(10) the students' rights provisions of 20-25-511 through 20-25-516; and

(11) the health provisions of 50-1-206."

Section 12. Repealer. Sections 20-9-206, 20-9-222, and 20-9-224, MCA, are repealed.

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Section 13. Effective date. [This act] is effective July 1, 1995.

Approved March 27, 1995

CHAPTER NO. 261

[HB 372]

AN ACT ELIMINATING THE REQUIREMENT THAT A PERSON WHO PASSES THE GENERAL SECURITIES PRINCIPAL'S EXAMINATION IS ALSO REQUIRED TO PASS THE UNIFORM INVESTMENT ADVISER LAW EXAMINATION; ELIMINATING THE REQUIREMENT THAT A SALESPERSON DUALLY REGISTERED AS INVESTMENT ADVISER REPRESENTATIVE WITH A BROKER-DEALER DUALLY REGISTERED AS AN INVESTMENT ADVISER PAY THE $50 FEE TO REGISTER AS AN INVESTMENT ADVISER REPRESENTATIVE; AMENDING SECTIONS 30-10-201 AND 30-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salespersons, investment advisers, and investment adviser representatives. (1) It is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesperson to represent the hroker-dealer or issuer in this state, except in transactions exempt under 30-10-105, unless the salesperson is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) the person is so registered under parts 1 through 3 of this chapter;

(b) the person is registered as a broker-dealer under parts 1 through 3 of this chapter;

(c) the person's only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

(vi) savings and loan associations;

(vii) employee benefit plans with assets of not less than $1 million;

(viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(ix) other institutional investors as are designated by rule or order of the commissioner; or

(d) the person does not have a place of business in this state and during any 12 consecutive months does not direct business communications in this stato in any manner to more than five present or prospective clients, other than those specified in subsection (3)(c), whether or not the person or any of the persons to whom the communications are directod are then present in this state.

(4) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in the form ~~as~~ *that* the commissioner prescribes and payment of the fee prescribed in 30-10-209. A salesperson acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required te file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond ~~shall~~ *must* be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure te comply, the salesperson is liable to any and all persons who may suffer loss by reason ~~thereof~~ *of a failure to comply*.

(5) The application ~~shall~~ *must* contain whatever information the commissioner requires. A registration application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn before the commissioner approves or denies the registration, without the express written consent of the commissioner.

(6) When the registration requirements are met, the commissioner shall make the registration effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn or terminated without the express written consent of the commissioner.

(7) Except as provided in subsection (6), registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative:

(a) is effective until December 31 following the registration or any other time as the commissioner may by rule adopt; and

(b) may be renewed.

(8) The registration of a salesperson is not effective during any period when the salesperson is not associated with an issuer or a registered broker-dealer specified in the application. When a salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson and the issuer or broker-dealer shall promptly notify the commissioner.

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(9) The registration of an investment adviser representative is not effective during any period when the person is not associated with an investment adviser registered under this act and specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner.

(10) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative may be renewed by filing, prior to the expiration of the registration, an application containing information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative filed by the applicant, payment of the prescribed fee, and, in the case of a hroker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of the broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(11) Every registered broker-dealer and investment adviser shall make and keep accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All required records must be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to reasonable periodic, special, or other examinations, within or outside this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(12) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, directer, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) has filed an application for registration under this section ~~which~~ *that*, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement ~~which~~ *that* was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

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(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative;

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrater of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (12) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (12), and the commissioner shall vacate any order when the deficiency has been corrected; or

(k) has failed to reasonably supervise the person's salespersons or employees or investment adviser representatives or employees to assure their compliance with this act.

(13) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when registration became effective unless the proceeding is instituted within 30 days after the date on which the registration became effective.

(14) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(15) Upon the entry of the order under subsection (12) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesperson or investment adviser representative, that it has been entered and of the reasons for the order and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set for hearing. If a hearing is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(16) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment adviser

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representative or is subject to an adjudication of mental incompetonce or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(17) The commissioner may, after suspending or revoking registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative, impose a fine not to exceed $5,000 upon the broker-dealer, salesperson, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected hy the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesperson, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the broker-dealer, salesperson, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a hroker-dealer, salesperson, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(18) A sole proprietor registered as a broker-dealer or investment adviser who does not employ other salespersons or investment adviser representatives, other than the sole proprietor, is not required to register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser representative if the sole proprietor meets the examination requirements estahlished hy the commissioner by rule.

(19) A person who is subject to the provisions of this section and who has passed the general securities principal's examination is not required to also pass the uniform investment adviser law examination. The commissioner shall by rule provide for a form that a person who passes the general securities principal's examination shall file with the commissioner as a verification of having passed the examination unless the commissioner can verify electronically that the person has passed the exam."

Section 2. Section 30-10-209, MCA, is amended to read:

"30-10-209. **Fees.** The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there ~~shall~~ *must* be paid to the commissioner for the first year of registration a registration fee ef $200 for the first $100,000 of initial issue or portion thereof in this state, hased on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each *succeeding* year ~~thereafter~~, a registration of securities may be renewed, prior to its termination dato, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this stato during that year, even though the maximum fee was paid the preceding year. The additional registration fee may not be less than $200 or

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more than $1,000. The registration statement for the securities may be amended to increase the amount of securities to be offered.

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, the registrant shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a portfolio registration fee to be calculated as provided in subsections (1)(a) through (1)(c). The portfolio registration fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer. *A salesperson who is dually registered as an investment adviser representative with a broker-dealer dually registered as an investment adviser is not required to pay the $50 fee to register as an investment adviser representative.*

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) Except for portfolio registration fees established in this section, all fees, examination charges, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 27, 1995

CHAPTER NO. 262

[HB 375]

AN ACT PROHIBITING THE POSSESSION OR TRANSPORTATION OF CERTAIN LIVE FISH AWAY FROM THE BODY OF WATER IN WHICH THE

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FISH WERE TAKEN; AMENDING SECTION 87-3-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-111, MCA, is amended to read:

"**87-3-111. (Temporary) Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is unlawful for ~~any~~ *a* person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

(c) the possession, transportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed; or

(d) the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601.

(3) It is unlawful for a person to possess or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within and along the boundaries of the eastern Montana fishing district, as established by the 1994-95 commission regulations.

~~(3)~~*(4)* ~~Any~~ *A* person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102. (Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)

87-3-111. (Effective July 1, 2003) Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties. (1) It is unlawful for ~~any~~ *a* person to purchase, sell, offer te sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or

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different species from that native to the state of Montana, except as specifically permitted by the laws of this stato.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game hird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110; or

(c) the possession, t ansportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed.

(3) It is unlawful for a person to possess or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within and along the boundaries of the eastern Montana fishing district, as established by the 1994-95 commission regulations.

~~(3)~~*(4)* ~~Any~~ *A* person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 28, 1995

CHAPTER NO. 263

[HB 384]

AN ACT REVISING THE LAWS RELATED TO MANAGEMENT AND HUNTING OF BLACK BEARS; ESTABLISHING A FEE FOR A COMBINATION SPORTS LICENSE THAT INCLUDES A BLACK BEAR TAG; CLARIFYING THAT THE MEAT OF A BEAR INFECTED WITH TRICHINOSIS IS NOT CONSIDERED SUITABLE FOR FOOD; AMENDING SECTIONS 87-2-501, 87-2-701, 87-2-711, AND 87-3-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-501, MCA, is amended to read:

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"87-2-501. **Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only, who will be 12 years of age or older prior to September 15 of the season for which the license is issued ~~may~~, upon payment of the proper fee or fees, ~~be~~ *is* entitled to purchase one each of the following licenses at the prescribed cost, which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, ~~$11 beginning March 1, 1992, and~~ $13 ~~beginning March 1, 1994~~;

(b) Class A-4, deer B tag, ~~$7 beginning March 1, 1992, and~~ $8 ~~beginning March 1, 1994~~;

(c) Class A-5, elk tag, ~~$13 beginning March 1, 1992, and~~ $16 ~~beginning March 1, 1994~~;

(d) Class A-6, black ~~or brown~~ bear tag, ~~$11 beginning March 1, 1992, and~~ $15 ~~beginning March 1, 1994~~;

(e) Class A-7, antlerless elk tag, ~~$13 beginning March 1, 1992, and~~ $16 ~~beginning March 1, 1994~~.

(2) (a) The holder of a Class A-7 antlerless elk license is entitled to take antlerless elk in areas designated by the commission and at ~~such~~ times and upon ~~such~~ terms *that are* as set forth by the commission.

(b) ~~No~~ *A* person may *not* take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite te application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section ~~shall~~ *must* be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediato family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 2. Section 87-2-701, MCA, is amended to read:

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"87-2-701. (Temporary) Special licenses. (1) ~~Any~~ *An* applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license ~~which~~ *that*, in the judgment of the department, is to be issued and shall pay the following fees ~~therefor~~:

(a) moose—resident, ~~$60 beginning March 1, 1992, and~~ $75 ~~beginning March 1, 1994~~; nonresident, ~~$450 beginning March 1, 1992, and~~ $475 ~~beginning March 1, 1994~~;

(b) mountain goat—resident, ~~$60 beginning March 1, 1992, and~~ $75 ~~beginning March 1, 1994~~; nonresident, ~~$450 beginning March 1, 1992, and~~ $475 ~~beginning March 1, 1994~~;

(c) mountain sheep—resident, ~~$60 beginning March 1, 1992, and~~ $75 ~~beginning March 1, 1994~~; nonresident, ~~$450 beginning March 1, 1992, and~~ $475 ~~beginning March 1, 1994~~;

(d) antelope—resident, ~~$9 beginning March 1, 1992, and~~ $11 ~~beginning March 1, 1994~~; nonresident, ~~$145 beginning March 1, 1992, and~~ $150 ~~beginning March 1, 1994~~;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black ~~or brown~~ bear—nonresident, $120.

(2) ~~In the event~~ *If* a holder of a valid special grizzly bear license kills a grizzly bear, ~~he~~ *the person* shall purchase a trophy license for a fee of $25 within 10 days after date of kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-701. (Effective March 1, 2006) Special licenses. (1) ~~Any~~ *An* applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license ~~which~~ *that*, in the judgment of the department, is to be issued and shall pay the following fees ~~therefor~~:

(a) moose—resident, $75; nonresident, $455;

(b) mountain goat—resident, $75; nonresident, $455;

(c) mountain sheep—resident, $75; nonresident, $455;

(d) antelope—resident, $11; nonresident, $130;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black ~~or brown~~ bear—nonresident, $100.

(2) ~~In the event~~ *If* a holder of a valid special grizzly bear license kills a grizzly bear, ~~he~~ *the person* shall purchase a trophy license for a fee of $25 within 10

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days after date of kill. The trophy license authorizes the holder te possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department."

Section 3. Section 87-2-711, MCA, is amended te read:

"**87-2-711. (Temporary) Class AAA—~~sportsman's~~ *combination sports* license.** *(1)* ~~Any~~ *A* resident, as defined by 87-2-102, who will be 12 years of age or older prior te September 15 of the season for which the license is issued, *is entitled to:*

(a) upon payment of the sum of $54, ~~beginning March 1, 1992, and $64 beginning March 1, 1994, shall be entitled to a sportsman's~~ *a combination sports* license ~~which shall permit~~ *that permits* the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, ~~A-6,~~ and resident conservation licenses as prescribed in 87-2-202*; or*

(b) upon payment of the sum of $64, a combination sports license that permits the holder to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license.

(2) The department shall furnish each holder of a ~~sportsman's~~ *combination sports* license an appropriate decal. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-711. (Effective March 1, 2006) Class AAA—~~sportsman's~~ *combination sports* license. *(1)* ~~Any~~ *A* resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued, *is entitled to:*

(a) upon payment of the sum of ~~$64~~ *$54*, ~~shall be entitled to a sportsman's~~ *a combination sports* license ~~which shall permit~~ *that permits* the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, ~~A-6,~~ and resident conservation licenses as prescribed in 87-2-202*; or*

(b) upon payment of the sum of $64, a combination sports license that permits the holder to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license.

(2) The department shall furnish each holder of a ~~sportsman's~~ *combination sports* license an appropriate decal."

Section 4. Section 87-3-102, MCA, is amended to read:

"**87-3-102. Waste of fish or game.** (1) A person who is responsible for the death of ~~a black or brown bear or~~ a mountain lion commits the offense of waste of game if ~~he~~ *the person* abandons the head or hide in the field.

(2) A person who is responsible for the death of a grizzly bear commits the offense of waste of game if ~~he~~ *the person* abandons the head or hide or any parts required by department or commission regulation for scientific purposes. All parts of a grizzly bear required by department or commission regulation for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return

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te the licensee any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

(3) A person responsible for the death of any game animal, except ~~grizzly, black, and brown bear and~~ *a* mountain lion~~,~~ commits the offense of waste of game if ~~he~~ *the person*:

(a) detecbes or removes from the carcass only the head, hide, antlers, tusks, or teeth or any or all ~~of aforesaid~~ *these* parts;

(b) wastes any part of any game animal, game bird, or game fish suitable for food by transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandons in tbe field the carcass of any game animal or any portion of the carcass suitable for food.

(4) A person in possession of a game animal or game animal parts, game bird, or game fish suitable for food commits the offense of waste of game if ~~he~~ *the person*:

(a) purposely or knowingly transports, steres, or hangs the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposes of or abandons any portion of a game animal, game bird, or game fish that is suitable for food.

(5) *For the purposes of this section, the meat of a grizzly or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.*

(6) A person convicted of waste of game ~~shall~~ *may* be fined not less than $50 or more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 5. Code commissioner instruction. Wherever the term "sportsman's license", meaning the license provided for in 87-2-111, appears in the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is directed to change the term to "combination sports license".

Section 6. Effective date. [This act] is effective March 1, 1996.

Approved March 27, 1995

CHAPTER NO. 264

[HB 385]

AN ACT GENERALLY REVISING CHILD SUPPORT LAWS AND THE METHOD BY WHICH THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES COLLECTS AND ENFORCES SUPPORT; AUTHORIZING SALE OF SUPPORT DEBTS; AMENDING SECTIONS 27-2-201, 40-5-202, 40-5-206, 40-5-221, 40-5-226, 40-5-255, AND 40-5-443, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of social and rehabilitation services — powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this ~~part~~ *chapter*, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing ~~child support enforcement~~ services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of another state.

(2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. ~~The~~ *Upon filing, the* department may, *on behalf of itself or on behalf of the obligee, obligor, or child,* initiate, participate in, *intervene in,* or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.

(3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department and its attorneys serve the public interest in ensuring that children are supported by their parents, rather than maintained by public assistance. The department does not represent the interests of any individual person, and its attorneys represent only the department. An attorney-client relationship is not created between department attorneys and any person or entity other than the department. The obligee, obligor, and child may obtain the services of a private attorney to represent their interests. The existence or appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the department's right to act or provide services under this chapter. This chapter does not require the department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or child.

~~(3)~~*(4)* The department has the power of attorney to act in the name of any obligee to endorse and cash any ~~and all~~ drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

~~(4)~~*(5)(a)* ~~The~~ *If the* department ~~is a party to and~~ *is providing IV-D services, the department* must be afforded notice and an opportunity to participate *as an independent party* in any proceeding relating to paternity, *to termination of parental rights,* or to the establishment, enforcement, or modification of a support obligation, whether initiated by the obligee, the obligor, or the child. ~~A recipient of services may not act to prejudice the rights of the department while the services are being provided.~~

(b) The notice must reasonably inform the department of the issues to be determined in the proceeding, the names of the parties and the child, and the identity and location of the tribunal in which the issues will be determined. The notice is for informational purposes only and is not intended as a substitute for

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procedures necessary under the Montana Rules of Civil Procedure to establish personal jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment, decree, or order is void as to any interest of the department that is or may be affected by the agreement, judgment, decree, or order if the department was not joined as a party in the manner provided in the Montana Rules of Civil Procedure.

(c) The notice must be personally served on the department. Within 20 days after service of the notice, the department may:

(i) decline to enter the proceeding as a party, in which case the proceeding may continue without the department's participation;

(ii) inform the tribunal that a substantial interest of the department could be adversely affected by the proceeding, in which case the proceeding may not continue without joining the department as a necessary party in the manner provided in the Montana Rules of Civil Procedure; or

(iii) inform the tribunal that prior to the filing of the proceeding, the department initiated an administrative proceeding under this chapter in which the parties and some or all of the issues are the same as those in the proceeding before the tribunal. The tribunal shall then discontinue the proceeding as to the common issues until administrative remedies have been exhausted.

(6) (a) A recipient or former recipient of public assistance who assigned support rights under 53-2-613 or a collection agency acting on behalf of the recipient or former recipient may collect only that part of a delinquent support amount that accrued after termination of public assistance. The recipient, former recipient, or collection agency may not commence or maintain an action against or make an agreement with the obligor to recover an assigned delinquent support amount unless the department, in writing:

(i) releases or relinquishes its assigned interest;

(ii) declares the support debt owed the department to be satisfied, in which case the balance of the delinquent amount is released; or

(iii) consents to the action or agreement.

(b) If a recipient, former recipient, or collection agency collects or receives value for any part of an assigned delinquent support amount and the department has not given its consent or released or relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt and full restitution to the department. If prompt and full restitution is not made, the department may send a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection agency is liable for damages equal to double the amount collected or value received. The amount of damages may be determined and assessed by the department under the contested case provisions of the Montana Administrative Procedure Act. The damages may be collected by the department by any method or remedy available for the enforcement of child support owed by an obligor parent.

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(c) This subsection (6) does not limit the right of a person to recover money not assigned. If there are competing proceedings against an obligor for collection of delinquent support, the collection of support assigned to the department takes priority over the obligor's income and assets.

(7) An applicant for or recipient of services may not act to the prejudice of the department's rights while the services are being provided.

~~(5)~~*(8)* ~~If child support enforcement services are being or have been provided under this part~~ *Unless the department has consented to the agreement in writing, if public assistance is being or has been paid for a child,* an agreement between ~~any~~ *an* obligee and ~~any~~ *an* obligor ~~either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may~~ *or a judgment, decree, or order adopting the agreement does* not act to reduce or terminate any rights of the department *to establish a support order or* to recover *a support debt* from the obligor ~~for support debt provided unless the department has consented to the agreement in writing,~~ *even if the agreement, judgment, decree, or order purports to:*

(a) relieve or terminate the obligor's support duty;

(b) waive, modify, compromise, or discharge the support debt;

(c) prepay future support obligations or settle past, present, or future support obligations; or

(d) permit the obligor to pay past, present, or future support obligations:

(i) with noncash contributions;

(ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgage payments; or

(iii) by making contributions to a trust or other account or payments toward an asset if the contributed amounts are unavailable to the department.

~~(6)~~*(9)* The department may petition a court or an administrative agency for modification of any order on the same hasis as a party to that action is entitled to do.

~~(7)~~*(10)* The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

~~(6)~~*(11)* If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies te the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

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~~(9)~~*(12)* The department may adopt and enforce the rules necessary to carry out the provisions of this part.

~~(10)~~*(13)* ~~The department, for~~ *While providing services under this chapter and in order to carry out* the purposes mentioned in this ~~part~~ *chapter, the department,* through its director or the director's authorized representatives, may:

(a) administor oaths ~~to~~;

(b) certify official acts and records~~,~~;

(c) issue *investigative and hearing* subpoenas~~, and~~;

(d) order discovery before and after a hearing;

(e) hold prehearing and settlement conferences;

(f) compel *the attendance of* witnesses and the production of books, accounts, documents, and evidence*; and*

(g) conduct proceedings supplementary to and in aid of a writ of execution or warrant for distraint, including the examination of an obligor or other person in the manner provided for the taking of a deposition in a civil action.

~~(11)~~*(14)* ~~When~~ *In addition to any other requirement for service provided by the Montana Rules of Civil Procedure, if* a person is required to give notice to, serve, or provide a written response to the department ~~in a proceeding concerning the establishment or enforcement of child support~~ *under this chapter*, the notice, service, or response must be made to the department's child support enforcement division."

Section 2. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ~~assure~~ *ensure* effective cooperation with law enforcement agencies.

(2) If services are provided to a child under this part, the department may request and, notwithstanding any statuto making the information confidential, all state, county, and city agencies, officers, and employees ~~must~~ *shall* provide on request information, if known, concerning an obligor *or obligee*, including:

(a) name;

(b) ~~address of obligor's residence~~ *residential and mailing addresses*;

(c) date of birth;

(d) social security number;

(e) wages or other income;

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(f) numher of dependents claimed for state and federal income tax withholding purposes;

(g) name and address of employer;

(h) address, *location, and description* of any real property ~~owned by the obligor~~; and

(i) any other asset in which the obligor *or obligee* may have an interest, including the extent, nature, and value of the interest.

(3) Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly. *The department may release information obtained from nonconfidential public and private sources, including information regarding support orders, judgments, and payment records.*

(4) Use or disclosure of information obtained by the department from confidential sources of and information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) county attorneys and courts having jurisdiction in support and abandonment proceedings ~~or actions or~~ *and* agencies in other states engaged in the enforcement of support of minor children ~~as authorized by the rules of the department and by the provisions of~~ *under* the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act."

Section 3. Confidentiality of paternity hearings and records of proceedings. Because of the privacy interests involved, a hearing under 40-5-231 through 40-5-237 and this section for the purpose of determining paternity or reasonable cause to pursue paternity blood testing is closed to the public. Attendance of others may be limited hy the hearing officer as necessary to protect privacy rights. All papers and records of the proceedings, other than a final adjudication of paternity, are closed to public inspection, except that they may be opened upon consent of the parties and the hearing officer or, in exceptional cases, by order of the hearing officer.

Section 4. Section 40-5-221, MCA, is amended to read:

"**40-5-221. Debt to state by obligor — limitations.** (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of a child creatos a debt due and owing the state of Montana by the obligor in an amount equal to the amount of public assistance money so paid. In the case of an obligor who is an adoptive parent, a debt for public assistance paid may not accrue prior to the dato of adoption.

(2) If a support order has been entered, the support debt created by this section may not exceed the amount of the order.

(3) If a child has been placed in foster care and a written agreement for payment of support exists between the obligor and any state agency, the support

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debt is limited to the amount provided for in the agreement. However, if a support order is or has been entered, the provisions of the order prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in ~~such~~ *the* agreements or modifications of ~~such~~ *the* agreements based on changed circumstances.

(5) The department may establish and collect a debt created under this section in a proceeding that is in addition to and independent of the subrogation creatod by 40-5-202~~(7)~~ and the assignment under 53-2-613."

Section 5. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must be scheduled within 20 days.

(3) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with the determination. *The order may award support from the date of:*

(a) the child's birth if paternity was established under 40-5-231 through 40-5-237 and [section 3] or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support gnidelines adopted by the department under 40-5-209. The hearing officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearing officer finds by clear and convincing evidence that the application of the ~~standards and~~ guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearing officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearing officer shall state the reasons for finding that the application of the ~~standards and~~ guidelines is unjust to the child

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or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. *The hearing officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearing officer considers just.* Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

(7) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

(8) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

(9) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(10) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, ~~every~~ *each* order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

(11) For the purposes of income withholding provided for in subsection (10), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information.

(12) The hearing officer may:

(a) compel obedience to the hearing officer's orders, judgments, and process and te any orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence; and

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(13) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearing officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearing officer fails to comply with discovery requests; or

(e) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time *that* income is required to be withheld and paid to the department and the payor fails to take the required action.

(14) An affidavit of the facts constituting a contempt must be submitted to the hearing officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearing officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than $500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contomnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(15) At the time and date set for hearing, the hearing officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearing officer finds the alleged contemnor in contempt, the hearing officer may impose a penalty of not more than $500 for each count found. The hearing officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(16) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(17) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special

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revenue fund and must be accompanied by a detailed statement of the amounts collected."

Section 6. Section 40-5-255, MCA, is amended to read:

"**40-5-255. Charging off child support debts as uncollectible — *sale of support debts.*** (1) Any support debt due the department from an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after 10 years from the date of tormination of the support obligation, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. A proceeding or action under the provisions of this part may not be begun after expiration of the 10-year period to institute collection of a support debt. This part may not be construed to render invalid or nonactionable a warrant for distraint issued by the department prior to the expiration of the 10-year period or an assignment of earnings executed prior te the expiration of the 10-year period.

(3) The department may discount and sell to a private collection agency, credit bureau, or other private entity any interest that the state and the department may have in the unpaid balance of the support debt created by 40-5-221 and 53-4-248 or assigned to the department under 53-2-613.

(a) The sale must be by sealed bid to the highest bidder provided that the highest bid is not less than 10% of the value of the support debt subject to the sale.

(b) The sale must be subject to conditions and terms that the department may set out in a sales contract.

(c) The department shall publish notice of the sale in a newspaper having statewide circulation once a week for 4 successive weeks.

(d) Proceeds must be paid into the state treasury to the credit of the child support enforcement division special revenue fund."

Section 7. Section 40-5-443, MCA, is amended to read:

"**40-5-443. Payors to provide information — exemption from liability.** (1) For the purposes of this part, upon written request by the department, a payor or former payor and any labor union of which the obligor *or obligee* is or may have been a member shall provide tbe department with the following information, if known, regarding tbe obligor *or obligee*:

(a) last-known residential address;

(b) social security number;

(c) dates of employment or union membership;

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(d) amounts of wages, salaries, commissions, *contract proceeds,* and other earnings *or amounts* paid ~~to the obligor during any period when the department provided support enforcement services; and~~

(e) whether health insurance coverage is or was available ~~to the obligor~~ through the payor or union and, if so:

(i) the name of the insurer or health care provider;

(ii) the policy numbers or other identifiers; and

(iii) the persons covered*; and*

(f) names, telephone numbers, and addresses of current and former employers, payors, and unions.

(2) A payor *or union* ~~who~~ *that* discloses information to the department in compliance with this section is exempt from any liability to the obligor *or obligee* that may result from ~~such~~ *the* disclosure."

Section 8. Section 27-2-201, MCA, is amended to read:

"**27-2-201. Actions upon judgments.** (1) Except as provided in ~~subsection~~ *subsections* (3) *and (4),* the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation.

(4) The period prescribed for the commencement of an action to collect past-due child support that has accrued under a support order issued in another state, in a foreign country, or in a tribal court is as provided in subsection (3) or as provided in the law of the issuing jurisdiction, whichever period is longer."

Section 9. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [section 3].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved March 28, 1995

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CHAPTER NO. 265

[HB 428]

AN ACT REVISING BANKING LAWS; CONFORMING MONTANA STATUTES TO PROVISIONS OF THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994; REVISING THE CONSOLIDATION AND MERGER OF BANKS; REVISING THE PERIOD OF EXISTENCE REQUIRED OF A BANK TO BE ACQUIRED BY A BANK HOLDING COMPANY; PROVIDING FOR THE SALE AND RELOCATION OF BRANCH BANKS; REVISING THE MONTANA ELECTRONIC FUNDS TRANSFER ACT TO REFLECT CURRENT TECHNOLOGY AND TO COMPLY WITH FEDERAL LAWS AND REGULATIONS; REQUIRING DISCLOSURES RELATING TO OTHER CHARGES AND SURCHARGES; CHANGING FROM MANDATORY TO DISCRETIONARY THE ADOPTION OF RULES BY THE DEPARTMENT OF COMMERCE CONCERNING BANK DRAFTS AND RETAIL INSTALLMENT SALES; AMENDING SECTIONS 31-1-211, 32-1-202, 32-1-204, 32-1-371, 32-1-381, 32-1-382, 32-1-383, 32-1-437, 32-1-465, 32-6-102, 32-6-103, 32-6-104, AND 32-6-301, MCA; REPEALING SECTIONS 32-6-201, 32-6-202, 32-6-203, 32-6-204, 32-6-305, 32-6-307, 32-6-308, AND 32-6-309, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-211, MCA, is amended to read:

"**31-1-211. Powers of department.** (1) The department ~~shall~~ *may* adopt rules necessary to carry out the intent and purposes of this part. All rules of general application ~~shall~~ *must* be filed in the office of the department. A copy of every rule ~~shall~~ *must* be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt ~~him~~ *the licensee* from the duty of compliance with those rules lawfully adopted under the provisions of this section.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations te a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by it, a judge of the district court of the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may he required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

(4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence as required by ~~it~~ *the subpoena*, the department may apply to the judge of the court issuing the subpoena for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an arrest warrant, directed to any sheriff, constable, or police officer, for

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the arrest of that person and, upon ~~his~~ *that person* being brought before the judge, proceed to a hearing of the case. The judge may compel:

(a) obedience to the subpoena;

(b) the answering of any question;

(c) the production of any evidence that may be proper; or

(d) the witness to pay the costs of the proceeding.

(5) Failure to comply with the requirements of ~~subsections~~ *subsection* (4)(a), *(4)*(b), or *(4)*(c) is punishable by a fine not exceeding $100 or by imprisonment in the county jail, or both."

Section 2. Section 32-1-202, MCA, is amended to read:

"**32-1-202. Powers and duties of board.** The board shall:

(1) make final determinations upon applications for certificates of authorization for new banks, branch banks, *sales of branch banks,* mergers, consolidations, and relocations of banks *and branch banks*;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the department as the duties and powers relato to banking."

Section 3. Section 32-1-204, MCA, is amended to read:

"**32-1-204. Hearings — notice.** (1) A hearing ~~shall~~ *must* be conducted upon all applications for new bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a contestsd case, whether or not any protest to the application is filed.

(2) A notice of tbe filing of an application for a new bank certificate of authorization ~~shall~~ *must* be mailed to all banks within 100 miles of the proposed location, measured in a straight line.

(3) A hearing ~~shall~~ *must* be conducted no sooner than 30 days and not later than 90 days following the mailing of ~~such~~ *the* notice.

(4) ~~Any~~ *A* bank filing a written protest with the board prior to the date of the hearing ~~shall~~ *must* be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, ~~and~~ the right to receive all notices, *a* copy of the application, *and* all orders, and the right of judicial review and appeal.

(5) All applications for mergers, consolidations, *sales of branch banks,* or relocations of banks *or branch banks* ~~shall likewise~~ *also* require a hearing, and all of the rights and procedures ~~stated herein shall~~ *in subsection (4)* apply to these matters.

(6) Notwithstanding the requirements of subsections (1) through (5), when the deposit liability of any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the board ~~is empowered to~~ *may*

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issue a certificate of authorization without notice or hearing, according to rules adopted by the board."

Section 4. Section 32-1-371, MCA, is amended to read:

"**32-1-371. Consolidation or merger of banks.** (1) The words "bank" or "banks" as used in 32-1-372 and this section include commercial banks, savings banks, trust companies, investment companies, and other ~~such~~ corporations carrying on the business of banking, *of a* trust company, or *of an* investment company under the laws of this state or doing business in this state under the national banking laws of the United States.

(2) (a) Any two or more banks ~~doing business in this state and~~ *doing business in this state and* under common ownership may, with the approval of the state banking board in the case of state banks, consolidate or merge into one bank, on ~~such~~ terms and conditions ~~as may be~~ lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. Before a consolidation or merger becomes effective, it must be *approved by the shareholders of each merging bank by a vote of not less than two-thirds of the outstanding shares of each class of voting stock entitled to vote on the merger proposal at a meeting called to consider the merger* ~~ratified by the consent in writing of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding~~. *The approval by the shareholders must be provided in writing or reflected in the minutes of the shareholders' meeting.* The capital stock of the consolidated or merged bank may not be less than that required under existing law for the organization of a bank of the class of the largest of the *consolidating* banks ~~so consolidating~~. *If upon the completion of the merger the resulting bank has a main banking house and a branch bank or branch banks as defined in 32-1-109, then all banks involved must have conducted business in this state for a continuous period of at least 5 years prior to the effective date of the merger.*

(b) ~~Nothing in this~~ *This* section ~~permits~~ *does not permit* a bank or bank holding company located in another state to acquire by consolidation, merger, or otherwise any bank doing business in this state in contravention of 12 U.S.C. 1842.

(c) Two or more banks under common ownership may not consolidate or merge unless all banks under the common ownership are parties to the consolidation or merger. *Subject to approval of the state banking board, nothing contained in parts 1 through 5 of this chapter or in this section may be construed to prohibit consolidation or merger of banks that come under common ownership with banks that have been previously merged or consolidated.*

(3) Upon consolidation or merger, the corporate franchise, *the* corporate life, being, and existence, and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, guardian, and ~~all and~~ every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed of the consolidating or merging banks ~~shall~~ *are*, without the necessity of any instrument of transfer, ~~become~~ consolidated or merged and continued in and held, enjoyed, and assumed by the consolidated or merged bank. The consolidated or merged bank ~~shall have and enjoy~~ *has* the right equal ~~as to priorities~~ with any other applicant

to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or otber instrument made prior to the consolidation or merger and by which will or instrument the consolidating or merging bank was nominated by the maker to the office.

(4) Upon consolidation or merger, the consolidated or merged bank shall designate and operate one of the prior main banking bouses of the consolidating or merging banks as ite main banking bouse and the bank may maintain and continue to operate the main banking houses of each of the other consolidating or merging banks as a branch bank.

(5) A branch bank ~~must~~ *shall* offer all services offered at a main banking house.

(6) (a) Upon consolidation or merger and subject to the provisions of subsection (6)(b), the banks involved may not directly or indirectly control more than 19% of all deposits in federally insured banks, savings associations, and credit unions located in this state.

(b) On October 1, 1995, and on October 1 of each succeeding year, the percentage limitation contained in subsection (6)(a) must be increased by 1% until the limit reaches 22%.

(7) A branch bank may be relocated with the approval of the state banking board in the city or within 3,000 feet of the city limits in which it is located. Upon relocation, the branch may not be closer than 200 feet to a branch or detached facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurements to be made in a straight line from the closest points of the closest structures involved. The distances specified in this subsection in relation to a branch or detached facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a branch or detached facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurements to be made in a straight line from the closest points of the closest structures involved."

Section 5. Section 32-1-381, MCA, is amended to read:

"**32-1-381. Purpose.** (1) The purpose of 32-1-381 through 32-1-384 is to*:*

(a) authorize interstate banking by the acquisition of existing banks within the framework of the "Douglas amendment" to the Bank Holding Company Act of 1956, as amended~~, and~~*;*

(b) ~~to~~ provide a variety of banking alternatives in Montana in terms of the numbers and ownership of banks~~.~~*; and*

(c) conform Montana statutes with the provision of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, 1995. Any inconsistencies between the provisions of 32-1-381 through 32-1-384 and Public Law 103-328 must be resolved in favor of Public Law 103-328. ~~If federal legislation authorizes unrestricted interstate banking unless state law affirmatively provides otherwise, it is the purpose of 32-1-381 through 32-1-384 to affirmatively provide that unrestricted interstate banking does not apply in Montana.~~

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(2) Sections 32-1-381 through 32-1-384 do not authorize the establishment of a branch bank in Montana by a bank not located in Montana. Sections 32-1-371 and 32-1-375 do not apply to acquisitions or transactions authorized in 32-1-381 through 32-1-384."

Section 6. Section 32-1-382, MCA, is amended to read:

"32-1-382. **Definitions.** As used in 32-1-381 through 32-1-384, unless the context requires otherwise, the following definitions apply:

(1) "Acquire" means:

(a) the direct or indirect purchase *or exchange* of stock;

(b) the direct or indirect purchase of assets *and liabilities*; or

(c) a merger.

(2) "Bank" means a commercial bank, as defined in 32-1-105, or a national banking association as designated by 12 U.S.C. 24.

(3) "Bank holding company" means a bank holding company that is registered under the Bank Holding Company Act of 1956, as amended, regardless of where it is located or has its headquarters.

(4) "Control" means:

(a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of voting security;

(b) authority in any manner over the election of a majority of directors; or

(c) power to exercise, directly or indirectly, a controlling influence over management and policies.

(5) "Department" means the department of commerce provided for in 2-15-1801.

(6) "Financial institution" means a bank or bank holding company.

(7) "Headquarters" means the state in which the activities of a bank holding company or a company controlling the bank holding company are "principally conducted" within the meaning of the Bank Holding Company Act of 1956, as amended.

(8) "Located in this state" means:

(a) in the case of a bank, that the organizational certificato identifies an address in this state as the principal place of conducting its business; and

(b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws of this state.

~~(9) "Reciprocating state" means a state that authorizes the acquisition, directly or indirectly, of control of banks in that state by a bank holding company located in this state under terms and conditions substantially similar to the terms and conditions contained in 32-1-381 through 32-1-384.~~

~~(10) "Regional bank holding company" means a bank holding company that does not have its headquarters in Montana and:~~

~~(a) that has headquarters in Colorado, Idaho, Minnesota, North Dakota, South Dakota, Wisconsin, or Wyoming; or~~

~~(b) that controlled a bank in Montana on January 1, 1993. The authority to acquire control of a bank under 32-1-381 through 32-1-384 may not be transferred to a bank holding company that does not have its headquarters in a state listed in subsection (10)(a).~~"

Section 7. Section 32-1-383, MCA, is amended to read:

"**32-1-383. Acquisition of financial institution by bank holding company not located in this state — limitations.** (1) A ~~regional~~ bank holding company with headquarters in ~~a reciprocating~~ *another* state may acquire control of a hank located in this state through acquisition of a financial institution if the ~~regional~~ bank holding company complies with 32-1-381 through 32-1-384. The bank to be acquired must:

(a) have been conducting business for a continuous period of at least 6 *5* years prior to the *effective date of the* acquisition; or

(b) be organized for the purpose of purchasing the assete of a bank that has conducted business for a continuous period of at least 6 *5* years prior te the acquisition.

(2) A bank holding company may acquire control of a bank located in this state by purchase of steck in or by merger witb a ~~regional~~ bank holding company.

(3) (a) Subject to the provisions of subsection (3)(b), a bank, *a bank* holding company, *or a subsidiary of the bank or bank holding company* may not acquire control of a bank located in this state if the bank, *bank* holding company, *or subsidiary* would directly or indirectly control more than 18% of all deposits in federally insured banks, savings associations, and credit unions located in this state.

(b) On ~~October 1, 1994, and on~~ October 1 of each year ~~thereafter~~, the percentage limitation contained in subsection (3)(a) must be increased by 1% until the limit reaches 22%.

(4) A bank holding company that is not located in this state or that does not have headquarters in this state may not acquire control of a bank located in this state if the acquisition of control would result in the aggregate direct or indirect control, by all bank holding companies that do not have headquarters in this state, of more than 49% of all deposits in all federally insured banks and savings associations located in this state.

(5) The determination of the limits contained in subsections (3) and (4) must be based upon public reports filed with the appropriate regulatery agency as of the December 31 preceding the submission to the appropriate federal banking regulatory agency of the application seeking prior approval of the acquisition of control of the bank:

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~~(6) A bank holding company that ceases to be a regional bank holding company shall divest all interest in a bank located in this state unless the bank holding company:~~

~~(a) controlled the bank for a period of 36 consecutive months immediately prior to cessation of its status as a regional bank holding company; or~~

~~(b) controlled the bank on January 1, 1993.~~

~~(7) If a regional bank holding company is being acquired by a bank holding company that does not have its headquarters in this state and that is not a regional bank holding company, then the bank holding company shall divest all interest in a bank located in this state unless the regional bank holding company:~~

~~(a) controlled the bank for a period of 36 consecutive months immediately prior to the acquisition of control of the regional bank holding company by the acquiring bank holding company; or~~

~~(b) controlled the bank on January 1, 1993.~~

~~(8) If this section requires a bank holding company to divest all interest in a bank located in this state, the divestiture must be completed within 24 calendar months of the event requiring the divestiture.~~"

Section 8. Sale of branch bank. Notwithstanding the provisions of 32-1-371 and 32-1-372, a bank located and doing business in this state may, with the approval of the state banking board in the case of a state bank, huy from any other bank also located and doing business in this state all or substantially all of the business, assets, and liabilities of the selling bank's hranch bank or branch banks, including the right to own and operate any detached facilities or satellite terminals, upon compliance with tho provisions of this part. Upon completion of the sale, tho purchasing bank may operate a branch bank at the solling bank's former hranch bank location.

Section 9. Agreement of purchase and sale. (1) The selling and purchasing banks shall enter into an agreement that must contain all the torms and conditions of the sale and that must contain:

(a) proper provision for the assumption, payment, transfer, or retention of all the liabilities of the selling bank as te the branch assets and business sold;

(h) proper provision for the assumption, payment, transfer, or retention of the purchasing bank of all fiduciary obligations of the branch or branch business sold.

(2) The agreement for purchase and sale of a stato hank must be authorized and approved by the state banking board. The agreement of purchase and sale of a national bank must be in accordance with tho laws applicable to national banks. After approval, a notice of the sale must be published once a week for 3 consecutive weeks in a newspaper of general circulation in the county whero the branch is located. The purchasing bank shall provide proof to the department that the notice has been published in accordance with this section.

Section 10. Section 32-1-437, MCA, is amended to read:

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"32-1-437. Acceptance and issuance of drafts — rulemaking authority. (1) ~~Every~~ *A* bank organized and existing under the laws of Montana ~~shall have power and authority to~~ *may* accept for payment at a future date drafts drawn upon it by its customers~~,~~ authorizing *the* holders ~~thereof~~ *of the drafts* to draw drafts upon it or its correspondents at sight or on time~~, provided that~~ *if* the total amount of drafts so accepted for any one person, firm, or corporation ~~shall~~ *does* not at any one time exceed 20% of the capital and surplus of the accepting or issuing bank.

(2) The department ~~shall~~ *may* adopt rules to implement this section."

Section 11. Section 32-1-465, MCA, is amended to read:

"32-1-465. Limit on loans to officer, director, or principal shareholder. (1) Except as provided in subsection (2), a bank may not extend credit to an officer, director, or principal shareholder unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all officers, directors, or principal shareholders, does not exceed the bank's unimpaired capital and unimpaired surplus.

(2) A ~~member~~ bank with deposits of less than $100 million may by resolution of its board of directors increase the general limit in subsection (1) to a limit that does not exceed two times the bank's unimpaired capital and unimpaired surplus if:

(a) the board of directors determines that a higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to officers, directors, and principal shareholders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;

(b) the resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to officers, directors, and principal shareholders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(c) the bank has submitted the resolution to the department; and

(d) the bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements established by the department."

Section 12. Section 32-6-102, MCA, is amended to read:

"32-6-102. Findings and purpose. ~~(1)~~ The legislature has determined that ~~development of electronic funds transfer systems is a technology which promises convenience and efficiency for all types of financial depository institutions and their customers. The legislature further finds that this technology threatens to proliferate rapidly; that there presently exists no adequate governmental regulation, federal or state, to control orderly development of this technology to prevent market domination and monopolies, to provide parity for all financial depository institutions, to provide mandatory sharing of such systems, and to assure nondiscriminatory access to such systems at nondiscriminatory rates on the part of all who are involved in the use of this technology.~~ *electronic funds transfer systems are technologies offered by all types*

of financial depository institutions. These technologies provide the consumer with both convenience and efficiency in making financial transactions. Regulation E of the federal Electronic Fund Transfer Act addresses many of the consumer issues relating to these systems. This chapter ~~shall apply~~ *applies* te financial institutions chartered under the United States Code *or Title 30, chapter 1, parts 1 through 5,* te the extent ~~permitted by such code~~ *that those laws permit.*

~~(2) The legislature finds need to control location and structural placement of electronic terminals in order to:~~

~~(a) assure access, protection, and convenience to the public using them;~~

~~(b) assure that structural placement of automated teller machines is designed to provide maximum protection to the terminal and its contents from vandalism, tampering, and theft and, since such machines shall be unmanned, to locate them in a manner designed to permit maximum protection of the public using them;~~

~~(c) prevent traffic congestion at vehicle parking lots and pedestrian concourses and sidewalks;~~

~~(d) prevent vehicle backup onto public highways;~~

~~(e) prevent undue interference with nearby businesses;~~

~~(f) locate automated teller machines in places permitting maximum sharing of their use to all operators desiring to use them under conditions herein stated.~~

~~(3) The legislature further finds that in the present state of the technology there is substantial potential for error and misuse and that these systems, including various types of terminals, telecommunications between them and computer and switching equipment or transport of electronically recorded materials from the terminals to such equipment, and the computers and switches themselves are subject to malfunction, vandalism, fraud, theft, and other abuses and accidents, all indicating the obvious need for the exercise of the police power of this state to protect its citizens and their property in the use of this technology. Location of terminals is an important factor in such protection.~~

~~(4) The legislature further finds that commercial banks, savings and loan associations, and credit unions, chartered by both federal and state governments, are in competition for deposits, share accounts, and loans and other financial business of the state's citizens; that each has the capability of utilizing electronic funds transfer systems; and that unless there is controlled use of these systems there will be strong potentials for destructive competition and market domination by some financial institutions over others, increasing the likelihood for misuse and error, duplication and waste, and resulting increased costs.~~

~~(5) To meet these needs, the legislature finds that state authority must provide for authorizing such systems; for speedy and fair remedies for losses resulting from malfunction, misuse, or error; and for penalties for violation of this chapter."~~

Section 13. Section 32-6-103, MCA, is amended to read:

"**32-6-103. Definitions.** As used in this chapter, ~~the following definitions apply~~ unless the context otherwise requires, *the following definitions apply*:

(1) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(2) "Department" means the department of commerce.

(3) "Electronic funds transfer" means ~~debiting or crediting a depositor's account or otherwise transacting any business in a financial institution by electronic impulse messages, authorized under this chapter, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies, or otherwise, and processing the adjustments without regular and customary direct human intervention. Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through normal human intervention~~ *any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes but is not limited to point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It also includss a transfer resulting from a debit card transaction, including a transaction that does not involve an electronic terminal at the time of the transaction. The term does not includs payments made by check, draft, or similar paper instrument at an electronic terminal.*

(4) *"Electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic funds transfer. The term includes but is not limited to point-of-sale terminals, automated teller machines, and cash dispensing machines.*

(5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer loan company licensed under chapter 5 is considered a financial institution.

~~(5)~~*(6)* "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

~~(6)~~*(7)* "Person" means an individual, partnership, corporation, association, or any other business organization.

~~(7) "Personal identification number" means a combination of numerals or letters selected for a customer of a financial institution, merchant, or other~~

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~~person and used, in conjunction with a unique identification device, to initiate a request for an electronic funds transfer.~~

(8) "Premises" means those locations where, by applicable law, financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses~~; the~~. *The* term includes a detached drive-in or walk-up facility approved under 32-1-372.

(9) (a) "Satellite terminal" means any machine or device *that is* located off the premises of a financial institution ~~which~~ *and that* a financial institution or its customers may use to carry out electronic funds transfers.

(b) Satellite terminal includes:

(i) *an* automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, *and* activated by a unique identification device and personal identification number;

(ii) *a* point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a *customer, a* merchant, or ~~his~~ *the merchant's* employees solely to debit *or credit* a customer's deposit or share account in a financial institution and solely to credit *or debit* the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, ~~provided that~~ *if* the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale torminals with the electronic funds transfer taking effect at the time of the transaction or at a steted time after the transaction.

(c) The definition of satellite terminal does not include and nothing in this chapter may be construed to apply to:

(i) an automated teller macbine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal ~~which~~ *that* is ~~utilized~~ *used* by a merchant in the merchant's business only and does not provide access te a financial institution.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device ~~containing~~ *that contains either* a number ~~unique to a customer~~ *or a dollar balance, or both, that is unique to a customer* and *that is* issued by a financial institution, merchant, or other person."

Section 14. Section 32-6-104, MCA, is amended te read:

"**32-6-104. Consumer information.** (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a custemer te make electronic funds transfers, provide the customer *with* an itemized statement clearly setting forth, without limitation:

(a) the specific transactions ~~which~~ *that* may be performed through satellite terminals;

(b) the charges, if any, for individual transactions ~~engaged in~~ *made* through a satellite terminal;

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes ~~his~~ *a* personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon tbe importance of immediate notification to the institution of theft or loss;

(e) the legal status of receipts issued from a satellite torminal;

(f) the right of the customer to a description of transactions performed by satollito terminal on any periodic statement of account furnished the customer;

(g) the right of the custemer to seek correction of ~~any errors~~ *an error* ~~he~~ *that the customer* believes ~~have~~ *has* been made in ~~his~~ *the customer's* account by electronic funds transfer;

(h) instructions in maintaining custemer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(i) the economic significance of having no "float" time and no stop-payment authority.

(2) The customer shall then sign a statement acknowledging ~~his~~ acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, must be provided *to* the custemer. In addition, the information set forth in subsection (1)(d) must be specifically acknowledged by the custemer. The customer shall verify ~~his~~ acknowledgement by signing ~~his~~ *the customer's* initials immediately adjacent te the information provided.

(3) *The owner of an electronic terminal may impose a surcharge for the use of its electronic terminal. The owner of an electronic terminal that elects to impose a surcharge for the use of its electronic terminal shall clearly advise the user of the electronic terminal, by a conspicuous disclosure on the terminal or through a message displayed on the electronic terminal screen, of the exact amount of the surcharge. The user must then be provided the option either to cancel the transaction, without incurring the surcharge, or to complete the transaction subject to the surcharge.*

(4) A merchant or person other than a financial institution that issues a unique identification device te its customers for use at a point-of-sale terminal and that provides to the holders of the unique identification device a disclosure that satisfies the initial disclosures of terms and conditions under Regulation E of the federal Electronic Fund Transfer Act is considered te be in compliance with the disclosure requirements of this section."

Section 15. Section 32-6-301, MCA, is amended to read:

"**32-6-301. Records of electronic funds transfers.** (1) A satellite terminal ~~shall~~ *must* be operated ~~so as~~ te produce a humanly readable record of any transaction and to provide a copy of this record to the person initiating the transaction as soon as the transaction is complete.

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(2) The receipt provided to the person initiating an electronic funds transfer ~~shall be~~ *is* admissible as evidence in any legal proceeding and constitutes prima facie proof of the transaction ~~which~~ *that* it records.

(3) (a) A financial institution shall provide each of its customers ~~utilizing~~ *using* electronic funds transfer services with a periodic account statement containing a brief description of all electronic funds transfers sufficient to enable the customer to identify any transaction and relate the transaction to the receipt provided under subsection (1) ~~of this section~~.

(b) *The periodic account statement description of automated teller machine transactions must include a specific geographic location where each transaction occurred.*

(c) When a periodic account statement includes both electronic funds transfers and other transactions, all electronic funds transfers ~~shall~~ *must* be identified as such and be furnished in compliance with this subsection *(3)*."

Section 16. Repealer. Sections 32-6-201, 32-6-202, 32-6-203, 32-6-204, 32-6-305, 32-6-307, 32-6-308, and 32-6-309, MCA, are repealed.

Section 17. Codification instruction. [Sections 8 and 9] are intended to be codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [sections 8 and 9].

Section 18. Effective dates. (1) [Sections 1 through 4, 8 through 17, and this section] are effective on passage and approval.

(2) [Sections 5 through 7] are effective September 29, 1995.

Approved March 27, 1995

CHAPTER NO. 266

[HB 431]

AN ACT CLARIFYING THE PORTION OF A SCHOOL DISTRICT GENERAL FUND BUDGET THAT REQUIRES VOTER APPROVAL; AMENDING SECTION 20-9-353, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-353, MCA, is amended to read:

"**20-9-353. Additional financing for general fund — election for authorization to impose.** (1) ~~Except as limited by 20-9-308, the~~ *The* trustees of a district may propose to adopt:

(a) a budget amount up to the BASE budget amount for the district general fund that is within the limitations and required budget increases provided in 20-9-308(2);

(b) an over-BASE budget amount for the district general fund that does not exceed the maximum general fund budget for the district or other limitations, as provided in 20-9-308(3); or

(c) a general fund budget *amount* in excess of the maximum general fund budget amount for the district, *as provided in 20-9-308(4).*

(2) ~~Except as provided in 20-9-308(4)(b), when~~ *When* the trustees of a district determine that ~~an~~ *a voted* ~~additional~~ amount of financing is required for the general fund budget ~~that is in excess of the maximum general fund budget amount~~, the trustees shall submit the proposition to finance the ~~excess~~ *additional* amount of general fund financing to the electors who are qualified under 20-20-301 to voto upon the proposition. The special election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of money to be financed, the approximato number of mills required to raise all or a portion of the money, and the purpose for which the money will be expended. The ballot must be in tbe following format:

PROPOSITION

Shall the district be authorized te expend the sum of (state the *additional* amount to be expended), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional financing is made)?

☐ FOR budget authority and any levy.

☐ AGAINST budget authority and any levy.

(3) If the election on any additional financing for the general fund is approved by a majority vote of the electors voting at tbe election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify any additional levy amount authorized by the special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, to raise the amount of the additional levy.

(4) Authorization to levy an additional tax ~~under the provisions of this section~~ *to support a budget amount adopted as allowed by 20-9-308(4)* is effective for only 1 school fiscal year ~~and~~.

(5) All levies adopted under this section must be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective.

~~(5)~~*(6)* If the trustees of a district are required to submit a proposition to finance a *an increased amount up to the* BASE budget amount, as provided in 20-9-308(2)(b), ~~or~~ an *increased* over-BASE budget amount, as provided in 20-9-308~~(3)(b)~~*(3)(a), or an amount in excess of the maximum general fund budget amount for the district as allowed by 20-9-308(4)* to the electors of the district, tbe trustees shall comply with the provisions of subsections (2) through (4)."

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Section 2. Effective date — applicability. [This act] is effective July 1, 1995, and applies to school district general fund budgets for the school fiscal year beginning July 1, 1996.

Approved March 28, 1995

CHAPTER NO. 267

[HB 433]

AN ACT GRANTING THE FISH, WILDLIFE, AND PARKS COMMISSION THE AUTHORITY TO DESIGNATE SPECIAL LICENSES OR PERMITS, SEASONS, CONDITIONS, OR PROGRAMS FOR HUNTING BY MONTANA'S YOUTH; AND AMENDING SECTION 87-1-301, MCA.

WHEREAS, Montana has a long and cherished hunting heritage; and

WHEREAS, as with other traditions, Montana's hunting heritage will persevere through its passage from one generation to the next; and

WHEREAS, it is fitting that the Fish, Wildlife, and Parks Commission, as the regulating body for state hunting regulations, be granted the specific authority to encourage this hunting heritage for Montana's youth through the establishment of special youth licenses or permits, seasons, conditions, or programs.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-301, MCA, is amended to read:

"**87-1-301. Powers of commission.** (1) The commission shall:

(a) set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) establish the hunting, fishing, and trapping rules of the department;

(c) establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) have the power within the department to establish wildlife refuges and bird and game preserves;

(e) approve all acquisitions or transfers by the department of interests in land or water;

(f) review and approve the budget of the department prior to its transmittal to the budget office; and

(g) review and approve construction projects whose estimatod cost is more than $1,000 but less than $5,000.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into

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account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth."

Approved March 28, 1995

CHAPTER NO. 268

[HB 439]

AN ACT ESTABLISHING A POLICY FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS REGARDING ENTRY UPON PRIVATE LAND BY REQUIRING THE DEPARTMENT TO WORK WITH THE LANDOWNER ON LAND ENTRY AND USER POLICIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Entry on private land — policy. It is the policy of the department to meet with and work cooperatively with individual private landowners on policies regarding entry of the department to private landowners' land and to work with public and private land managers to resolve and reduce user conflicts.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

Approved March 28, 1995

CHAPTER NO. 269

[HB 454]

AN ACT REVISING AND UPDATING THE UNIFORM TRADE SECRETS ACT; REVISING INJUNCTIVE RELIEF IN EXCEPTIONAL CIRCUMSTANCES; REVISING THE CIRCUMSTANCES FOR THE RECOVERY OF DAMAGES; CLARIFYING THE IMPACT ON OTHER LAW; AMENDING SECTIONS 30-14-403, 30-14-404, AND 30-14-408, MCA; AND PROVIDING AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-403, MCA, is amended to read:

"30-14-403. **Injunctive relief — royalty.** (1) Actual or threatened misappropriation may he enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased te exist, but the injunction may be continued for an additional reasonable period of time in order to

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eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) ~~If the court determines that it would be unreasonable to prohibit future use~~ *In exceptional circumstances*, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of timo ~~the~~ *for which* use could have been prohibited. *Exceptional circumstances include but are not limited to a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.*

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order."

Section 2. Section 30-14-404, MCA, is amended to read:

"**30-14-404. Damages.** (1) ~~In addition to or in lieu of injunctive relief~~ *Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable*, a complainant ~~may~~ *is entitled to* recover damages for ~~the actual loss caused by~~ misappropriation. ~~A complainant also may recover for~~ *Damages may include both the actual loss caused by misappropriation and* the unjust enrichment caused by misappropriation that is not taken into account in computing ~~damages for~~ actual loss. *In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized use of a trade secret.*

(2) If willful and malicious misappropriation exists, the court may award exemplary damages."

Section 3. Section 30-14-408, MCA, is amended to read:

"**30-14-408. Effect on other law.** (1) ~~This~~ *Except as provided in subsection (2), this* part displaces conflicting tort, restitutionary, and other law of this state ~~pertaining to~~ *providing* civil ~~liability~~ *remedies* for misappropriation of a trade secret.

(2) This part does not affect:

(a) contractual ~~or other civil liability or relief that is~~ *remedies, whether or* not based upon misappropriation of a trade secret; ~~or~~

(b) ~~criminal liability for~~ *other civil remedies that are not based upon* misappropriation of a trade secret*; or*

(c) criminal remedies, whether or not based upon misappropriation of a trade secret."

Section 4. Applicability. With respect to a continuing misappropriation that began prior to [the effective date of this act], [this act] does not apply to the continuing misappropriation that occurs after [the effective date of this act].

Approved March 28, 1995

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CHAPTER NO. 270

[HB 461]

AN ACT CREATING THE MONTANA EMERGENCY RESPONSE TO HAZARDOUS MATERIAL INCIDENTS ACT; AMENDING SECTION 75-1-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 14] may be cited as the "Montana Response to Hazardous Material Incidents Act".

Section 2. Purpose. It is the purpose of [sections 1 through 14] to:

(1) provide that adequate hazardous material emergency response capability exists in the stato in order to protect the health and safety of Montana citizens and the environment;

(2) delineate those state agencies responsible for responding to a hazardous material incident;

(3) provide for the control and management of incidents;

(4) provide for the cooperation of other stato agencies and local governments in incident management; and

(5) provide for the formulation of a comprehensive, statewide incident management and hazardous material response support plan.

Section 3. Definitions. As used in [sections 1 through 14], the following definitions apply:

(1) "Commission" means the state emergency response commission.

(2) "Division" means the division of disastor and emergency services in the department of military affairs.

(3) "Duration of response" means a period of time beginning when a emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.

(4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.

(5) "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to control an actual release or threatened release of bazardous material requiring close approach to the material, te respond to releases or threatened releases of

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hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance te local jurisdictions.

(6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or texic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

(7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.

(8) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

(9) "Local emergency response authority" means the person or persons designated hy the city, county, or commission to be responsible for the management of an incident at the local level.

(10) "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.

(11) "Plan" means the Montana incident management and hazardous material response support plan.

(12) (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of matorial unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.

(13) "State hazardous material incident response team" means persons who are designated as stato employees by the commission while they are engaged in activities as provided for in [section 4] and may include members of the commission and local and state government responders.

(14) "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material inte the environment.

Section 4. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission must consist of 20 members appointed by the governor. The commission must include representatives of the national guard, air force, state and local fire organizations, state and local emergency medical responders, state and local law enforcement agencies, local emergency planning committees, a Montana utility company, and a railroad company doing business in the state, representatives from the department of health and environmental sciences, the division, the department of transportation, the department of administration, the department of justice, the department of fish, wildlife, and parks, and the office of the governor, and any other representatives that the governor appoints. The members shall serve

without compensation. The governor shall appoint a presiding officer from the appointees.

(2) The commission shall implement the provisions of [sections 1 through 14], and in so doing, the commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may entor inte written agreements with each entity or person providing equipment or services to the state hazardous matorial incident response toam.

(4) The commission or its designee may direct that the stato hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their stato agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response te incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the stato for emergency response activities provided for in [sections 1 through 14].

(10) The commission may prepare, coordinate, implement, and update a plan, which coordinates state and local emergency authorities, to respond to incidents within the state. The plan must be consistent with [sections 1 through 14]. All stato emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission bas the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under [sections 1 through 14].

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Section 5. Commission budget and expenditures. (1) The commission shall submit its budget to the division.

(2) The commission shall expend any funds appropriated to it in the following priority:

(a) payment of workers' compensation premiums for coverage of state hazardous material incident response team members;

(b) training activities for the state hazardous material incident response team;

(c) equal payments to each hazardous material incident response team as compensation for duties established in the plan; and

(d) any remaining funds te be used at the discretion of the commission for programs related to the plan.

Section 6. Local emergency response authorities — designation. (1) The governing body of each incorporated city and county shall designate the local emergency response authority for incidents that occur within its jurisdiction.

(2) Local emergency response authority members must be trained in hazardous material incident response in compliance with 29 CFR 1910.120(q), as amended.

(3) An incorporated city may, with the mutual consent of the county, designate the county as its local emergency rosponse authority and participate in the local emergency operations plan for incident response.

(4) If an incident occurs in an area in which local emergency respense authority has not been designated, the presiding officer of the board of county commissioners must bo the local emergency response authority for the incident for the purposes of [sections 1 through 14].

Section 7. Local emergency response autborities — powers and duties. (1) Every local emergency response authority designated pursuant te [sections 1 through 14] shall respond to incidents occurring within its jurisdiction according to the local emergency operations plan. The local emergency response authority shall also respond to an incident that initially occurs within ita jurisdiction but spreads to another jurisdiction. If an incident occurs on a boundary between two jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive at the scene of the incident shall perform the initial emergency response duties.

(2) Each local emergency response authority shall define in writing its incident management system and specifically define the agency that will be the incident commander.

(3) The incident commander shall declare that the emergency situation associated with an incident has ended when the acute threat to public health and safety or to the environment has been sufficiently addressed.

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Section 8. Controlling provisions for state of emergency — liability of responsible persons. In the event that a state of emergency is declared by proper authority pursuant to 10-3-302, as the result of an incident, the provisions of 10-3-303 govern.

Section 9. Notification of release. (1) A person responsible for reporting a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9603, shall, as soon as practicable after obtaining the knowledge of a required reportable release, other than a permitted release, notify the division of the release.

(2) The division shall notify the commission of releases or threatened releases as defined in the plan.

(3) The division shall immediately notify the department of health and environmental sciences of any release reported and who will respond according to the plan.

(4) Any person who does not make notification in accordance with the provisions of this section is liable for a civil penalty not to exceed $10,000 for each day the violation continues to a maximum of $100,000. These penalties are in addition to any other penalties imposed by law. All penalties collected must be deposited in the environmental contingency account provided for in 75-1-1101.

(5) Compliance with the reporting requirements of this section does not relieve any person of the obligation to report the same incident under any other applicable state or federal law, regulation, or other requirement.

Section 10. Right to reimbursement. (1) State hazardous material incident response team members may submit claims to the commission for reimbursement of documented costs incurred as a result of the team's response to an incident. Reimbursement for the costs may not exceed the duration of response.

(2) A party who is not a part of the state hazardous material incident response team and is not liable under federal or state law may submit a claim to the commission for costs if the claim is associated with a request by the state hazardous material incident response team or the commission.

(3) Claims for reimbursement must be submitted to the commission within 60 days after termination of the response to the incident for the state's determination of payment, if any.

(4) Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident as defined in [sections 1 through 14] and only if adequate funds are available.

Section 11. Deficiency warrants for reimbursement of response costs. (1) (a) The commission shall review all claims for reimbursement and make recommendations to the governor as to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to the limit of the fund balance for the purpose of reimbursing

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reasonahle and documented costs associated with emergency actions taken pursuant to [sections 1 through 14].

(b) The costs of routine firefighting procedures are not reimbursable costs under [sections 1 through 14].

(2) Reimbursement must he in accordance with the schedule defined in the plan.

(3) The decision of the governor is final and nonappealable.

(4) This section may not be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

Section 12. Cost recovery and civil remedies. (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in [sections 1 through 14] is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission and the state hazardous material incident response team, [sections 1 through 14] do not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associatod with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement.

(9) (a) In the event of orphaned hazardous material or the inability of the stato to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost identified pursuant to [sections 1 through 14].

(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be equally divided among the jurisdictions.

Section 13. Liability of persons and response team members rendering assistance. The commission and the state hazardous material incident response team are not liable under [sections 1 through 14] for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release of a hazardous material. The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss. A person becomes a member of the state hazardous material incident response team when the person is contacted for response regardless of the person's location.

Section 14. Required assistance in hazardous material incident. An owner or agent of the owner of a hazardous material involved in an incident, a person causing an incident, a person transporting a hazardous material involved in an incident, and a person owning or occupying property involved in an incident shall assist the state as requested by the incident commander in responding to an emergency situation associated with the incident as may be necessary to address an acute threat to public health or safety or to the environment until the incident commander declares that the emergency situation is over.

Section 15. Section 75-1-1101, MCA, is amended to read:

"**75-1-1101. Environmental contingency account objectives.** (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated te the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, ~~no~~ allocation will *not* be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

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(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond te an emergency or imminent threat to persons, property, or the environment caused by mineral development; ~~and~~

(d) to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

~~(d)~~*(e)* to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues te the resource indemnity trust interest account.

(5) The governor shall submit, as a part of the information required by 17-7-111, a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report."

Section 16. Codification instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1 through 14].

Section 17. Two-thirds vote required. Because [section 14] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. Effective date. [This act] is effective on passage and approval.

Approved March 28, 1995

CHAPTER NO. 271

[HB 467]

AN ACT PROVIDING TERM LIMITS FOR THE MEMBERS OF THE PUBLIC SERVICE COMMISSION; AND AMENDING SECTION 69-1-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1-105, MCA, is amended to read:

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"69-1-105. Term of office — *term limits.* (1) ~~Every~~ *A* term ~~shall be~~ *is* for a period of 4 years. ~~Said commissioners~~ *A commissioner* when elected ~~will~~ *shall* qualify at the time and in the manner provided hy law for other state officers and shall take office on the first Monday of January~~, next~~ after ~~their~~ *the* election.

(2) ~~Each of said members of said commission, so elected,~~ *A commissioner* shall serve until ~~his~~ *a* successor is elected and qualified.

(3) The secretary of state or other authorized official may not certify a candidate's nomination or election to the public service commission or print or cause to be printed on any ballot the name of a candidate for the public service commission if, at the cnd of the current term of that office, the candidate will have served in that office or, had the candidate not resigned or been recalled, would have served in that office for 8 or more years in a 16-year period.

(4) When computing the time served for the purposes of subsection (3), the provisions of subsection (3) do not apply to time served in terms that ended during or prior to January 1995."

Approved March 28, 1995

CHAPTER NO. 272

[HB 489]

AN ACT ALLOWING THE SALE OF CERTAIN STATE LAND OR THE EXCHANGE OF CERTAIN STATE LAND; ALLOWING A COMMITMENT TO USE THE PROPERTY FOR A COMMUNITY SERVICE OR PUBLIC PURPOSE TO CONSTITUTE PARTIAL OR TOTAL CONSIDERATION FOR THE TRANSFER OF THE LAND; AND AMENDING SECTION 77-2-351, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-351, MCA, is amended to read:

"**77-2-351. Salo to or exchange of property with public entity.** Notwithstanding any other section in this chapter, any lands may be sold to or exchanged for other land or for other consideration with another public entity on terms and in a manner ~~as~~ *that* the board, after consultation with the appropriate legislative committee, may determine te be in the state's best interest, subject te The Enabling Act and constitutional restrictions. *In the case of land that is not granted to or held by the state in trust for the support of the common schools, for a state institution, or for another specific purpose, the board may accept as partial or total consideration for the transfer of the land a binding commitment by the transferee to use the property to provide a community service or a benefit that fulfills a public purpose.* The sale or exchange of the property may not be finally concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given. *As used in this section, "public entity" means any county, city, municipal corporation, school district, or special improvement or taxing district."*

Approved March 28, 1995

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CHAPTER NO. 273

[HB 501]

AN ACT REQUIRING A WRITTEN UNDERTAKING IN ANY CIVIL ACTION SEEKING AN INJUNCTION OR RESTRAINING ORDER TO SET ASIDE A DECISION BY THE BOARD OF LAND COMMISSIONERS REGARDING THE USE OR DISPOSITION OF STATE LANDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Written undertaking required in legal action for challenge to use or disposition of state lands. In any civil action seeking an injunction or restraining order concerning a decision of the board approving a use or disposition of state lands that would produce revenue for any state lands trust beneficiary, the court shall require a written undertaking for the payment of damages that may be incurred by the trust beneficiary if the board is wrongfully enjoined or restrained.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 28, 1995

CHAPTER NO. 274

[HB 536]

AN ACT REVISING THE LAWS RELATING TO OUT-OF-STATE MAIL SERVICE PHARMACIES; SPECIFYING THE REQUIREMENTS FOR SALE OF PRESCRIPTION DRUGS BY OUT-OF-STATE MAIL SERVICE PHARMACIES TO MEMBERS OF A GROUP HEALTH INSURANCE CONTRACT OR PLAN FOR A UNIT OF STATE OR LOCAL GOVERNMENT; REMOVING LICENSING OF AND REQUIRING REGISTRATION OF OUT-OF-STATE MAIL SERVICE PHARMACIES; SPECIFYING REGISTRATION REQUIREMENTS; GRANTING RULEMAKING AUTHORITY TO THE BOARD OF PHARMACY REGARDING OUT-OF-STATE MAIL SERVICE PHARMACIES; AMENDING SECTIONS 2-18-704, 37-7-701, AND 37-7-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the board of pharmacy authority to adopt administrative rules for the registration of out-of-state mail service pharmacies.

It is the intent of the legislature to correct a deficiency in Title 37, chapter 7, part 7 (Chapter 664, Laws of 1991), that arose from a defective attempt to

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grant rulemaking authority to the board of pharmacy to carry out the provisions regarding out-of-state mail service pharmacies. [Section 4] is specifically intonded to grant rulemaking authority to the board of pharmacy to carry out the purpose and to enforce the provisions of Title 37, chapter 7, part 7. Sections 37-7-701 and 37-7-703 are intended to provide for regulation of out-of-state pharmacies and pharmacists through recognition of the licenses issued by their states of domicile through registration, rather than licensure, by the state of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-704, MCA, is amended to read:

"2-18-704. **Mandatory provisions.** (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participato in another group plan with substantially the same or greatsr benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member te remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued ~~after June 30, 1983,~~ under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan ~~issued after August 31, 1991,~~ must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of ~~his~~ *the legislator's* legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3) and subsequently terminates membership may not rejoin the group unless the person again serves as a legislator.

(4) A person electing to remain a member of the group under subsection (1), (2), or (3) shall pay the full premium for coverage and for that of the person's covered dependents.

(5) An insurance contract or plan issued under this part ~~after June 30, 1993,~~ that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan *and to meet all terms and conditions, including the same professional requirements that are met* by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is ~~licensed by~~ *registered with* the board under Title 37, chaptor 7, part 7, and that is registored in this state as a foreign corporation."

Section 2. Section 37-7-701, MCA, is amended to read:

"37-7-701. **Legislative declaration.** The legislature recognizes that with the proliferation of altornate methods of health care delivery, there has arisen among third-party ~~payers~~ *payors* and insurance companies the desire to control the cost and ~~utilization~~ *use* of pharmacy services through a variety of mechanisms, including the use of mail service pharmacies locatod outside this stato. As a result, the legislature finds and declares that to continue to protect the consumer-patients of this stato, all out-of-state mail service pharmacies that provide services to this state's residents must be ~~licensed~~ *registered* with the board, shall disclose specific information about their services, shall meet the same standards for utilization of tochnicians as an in-state pharmacy, and shall provide pharmacy services at a high level of competonce."

Section 3. Section 37-7-703, MCA, is amended to read:

"37-7-703. ~~License~~ ***Registration*** **requirements.** Each out-of-state mail service pharmacy must be ~~licensed by~~ *registered with* the board of pharmacy. In

order to be ~~licensed by~~ *registered with* the board to do business in this state and for annual renewal of its ~~license~~ *registration*, an out-of-state mail service pharmacy:

(1) (a) ~~must be~~ *shall submit a certificate from the appropriate licensing authority with which it is currently* licensed and in good standing in the state in which its dispensing facilities are located; and

(b) shall comply with all applicable laws, regulations, and standards of that state and the United States and, if requested by the board, provide evidence that it has so complied;

(2) shall ~~submit an application in form and content as determined by~~ *register with* the board~~, including~~ *and provide* information on ownership and location, *including the names and titles of the corporate officers,* of the out-of-state mail service pharmacy and the identity of a pharmacist *licensed in the state in which the pharmacy is located who is* in charge of dispensing prescriptions for shipment to Montana from the out-of-state mail service pharmacy;

(3) shall submit a utilization plan for the employment of pharmacy technicians if allowed by the state where the mail service pharmacy is located. ~~Any plan that has a ratio of technicians to pharmacists greater than the maximum ratio allowed for an in-state retail pharmacy under the board's rules must be~~ *If the state in which the pharmacy is located does not establish a ratio of technicians to pharmacists for determining the number of pharmacy technicians or otherwise define the role of the pharmacist in compounding or dispensing drugs at the pharmacy, then the out-of-state mail service pharmacy may not allow a pharmacist to supervise more than one supportive person at any one time in the compounding or dispensing of prescription drugs, unless* approved by the board as provided in 37-7-307 through 37-7-309.

(4) shall ~~register each pharmacist identified under subsection (2) with~~ *submit to* the board~~, with~~ proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is employed and ~~with~~ the pharmacist's written commitment to comply with the utilization plan, if any, *for each pharmacist identified under subsection (2) and shall provide to the board the same toll-free telephone service referenced in 37-7-706 in order to comply with all information requests by the board*; and

(5) shall pay an initial ~~license~~ *registration* fee and annual renewal fee in an amount to be determined by the board."

Section 4. Rulemaking authority. The board of pharmacy may adopt rules to implement this part.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 37, chapter 7, part 7, and the provisions of Title 37, chapter 7, part 7, apply to [section 4].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective on passage and approval.

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Approved March 28, 1995

CHAPTER NO. 275

[SB 150]

AN ACT REVISING THE LAW REGARDING THE PROVISION OF ADOPTION INFORMATION; ALLOWING LIMITED DISCLOSURE OF NONIDENTIFYING ADOPTION INFORMATION; PROVIDING FOR COURT APPOINTMENT OF A CONFIDENTIAL INTERMEDIARY TO ASSIST IN A SEARCH FOR INFORMATION FOR CERTAIN PERSONS INVOLVED IN AN ADOPTION; DEFINING APPLICABLE TERMS; PROVIDING A PENALTY; AND AMENDING SECTIONS 40-8-103 AND 40-8-126, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-8-103, MCA, is amended to read:

"**40-8-103. Definitions.** As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) *"Confidential intermediary" means a staff person of a nonprofit agency who has expertise in adoption.*

(7) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

~~(7)~~*(8)* "Department" means the department of family services, as established and provided for in 2-15-2401.

~~(8)~~*(9)* "Extended family member" means an adult who is the child's grandparent, aunt or uncle, or brother or sister.

~~(9)~~*(10)* "Home study" means the process of assisting the prospective adoptive parent or family to assess its own readiness to adopt and a determination by the department or a licensed child-placing agency of the compliance of the parent or family and its residence with applicable standards.

~~(10)~~*(11) "Identifying information" means information that reveals or directly indicates the identity of a person and includes the person's name or address.*

(12) "Nonidentifying information" means information that does not reveal or directly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved.

(13) "Parent" means the birth or adoptive mother or tbe birth, adoptive, or legal father whose parental rights have not been terminated.

~~(11)~~*(14)* "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

~~(12)~~*(15)* "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual pursuant to 40-6-135, 40-8-109, or 40-8-117, whichever is applicable."

Section 2. Section 40-8-126, MCA, is amended to read:

"40-8-126. Confidentiality *and disclosure* of record and proceedings — *appointment and duties of confidential intermediary.* (1) Unless the court ~~shall~~ *orders* otherwise ~~order~~, all hearings held in proceedings under this part ~~shall be~~ *are* confidential and ~~shall~~ *must* be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption ~~shall~~ *must* he kept as a permanent record of the court and withheld from inspection. ~~No~~ *A* person ~~shall~~ *may not* have access to ~~such~~ *the* records, except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered;

(b) as provided in subsection (7); or

~~(b)~~*(c)* as provided in 50-15-206.

(3) All files and records pertaining to ~~said~~ adoption proceedings ~~in the county departments of public welfare, the department of social and rehabilitation services,~~ *retained by* the department ~~of family services,~~ or any authorized ~~agencies shall be~~ *agency are* confidential and *must be* withheld from inspection, except ~~upon order of court for good cause shown or as provided in 50-15-206~~ *that the department or authorized agency may disclose:*

(a) nonidentifying information to an adoptee, an adoptive or biological parent, or an extended family member of an adoptee or biological parent; and

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-206.

(4) When an adoptee reaches 18 years of age, the adoptee, an adoptive or biological parent, or an extended family member of the adoptee or biological parent may petition the court for disclosure of the identity of the adoptee, biological son, biological daughter, or biological parent. A petition for disclosure must contain the following information:

(a) the name, address, and identification of the petitioner;

(b) the date of the adoptee's birth;

(c) the county and state where the adoption occurred;

(d) the date of the adoption; and

(e) any information known to the petitioner concerning the biological parents, the adoptive parents, and the adoptee, that could assist in locating the person being sought.

(5) After a petition for disclosure has been filed under subsection (4), the court shall appoint a confidential intermediary who shall:

(a) conduct a confidential search for the person sought, as requested in the petition for disclosure;

(b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless ordered to do so by the court; and

(c) make a written report of the results of the search to the court not later than 6 months after appointment.

(6) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

(7) A confidential intermediary may inspect otherwise confidential records of the court, the department, or an authorized agency for use in the search. The confidential intermediary may not disclose the contents of the records or any results of a search unless authorized by the court.

(8) If a confidential intermediary is unable to locate the person being sought within 6 months of appointment, the confidential intermediary shall recommend to the court whether a further search is warranted and state the reasons for the recommendation. If the court finds that a further search is warranted, the court may order that the search be continued for a specified time.

(9) If a confidential intermediary locates the person being sought, a confidential inquiry must be made as to whether the located person consents to having that person's present identity disclosed to the petitioner. The court may request that the confidential intermediary assist in arranging contact between the petitioner and the located person.

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(10) If a confidential intermediary locates the person being sought and the located person does not consent to having that person's identity disclosed, identifying information regarding that person may be disclosed only upon order of the court for good cause shown.

(11) If the person being sought is found to be deceased, the court may order disclosure of the identity of the deceased to the petitioner."

Section 3. Penalty for unauthorized disclosure of identifying information. An individual who knowingly discloses identifying information in violation of 40-8-126 is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or by both fine and imprisonment.

Section 4. Codification instruction. [Section 3] is intended te be codified as an integral part of Title 40, chapter 8, part 1, and the provisions of Title 40, chapter 8, part 1, apply to [section 3].

Approved March 28, 1995

CHAPTER NO. 276

[HB 55]

AN ACT REVISING THE STATE CHILD SUPPORT INCOME DEDUCTION LAWS TO CONFORM TO THE REQUIREMENTS OF 42 U.S.C. 666(A)(8)(B); AMENDING SECTION 40-5-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Duties of employers. (1) An employer who has been served with an order for deduction under this part shall deduct the amount designated in tbe order beginning not later tban the first pay period that occurs after 14 days from the service of the order. The employer shall, within 10 working days of the date the obligor is paid, promptly pay the deducted amount as directed by tbe order. The employer shall include with the payment a statement indicating the date the amount was deducted from the obligor's wages or salary.

(2) Whenever an employer receives more than one wage deduction order from the same district court, the employer may combine all amounts deducted into a single payment for that month, with the portion that is attributable to each ohligor separately designated.

(3) Whenever there is more than one deduction order against a single obligor the employer shall:

(a) honor all wage deduction orders te the extent that the total amount deducted from the obligor's wages or salary does not exceed the limits set in 40-5-309; and

(b) comply with the orders in the sequence in which they were served upon the employer except for income withholding orders issued by the department of social and rehabilitation services. Under 40-5-423, orders issued by the

department have priority over all other orders without regard to the sequence in which they were served.

(4) The employer shall promptly notify the clerk of the district court that issued the deduction order of the termination of the obligor's employment and provide the obligor's last-known address and the name and address of the obligor's new employer, if known.

Section 2. Obligor rights protected — penalties. (1) An employer may not discharge, discipline, or refuse to hire a person because:

(a) the person has a child support obligation;

(b) a withholding order has been issued for the person's wages or salary; or

(c) proceedings have been initiated under this part.

(2) An employer who violates the provisions of this section may be fined not more than $100.

Section 3. Civil liability for failure to comply with wage deduction order. (1) An employer who knowingly fails to deduct support money from the obligor's wages or salary and remit the money to the district court when ordered to do so under this part is liable to the obligee of the support order for any amount up to the accumulated amount the employer should have deducted and remitted.

(2) An employer who complies with a deduction order under this part is not liable to the obligor or to any other person claiming rights derived from the obligor for wrongful deductions.

Section 4. Section 40-5-308, MCA, is amended to read:

"**40-5-308. Order for deduction from income for child support payments.** (1) If the obligor fails to respond to notice within 15 days or if the district court determines that the obligor is delinquent in payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's employer ordering a deduction from the obligor's wages or salary for the payment of child support.

(2) The order ~~shall~~ *must* state:

(a) the action involved;

(b) the total amount of back child support due and the amount of each court-ordered installment of child support;

(c) the amount to be deducted from the wages or salary of the obligor each pay period and the amount, if any, allowed to the employer under ~~subsection (2) of~~ 40-5-309*(2)* as a fee for handling the deduction;

(d) the length of time the order is to remain in effect, if ascertainable; and

(e) *the name and address of the clerk of court* to whom the deduction is to be ~~made payable and where it is to be forwarded~~ *paid* by the employer."

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 40, chapter 5, part 3, and the provisions of Title 40, chapter 5, part 3, apply to [sections 1 through 3].

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved March 29, 1995

CHAPTER NO. 277

[HB 534]

AN ACT ALLOWING CERTAIN UNDEVELOPED LAND OWNED BY A LOCAL ECONOMIC DEVELOPMENT ORGANIZATION TO QUALIFY AS AN INDUSTRIAL PARK FOR PROPERTY TAX PURPOSES; AND AMENDING SECTION 15-24-1901, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1901, MCA, is amended to read:

"15-24-1901. Definitions. Unless the context requires otherwise, the following definitions apply to this part:

(1) "Industrial park" means property zoned for light and heavy industry. The term includes fully developed or partially developed land and improvements and undeveloped land. *The term also includes undeveloped land owned by a local economic development organization if the local economic development organization provides reasonable evidence and the governing body is satisfied that the property is suitable for development as an industrial park and that the local economic development organization will develop the land as an industrial park.*

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

(3) "Port authority" means a port authority created under 7-14-1101 or 7-14-1102."

Approved March 29, 1995

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CHAPTER NO. 278

[HB 570]

AN ACT RELATING TO THE TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114, AND 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ *is* the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, and in addition ~~shall include~~ *includes* the following:

(a)*(i)* interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof *except to the extent that the interest is exempt from taxation by Montana under federal law*;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent *that* the deduction of ~~such~~ *the* tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchaptor S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a)*(i)* all interest income from obligations of the Unitod States government, the state of Montana, county, municipality, district, or other political subdivision thereof *and any other interest income that is exempt from taxation by Montana under federal law*;

(ii) exempt-interest dividende as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer ~~age~~ *who is* 65 *years of age* or older in a taxable year up te and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; and

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in ~~his~~ adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, is allowed te deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separato Montana income tax returns. The federal base must be split equally on the Montana return.

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(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due te the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 2. Section 15-31-113, MCA, is amended to read:

"**15-31-113. Gross income and net income.** (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal income tax *and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered*;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, (as those sections may be amended or renumbered), attributable to steckholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, (as those sections may be amended or renumbered), when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) ~~No~~ *A* corporation is *not* exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

Section 3. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. *(1)* In computing the net income, the following deductions ~~shall be~~ *are* allowed from the gross income received by ~~such~~ *the* corporation within the year from all sources:

~~(1)~~ *(a)* ~~All~~ *all* the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation ~~hereinafter~~ contained *in this section, and* rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. ~~No~~ *A* deduction ~~shall be~~ *is not* allowed for salaries paid upon which the recipient ~~thereof~~ has not paid Montana state income tax~~;~~. ~~provided, however~~ *However, ~~that where~~ when* domestic corporations are taxed on income derived from ~~without~~ *outside* the stsio, salaries of officers paid in connection with securing ~~such~~ *the* income ~~shall be~~ *are* deductible.

~~(2)(a)~~ *(b)(i)* ~~All~~ *all* losses actually sustained and cbarged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business~~, such~~. *The* allowance ~~to be~~ *is* determined according to the provisions of section 167 of the Intornal Revenue Code in effect with respect to the taxable year. All elections for depreciation ~~shall~~ *must* be the same as the elections made for federal income tax purposes. ~~No~~ *A* deduction ~~shall be~~ *is not* allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and ~~no~~ *a* deduction ~~shall~~ *may not* be made for any amount of expense of restoring property or making good the exhaustion ~~thereof~~ *of property* for which an allowance is or has heen made. ~~No~~ *A* deprociation or amortization deduction ~~shall be~~ *is not* allowed on a title plant as defined in 33-25-105(15).

~~(b)~~ *(ii)* There ~~shall be~~ *is* allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

~~(3)~~ *(c)* ~~In~~ *in* the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements~~; such~~. *The* reasonable allowance ~~to~~ *must* he determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes ~~shall~~ *must* be the same as the elections made for federal income tax purposes.

~~(4)~~ *(d)* The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived~~; but no interest shall~~. *Interest may not* he allowed as a deduc.ion if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from ~~such~~ *the* property or husiness would be taxahle under this part.

~~(5)(a)~~ *(e)(i)* ~~Taxes~~ *taxes* paid within the year, except the following:

~~(i)~~ *(A)* ~~Taxes~~ *taxes* imposed by this part~~.~~*;*

~~(ii)~~ *(B)* ~~Taxes~~ *taxes* assessed against local benefits of a kind tending to increase the value of the property assessed~~.~~*;*

~~(iii)~~ *(C)* ~~Taxes~~ *taxes* on or according to or measured by net income or profits imposed by authority of the government of the United States~~.~~*;*

~~(iv)~~ *(D)* ~~Taxes~~ *taxes* imposed by any other state or country upon or measured by net income or profits.

~~(b)~~ *(ii)* Taxes deductible under this part ~~shall~~ *must* be construed to include taxes imposed by any county, school district, or municipality of this state.

~~(6)~~ *(f)* ~~That~~ *that* portion of an energy-related investment allowed as a deduction under 15-32-103~~.~~*;*

~~(7)(a)~~ *(g) (i)* ~~Except~~ *except* as provided in subsection ~~(b)~~ *(1)(g)(ii)*, charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

~~(b)~~ *(ii)* The public service commission ~~shall~~ *may* not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

~~(8)~~ *(2)* In lieu of the deduction allowed under subsection ~~(7)~~ *(1)(g)*, the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of ~~(b) of this~~ subsection ~~(6)~~ *(2)(b)*.

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered."

Section 4. Section 15-31-119, MCA, is amended to read:

"15-31-119. Net operating losses — carryovers and carrybacks. (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss carrybacks to the taxable period.

(2) The term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the modifications specified in subsection (6).

(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.

(4) A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating loss carryover to each of the seven taxable periods following the taxable period of the loss.

(5) Except as provided in subsection (11), the portion of the loss that must be carried to each of the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior taxable periods to which the loss was carried. For purposes of ~~the preceding sentence~~ *this subsection*, the net income for the prior taxable period must be computed with the modification specified in subsection (6)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period ~~thereafter~~ *after the loss period*, and the net income so computed may not be considered to be less than zero.

(6) The modifications referred to in subsection (2) are as follows:

(a) *The* net operating loss deduction may not be allowed.

(b) The deduction for depletion may not exceed the amount that would be allowable if computed under the cost method.

(c) Any net operating loss carried over to any taxable ~~years beginning after December 31, 1978,~~ *year* must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(7) A net operating loss deduction ~~must~~ *may* be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(8) In the case of a merger of corporations, the surviving corporation may not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

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(10) The net operating loss deduction ~~may not be allowed with respect to taxable periods that ended on or before December 31, 1970, but~~ must be allowed ~~only~~ with respect to taxable periods ~~beginning on or after January 1, 1971~~.

(11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The election must be made on or before the date on which the return is due, including any extension of tho due dato, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.

(12) Notwithstanding any other provision of this section, the net operating loss deduction is not allowed in the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended or renumbered."

Section 5. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Approved March 29, 1995

CHAPTER NO. 279

[HB 572]

AN ACT INCREASING THE TIME IN WHICH AN ECONOMIC DEVELOPMENT LEVY IS EFFECTIVE TO 6 YEARS FROM 5 YEARS; AMENDING SECTION 90-5-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-5-112, MCA, is amended to read:

"**90-5-112. Economic development levy.** (1) The governing body of a city, county, or town is authorized to levy up to 1 mill upon the taxable value of all the property in the city, county, or town subject to taxation for the purpose of economic development. The governing body may:

(a) submit the question of tbe mill levy to the qualified voters voting in a city, county, or tewn election; or

(b) approve the mill levy by a vote of the governing body.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

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(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

(4) A tax authorized by a vote of the electorato, as provided in subsection (1)(a), may be levied for a period not to exceed ~~5~~ *6* years and is not subject to the provisions of Title 15, chapter 10, part 4."

Section 2. Applicability. [Section 1] applies to all levies approved by the electorate after [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 29, 1995

CHAPTER NO. 280

[SB 258]

AN ACT ALLOWING A COUNTY TO RETAIN CERTAIN LAND ACQUIRED BY TAX DEED IF IT IS IN THE BEST INTEREST OF THE COUNTY OR WILL ADVANCE THE PUBLIC BENEFIT OR WELFARE; CLARIFYING THE REPURCHASE RIGHTS OF TAXPAYERS AND SUCCESSORS; REQUIRING THE DEPARTMENT OF REVENUE TO DETERMINE THE FAIR MARKET VALUE OF TAX-DEED LAND; SUBSTITUTING SALES PRICE FOR FAIR MARKET VALUE IN CERTAIN SECTIONS OF LAW PERTAINING TO THE SALE OF TAX-DEED LAND; REQUIRING PUBLIC NOTICE OF THE DONATION OR RETENTION OF TAX-DEED LAND; ELIMINATING THE REQUIREMENT THAT THE SALE OF LAND ACQUIRED BY TAX DEED BE HELD AT THE COURTHOUSE; AND AMENDING SECTIONS 7-8-2301, 7-8-2302, 7-8-2303, AND 7-8-2502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2301, MCA, is amended to read:

"**7-8-2301. Disposal of county tax-deed land.** (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to *enter an order to*:

(a) ~~make and enter an order for sale of~~ *sell* the ~~lands~~ *land* at public auction ~~at the front door of the courthouse~~;

(b) donate tbe land to a municipality, as provided in subsection ~~(6)~~ *(3)*, if the land is within the incorporated boundaries of the municipality; ~~or~~

(c) donate the ~~lands~~ *land* te a nonprofit corporation as provided in subsection ~~(7).~~ *(3); or*

(d) retain the land for the county as provided in subsection (3).

(2) A *When tax-deed land is to be sold, the* sale may not be made for a price less than the ~~fair market value of the land~~ *sales price*~~,~~ ~~as~~ determined and fixed by the board prior to making the order of sale. ~~In determining fair market value,~~

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~~the board shall subtract the amount of outstanding assessments that are a lien on the land from the unencumbered value of the land, but the minimum sale price for a parcel of land may not be less than $10.~~ *The sales price may be set in an amount sufficient to recover the full amount of taxes, assessments, penalties, and interest due at the time the tax deed was issued to the county plus the county's costs in taking the tax deed and in conducting the sale and additional taxes due, if any, at the time of the sale.*

(3) A board of county commissioners may, upon expiration of the repurchase period provided for in 7-8-2303:

(a) sell the land as provided in subsections (2) and (4);

(b) donate the land to a municipality with the consent of the municipality;

(c) donate the land to a nonprofit corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation; or

(ii) single-family houses. Upon completion of a house, the nonprofit corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(d) retain the land for the county pursuant to 7-8-2501.

~~(3)~~*(4)* If ~~no~~ bids are *not* received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the ~~fair market value~~ *sales price* of the land *determined* under subsection (2). In the period of time between the auction conducted under subsection (1), in which there were ~~no~~ *not any* qualifying bids for the ~~property~~ *land*, and an auction held pursuant to this subsection, the board may sell the land by negotiated sale at a price that is not less than the ~~fair market value~~ *sales price* that was fixed for the original auction under subsection (1)*(a)*.

~~(4)~~*(5)* If ~~no~~ *a* bid is *not* received at the sale conducted under subsection ~~(3)~~ *(4)*, the board may dispose of the land as provided in 7-8-2218.

~~(5)~~*(6)* Notwithstanding the amount of the ~~fair market value~~ *sales price* fixed by the board prior to the auction *conducted under subsection (1)(a)*, if the successful sale bidder is the delinquent taxpayer or the taxpayer's successor in interest, the taxpayer's agent, or a member of the taxpayer's immediate family, the purchase price may not be less than the amount necessary to pay, in full, ~~all county costs of conducting the sale, delinquent taxes, assessments, and all interest and penalties~~ *the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of the repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase.*

~~(6) A board of county commissioners may, upon expiration of the redemption period provided for in 15-18-111, donate the land to a municipality with the consent of the municipality.~~

~~(7) A board of county commissioners may, upon expiration of the redemption period provided for in 15-18-111, donate the land to a nonprofit corporation for the purpose of constructing:~~

~~(a) a multifamily housing development operated by the corporation; or~~

~~(b) single-family houses. Upon completion of a house, the nonprofit corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.~~"

Section 2. Section 7-8-2302, MCA, is amended to read:

"**7-8-2302. Notice of ~~sale~~ *disposal* of tax-deed lands.** (1) Notice of the sale, *donation, or retention of tax-deed lands* provided for in 7-8-2301 ~~shall~~ *must* be given by puhlication as provided in 7-1-2121 and ~~shall~~ *must* also be posted in at least three public places in the county.

(2) ~~Posted~~ *The posted* and published notice ~~shall~~ *must* be signed by the county clerk, and ~~one~~ *the published* notice ~~may~~ *must* include a list of all lands to be sold, *donated, or retained,* the ~~appraised~~ *fair market* value of the ~~same~~ *lands as determined and fixed by the department of revenue*, and the time and place of sale, *donation, or retention.* ~~The fair market value~~ *If the land is to be sold, the sales price* as determined under 7-8-2301 ~~shall~~ *must* be stated in the *published* notice of sale."

Section 3. Section 7-8-2303, MCA, is amended to read:

"**7-8-2303. Repurchase rights of taxpayer or successors.** At any time *up to 24 hours* before the time fixed for the first offering of property for sale *or the time fixed for the donation or retention of the property* pursuant to 7-8-2301, the taxpayer or the taxpayer's successor in intorest or legal representative may repurchase the property from the county. The property may be repurchased, subject to tho reservations provided for in 7-8-2305, by payment to the county of the full amount of the taxes, *assessments,* penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of repurchase *as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase.* The purchase and payment may be effected by an installment contract with annual payments as provided for in 7-8-2304."

Section 4. Section 7-8-2502, MCA, is amended to read:

"**7-8-2502. Application of part.** (1) Any lands offered for sale by the county commissioners of any county ~~under~~ *pursuant to* 7-8-2301 and not sold at ~~such~~ *the* sale, *any lands classified for retention by the county,* any lands concerning which the preferential right to purchase has been torminated and harred ~~under~~ *pursuant to* the provisions of 7-8-2303, and any other lands owned by the county, however acquired, may, in the discretion and at the election of the board, be administered by the board under this part.

(2) The board may in its discretion elect te exercise ~~all or~~ any of the powers and authority granted to it by this part, and to the extent *that the board* ~~it so~~

elects, the provisions of this part ~~shall be~~ *are* controlling and ~~shall~~ supersede all conflicting provisions of other laws.

(3) The sale, exchange, lease, or issuance of licenses and permits of county lands as provided in this part ~~shall extend~~ *extends* only to those lands not necessary to the conduct of the county's business."

Approved March 29, 1995

CHAPTER NO. 281

[SB 277]

AN ACT ALLOWING A FARM MUTUAL INSURER TO INSURE PROPERTY WITHIN AN INCORPORATED CITY OR TOWN WITH A POPULATION OF LESS THAN 15,000 AND ALLOWING COVERAGE TO CONTINUE EVEN IF THE POPULATION OF THE INCORPORATED CITY OR TOWN MEETS OR EXCEEDS 15,000; AND AMENDING SECTION 33-4-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-4-501, MCA, is amended to read:

"**33-4-501. Insuring powers in general.** (1) In respect to property insurance as defined in 33-1-210, a farm mutual insurer shall insure against loss or damage by fire or other casualty only:

(a) rural dwellings and buildings, including the usual contents, farm livestock, machinery, vehicles, growing crops, and other forms of farm property owned by a member of the insurer or by the member's spouse;

(b) residential dwellings, appurtenant structures, and personal property owned by a member of the insurer or by the member's spouse and located:

(i) outside the boundaries of an incorporatod city or town; *or*

(ii) in an incorporated city or town with a population of less than 15,000;

(c) dwellings and related buildings designed for occupancy by not over two families, together with the usual contents, situated in an incorporated city or town *with a population of 15,000 or more, but only* if the property is owned by a member of the insurer or by the member's spouse and ~~if~~ the member has other insurance of rural property with the insurer;

(d) rural schoolhouses and buildings used in connection with the schoolhouse, rural community houses, rural churches, or other rural public buildings.

(2) A farm mutual insurer may insure against the liability risks provided in 33-1-206(1)(b) only to the extent of the limit of risks provided in 33-4-502(3) and only if every policy bears on its face in boldface type a statement that each member of the farm mutual insurer is subject to a contingent liability under 33-3-411.

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(3) Except as provided in subsection ~~(1)(c)~~ *(1)(d)*, an insurer may not insure any property not owned by a member or by the member's spouse.

(4) An insurer may not insure any property situated within the limits of *an* incorporated ~~towns or cities~~ *city or town* except as provided in ~~subsection~~ *subsections (1)(b)(ii)*, (1)(c), *and (5)* and may not insure the property unless it has and maintains the surplus funds as required under 33-4-401.

(5) An insurer may continue to insure property situated within the limits of an incorporated city or town with a population of 15,000 or more if the insured obtained coverage when the incorporated city or town had a population of less than 15,000."

Approved March 29, 1995

CHAPTER NO. 282

[SB 286]

AN ACT PROVIDING FOR THE PAYMENT OF COUNSEL FEES AND COSTS, INCLUDING BLOOD TEST COSTS, IN AN ACTION TO DETERMINE THE EXISTENCE OF THE FATHER AND CHILD RELATIONSHIP; AMENDING SECTION 40-6-119, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-6-119, MCA, is amended to read:

"40-6-119. ~~Rights~~ *Right* to counsel — *payment of counsel fees and costs* — free transcript on appeal. (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(2) The court may order reasonable fees of counsel, experts, and the child's guardian ad litem and other costs of the action and pretrial proceedings, including blood test costs, to be paid by the parties in proportions and at times determined by the court.

~~(2)~~*(3)* If a party is financially unable te pay the cost of a transcript, the court sball furnish on request a transcript for purposes of appeal."

Section 2. Applicability. [This act] applies to actions filed after [the effective date of this act].

Approved March 29, 1995

CHAPTER NO. 283

[SB 355]

AN ACT GENERALLY REVISING THE LAWS RELATING TO TOW TRUCKS AND ABANDONED VEHICLES; CLASSIFYING TOW TRUCKS BASED ON WEIGHT; REQUIRING LIABILITY INSURANCE AND ANNUAL SAFETY

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INSPECTIONS FOR COMMERCIAL TOW TRUCKS; ESTABLISHING A LAW ENFORCEMENT ROTATION SYSTEM FOR THE REMOVAL OF WRECKED, DISABLED, OR ABANDONED VEHICLES; LIMITING THE USE OF NONCOMMERCIAL TOW TRUCKS; CREATING A PRIMA FACIE PRESUMPTION OF OWNERSHIP OF AN ABANDONED VEHICLE; INCREASING THE VALUE OF A JUNK VEHICLE; AMENDING SECTIONS 61-1-120, 61-8-356, 61-9-416, 61-12-402, AND 69-12-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

(1) A statement of intent is required for this hill hecause it requires the department of justice to adopt rules implementing the provisions of [sections 1 through 11]. At a minimum, the rules must address:

(a) the handling of wrecked, disahled, or ahandoned motor vehicles carrying hazardous materials;

(h) the classification of noncommercially manufactured or modified tow truck equipment;

(c) the procedure for hearing disputes over the classification of noncommercially manufactured tow truck equipment;

(d) the protection of property taken into custody and the reclaiming of that property;

(e) inspection fees;

(f) the admission, suspension, or tormination of tow truck operators on the law enforcement rotation system; and

(g) the certification of inspectors.

(2) It is the intent of the legislature that the Montana highway patrol be charged with the administration of [sections 1 through 11].

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 11] may be citod as the "Montana Professional Tow Truck Act".

Section 2. Purpose. The legislature recognizes that:

(1) wrecked, disahled, and abandoned motor vehicles on the public roadways create hazards that imperil lives and property and require expeditious removal;

(2) officers investigating accidents on the public roadways need immediately available towing and recovery vehicles staffed by competent operators and adequately equipped to clear the roadways and remove hazardous obstructions with minimum damage to property;

(3) certain standards and classifications are needed for professional tow trucks and equipment used for towing and recovering wrecked, disabled, and abandoned motor vehicles or other objects creating hazards on the public roadways;

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(4) encouragement of a competitive and qualified professional towing industry requires establishment of a uniform and equitable qualification system based on the equipment and the standards provided in [sections 5 through 7] and a system for the fair consideration of all qualified tow truck companies; and

(5) the use of nonqualified tow truck companies or private motor vehicles to tow or recover for hire wrecked, disabled, or abandoned vehicles creates additional hazards and, except in limited situations, should be prohibited. However, when a person or tow truck company responds in good faith to life-threatening emergency situations, it should not be liable for civil damages for acts or omissions, other than damages occasioned by gross negligence or by willful or wanton acts or omissions.

Section 3. Definitions. As used in [sections 1 through 11], the following definitions apply:

(1) "Commercial tow truck operater" or "operater" means a person, firm, or other entity that owns or operates a commercial tow truck as defined in 61-9-416.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "Local government" means a county, a municipality, or other local board or body that has authority to enact laws relating to traffic.

(4) "Qualified tow truck operator" means a commercial tow truck operater:

(a) that has equipment that:

(i) meets the requirements of 61-9-416 and [sections 6 and 7]; and

(ii) has been classified in accordance with [section 5]; and

(b) that participates in the law enforcement rotation system provided for in [section 8].

Section 4. Prohibition — exception. (1) A commercial tow truck operator may not operate for compensation upon the public roadways of this state unless the operater complies with the provisions of [sections 6(1) and 7].

(2) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in [section 8] unless the operator complies with the provisions of [sections 5 through 7].

(3) [Sections 1 through 8 and 10] do not apply to a commercial tew truck operator that does not operate for compensation.

Section 5. Classification standards. (1) Commercial tow trucks are divided into the following five classes based on the manufacturer's rating:

(a) Class A tow truck equipment must have a minimum manufacturer's rating of 4 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 10,000 pounds gross vehicle weight.

(b) Class B tew truck equipment must have a minimum manufacturer's rating of 8 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 18,000 pounds gross vehicle weight.

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(c) Class C tow truck equipment must have a minimum manufacturer's rating of 16 tons and must be mounted on a chassis that has a minimum manufacturer's rating of 32,000 pounds gross vehicle weight.

(d) Class D is class A, B, or C tow truck equipment that includes manufactured rollbacks and car carriers with manufacturer's gross vehicle ratings ranging from 10,000 pounds to 30,000 pounds. The rollbacks and car carriers must be mounted on a truck-trailer chassis that, at a minimum, is equal to the minimum gross weight of the rollback or car carrier.

(e) Class E includes two or more tow trucks working together with a combined manufacturer's rating of a minimum of 80,000 pounds with access to supportive equipment, such as forklifts, banders, and air bags, for the recovery of rollovers and wrecked, disabled, and abandoned vehicles whose cargo requires special handling. Class E refers to tow truck companies and not to tow truck equipment.

(2) (a) An operator of noncommercially manufactured or modified tow truck equipment in use on October 1, 1995, that wishes to participate in the law enforcement rotation system must have its equipment classified by the department within a time period set by the department. Once the equipment is classified, further modifications may not be made.

(b) (i) The department shall establish a committee composed of members selected from the:

(A) tow truck industry;

(B) the motor carrier services division of the department of transportation; and

(C) the highway patrol.

(ii) The committee is responsible for hearing disputes that may arise regarding the classification of noncommercially manufactured or modified tow truck equipment.

(iii) The department shall establish by rule a procedure for hearing a disputo.

(c) After October 1, 1995, an operator of new noncommercially manufactured or modified tow truck equipment must have its equipment independently certified before participating in the law enforcement rotation system.

Section 6. Liability insurance — storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

(i) $300,000 for class A tow trucks;

(ii) $500,000 for class B tow trucks; and

(iii) $750,000 for class C tow trucks;

(b) insurance to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) garage keepers legal liability insurance.

(2) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

(a) adequato for the secure storage and safekeeping of stored vehicles;

(b) located in a place that is reasonably convenient for public access;

(c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays; and

(d) large enough to store all the vehicles towed for law enforcement agencies.

Section 7. Inspection — fees — decal. (1) The tow truck equipment of a commercial tow truck operator must have an annual safety inspection. A highway patrol officer, an employee of the department of transportation appointed as a peace officer in accordance with 61-12-201, or an inspector certified by the department shall conduct the inspection and require the commercial tow truck operator to provide proof of compliance with the provisions of [section 6].

(2) (a) Upon satisfactory completion of the inspection and verification of the insurance requirements, a decal showing the last inspection dato and the expiration date of the insurance coverage must be affixed in a prominent place on the tow truck.

(b) If the commercial tow truck operator is participating in the law enforcement rotation system, the decal must also show the classification of the operator's tow truck equipment.

(3) The department may establish an inspection fee that may not exceed the actual costs of the inspection. The fees must be deposited in the stato highway account in the stato special revenue fund.

Section 8. State law enforcement rotation system — local government rotation system. (1) The department shall establish an equitable rotation systom among qualified tow truck operators that apply to the department in writing to be placed on the system. The rotation system:

(a) must be administered by the highway patrol in a manner that will give priority to public safety;

(b) must be based on the classification of equipment as provided in [section 5]; and

(c) may include only qualified tow truck operators.

(2) The rotation system is not applicable when the owner or driver of a wrecked or disabled vehicle obstructing a public roadway requests a tow truck

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operator of the owner's or driver's choice and the operator meets the insurance requirements provided in [section 6] and the safety inspection requirements provided in [section 7].

(3) (a) (i) The law enforcement officer at the scene of the wreck shall call the qualified tow truck operator that is next on the rotation list if:

(A) a request for a tow truck is not made by the owner or driver;

(B) the requested tow truck cannot respond in a timely manner; or

(C) the law enforcement officer determines that the requested tow truck is unable to handle the wrecked or disabled vehicle.

(ii) If the qualified tew truck operator is not classified to handle the wrecked or disabled vehicle, the officer shall call the qualified tow truck operator next on the rotation list that is classified to handle the wrecked or disabled vehicle.

(b) If a qualified tew truck operator classified to handle the wrecked or disabled vehicle is not reasonably available, the law enforcement officer may request other equipment to remove the hazard.

(4) The department shall administor the state law enforcement rotation system. A qualified tew truck operator may examine the rotation system schedule established by the department in order to determine if the system is being administered in an equitable manner.

(5) A qualified tow truck operator gives implied consent to a reasonable inspection during normal business hours of its premises, vehicles, and equipment by the department of transportation, highway patrol, or a local government to ensure compliance with [sections 5 through 7].

(6) A local law enforcement agency may adopt and administer a local law enforcement rotation system. A tow truck operator desiring to be placed on the local law enforcement rotation system must be a qualified tow truck operator as provided in [sections 1 through 11].

Section 9. Good faith immunity. A person who renders assistance in an emergency that is life-threatening to the occupant of a wrecked, disabled, or abandoned vehicle or that is creating an immediate hazard on a public roadway or who renders emergency assistance as directed by a law enforcement officer or other emergency responder at the scene of a motor vehicle accident is immune from damages arising from acts or omissions related te the rendering of assistance unless the damages are occasioned by the gross negligence or by the willful or wanton acts or omissions of the person rendering the assistance.

Section 10. Violation — penalty. A commercial tow truck operator that violates a provision of [section 6 or 7] is guilty of a misdemeanor and is subject to the penalty provided in 61-8-711.

Section 11. Rulemaking authority. The department shall adopt reasonable and necessary rules to administer the provisions of [sections 1 through 10].

Section 12. Section 61-1-120, MCA, is amended to read:

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"61-1-120. **Emergency service vehicles.** "Emergency service vehicles" means emergency service vehicles of state, county, or municipal departments, or public service vehicles, *commercial tow trucks, or commercial road service trucks,* which by the nature of their operation cause a vehicular traffic hazard; ~~or authorized tow cars.~~"

Section 13. Section 61-8-356, MCA, is amended to read:

"61-8-356. **Prohibition against parking or leaving vehicles on public property — *presumption of ownership.*** ~~No~~ *(1) A* vehicle ~~shall~~ *may not* be parked or left standing upon the right-of-way of ~~any~~ *a* public highway for a period longer than 48 hours, ~~or~~ upon a city street, or ~~any~~ *upon* state, county, or city property for a period longer than 5 days.

(2) The abandonment of a motor vehicle on a public highway, a city street, public property, or private property creates a prima facie presumption that the last-registered owner of the motor vehicle is responsible for the abandonment and is liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less the amount realized if the motor vehicle is sold.

(3) The filing of a verified theft report with a law enforcement agency prior to the abandonment relieves the last-registered owner of liability under subsection (2)."

Section 14. Section 61-9-416, MCA, is amended to read:

"61-9-416. **Commercial tow truck *definition* — requirements.** (1) ~~A commercial tow truck used to tow a vehicle by means of a crane, hoist, towbar, towline, or dolly must be~~ *"Commercial tow truck" means a motor vehicle operating for compensation that is equipped with specialized equipment designed and intended for towing or the recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the public roadways. A commercial tow truck must be equipped with:*

(a) ~~equipped with~~ and carry not less than two red flares, two red lanterns, or two warning lights or reflectors. The reflectors must be of a type approved by the department.

(b) ~~equipped with~~ at least two highway warning signs of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department. When a motor vehicle is disabled on the highway, the tow truck operator called to render assistance during the hours of darkness shall immediately upon arrival place warning signs upon the highway as prescribed in this section and shall also place not less than one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(c) ~~equipped with~~ and carry a dry chemical fire extinguisher of at least 5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department;

(d) ~~equipped with~~ a lamp emitting a flashing or steady red *or amber* light, *or both a red and amber light,* mounted on top of the cab of the tow truck or on

the top of the crane or hoist if the light can he seen from the front of the tow truck. The light from the lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions and must be mounted in such a manner that it can be securely fastened with the lens of the lamp facing the rear of the tow truck upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow truck may unfasten the red light and place it in any position considered advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light must he turned to the rear of the tow truck upon which it is mounted and securely locked in this position. Additional red *or amber* lights of an approved type may be displayed at either side or both sides of the tow truck as the case may warrant during the period of preparation at the location from which the disahled vehicle is to be towed.

(e) ~~equipped with~~ one or more brooms, and the operator of the tow truck engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway hy the disabled vehicle that is to be towed;

(f) ~~equipped with~~ and carry a shovel, and whenever practical, the tow truck operator engaged to remove any disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by the disabled vehicle;

(g) ~~equipped with~~ and carry a portable electrical extension cord *or other device* for use in displaying ~~a light~~ *stop, turn, and tail lights* on the rear of the disabled vehicle. The length of the extension cord may not be less than the length of the combined vehicles, and whenever a disahled vehicle is towed during the hours of darkness and the rear lamp or lamps on the disabled vehicle cannot be lighted, the tow truck operator shall provide for the rear light *that is capable of emitting a stop and a directional signal* by means of the extension cord *or other device* referred to in this subsection.

(2) The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of any portion of the roadway outside a business or residence district, place a highway warning sign as required in subsection (1)(b):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 450 feet in advance of the disabled vehicle and an equal distance to the rear of the disabled vehicle; and

(b) in an area in which the posted speed limit is more than 45 miles an hour, 600 feet in advance of the disabled vehicle, except on a divided highway where the disabled vehicle does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the disabled vehicle.

(3) The owner or operator of a commercial tow truck who complies with the requirements of *[sections 6 and 7] and* this section may stop or park the tow truck upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code."

Section 15. Section 69-12-102, MCA, is amended to read:

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"**69-12-102. Scope of chapter — exemptions.** (1) This chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities, ~~(not including manufactured products of agricultural commodities)~~, if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses ~~which~~ *that* are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities ~~which~~ *that* are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintonance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

~~(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;~~

~~(g)~~*(f)* motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

~~(h)~~*(g)* ambulances;

~~(i)~~*(h)* the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill;

~~(j)~~*(i)* the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

~~(k)~~*(j)* the transportation of property by motor carrier as part of a continuous movement if that property, prior or subsequent to part of a continuous movement, has been or will be transported by an air carrier;

~~(l)~~*(k)* the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 44;

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~~(m)~~*(l)* armored motor vehicles used exclusively for the transportation of coins, currency, silver bullion, gold bullion, and other precious metals, precious stones, valuable paintings, and other items of unusual value requiring special handling and security;

~~(n)~~*(m)* the transportation of a commodity under an agreement between a motor carrier and an office or agency of the United States government; or

~~(o)~~*(n)* the transportation of ~~handicapped~~ *disabled* or elderly persons provided by private, nonprofit organizations. As used in this subsection:

(i) ~~"handicapped"~~ *"disabled"* means an individual who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) "elderly" means a person 60 years of age or older; and

(iii) "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) This chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. However, commercial tow truck firms shall file policies of insurance showing coverage required by [section 6].

~~(2)~~*(3)* This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 16. Section 61-12-402, MCA, is amended to read:

"61-12-402. Notice to owner. (1) Within 72 hours after any vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition, the Montana highway patrol sball furnish the sheriff:

(a) a complete description of the vehicle, including year, make, model, serial number, and license number if available;

(b) any costs incurred to that date in the removal, storage, and custody of the vehicle; and

(c) any available information concerning its ownership.

(2) The sheriff or the city police shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If a name and address are ascertained, the sheriff or the city police shall notify the owner and lienholder or person of the location of the vehicle.

(3) If the vehicle is registered in the office of the department, notice is considered to have been given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid, is mailed at least 30 days before the vehicle is sold.

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(4) If the identity of the last-registered owner cannot be determined, if the registration does not contain an address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned is sufficient to meet all requirements of notice pursuant to this part. The notice by publication can contain multiple listings of abandoned vehicles. The notice must be provided in the same manner as prescribed in 25-13-701(1)(b).

(5) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (2) through (4). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(6) A vehicle found by law enforcement officials to be a "junk vehicle", as defined by 75-10-501, and certified as having an appraised value of ~~$100~~ *$500* or less, as determined by the department of revenue, may be directly submitted for disposal in accordance with the provisions of part 5 of chapter 10, Title 75, upon a release given by the sheriff or the city police. In the release, the sheriff or the city police shall include a description of the vehicle, including year, make, model, serial number, and license number if available. A release provided by the sheriff or the city police under this section must be transmitted to the motor vehicle wrecking facility and must be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted without notice and without a required holding period."

Section 17. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1 through 11].

Section 18. Coordination instruction. If ____ Bill No. ____ [LC 981] is passed and approved and if it includes a section that repeals 69-12-102, then [section 15 of this act], amending 69-12-102, is void.

Section 19. Effective date. [This act] is effective on passage and approval.

Approved March 29, 1995

CHAPTER NO. 284

[HB 202]

AN ACT ALLOWING AN INDIVIDUAL INCOME TAX DEDUCTION FOR ONE-HALF OF PREMIUM PAYMENTS FOR MEDICAL CARE INSURANCE; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(c) one-half of premium payments for medical care as provided in subsection (9);

(2) federal income tax paid within the ~~taxable~~ *tax* year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and (9) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f), as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(iii) a spouse who is unable to provide self-care because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if ~~such~~ *the* expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services ~~which~~ *that* are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(d) the amounts deductible in ~~subsection~~ *subsections* (3)(a) through (3)(c), are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent *that* the expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent *that* the expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the ~~taxable~~ *tax* year during which the expenses are incurred, the amount of the employment-related expenses incurred, ~~must~~ *to* be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the ~~taxable~~ *tax* year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the ~~taxable~~ *tax* year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the ~~taxable~~ *tax* year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 ~~which~~ *that* was not otherwise deducted in computing taxable income;

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(7) *one-half of* premium payments, *except premiums deducted in determining Montana adjusted gross income,* for*:*

(a) insurance for medieal care made directly by the taxpayer; and

(b) long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner; and

(8) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159.

(9) For the purpose of subsection (7)(a), deductible medical insurance premiums are those premiums that provide payment for medical care as defined by 26 U.S.C. 213(d).

~~(9)~~*(10)* (a) Subject to the conditions of subsection (3), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount *that* the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (3)(d)(ii).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection ~~(9)~~ *(10)*. (Subsection (8) terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)"

Section 2. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Section 3. Contingent voidness. In order to maintain a balanced budget, because [this act] reduces revenue, it may not be transmitted te the governor unless a corresponding identified reduction in spending is contained in House Bill No. 2. If a corresponding identified reduction in spending is not contained in House Bill No. 2, [this act] is void.

Approved March 30, 1995

CHAPTER NO. 285

[HB 233]

AN ACT PROVIDING FOR THE DISSOLUTION OF A K-12 SCHOOL DISTRICT; AMENDING SECTION 20-6-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Dissolution of K-12 school district. (1) In order to dissolve a K-12 district under the provisions of this section, the electors of the K-12 district shall approve a proposition dissolving the K-12 district for the purpose of annexing or consolidating the K-12 district's elementary or high school program

with an adjacent school district or districts in an ensuing school fiscal year under the provisions of 20-6-203 through 20-6-208 or 20-6-315 through 20-6-319.

(2) If the entire territery of the dissolving K-12 district will be annexed or consolidated with an adjacent district or districts, the resolution or petition required in subsection (1) must contain a description of the manner in which the real and personal property and funds of the district are to be apportioned in the dissolution of the district and the subsequent annexation or consolidation with one or more other districts. If a portion of the dissolving K-12 district will not be annexed or consolidated with another district or districts and the resolution or petition does not contain a description of the apportionment of funds and property, the provisions of subsection (4)(c) must be used to determine the disposition of property and funds.

(3) After the county superintendent receives the certificato of election provided for in 20-20-416 from the trustees of the K-12 district and from each district included in a consolidation proposition, the county superintendent shall determine whether the dissolution and annexation or consolidation proposition or propositions have been approved. If the K-12 district has approved the dissolution proposition and each district involved in a consolidation has approved the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the election certificate, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent sball send a copy of the dissolution order to the board of county commissioners, the trustees of the district included in the dissolution order, and the superintendent of public instruction.

(4) Wbenever a K-12 district is dissolved for the purpose of annexing or consolidating the high school or elementary program with one or more other districts, the following provisions apply:

(a) The trustees of the K-12 district are the trustees of the district whose territory is not consolidated or annexed to one or more adjacent districts upon dissolution of the K-12 district.

(b) The trustees of the district whose territory is not annexed or consolidated upon dissolution of the K-12 district are responsible for the execution of remaining financial obligations of the K-12 district, including tuition.

(c) Unless otherwise provided for in the proposition for dissolution of the K-12 district, all the tangible property, real and personal, of the K-12 district and all cash and receivables remaining to the credit of the K-12 district after providing for payment of outstanding debts, except bonded indebtedness, become the property of the district whose territory is not annexed or consolidated with one or more adjacent districts.

(d) The provisions of 20-6-410 apply for tenure teachers in the dissolution of a K-12 district.

(e) For purposes of applying the budget limitation provisions of 20-9-308, the budget of a K-12 district during its last year of operations as a K-12 district will he prorated based on rules promulgated by the superintendent of public instruction.

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Section 2. Section 20-6-104, MCA, is amended to read:

"20-6-104. Moratorium on creation of new district — *exception.* (1) ~~Following July 1, 1993, a~~ *A* school district may not initiate the creation of a new elementary district under the provisions of 20-6-216 and 20-6-217 or initiate the creation of a new high school district under the provisions of 20-6-303 and 20-6-325.

(2) This section does not apply to ~~a petition to create a new elementary or high school district that was filed prior to July 1, 1993~~ *a district that results from the procedure for the dissolution of a K-12 school district pursuant to [section 1].*"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, part 7, and the provisions of Title 20 apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 30, 1995

CHAPTER NO. 286

[HB 246]

AN ACT REVISING CERTAIN PROVISIONS RELATING TO COMPETITIVE BIDDING FOR CONTRACTS FOR WORK ON ROADS AND HIGHWAYS; AND AMENDING SECTION 60-2-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding. (1) ~~When~~ *Except as provided in subsections (2) through (4), when* the estimated cost of any work exceeds ~~$10,000~~ *$50,000*, the commission shall let the contract by competitive bidding. Award ~~shall~~ *must* be made upon ~~such~~ *the* notice and ~~upon such~~ terms ~~as~~ *that* the commission ~~may prescribe~~ *prescribes* by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 and 18-1-112.

(2) The commission may let a contract by means other than competitive bidding if it determines that special circumstances so require. The commission ~~must~~ *shall* specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total ~~cost~~ *costs* of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less."

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Approved March 30, 1995

CHAPTER NO. 287

[HB 249]

AN ACT GENERALLY REVISING THE LAWS RELATING TO LOCAL GOVERNMENT REGULATION OF TRAFFIC; ALLOWING A CITY TO REGULATE SKATEBOARDING AND ROLLERBLADING ON CITY STREETS; ALLOWING A LOCAL AUTHORITY TO ADOPT VARIABLE SPEED LIMITS TO ADAPT TO TRAFFIC CONDITIONS; AND AMENDING SECTIONS 7-14-4102, 61-8-303, AND 61-8-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-4102, MCA, is amended to read:

"7-14-4102. Regulation of trafficways and public grounds. The city or town council ~~has power to~~ *may*:

(1) regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by sigus, poles, wires, posting handbills or advertisements, or any obstruction;

(2) regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds;

(3) regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town;

(4) provide for and regulate street crossings, curbs, and gutters;

(5) prevent horseracing or immoderate driving or riding in the streets of the city or town and regulate and provide for the hitching of all animals on the streets;

(6) regulate or prohibit coasting, skating, sliding, *skateboarding, rollerblading,* or tobogganing on the streets or alleys or ~~the indulgence in~~ other amusements dangerous or annoying to the inhabitants or having a tendency to frighten animals."

Section 2. Section 61-8-303, MCA, is amended to read:

"61-8-303. Speed restrictions — basic rule. (1) A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner~~,~~ and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead~~, and he~~. *The person* shall drive ~~it~~ *a vehicle* so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

(2) ~~Where~~ *When* no special hazard exists that requires lower speed for compliance with subsection (1) of this section, the speed of a vehicle not in excess

of the limits specified in this section or established as authorized in 61-8-309~~, 61-8-310,~~ *through* 61-8-311~~,~~ and 61-8-313 is lawful, but a speed in excess of those limits is unlawful:

(a) 25 miles per hour in an urban district;

(b) 35 miles per hour on a highway under construction or repair or on a highway being surveyed;

(c) 55 miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is 65 miles per hour.

(3) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(4) The speed limits set forth in this section may be altered by the highway commission *or a local authority* as authorized in 61-8-309, 61-8-310, and 61-8-313.

(5) The driver of a vehicle shall, consistent with subsection (1), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition."

Section 3. Section 61-8-310, MCA, is amended to read:

"61-8-310. When local authorities may and shall alter limits. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 55 miles per hour during the nighttime;

(c) decreases the limit outside an urban district, but not te less than 15 miles per hour; or

(d) decreases the limit in an area near a school, a senior citizen center, as defined in 23-5-112, or a designated crosswalk, as crosswalk is defined in 61-1-209, that is close to a school ~~or~~ *or* a senior citizen center to not less than ~~80%, rounded down to the nearest whole number evenly divisible by 5 but not less than 25~~ *80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15* miles an hour~~, of the speed limit that would be set on the basis of an engineering and traffic investigation~~. *If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.*

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road, as defined in 60-1-103.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309."

Approved March 30, 1995

CHAPTER NO. 288

[HB 289]

AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY ELIMINATING THE 12 PERCENT A YEAR UTILITY RATE INCREASE LIMIT FOR MUNICIPAL UTILITIES; ELIMINATING THE REQUIREMENT FOR AN ANNUAL REPORT; AMENDING SECTION 69-7-101, MCA; AND REPEALING SECTIONS 69-7-102 AND 69-7-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-7-101, MCA, is amended to read:

"69-7-101. Municipal utilities — regulation by municipality — limitation. A municipality has the power and authority to regnlate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhahitants and other persons served by municipal utility systems. Rates, charges, and classifications ~~shall~~ *must* be reasonable and just ~~and, except as provided in 69-7-102, they may not be raised to yield more than a 12% increase in total annual revenues or, in the case of mandated federal and state capital improvements, the increase may not exceed amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements. Annual revenues must be computed on any consecutive 12-month period for purposes of this chapter.~~"

Section 2. Repealer. Sections 69-7-102 and 69-7-121, MCA, are repealed.

Approved March 30, 1995

CHAPTER NO. 289

[HB 323]

AN ACT PROVIDING THAT A PERSON WITH A CONCEALED WEAPON PERMIT NEED NOT COMPLY WITH THE 5-DAY WAITING PERIOD REQUIRED BY FEDERAL LAW FOR THE PURCHASE OF A HANDGUN.

Be it enacted by the Legislature of the State of Montana:

Section 1. Concealed weapon permittee — waiver of five-day handgun purchase waiting period. Upon showing any handgun seller in this state a person's concealed weapon permit and a driver's license or other identification card with the person's picture on the card, the person is entitled to buy, and the seller shall sell the person, a handgun without complying with the 5-day waiting period.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45 apply to [section 1].

Section 3. Coordination instruction. If House Bill No. 232 is passed and approved with a provision exempting a concealed weapon permittee from the federal handgun purchase background check and 5-day waiting period, then [this act] is void.

Approved March 30, 1995

CHAPTER NO. 290

[HB 414]

AN ACT REVISING THE NAME AND DUTIES OF THE WORKERS' COMPENSATION CLASSIFICATION AND RATING COMMITTEE; REVISING THE FUNDING REQUIREMENTS FOR THE COMMITTEE; REQUIRING THE COMMITTEE TO ESTABLISH AND REVISE WORKERS' COMPENSATION CLASSIFICATIONS PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; ELIMINATING THE REQUIREMENT FOR THE COMMITTEE TO ESTABLISH WORKERS' COMPENSATION ADVISORY PREMIUM RATES; ALLOWING ANY POLICYHOLDER OR INSURER TO FILE AN OBJECTION TO A CLASSIFICATION ASSIGNED TO A POLICYHOLDER PURSUANT TO RULES GOVERNING THE ISSUANCE OR APPLICATION OF CLASSIFICATIONS; REVISING THE PROCEDURE FOR A HEARING TO REVIEW CLASSIFICATIONS OR RULES RELATING TO CLASSIFICATIONS; ALLOWING AN ADDITIONAL HEARING BEFORE SEEKING LEGAL REDRESS THROUGH A COURT; CHANGING THE VENUE AND JURISDICTION FOR JUDICIAL REVIEW TO THE WORKERS' COMPENSATION COURT FROM THE DISTRICT COURT FOR APPEALS FROM DECISIONS OF THE CLASSIFICATION REVIEW COMMITTEE; AND AMENDING SECTIONS 2-4-702, 33-16-1011, AND 33-16-1012, MCA.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 2-4-702, MCA, is amended to read:

"**2-4-702. Initiating judicial review of contested cases.** (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute ~~shall~~ *may* not be precluded from questioning the validity of that statute on judicial review, but ~~such~~ *the* party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) ~~Proceedings~~ *Except as provided in subsection (2) (c), proceedings* for review ~~shall~~ *must* be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision ~~thereon~~ *is rendered*. Except as otherwise provided by statute, the petition ~~shall~~ *must* be filed in the district court for the county where the petitioner resides or has ~~his~~ *the petitioner's* principal place of business or where the agency maintains its principal office. Copies of the petition ~~shall~~ *must* be promptly served upon the agency and all parties of record.

(b) The petition ~~shall~~ *must* include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends he is entitled to relief. The petition ~~shall~~ *must* demand the relief to which the petitioner believes ~~he~~ *the petitioner* is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(3) Unless otherwise provided by statute, the filing of the petition ~~shall~~ *may* not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms ~~which~~ *that* it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315, 27-19-316, and 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record."

Section 2. Section 33-16-1011, MCA, is amended to read:

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"33-16-1011. Classification ~~and rating~~ *review* committee — membership — term. (1) There is a classification ~~and rating~~ *review* committee.

(2) The committee is composed of five voting members, consisting of:

(a) two representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance producer who resides in Montana, appointed by the commissioner of insurance;

(c) one representative of the state compensation insurance fund who is an employee of the state fund and who is appointed by the ~~executive director~~ *executive director* of the state fund; and

(d) one representative of an employer who is insured by either a private insurance carrier or the state compensation insurance fund, appointed by the commissioner of insurance.

(3) Each member shall hold office for a period of 3 years. An appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a), (2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance producers, and employers may submit names of individuals they recommend for appointments. The commissioner of insurance shall ~~give consideration to~~ *consider* the names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee must be staffed by the rating organization and be funded ~~from the operations budget of~~ *by* the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses.

(6) Documents and other information concerning the committee's actions must be made available for public review in the office of the commissioner of insurance."

Section 3. Section 33-16-1012, MCA, is amended to read:

"33-16-1012. Functions and powers of classification ~~and rating~~ *review* committee — hearings — rulemaking. (1) The classification ~~and~~ ~~rating~~ *review* committee shall:

(a) meet not less than semiannually to conduct its business;

(b) make the final determination regarding the establishment *or revision* of all classifications *in accordance with the procedures set forth in Title 2, chapter 4, part 3*;

~~(c) establish the advisory premium rates as provided for in 33-16-1005;~~

~~(d)~~ publish material and pamphlets as it considers appropriate;

~~(e)~~*(d)* act as a review committee concerning objections filed by ~~employers~~ *a policyholder or insurer* in relation to classifications assigned to ~~the employer by an insurer~~ *a policyholder according to rules governing the issuance or application of classifications*; and

~~(f)~~*(e)* make rules as may be necessary for the conduct of any business that is subject to notice and hearings. The rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be published in the Administrative Rules of Montana as part of the rules promulgated hy the commissioner of insurance.

(2) (a) A *The initial* hearing conducted by the committee pursuant to subsection ~~(1)(e)~~ *(1)(d)* must be ~~an~~ informal ~~proceeding as provided in 2-4-604~~ *and nonbinding upon the parties and must be conducted pursuant to rules of procedure that the committee considers to be appropriate. The committee shall issue its written advisory decision within 30 days of the conclusion of the hearing and send a written copy of the decision by first-class mail, postage prepaid, to each party. Each party to the informal hearing shall notify the committee and each other party of the notifying party's intent to be bound or not bound by the committee's advisory decision, and the notice must be made within 30 days of the date the committee mails the written copy of the decision to the parties.*

(b) A party *who is* aggrieved by a *the advisory* decision of the committee, *or by the refusal of a party to be bound by the committee's advisory decision* rendered after a hearing conducted pursuant to subsection (2)(a) may, ~~petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7~~ *within 30 days after the expiration of the 30-day notice deadline specified in subsection (2)(a), initiate an informal contested case proceeding pursuant to 2-4-604 before the committee, and the committee shall hear the matter in a de novo administrative proceeding as provided in Title 2, chapter 4, part 6. The committee may, in its discretion or at the request of any party, appoint a hearings examiner. If a hearings examiner is appointed, the examiner shall take evidence and prepare proposed findings of fact and conclusions of law that the committee may accept, reject, or modify, in whole or in part, based on the evidence produced during the informal contested case proceeding.*

(c) A party who is aggrieved by a decision of the committee rendered after a hearing conducted pursuant to subsection (2)(b) may petition the workers' compensation court for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

(3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."

Approved March 30, 1995

CHAPTER NO. 291

[HB 415]

AN ACT REVISING CERTAIN LAWS RELATING TO THE MONTANA SCHOOL FOR THE DEAF AND BLIND; REVISING ADMISSION ELIGIBILITY; AUTHORIZING NEGOTIATIONS WITH OUT-OF-STATE

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EDUCATIONAL INSTITUTIONS FOR ADMISSION OF OUT-OF-STATE STUDENTS; CLARIFYING PROVISIONS RELATING TO THE SUSPENSION AND EXPULSION OF STUDENTS; STATUTORILY APPROPRIATING FEES PAID BY OUT-OF-STATE STUDENTS; AMENDING SECTIONS 17-7-502, 20-8-104, 20-8-106, 20-8-107, AND 20-8-116, MCA; REPEALING SECTION 20-8-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-8-104, MCA, is amended to read:

"**20-8-104. Eligibility of children for admittance.** ~~On~~ *Upon* proper application ~~being made therefor~~ *for admittance*, as prescribed by the rules of the board of public education, ~~deaf and blind~~ *and either pursuant to an individualized educational plan developed jointly by a child's local educational agency and the Montana school for the deaf and blind or by direct application by the child's parents, hearing impaired or visually impaired* children who are not more than ~~18~~ *21* years of age residing within the state of Montana and nonresident children who are not more than ~~18~~ *21* years of age~~, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality or incapacitated for useful instruction by reason of physical disability~~ may be admitted to ~~such school~~ *the Montana school for the deaf and blind if the child's local educational agency and the Montana school for the deaf and blind determine that the admittance constitutes the most appropriate educational placement for the child.*"

Section 2. Section 20-8-106, MCA, is amended to read:

"**20-8-106. Duration of attendance at school — *suspension or expulsion* — transfer.** (1) ~~Every~~ *Each* child admitted to ~~such~~ *the* school ~~shall be~~ *is* entitled to attend ~~such~~ *the* school until reaching the age of 21 years ~~unless the board of public education and superintendent determine that attendance at the school will not benefit the child, provided that nothing~~ *if attendance at the Montana school for the deaf and blind is the most appropriate educational placement for the child.*

(2) Nothing in this section ~~shall~~ *may* be construed ~~so as~~ to prevent the suspension or expulsion of ~~any~~ *a* child at any time for insubordination or other cause ~~deemed~~ *considered* good and sufficient by the board of public education and superintendent *of the Montana school for the deaf and blind if the suspension or expulsion complies with other applicable state and federal law.*

~~(2)~~*(3)* Transfer of a student from the school to another educational placement must ~~be in accordance~~ *comply* with rules ~~of~~ *adopted by* the board of public education."

Section 3. Section 20-8-107, MCA, is amended to read:

"**20-8-107. Admission of nonresident children and advance payment of cost — Indian children.** (1) ~~Deaf and blind~~ *Hearing impaired or visually impaired* children who are not residents of the state of Montana~~, upon~~ *may be admitted to the Montana school for the deaf and blind after proper* application ~~being made therefor~~ *for admission*, ~~may be admitted to the school,~~ subject to all

eligibility requirements prescribed for children who are residents of the state~~, provided that for~~ *if:*

(a) ~~each such nonresident child there shall be paid to~~ the school *is paid* in advance a sum of money ~~the amount of which shall be determined by a careful~~ *for each child equal to an* estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application~~,~~*;* and

(b) ~~provided further that no nonresident child shall be admitted to the school except when~~ the full capacity ~~thereof~~ *of the school* is not required for children who are residents of the state.

(2) The Montana school for the deaf and blind is authorized to negotiate with an out-of-state educational institution to place a student at the school. If a group of out-of-state students attends the Montana school for the deaf and blind, the educational institution of the other state shall pay in advance to the Montana school for the deaf and blind an amount of money for each student determined as a result of a negotiated agreement between the superintendent of the Montana school for the deaf and blind and the out-of-state educational institution. The agreement must be approved by the board of public education.

~~(2)~~*(3)* Indian children who are Montana residents ~~and wards of the United States shall be~~ *are* eligible ~~to~~ *for admission* and ~~shall~~ *must* be admitted to ~~such~~ *the* school on the same terms as residents.

(4) The money paid by an out-of-state institution must be deposited in a state special revenue account and is statutorily appropriated, pursuant to 17-7-502, to the Montana school for the deaf and blind for educational purposes."

Section 4. Section 20-8-116, MCA, is amended to read:

"20-8-116. Employment placement — continuing education. (1) The superintendent *of the Montana school for the deaf and blind or the superintendent's designee* shall ~~gather and record data and statistics to help him locate~~ *assist in locating* suitable employment for ~~blind, deaf, and hard-of-hearing~~ *hearing impaired or visually impaired* persons ~~not~~ in attendance at ~~said~~ *the* school ~~or for those who have been trained by the department of social and rehabilitation services when it so requests such assistance. He~~ *The superintendent or the superintendent's designee* shall:

(a) consult with various county, state, and federal agencies and with the department of social and rehabilitation services to secure employment for self-sustaining persons~~.~~*; and*

(b) ~~He shall~~ coordinate ~~his~~ work with ~~such~~ federal ~~agencies~~ *programs, such* as social security and reemployment for those out of work, as required by this part.

(2) The superintendent *or the superintendent's designee,* may, within funding limitations, develop and offer continuing education programs of a vocational nature for the *hearing impaired and* visually impaired ~~and hearing impaired that~~ *who* use the campus and facilities of the school during the summer months and other times when the school's facilities are not being used by its students."

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Section 5. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; *20-8-107;* 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 6. Repealer. Section 20-8-105, MCA, is repealed.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved March 30, 1995

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CHAPTER NO. 292

[HB 417]

AN ACT ALLOWING THE GOVERNING BODY OF THE CITY TO DETERMINE HOW MANY CITY JUDGES THE CITY COURT WILL HAVE; AND AMENDING SECTIONS 1-11-101, 3-11-101, AND 3-11-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-101, MCA, is amended to read:

"1-11-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Code" or "codes" means the Revised Codes of Montana, 1947, the pocket supplements thereto, and the replacement volumes.

(2) "Recodify" means to compile, arrange, rearrange, and prepare for publication. It includes, without changing the meaning, effect, or intent of any law:

(a) correcting or changing punctuation, capitalization, spelling, grammatical construction, and numbering as required by uniform literary and bill drafting practice;

(b) substituting the appropriate new code division reference for reference to a section of, to a part of, or to an entire "act";

(c) substituting calendar date for "effective date", "hereafter", and similar terms;

(d) creating new titles, chapters, parts, sections, or other divisions of the code;

(e) changing or inserting language made necessary because of rearrangement;

(f) eliminating redundant words;

(g) when given direction or authority by another statute, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes;

(ii) other code sections, such as those ~~which~~ *that* have been repealed or repealed and replaced;

(h) changing inaccurate terminology to comply with statutory definitions or short form amendments, such as those found in 1-1-202(7) ~~or 3-11-101(2)~~;

(i) changing or creating section captions (catchlines) to clearly reflect the content of the section, unless the section captions are specifically and expressly adopted as part of the law by the legislature."

Section 2. Section 3-11-101, MCA, is amended to read:

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"**3-11-101. City court established.** ~~(1)~~ A city court is established in each city or town. ~~The~~ *A* city judge shall establish regular sessions of the court. On judicial days, the court ~~shall~~ *must* be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal business only.

~~(2) Police court is hereby renamed city court, and all references to police court or police judges in the Montana Code Annotated shall be considered amended to read city court or city judge.~~"

Section 3. Section 3-11-201, MCA, is amended to read:

"**3-11-201. ~~Term~~ *Number of judges — term* of office.** *(1) The governing body of a city may determine by ordinance the number of judges required to operate the city court.*

~~(1)~~*(2)* An elected or appointed city judge shall hold office for a term of 4 years and until the qualification of ~~his~~ *a* successor.

~~(2)~~*(3)* A justice of the peace designated to act as city judge for a city or town under 3-11-205 shall serve as city judge for the duration of ~~his~~ *the justice of the peace's* term as justice of the peace or until the agreement provided for in 3-11-205 terminates."

Approved March 30, 1995

CHAPTER NO. 293

[HB 425]

AN ACT REQUIRING THE PAYMENT OF ALL TAXES ASSESSED AND LEVIED ON LAND BEFORE A FINAL SUBDIVISION PLAT IS APPROVED; AND AMENDING SECTION 76-3-611, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-611, MCA, is amended to read:

"**76-3-611. Review of final plat.** (1) The governing body shall examine ~~every~~ *each* final subdivision plat and shall approve ~~it when and~~ *the plat* only ~~when~~ *if*:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant ~~thereto~~ *to this chapter*; and

(b) the county treasurer has certified that ~~no~~ *all* real property taxes *and special assessments* assessed and levied on the land to be subdivided ~~are delinquent~~ *have been paid*.

(2) (a) The governing body may require that final subdivision plats and certificates of survey he reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions ~~set forth by or~~ pursuant to this chapter, the examining

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land surveyor shall ~~so~~ certify *the compliance* in a printed or stamped certificate on the plat or certificate of survey. ~~Such~~ *The* certificate ~~shall~~ *must* be signed by ~~him~~ *the surveyor*.

(b) ~~No~~ *A* land surveyor ~~shall~~ *may not* act as an examining land surveyor in regard to a plat or certificate of survey in which ~~he~~ *the surveyor* has a financial or personal interest."

Approved March 30, 1995

CHAPTER NO. 294

[HB 434]

AN ACT CREATING A TREASURE STATE LIVING CULTURAL TREASURES PROGRAM; AND PROVIDING FOR NOMINATION AND SELECTION OF HONOREES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Treasure state living cultural treasures program. There is a treasure stato living cultural treasures program to honor Montanans who are dedicated to preserving and passing on the traditional skills and knowledge found in Montana and whose work exemplifies Montana's culture in all of its varieties. The names of the honorees will be made available to educators, community groups, and other interested persons as a resource for information and education. A speakers' bureau registry of honorees will be created and maintained by the governor's office.

Section 2. Purpose. (1) The purpose of the treasure state living cultural treasures program is to preserve the historical traditions and culture of Montana by honoring those who actively practice and preserve the skills and knowledge of Montana's culture. The program is intended to honor those who have devoted their energies to carrying forward the skills of the past and preserving the traditions and, in doing so, exemplify the vitality, variety, and excellence of Montana's culture. Montana and the surrounding region have a unique western culture that has developed from living in a sometimes harsh and always variable climate and from creating beauty and recreation from the tasks of ordinary life.

(2) Montana culture includes the forms in which the common culture of Montana manifests itself, such as in traditional music, arts and crafts, survival skills, cooking, occupational skills, storytelling, ritual and custem, and a myriad of Montana cultural and traditional artistic expressions. The most important elements of Montana's history and culture have been passed on through the generations hy Montanans who pursue traditional occupations and create beauty in their everyday life.

(3) Montana's culture is a blend of native, ethnic, racial, occupational, and regional traditions that sometimes coexist and sometimes blend, including traditionally masculine and feminine domains that together create a many-faceted culture within the state.

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Section 3. Honorees — nominations — selection — certificate of proclamation — speakers' bureau. (1) County commissioners may annually solicit nominations of persons who exemplify aspects of Montana's common culture from local groups in their county, including but not limited to senior citizens' groups, community centers, county historical societies, local art agencies, labor and trade organizations, schools, and other local groups.

(2) When a solicitation of nominations is completed, the county commissioners shall compile a list of nominees from their county and present the list to the governor. The governor shall select the honorees.

(3) Each honoree shall receive:

(a) a certificate signed by the governor proclaiming the honoree to he a "Treasure State Living Cultural Treasure"; and

(b) an invitation to be included in the speakers' bureau.

(4) The speakers' bureau is a registry, maintained by the governor's office, of the treasure stato living cultural treasures honorees and the skills and areas for which each honoree is recognized and can be called upon as a resource for the school-age population and all other residents of the state. The registry may include a fee schedule that delineates the speaker's fee, reimbursement for travel costs and per diem, and any other necessary expenses, if any, to be paid to the speaker by the organizations and schools that arrange for the speaker's services.

(5) The governor's office shall send on an annual basis a copy of the registry to the superintendent of public instruction, who shall send a copy to each school district of the state.

(6) The superintendent of public instruction shall inform and encourage the school districts to use the registry to choose speakers in various areas of Montana's common culture as resources in furthering the knowledge of the school-age population in the state on the unique western culture of Montana.

(7) The registry is to be made available for a reasonable charge to any person in the stato upon request.

(8) The Indian tribal governments are invited to participate in the treasure state living cultural treasures program and to suhmit nominees to the governor as provided in subsection (2). For the purposes of this subsection, "Indian tribal government" means an Indian tribe, nation, or other organized group or community located within the existing boundaries of Montana.

Section 4. Notification of tribal governments. The secretary of state shall send a copy of [this act] to the tribal chairperson of each tribe or tribes located on the seven Montana reservations and to the tribal chairperson of the Little Shell tribe.

Section 5. Codification instruction. [Sections 1 through 3] are intended to he codified as an intogral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [sections 1 through 3].

Approved March 30, 1995

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CHAPTER NO. 295

[HB 560]

AN ACT PROVIDING FOR MEDICAL CARE SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR ESTABLISHMENT AND ADMINISTRATION OF ACCOUNTS; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF FUNDS CONTAINED WITHIN AN ACCOUNT AND FUNDS WITHDRAWN FOR ELIGIBLE MEDICAL EXPENSES OR FOR THE LONG-TERM CARE OF AN EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR THE ACCOUNT HOLDER; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE MEDICAL EXPENSES AND LONG-TERM CARE; PROVIDING PENALTIES; AMENDING SECTION 15-30-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be cited as the "Montana Medical Care Savings Account Act of 1995".

Section 2. Definitions. As used in [sections 1 through 7], unless it clearly appears otherwise, the following definitions apply:

(1) "Account administrator" means:

(a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

(b) a health care insurer as defined in 33-22-125;

(c) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50; or

(d) an employer if the employer has a self-insured health plan under ERISA.

(2) "Account holder" means an individual who is a resident of this state and who estahlishes a medical care savings account or for whose benefit the account is established.

(3) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary suhsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

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(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

(5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(6) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406.

(7) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to [section 3].

Section 3. Establishment of account. (1) An employer, except as otherwise provided by statute, contract, or a collective bargaining agreement, may establish a medical care savings account for an employee of the employer or for a dependent of the employee.

(2) An individual who is a resident of this state may establish a medical care savings account for that individual or for a dependent of the individual.

(3) Before making any contributions to an employee's account, an employer shall inform an employee in writing of the state and federal tax status of contributions made pursuant to [sections 1 through 7].

(4) Upon agreement between an employer and an employee, an employee may have the employer contribute to the employee's medical care savings account, to a health insurance policy or program for the employee, or to both the account and the policy or program.

Section 4. Tax exemption — conditions. (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest or other income is contained within the account or withdrawn only for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or the long-term care of the employee or account holder or a dependent of the employee or account holder.

(2) An employee or account holder may exclude as an annual contribution in 1 year no more than $3,000. There is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-121 is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

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(4) An employee or account holder may in 1 year deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed $3,000. An employee or account holder who deposits more than $3,000 into an account in a year may exclude from the employee's or account holder's adjusted gross income in accordance with 15-30-111(2)(j) in a subsequent year any part of $3,000 per year not previously excluded.

(5) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(6) The employee or account holder who establishes the account is the owner of the account. An employee or account holder may withdraw money in an account and deposit the money in another account with a different or with the same account administrator without incurring tax liability.

(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 to 1330, by an employee or account holder does not subject the employee or account holder to tax liability.

(8) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder.

Section 5. Withdrawal of funds from account for purposes other than medical expenses and long-term care. (1) An employee or account holder may withdraw money from the individual's medical care savings account for any purpose other than an eligible medical expense or the long-term care of the employee or account holder or a dependent of the employee or account holder only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the employee or account holder.

(2) If the employee or account holder withdraws money from the account other than for eligible medical expenses or long-term care or other than on the last business day of the account administrator's business year, the administrator shall withhold from the amount of the withdrawal and, on behalf of the employee or account holder, pay as a penalty to the department of revenue an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the employee or account holder.

Section 6. Administration of account. (1) An account administrator shall administer the medical care savings account from which the payment of claims is made and has a fiduciary duty to the person for whose benefit the account is administered.

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(2) Not more than 30 days after an account administrator begins to administor an account, tbe account administrator shall notify in writing each employee and account holder on whose behalf the account administrator administors an account of the dato of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-torm care annuity for tbe long-term care of the employee or account holder or a dependent of the employee or account holder, or paying the expenses of administering the account. Funds held in a medical care savings account may not be used to pay medical expenses or for a long-term care insurance policy or annuity of the employee or account holder or a dependent of the employee or account holder that is otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder or a dependent of the employee or account holder in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses.

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or account holder to the account administrator, and the account administrater shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

Section 7. False claims prohibited — penalty. (1) A person may not knowingly prepare or cause to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account.

(2) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount not exceeding $300 is guilty of theft and upon conviction shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

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(3) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount of $300 or more is guilty of theft and upon conviction shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the amount withdrawn from an account in violation of this section.

Section 8. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income ~~shall be~~ *is* the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition ~~shall include~~ *includes* the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of ~~such~~ *the* tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension

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or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; ~~and~~

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"; *and*

(j) principal and income in a medical care savings account established in accordance with [section 3] or withdrawn from an account for eligible medical expenses, as defined in [section 2], of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in ~~his~~ adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who bas retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the

employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 9. Account not to be treated as asset for purposes of eligibility. If allowed by federal law, the principal and all interest or other income contained within an account established in accordance with [sections 1 through 7] may not be treated as an asset of the employee or account holder or as an asset of a dependent of the employee or account holder for the purposes of eligibility for the Montana medicaid program.

Section 10. Codification instruction. (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 7].

(2) [Section 9] is intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply te [section 9].

Section 11. Effective date. [This act] is effective January 1, 1996.

Section 12. Contingent voidness. In order to maintain a balanced budget, because [this act] reduces revenue, it may not be transmitted to the governor unless a corresponding identified reduction in spending is contained in House Bill No. 2. If a corresponding identified reduction in spending is not contained in House Bill No. 2, [this act] is void.

Approved March 30, 1995

CHAPTER NO. 296

[SB 8]

AN ACT PROVIDING THAT CERTAIN COUNTY IMPROVEMENT DISTRICTS MAY DECLARE BANKRUPTCY UNDER FEDERAL MUNICIPAL BANKRUPTCY LAW; PROVIDING THAT COUNTIES MAY NOT DECLARE BANKRUPTCY; AND AMENDING SECTIONS 7-7-4111, 7-7-4112, AND 7-7-4113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Bankruptcy — definitions. As used in 7-7-4111 through 7-7-4113 and [this section], the following definitions apply:

(1) "Legislative body" means:

(a) the governing body of a city or tewn;

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(b) the governing body of a local entity that is a district if, by law, the district must have a governing body; or

(c) the governing body of the city, town, or county that created a local entity that is a district if law does not require the district to have a separate governing body. Unless otherwise agreed to by the governing bodies of the county and of the city or town, a joint board composed of an equal number of members from each governing body shall act as the district governing body of a district that was jointly created by the county and the city or town.

(2) "Local entity" means a district created under Title 7, chapter 12, a city, or a town, but the term does not include a county.

Section 2. Section 7-7-4111, MCA, is amended to read:

"7-7-4111. Procedure to declare ~~municipal~~ bankruptcy. (1) ~~Any city or town~~ *A local entity* may submit itself and a proposed plan of ~~composition~~ *adjustment* to the jurisdiction of the bankruptcy court having jurisdiction of ~~such~~ *the* matter. ~~and be~~ *If the local entity submits a proposed plan of adjustment, it is* governed, *subject to the provisions of Montana law applicable to the local entity,* by the proceedings, orders, and decrees of the court as provided by the federal municipal bankruptcy laws.

(2) The ~~city or town may~~ *local entity shall* compose and enter into, submit itself to, and perform the plan of ~~composition~~ *adjustment* as required by the federal laws and the orders and decrees of the bankruptcy court:

(a) upon the adoption by its ~~city council or town council~~ *legislative body* of an ordinance or resolution:

(i) declaring that it is insolvent or unable te meet its debts as they mature;

(ii) declaring that it desires to effect a plan for the ~~composition~~ *adjustment* of its debts under the provisions of the federal municipal bankruptcy laws; and

(iii) providing that the ~~city or town~~ *local entity* shall proceed to the ~~composition~~ *adjustment* of its ~~municipal~~ indebtedness under the provisions of the federal laws; and

(b) upon the acceptance ~~in writing~~ *or considered acceptance* of the proposed plan of ~~composition~~ *adjustment* of ~~municipal indebtedness by creditors of~~ the petitioning ~~municipal corporation~~ *local entity* ~~owning not less than the percentage thereof in amount of the municipal securities affected or to be affected by the proposed plan of composition,~~ as provided in the federal laws."

Section 3. Section 7-7-4112, MCA, is amended te read:

"7-7-4112. Power to comply with court decrees related to bankruptcy. ~~Any city or town~~ *A local entity* ~~may~~ *shall* comply with all orders and decrees contemplated by the federal municipal bankruptey laws and may issue its bonds and other securities for tbe carrying out and consummation of the ~~composition~~ *adjustment* of its debts as provided and contemplated by the federal law and as required by the orders and decrees of the bankruptcy court. *The orders and decrees of the bankruptcy court must be based on the Montana law applicable to the local entity.*"

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Section 4. Section 7-7-4113, MCA, is amended to read:

"7-7-4113. Role of state and state agencies in relation to bankruptcy. The state or any department or agency ~~thereof~~ *of the state* holding any of the securities of ~~any such city or town shall have~~ *a local entity has* the power to consent to any plan of ~~composition~~ *adjustment* of the indebtedness of ~~any such city or town~~ *the local entity* by the hoard ~~having~~ *or official that has* custody of and control over ~~any such~~ *the* securities ~~or by any other official or officials having such custody and control~~."

Approved March 30, 1995

CHAPTER NO. 297

[SB 78]

AN ACT MODIFYING CERTAIN REQUIREMENTS FOR THE WATER POLLUTION CONTROL ADVISORY COUNCIL; REVISING FEE REQUIREMENTS FOR HOLDERS OF A PERMIT OR AUTHORIZATION UNDER THE WATER QUALITY LAWS; REVISING THE ENFORCEMENT PROVISIONS OF THE WATER QUALITY LAWS TO CLARIFY EXISTING ENFORCEMENT AUTHORITY; AMENDING SECTIONS 75-5-221, 75-5-401, 75-5-516, 75-5-601, 75-5-616, 75-5-621, 75-5-631, 75-5-632, AND 75-5-636, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-221, MCA, is amended to read:

"75-5-221. Water poliution control advisory council — general. (1) The council provided for in 2-15-2107 shall select a ~~chairman~~ *presiding officer* from among its members. The directer of ~~health and environmental sciences~~ *the department* shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) ~~It shall hold at least two regular meetings each calendar year. Special meetings shall~~ *Meetings must* be held at the call of the ~~chairman~~ *presiding officer* or on written request of two or more members.

(3) Each memher may, by filing with the secretary, designato a deputy or alternate to perform ~~his~~ *the member's* duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution.

(5) The director of the department may designate other persons to participate with council members in evaluating particular issues arising under this chapter that are brought before the council."

Section 2. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits. (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(h) governing the issuance, denial, modification, or revocation of permits.

(2) The rules ~~shall~~ *must* allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ~~insures~~ *ensures* that ~~such~~ *the* permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules ~~shall~~ *must* provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of ~~disposal systems~~ *permitted activities* for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety."

Section 3. Section 75-5-516, MCA, is amended to read:

"75-5-516. Fees authorized for recovery — process — rulemaking. (1) The board shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board's and department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) Tbe rules promulgated by the board under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers te the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be ~~less than $250 or~~ more than $5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple ~~storm water~~ discharge points may be assessed a lower fee for tbose points according to board rule.

(b) an annual fee te be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be ~~less than $250 and may not be~~ more than $3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except tbat:

(i) a permit or authorization with multiple ~~storm water~~ discharge points may be assessed a lower fee for those points according to board rule*; and*

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under ~~this limitation~~ *subsection (2)(b)*, the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

~~(i)~~*(a)* the fees collected under subsection (2)(a);

~~(ii)~~*(b)* state general fund appropriations for functions administered under this chapter; and

~~(iii)~~*(c)* federal grants for functions administered under this chapter.

~~(3)~~*(4)* For purposes of subsection ~~(2)~~*(3)*, the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

~~(4)~~*(5)* If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed at the rate established under 15-31-510(3); or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection ~~(4)(a)~~*(5)(a)*.

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~~(5)~~*(6)* Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

~~(6)~~*(7)* The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

~~(7)~~*(8)* A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection ~~(6)~~*(7)*. The appeal to the hoard must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

~~(6)~~*(9)* If part of the department's fee assessment is not in dispute in an appeal filed under subsection ~~(7)~~*(8)*, the undisputed portion of the fee must be paid to the department upon written request of the department.

~~(9)~~*(10)* The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before tbe board under this section.

~~(10)~~*(11)* A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111."

Section 4. Section 75-5-601, MCA, is amended to read:

"**75-5-601. Cleanup orders.** (1) The department ~~shall~~ *may* issue ~~orders~~ *an order* to a person to clean up any material that ~~he~~ *the person* or ~~his~~ *the person's* employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and that may pollute ~~them~~ *state waters*.

(2) If a unit of state or local government, including but not limited to a local board of health, county commission, governing body of a municipality, or state agency, has granted a permit or license to a person to discharge waste or has otherwise authorized an activity that involves the placement of waste and the department has reason to believe that the waste is causing or is likely to cause pollution of state waters, the department may issue an order to tbe unit of state or local government to take measures to ensure that the wastes causing or likely to cause the pollution are cleaned up.

(3) The department may include in an order issued to a county commission pursuant to subsection (2) a request that the commission create a sewer district in the geographic area affected by the order for the purpose ef establishing a public sewer system in accordance with the petition and election procedures provided by 7-13-2204 and 7-13-2208 through 7-13-2214."

Section 5. Enforcement response. (1) Whenever, on the basis of information available to the department, the department finds that a person is in violation of this chapter, a rule adopted under this chapter, or a condition or limitation in a permit, authorization, or order issued under this chapter, the

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department shall initiate an enforcement response, which may include any of the following actions:

(a) issuance of a letter notifying the person of the violation and requiring compliance;

(h) issuance of an order requiring the person to correct the violation pursuant to 75-5-601, 75-5-611, 75-5-613, and 75-5-621;

(c) bringing a judicial action as authorized by 75-5-614 and 75-5-622; or

(d) seeking administrative or judicial penalties as provided under 75-5-611, 75-5-615, and 75-5-631 through 75-5-633.

(2) Unless an alleged violation represents an imminent threat to human health, safety, or welfare or to the environment, the department shall first issue a letter notifying the person of the violation and requiring compliance. If the person fails to respond to the conditions in the department's letter, then the department shall take further action as provided in subsection (1).

(3) The provisions of this chapter do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties, prior to initiating any administrative action authorized hy this chapter.

Section 6. Section 75-5-616, MCA, is amended to read:

"**75-5-616. Enforcement of permits and chapter.** The department shall take ~~such~~ actions as *that* are authorized ~~or required~~ under ~~75-5-612 through 75-5-615~~ *this part* to ~~insure~~ *ensure* that the terms and conditions of issued permits are complied with and to ~~insure~~ *ensure* that violations of this chapter are appropriately prosecuted."

Section 7. Section 75-5-621, MCA, is amended to read:

"**75-5-621. Emergencies.** (1) Notwithstanding ~~any~~ other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under ~~it which~~ *this chapter that*, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department ~~shall~~ *may* order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order ~~shall be~~ *is* effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order ~~shall~~ *must* conform to the requirements of 75-5-611(1) so far as practicable. The notice ~~shall~~ *must* indicate that the order is an emergency order.

(3) Upon issuing ~~such~~ an order, the department shall fix a place and time for a hearing before the board, not later than 5 days ~~thereafter~~ *after issuing the order* unless the person to whom the order is directed ~~shall request~~ *requests* a lator time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing ~~shall~~ *must* be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the

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order of the department. The order of the board ~~shall~~ *must* be accompanied by the statement specified in 75-5-611(5). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. The initiation of ~~such~~ an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section."

Section 8. Section 75-5-631, MCA, is amended to read:

"**75-5-631. Civil penalties — injunctions not barred.** (1) A *In an action initiated by the department to collect civil penalties against a* person who ~~violates~~ *is found to have violated* this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter, *the person* ~~shall be~~ *is* subject to a civil penalty not to exceed $25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain any enforcement proceedings in the name of the state.

(4) When seeking penalties under this section, the department shall take into account the following factors in determining an appropriate settlement~~,~~ *or judgment, as appropriate* ~~if any, subsequent to the filing of a complaint~~:

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, ~~his~~ *the violator's* ability to pay, ~~any~~ prior history of ~~such~~ violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, *the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state,* and ~~any~~ other matters ~~as~~ *that* justice may require."

Section 9. Section 75-5-632, MCA, is amended to read:

"**75-5-632. Criminal penalties.** A person who willfully or negligently violates 75-5-605 or any pretreatment standard established pursuant to this chapter is guilty of an offense and, *upon conviction, is* subject to a fine not to exceed $25,000 per day of violation or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, subsequent convictions ~~shall~~ subject a person to a fine of not more than $50,000 per day of violation or imprisonment for not more than 2 years, or both."

Section 10. Section 75-5-636, MCA, is amended to read:

"**75-5-636. ~~Action~~ *Investigation of complaints* by other parties.** A person, association, corporation, or agency of the state or federal government may ~~apply to~~ *notify* the department ~~protesting a~~ *of an alleged* violation of this chapter. ~~The~~ *Based upon information submitted by the person, association, corporation, or agency, the* department shall ~~make~~ *conduct* an investigation ~~and make a written report to the person, association, corporation, or agency which made the protest~~ *to determine the validity of the complaint.* If a violation is established by the *department's* investigation ~~of the department~~, *the department*

shall initiate an appropriate enforcement ~~action shall be taken~~ *response as described in [section 5].*"

Section 11. Codification instructions. [Section 5] is intended to be codified as an integral part of Title 75, chapter 5, part 6, and the provisions of Title 75, chapter 5, part 6, apply to [section 5].

Section 12. Effective date. [This act] is effective July 1, 1995.

Approved March 30, 1995

CHAPTER NO. 298

[SB 112]

AN ACT REIMBURSING A SCHOOL DISTRICT FOR PUPIL TRANSPORTATION COSTS BASED ON A WEIGHTED RIDERSHIP SYSTEM; ESTABLISHING A PASSENGER COUNT FOR HIGH SCHOOL TRANSPORTATION PROGRAMS; CLARIFYING THAT A K-12 SCHOOL DISTRICT HAS TWO REPRESENTATIVES ON THE COUNTY TRANSPORTATION COMMITTEE; ESTABLISHING CRITERIA FOR THE REVIEW OF A BUS ROUTE BY THE COUNTY TRANSPORTATION COMMITTEE; LIMITING STATE AND COUNTY REIMBURSEMENT FOR AN INDIVIDUAL TRANSPORTATION CONTRACT; INCREASING THE PER DIEM RATE FOR ROOM AND BOARD FOR AN ELIGIBLE TRANSPORTEE; AMENDING SECTIONS 20-10-101, 20-10-103, 20-10-131, 20-10-132, 20-10-141, AND 20-10-142, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-101, MCA, is amended to read:

"**20-10-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Bus route" means a route approved by the board of trustees of a school district and by the county transportation committee.

~~(1) An "eligible~~ *(2) "Eligible* transportee" means a public school pupil who:

(a) is 5 years of age or older and has not ~~attained his 21st birthday~~ *reached the age of 21 on or before September 10 of the current school year* or who is a preschool child with disabilities between the ages of 3 and 6;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries~~;~~*:*

(i) resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; *or*

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(ii) has transportation identified as a related service in an individualized education program as developed and implemented in accordance with the Individual With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and

(d) is considered to reside with ~~his~~ *a* parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(3) "Passenger seating position" means, as defined in 49 CFR 571.222, the space on a school bus allocated for one passenger.

~~(2)~~*(4)* (a) ~~A "school~~ *"School* bus" means, except as provided in subsection ~~(2)(b)~~ *(4)(b)*, any motor vehicle that:

(i) complies with the bus standards established by the board of public education as verified by the ~~Montana~~ department of justice's semiannual inspection of school buses and the superintendent of public instruction; and

(ii) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations; or

(iv) an over-the-road passenger coach used only to transport pupils to activity events.

~~(3)~~*(5)* "Transportation" means:

(a) a district's conveyance of a pupil by a school bus between ~~his~~ *the pupil's* legal residence or an officially designated bus stop and the school designated by the trustees for ~~his~~ *the pupil's* attendance; or

(b) "individual transportation" ~~whereby~~ *by which* a district is relieved of actually conveying a pupil. Individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

(6) "Transportation service area" means the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program.

(7) "Weighted ridership" means the sum of the passenger points assigned to the eligible transportees who are transported on a bus route."

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Section 2. Section 20-10-103, MCA, is amended to read:

"**20-10-103. School bus driver qualifications.** ~~Any~~ *A* driver of a school bus is qualified to drive a school bus if the driver:

(1) is not less than 18 years of age;

(2) is of good moral character;

(3) is the holder of a commercial driver's license;

(4) has filed with the district a satisfactory medical examination report, on a form approved by the United States department of transportation ~~or by the superintendent of public instruction~~, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

(5) has completed a basic first aid course and holds a valid basic first aid certificate from an authorized instructor. The issuance of the certificate is governed by rules established by the superintendent of public instruction, provided that the rules may suspend this requirement for a reasonable period of time if there has been an inadequate opportunity for securing the basic first aid course and certificato.

(6) has complied with any other qualifications established hy the board of public education; and

(7) has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven, certifying compliance with the driver qualifications enumerated in this section."

Section 3. Section 20-10-131, MCA, is amended to read:

"**20-10-131. County transportation committee membership.** (1) To coordinate the orderly provision of a uniform transportation program within a county ~~under the transportation law, board of public education transportation policies, and the transportation rules of the superintendent of public instruction~~, there ~~shall~~ *must* be a county transportation committee created in each county of the state of Montana. The membership of the ~~county transportation~~ committee ~~shall be~~ *consists of*:

(a) the county superintendent;

(b) the ~~chairman~~ *presiding officer* of the board of county commissioners or a member of ~~such~~ *the* board designated by the ~~chairman~~ *presiding officer*;

(c) *except for a K-12 school district,* a trustee or district employee designated by the trustees of each high school district of the county;

(d) one representative from each high school district of the county who is a trustee of an elementary district encompassed within the high school district and who has been selected at a meeting of the trustees of ~~such~~ *the* elementary districts;

(e) two representatives of each K-12 school district of the county, each of whom is either a trustee or a district employee designated by the trustees; and

~~(e)~~*(f)* a representative of a district of another county when the transportation services of ~~such a~~ *the* district are affected by the actions of the *county* transportation committee, but ~~such a~~ *the* representative ~~shall have~~ *has* a voice only in matters affecting transportation within ~~such~~ *the* district or by ~~such~~ *the* district.

(2) The county transportation committee ~~shall~~ *must* have at least five members, and if this minimum membership cannot be realized in the manner prescribed in subsections (1)(a) through ~~(1)(d)~~ *(1)(e)* ~~above~~, the county superintendent shall appoint a sufficient number of members to satisfy the minimum membership requirement.

(3) The county superintendent ~~shall be~~ *is* the ~~chairman~~ *presiding officer* of the county transportation committee, and a quorum ~~shall consist of~~ *is* a majority of the membership. *A quorum must be present for the committee to conduct business.* The ~~county transportation~~ committee shall meet on the call of the ~~chairman~~ *presiding officer* or any three members of ~~such~~ *the* committee."

Section 4. Section 20-10-132, MCA, is amended to read:

"20-10-132. Duties of ~~the~~ county transportation committee. (1) It ~~shall be~~ *is* the duty of the county transportation committee to:

(a) establish the transportation service areas within the county, without regard to district boundary lines, ~~which will define the geographic area of responsibility for school bus transportation~~ for each district that operates a school bus transportation program;

(b) *except as provided in subsection (2),* approve, disapprove, or adjust the school bus ~~routing~~ *routes* submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);

(c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation ~~due to~~ *because of* isolated conditions of the eligible transportee's residence; and

(d) conduct hearings to establish the facts of transportation controversies ~~which~~ *that* have been appealed from the decision of the trustees and act on ~~such~~ *the* appeals on the basis of the facts established at ~~such~~ *the* hearing.

(2) In an emergency situation, a temporary bus route change may be approved by the county superintendent. A bus route change approved by the county superintendent must be confirmed by the county transportation committee within 30 days in order to be continued for a period longer than 30 days.

(3) When the county transportation committee reviews a request for a new bus route or a change to an existing route, the committee shall consider the following:

(a) a map of the existing and proposed bus route;

(b) a description of turnarounds;

(c) conditions affecting safety;

(d) the total mileage and change in mileage of the affected bus route;

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(e) the approximate total cost;

(f) reasons for the proposed bus route change;

(g) the number of children to be served;

(h) a copy of the official minutes of the meeting at which the school trustees approved the new bus route or route change; and

(i) any other information that the county transportation committee considers relevant.

(4) When an application for increased reimbursement for individual transportation is presented to the county transportation committee, it must include a signed individual transportation contract and a copy of the official minutes of the meeting at which the trustees acted upon the request for increased reimbursement.

~~(2)~~*(5)* After a ~~fact-finding~~ *factfinding* hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal ~~such~~ *the* decision to the superintendent of public instruction who shall ~~render~~ *issue* a decision on the basis of the facts established at the county transportation committee hearing.

~~(3) The trustees of any district which objects to a particular school bus route or transportation service area to which it has been assigned may request a transfer to another school bus route or transportation service area. The county transportation committee may transfer the territory of such district to an adjacent district's transportation service area or approved school bus route with the consent of such adjacent district. When the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of such district be transferred for school bus transportation purposes to such consenting, adjacent district. When a satisfactory petition is presented to the trustees, the trustees shall call an election in accordance with 20-20-201 for the next ensuing regular school election day. Such election shall be conducted in accordance with the school election laws. If a majority of those voting at such election approve the transfer, it shall become effective on July 1 of the ensuing school fiscal year.~~

~~(4) Unless a transfer of a district from one transportation service area or approved school bus route to another such area or route is approved by the county transportation committee and the superintendent of public instruction, the state transportation reimbursement shall be limited to the reimbursement amount for school bus transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.~~"

Section 5. Section 20-10-141, MCA, is amended to read:

"**20-10-141. Schedule of maximum reimbursement by mileage rates.** (1) The following mileage rates for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates may not limit the amount that a district may budget in

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its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for the mileage. Any vehicle, the operation of which is reimbursed for bus mileage under the rate provisions of this schedule, must be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) Tbe rate per bus mile traveled must be determined in accordance with the following schedule when the number of eligible transportees that board a school bus on an approved route is not less than one-half of its ratod capacity:

(a) 85 cents per bus mile for a school bus with a rated capacity of ~~not less than 12 but~~ not more than 45 children; and

(b) when the rated capacity is more than 45 children, an additional 2.13 cents per bus mile for each additional child in the rated capacity in excess of 45 must be added to a base rate of 85 cents per bus mile.

(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).

(4) When the number of eligible transportees boarding a school bus on an approved route is less tban one-half of its rated capacity, the rate per bus mile traveled must be computed as follows:

(a) determine the number of eligible transportees that board the school bus on the route;

(b) multiply the number determined in subsection (4)(a) by two and round off to the nearest whole number; and

(c) use the adjusted rated capacity determined in subsection (4)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rato schedule in subsection (2).

(5) The rated capacity is the number of riding positions of a school bus as determined under the policy adopted by the board of puhlic education."

Section 6. Section 20-10-141, MCA, is amended to read:

"20-10-141. Schedule of maximum reimbursement by mileage rates. (1) Tbe following mileage rates for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates may not limit the amount that a district may budget in its transportation fund budget in order to provide for the estimatod and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on *bus* routes approved by the county transportation

committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for the mileage. Any vehicle, the operation of which is reimbursed for bus mileage under the rate provisions of this schedule, must be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled must be determined in accordance with the following schedule when the ~~number of eligible transportees that board a school bus on an approved~~ *weighted ridership assigned to a bus* route is not less than one-half of ~~its~~ *the* rated capacity *of the school bus*:

(a) 85 cents per bus mile for a school bus with a rated capacity of ~~not less than 12 but~~ not more than 45 ~~children~~ *passenger seating positions*; and

(b) when the rated capacity is more than 45 ~~children~~ *passenger seating positions*, an additional 2.13 cents per bus mile for each additional ~~child~~ *passenger seating position* in the rated capacity in excess of 45 must be added to a base rate of 85 cents per bus mile.

(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).

(4) When the ~~number of eligible transportees boarding a school bus on an approved~~ *weighted ridership assigned to a bus* route is less than one-half of ~~its~~ *the* rated capacity *of the school bus*, the rate per bus mile traveled must be computed as follows:

(a) determine the ~~number of eligible transportees that board the school bus on the~~ *weighted ridership assigned to the bus* route;

(b) multiply the number determined in subsection (4)(a) by two ~~and round off to the nearest whole number~~; and

(c) use the adjusted rated capacity determined in subsection (4)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2).

(5) The rated capacity is the number of ~~riding~~ *passenger seating* positions of a school bus as determined under the policy adopted by the board of public education. *If modification of a school bus to accommodate pupils with disabilities reduces the rated capacity of the bus, the reimbursement to a district for pupil transportation is based on the rated capacity of the bus prior to modification.*

(6) The number of pupils riding the school bus may not exceed the passenger seating positions of the bus."

Section 7. Section 20-10-142, MCA, is amended to read:

"**20-10-142. Schedule of maximum reimbursement for individual transportation.** The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from

state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in tbis section may not be altered by any authority other than tbe legislature ~~of the state of Montana~~. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian *for actual miles transported* on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement per day of attendance is determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product, and multiplying the difference by 21.25 cents, provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if the schools are operated by different school districts, the total amount of the reimbursement must be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian must be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop that are located within 3 miles of one another, the total reimbursement must be determined under the provisions of this subsection and must be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section is limited to one round trip per day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), a reimbursement may not be less than 25 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus routo approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance is determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting *3 6* miles from the product, and multiplying the difference by 21.25 cents, provided that:

(a) if the eligible transportees attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one hus, the parent or guardian must be separately reimbursed for transportation to each bus.

(3) When, ~~due to~~ *because of* excessive distances, impassable roads, or other special circumstances of isolation, the rates prescribed in subsection (1) or (2) would be an inadequate reimhursement for the transportation costs or would result in a physical hardship for the eligible transportee, a parent or guardian may request an increase in the reimbursement rate. A request for increased rates ~~due to~~ *because of* isolation must be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year hy indicating the special facts and circumstances that exist to justify the increase. Before an increased rate ~~due to~~ *because of* isolation may be paid to the requesting parent or guardian, the rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the ~~county transportation~~ committee and the superintendent of public instruction, the trustees shall pay the increased rate ~~due to~~ *because of* isolation. The increased rate is 1 1/2 times the rate prescribed in subsection (1).

(4) The state and county transportation reimbursement for an individual transportation contract may not exceed $8 per day of attendance for the first eligible transportee and $5 per day of attendance for each additional eligible transportee.

~~(4)~~*(5)* When the isolated conditions of the household where an eligible transportee resides require an eligible transportee to live away from the household in order to attend school, the eligible transportee is eligible for the room and board reimbursement. Approval to receive the room and board reimbursement must be obtained in the same manner prescrihed in subsection (3). The per diem rato for room and board is ~~$5.31~~ *$8* for one eligible transportee and ~~$3.19~~ *$5* for each additional eligible transportee of the same household.

~~(5)~~*(6)* When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate is the cost of the study, provided that the course of instruction is approved by the trustees and supervised by the district."

Section 8. Establishment of transportation service areas. (1) The territory of a transportation service area is the territery of a school district unless the county transportation committee approves alternative boundaries after determining that the adjustments will improve pupil safety, transportation efficiency, or the cost-effectiveness of the pupil transportation system of the county.

(2) A district may not extond a bus route to transport pupils from outside its transportation service area unless the district has a writton agreement with the district that the county transportation committee has assigued to transport the pupils.

(3) When the trustees of two or more districts enter into a written agreement to authorize transportation services among transportation service areas, a copy of the agreement must be submitted to the county superintendent and approved

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by the county transportation committee. Upon approval by the committee, the transportation agreements are valid for the current school year.

(4) The trustees of any district who object to a particular bus route or transportation service area to whicb the district has been assigned may request a transfer to another bus routo or transportation service area. The county transportation committee may transfer tbe territory of the district to an adjacent transportation service area or approved bus route with the consent of the district providing transportation in the adjacent transportation service area.

(5) If the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of the district be transferred for pupil transportation purposes to the adjacent transportation service area. If a satisfactory petition is presented to the trustees, the trustees shall call an election on the proposition in accordance with 20-20-201 for the next ensuing regnlar school election day. The election must be conducted in accordance with the school election laws. If a majority of those voting at the election approve the transfer, the transfer is effective on July 1 of the ensuing school fiscal year.

(6) Unless a transfer of territory from one transportation service area or approved bus route to another area or bus route is approved by the superintendent of public instruction and the county transportation committee, the state transportation reimbursement is limited to the reimbursement amount for pupil transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.

Section 9. Assignment of passenger points.

Passenger points must be assigned to each eligible transportee on a bus route as follows:

(1) 1 point for each elementary pupil not described in subsection (3) or (4);

(2) 1.5 points for each high school pupil not described in subsection (3) or (4);

(3) 3 points for pupils described in 20-10-101(2)(c)(ii) who do not use a wheelchair; and

(4) for pupils using a wheelchair:

(a) 12 points for the first pupil using a wheelchair;

(b) 9 points for the second pupil using a wheelchair; and

(c) 6 points for each additional pupil using a wheelchair.

Section 10. Passenger count required for high school programs. (1) Each school district shall conduct a passenger count of the eligible transportees in the high school program who ride a school bus on the morning bus route for 5 consecutive school days beginning on the first school day on or after November 14. Eligible transportees who ride at least once in the 5-day period must be

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included in the count. The passenger count must be used to determine the weighted ridership of the bus route for reimbursement purposes.

(2) The district shall send the passenger count to the superintendent of public instruction, on forms provided by the superintendent, on or before December 10. The district shall provide a copy of the passenger count to the county superintendent.

Section 11. Codification instruction. [Sections 8 through 10] are intended to be codified as an integral part of Title 20, chapter 10, part 1, and the provisions of Title 20, chapter 10, part 1, apply to [sections 8 through 10].

Section 12. Effective dates — retroactive applicability. (1) [Sections 1 through 4, 6 through 11, and 13] are effective July 1, 1995.

(2) [Section 5 and this section] are effective on passage and approval.

(3) [Section 5] applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1994.

Section 13. Termination. [Section 5] terminates July 1, 1995.

Approved March 30, 1995

CHAPTER NO. 299

[SB 121]

AN ACT ELIMINATING THE REQUIREMENT FOR PUBLISHING THE COUNTY ANNUAL REPORT IN A NEWSPAPER; AMENDING SECTION 7-5-2123, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2123, MCA, is amended to read:

"7-5-2123. Publication of board proceedings and annual financial statement. (1) *(a)* The board of county commissioners has jurisdiction and power, under ~~such~~ *the* limitations and restrictions ~~as are~~ prescribed by law, to ~~cause to be published~~ *publish* in a newspaper:

~~(a)~~ at the adjournment of each session of the board, in full and complete detail or in summary form or by reference, with the full and complete text made available on request, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount, and a fair summary of the minutes and records of all of its proceedings;.

(b) ~~annually,~~ *The board may publish* the county clerk's annual statement of the financial condition of the county, in full and completo detail or in summary form. *If the board does not publish the annual statement in complete detail or in summary form, it shall publish a notice that the annual statement is available and will be provided upon request from the county clerk.*

(2) Publication in full, in summary, or by reference of ~~such~~ *the* minutes and records of proceedings must be made within 21 days after the adjournment of

the session. Publication of the financial statement *or notice of the availability of the financial statement* must be made within 30 days after the presentation of the ~~same~~ *financial statement* to the board. The board ~~shall~~ *may* not allow or order paid any claim for any ~~such~~ publication of minutes and records of proceedings or annual financial statement unless *the publication is* made within the time ~~herein~~ prescribed ~~therefor~~ *in this subsection.*"

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved March 30, 1995

CHAPTER NO. 300

[SB 122]

AN ACT REVISING THE PROCESS OF GRANTING RIGHT-OF-WAY EASEMENTS ON STATE LANDS; ELIMINATING THE REQUIREMENT THAT PLATS BE VERIFIED BY AFFIDAVIT OF A COUNTY SURVEYOR OR COUNTY OR CITY ENGINEER; PROVIDING THAT AN ARCHEOLOGICAL SURVEY OF A RIGHT-OF-WAY IS NOT REQUIRED IN CERTAIN INSTANCES; ELIMINATING THE DEED FOR RIGHT-OF-WAY; AMENDING SECTIONS 77-2-102 AND 77-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-102, MCA, is amended to read:

"**77-2-102. Application for easement.** (1) Application for an easement on state land must be made to the department. ~~It shall~~ *Except as provided in subsection (3), the application must* describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information *that* the department requires.

(2) This application ~~shall~~ *must* be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, duly verified by the affidavit of the ~~county surveyor or county or city engineer or other~~ engineer *or surveyor* ~~having~~ *who* prepared the ~~same endorsed thereon~~ *application*. These plats ~~shall~~ *must* show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When ~~deemed~~ *considered* necessary by the department, these plats ~~shall~~ *must* show all these facts for ~~such~~ smaller subdivisions as the circumstances may render desirable for the state.

(3) ~~However, when~~ *If* the purpose of the right-of-way applied for is the transmission or distribution of electric energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given~~,~~ ~~except~~ *An exact geographical survey is not required, but the application must include* the description of the location of the center line of the right-of-way *that refers to an established monument within a filed corner recordation form, certificate of survey, or subdivision plat.*~~, and the~~ *The* entire right-of-way may be applied for in one application with only one plat

of the entire right-of-way required. *An archeological survey is not required if in the opinion of the department no heritage properties would be impacted.*"

Section 2. Section 77-2-103, MCA, is amended to read:

"**77-2-103. Processing of application.** (1) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right-of-way and report its findings to the board. The board shall consider tbe application and report and take any action it considers proper, including tbe fixing of compensation and damages to be paid to tbe state. The compensation ~~shall~~ *must* be tbe full market value of the estate or interest disposed of througb the granting of the rigbt-of-way easement, and the damages ~~shall~~ *must* be the actual damages resulting to the remaining land as nearly as tbey can be ascertained. If the right-of-way is granted according to the plat, the plat ~~shall become~~ *is* the official plat ~~thereof~~ *of the right-of-way* and ~~shall~~ *must* be retained in the office of the department. ~~The board shall issue right-of-way deeds for all such easements that it grants upon full payment being made.~~

(2) If the state land over or through wbich a right-of-way is applied for is under certificate of purcbase or sales contract, the purcbaser or ~~his~~ *thc purchaser's* assignee must be made a party to the proceedings and ~~his~~ *the purchaser's or assignee's* consent in writing to tbe laying out and establishment of tbe proposed bigbway, street, or otber easement and to the amount of compensation and damages to be paid must be filed with the board before the right-of-way is grantod. The board is the judge of bow much compensation and damages ~~shall~~ *must* be paid to the state and applied on the certificate of purchase or sales contract and of how mucb, if any, ~~shall~~ *must* be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights-of-way on state lands."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 1995

CHAPTER NO. 301

[SB 147]

AN ACT GENERALLY REVISING THE WATER RESOURCE ADMINISTRATION OF STATE WATER PROJECT LAWS; ESTABLISHING A SELF-SUPPORTING LEASE MANAGEMENT PROGRAM FOR WATER PROJECT LANDS; ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO TRANSFER OR DISPOSE OF AN INACTIVE STATE WATER PROJECT WITHOUT A DETERMINATION OF MARKET VALUE; CLARIFYING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S DUTY TO MAINTAIN FINANCIAL RECORDS OF STATE WATER PROJECTS; AMENDING SECTIONS 85-1-202, 85-1-204, 85-1-206, 85-1-209, 85-1-210, 85-1-211, AND 85-1-215, MCA; AND PROVIDING AN EFFECTIVE DATE.

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STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 3] authorizes the department of natural resources and conservation to adopt rules implementing the leasing program established in this bill.

The legislature intends that rules adopted by the department specify the procedure to be used by the department in determining how it will lease project lands and specify the standards, conditions, limitations, and requirements it will use as terms of the lease under the statutory guidelines provided in [section 3].

Be it enacted by the Legislature of the State of Montana:

Section 1. Statement of policy. It is the policy of the state that in the interest of accomplishing a self-supporting program from the leasing of project lands, the project lands must be appraised by the department at least once during the term of each lease. The purpose of the appraisals is to determine the lease value of project lands and the general condition of the lands.

Section 2. Leases authorized. (1) The department may lease all project lands appurtenant to a state-owned water project for purposes that the department considers appropriate.

(2) A lease of project lands may not exceed 10 years.

(3) All cabinsite leases issued prior to July 1, 1994, expire March 31, 1996.

Section 3. Rulemaking. The department may adopt rules necessary to implement and administer the leasing of project lands. These rules may include but are not limited to rules governing the:

(1) growing of crops or grazing of livestock;

(2) establishment of responsibility for a lessee to pay the assessment of taxes for weed control;

(3) acquisition and use of water on project lands;

(4) leasing of project lands, except for lease renewals and transfers, by competitive bidding and the establishment of bid procedures and bid deposits;

(5) process for giving notice and for cancellation, termination, and renewal of leases, including existing leases on project lands;

(6) general form of the lease and the form and conditions of a bond when the department considers a bond necessary;

(7) changes or modifications in lease conditions or lease use; and

(8) placement and removal of improvements directly related to the necessary use of the project lands.

Section 4. Appraisal of project lands — adjustment of lease fee. The department shall appraise project lands owned by the department and shall maintain records of the appraisals. Not less than once during the term of a lease, the department shall reappraise the project lands and adjust the lease fee

accordingly. The department may not increase a lease fee for a current lessee more than 2% a year during any period of 10 consecutive years.

Section 5. Full market value required. The department shall determine the full market value of project lands. The department may not accept a bid that is below full market value.

Section 6. Withdrawal of lands from leasing. The department may withdraw project lands from leasing for a period of time as the department determines to be in the best interest of the state.

Section 7. Assignment of leases — subleasing not allowed. (1) A lease of project lands may be assigned on forms prescribed by the department. An assignment is not binding on the department unless the assignment is filed with and approved by the department. An assignment fee must be paid to the department at the time of filing the assignment.

(2) The department may not approve a contingent or collateral assignment of a lease.

(3) A lease may not be subleased.

Section 8. Changes in lease use not authorized — cancellation. (1) During the term of a lease, the use of the project lands may not be changed. A change in the use of the lands automatically voids the lease.

(2) The department may cancel a lease for any of the following causes:

(a) fraud, misrepresentation, or concealment of facts relating to issuance of the lease, which if known would have prevented its issuance in the form or to the party issued;

(b) subleasing project lands;

(c) placing of unauthorized improvements on project lands;

(d) using the lands for purposes other than those authorized by the lease;

(e) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the lands;

(f) nonpayment of rental fees;

(g) violation of a lease condition;

(h) other causes that in the judgment of the department make the cancellation of the lease necessary in order to do justice te all parties concerned or to protect the interests of the state.

(3) Cancellation of a lease under this section does not entitle the lessee to a refund of rentals paid or exempt the lessee from the payment of rentals, penalties, or other compensation due the state.

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Section 9. Improvements authorized — no compensation — removal. (1) A lessee of project lands may place on tbe lands a reasonable amount of improvements directly related to the necessary use of the lands as provided in the lease.

(2) The department is not liable to pay compensation to a lessee or a former lessee for improvements made to project lands.

(3) A former lessee is responsible to reclaim project lands to the condition existing prior to the placement of the improvements. If the former lessee fails to remove the improvements from the land within 60 days from the date of the expiration of the lease, all of the improvements become the property of the department unless the department for good cause extends the time for removal of the improvements. The department may require a former lessee to remove improvements made by the former lessee from project lands at the former lessee's expense.

Section 10. No pledge or mortgage of leasehold interest. A lessee of project lands may not pledge the lease or mortgage a leasebold interest in the project lands.

Section 11. Project lands lease account. There is established a project lands lease account within the state special revenue fund of tbe state treasury. All lease fees collected under [sections 1 through 11] must be deposited in the account to pay the department's costs and expenses in administering [sections 1 through 11].

Section 12. Section 85-1-202, MCA, is amended to read:

"**85-1-202. Department actions subject to board approval.** *(1)* The department may not, *without prior approval of the board:*

(a) acquire by appropriation or otherwise a water right or interest ~~therein~~ *in a water right;* ~~and may not~~

(b) acquire real property or an interest ~~therein~~ *in real property* (except rights of access for the purpose of construction, operation, or maintenance of works) or mortgage*;*

(c) ~~or otherwise~~ create a lien on ~~the same~~ *water rights or real property;*

(d) or dispose of ~~in any manner~~ water rights or real property or interest ~~therein~~ *in water rights or real property;* ~~without prior approval of the board. The department may not~~

(e) sell, lease, or otherwise dispose of water impounded under this chapter;

(f) construct or cause to be constructed or contract for the construction of works or projects*;* ~~without prior approval of the board. The department may not~~ *or*

(g) loan funds to a person or water ~~user~~ *users'* association for the purpose of constructing or maintaining works ~~without prior approval of the board~~.

(2) A lease of project lands pursuant to [sections 1 through 11] is not subject to the approval of the board."

Section 13. Section 85-1-204, MCA, is amended to read:

"**85-1-204. Department powers over state ~~waters~~ *water*.** (1) The department~~, with the approval of the board,~~ may sell, lease, and otherwise dispose of ~~all waters which may be~~ *water* impounded under this chaptor~~, and the~~. *The* water may be sold for the purpose of irrigation, development of power, watering of stock, or ~~any~~ other ~~purpose~~ *purposes*. The department~~, with the approval of the board,~~ may also lease water under the stato water leasing program established under the provisions of 85-2-141. To the extent that it may be necessary to carry out this chaptor and subject to a compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take ~~such steps as may be necessary~~ *the necessary actions* to appropriato and conserve the ~~same~~ *water* for the use of the people. The authority of the department conferred by this chapter extonds and applies to rights to the natural flow of the ~~waters~~ *water* of this state ~~which~~ *that* it may acquire~~, with the approval of the board,~~ by condemnation, purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of ~~those waters~~ *water*, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction ~~which~~ *that* purport to adjudicato the ~~waters~~ *water* of a stream or its tributaries~~, and a~~. *A* fair, reasonable, and equitable reconciliation ~~shall~~ *must* be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by ~~any~~ *a* court.

(4) The department~~, at its discretion,~~ may hold hearings relating to the rights of respective claimants after first giving ~~such~~ *the* notice ~~as~~ it considers appropriate. ~~and~~ *The department shall* make findings of the date and quantity of appropriation and use of all claimants ~~which~~ *that* the department ~~will recognize~~ *recognizes* and ~~observe~~ *observes* in diverting the ~~waters which it~~ *water that the department* owns. The department may ~~police~~ *measure* and distribute *the water* to the owner of the recognized appropriation ~~the waters due him upon request and under terms agreed upon~~ *under agrecd-upon terms*.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the ~~waters~~ *water* owned or administered under agreement with respective owners. The owner of a prior right ~~contending~~ *who contends* that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the ~~waters~~ *water* of a stream it may divert or authorize the diversion at ~~any~~ *a* point on the stream or ~~any~~ *a* portion ~~thereof~~ *of the stream* when it is done without injury te a prior appropriator."

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Section 14. Section 85-1-206, MCA, is amended to read:

"85-1-206. Construction of works by department. (1) ~~Subject to the approval of the board, the~~ *The* department may construct works, *with* the cost of the construction to be paid wholly by means of or with the proceeds of revenue bonds ~~hereinafter authorized~~ or of a grant or loan to aid in financing the construction from the United States or any instrumentality or agency ~~thereof~~ *of the United States* and other funds provided for the construction. Before constructing a project, the department shall estimate the cost of the project, the cost of operation and maintenance, and the ~~revenues~~ *revenue* to be derived ~~therefrom~~ *from the operation of the project*. A project may not be constructed unless, according to the estimates, the ~~revenues~~ *revenue* to be derived will be sufficient to pay the cost of operation and maintenance and the principal and interest of loans or revenue bonds ~~which may be~~ issued for the cost of the project.~~;~~ ~~however, in~~ *In* connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of ~~those~~ *the* bonds or of the trust indenture, resolution, or other security ~~therefor~~ *for the bonds*.

(2) Should the bid of the lowest responsible bidder on any capital improvement associated with public works exceed the department estimates of the cost of the improvements by more than 5%, the department shall obtain approval from the water ~~user~~ *users'* association, whenever an association is involved, before the bid is accepted.~~; however, capital~~ *Capital* improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require ~~such~~ approval *of the water users' association*.

(3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation and use of water through the construction and operation of projects ~~designed for those purposes~~. The projects to be ~~finally~~ constructed ~~shall~~ *must* qualify as parts of the statewide program and ~~shall~~ *must* be approved ~~by the board~~ upon the showing of ~~their~~ prospective ability to meet, through the sale of water or other services, the cost of operation and maintenance and the principal and interest of loans and revenue bonds issued to finance the construction. The failure ~~of the board~~ to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security ~~therefor~~ *for the bonds*."

Section 15. Section 85-1-209, MCA, is amended to read:

"85-1-209. Acquisition of property by department. (1) The department~~,~~ ~~subject to the approval of the board under 85-1-202,~~ may acquire by purchase or exchange upon terms and conditions and in a manner it considers proper and *may* acquire by condemnation, in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises, and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned ~~shall~~ *must* be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court ~~having~~ *that has* jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

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(2) In *a* condemnation proceeding brought under the powers of eminent domain for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be acquired, as disclosed by the public records, ~~shall~~ *must* be made parties, and the court in the action shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If there is controversy between them, the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

(3) ~~The taking~~ *Taking* possession of the property sought te be condemned may not be delayed by reason of any dispute hetween the rival claimants or the failure to join any of them as a party to the proceedings in condemnation.

(4) If water rights are acquired or exercised by the department in connection with two or more works or projects, the department by order shall apportion or allocate to each of the works or projects ~~such~~ *the* part of ~~those~~ *the* water rights ~~as it may determine~~ *that the department determines is necessary*. Upon the adoption of the order, ~~those~~ *the* water rights ~~shall be~~ *are* considered a part of each of the works or projects to the extent that the water rights ha e been ~~so~~ apportioned or allocated ~~thereto respectively~~."

Section 16. Section 85-1-210, MCA, is amended to read:

"85-1-210. **Disposal of property by department.** In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of ~~waters~~ *water* for the purpose of irrigation, development of power, watering of stock, or other purposes, the department~~, with the approval of the board,~~ may sell, lease, or otherwise dispose of ~~waters~~ *water* from ite waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department~~, with the approval of the board,~~ may sell or otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the construction or acquisition ~~thereof~~ *of the project*, if any, and of all interest~~, thereon and~~ costs, and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. ~~The~~ *Except for a water project for which no water purchase contracts are managed by the department and for which no money is collected by the department, the* department shall make a determination of the market value of ~~the~~ *a* water project prior to its sale or other disposition. The department's determination of market value ~~shall~~ *must* consider all liens, encumbrances, and other limitations on the water project."

Section 17. Section 85-1-211, MCA, is amended to read:

"85-1-211. **Management of property — water contracts.** (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this cbapter may be sold and disposed of and enter inte contracts and agreements and do those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges ~~so as~~ to provide at all times funds tbat ~~will be~~ *are* sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs to the works, and that will

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provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of ~~those~~ *the* rates, prices, or charges as established by a contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of property or facilities must provide that, in the event of a failure or default in the payment of money specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit a remedy provided by the contract or by law for the recovery of money due or that may become due under the contract.

(5) ~~Subject to the approval of the board under 85-1-202, the~~ *The* department may sell, transfer to water ~~user~~ *users'* associations, abandon, *lease or rent,* or otherwise dispose of any rights-of-way, easements, properties, or interests ~~or lease or rent the same~~ or otherwise take and receive the income or profit and revenue ~~therefrom~~ *from them* without regard to other laws providing for the disposition of state property. *Except for a water project for which no water management contracts are managed by the department and for which no money is collected by the department,* ~~Prior~~ *prior* to the department's sale, transfer, or other disposition, a determination must be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value must consider all liens, encumbrances, and other limitations on the project properties or interests.

(6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal projects to be disposed of include the:

(i) Columbus canal;

(ii) Delphia-Melstone canals;

(iii) Hysham pumping canals;

(iv) Lewistown ditch;

(v) Livingston ditch;

(vi) Florence canal;

(vii) Paradise canal;

(viii) Park Branch canal;

(ix) Sidney pumping canals;

(x) South Side canal;

(xi) Vigilante canal; and

(xii) West Bench canal.

(b) The department may dispose of a canal project by sale, transfer to a water users' association, abandonment, or other legal conveyance. If there is an existing water users' association on the canal project, the provisions of ~~85-6-109(5)~~ *85-6-109* must be complied with in the disposal of tbe canal project. The department shall give preference to existing water users' associations operating and maintaining the canal project.

(c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995, the water users of the canal project are responsible for the department's administrative costs and the actual costs of operation and maintonance of the canal project.

(7) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection *of the canal project that* the department considers necessary ~~of the canal project~~, entry to salvage or remove project property, and entry to make physical alterations to canal project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

Section 18. Section 85-1-215, MCA, is amended to read:

"**85-1-215. Department duties — records and operations.** The department shall keep ~~full and complete accounts concerning all matters and things relating to the works and annually shall prepare balance sheets and income and profit and loss statements~~ *accounting records of each project and by July 1 of each year prepare a financial statement* showing the financial ~~condition~~ *status* of each project ~~and file copies thereof with the secretary of state~~. All books and papers pertaining to ~~all~~ matters provided for in this chapter shall at all reasonable times be open to the inspection of ~~any party~~ *an* interested *party* or ~~any~~ citizen of the state. Except as otherwise provided in this chapter, the department has full charge and control of the construction, operation, and maintenance of the works and the collection of all rates, charges, and ~~revenues of whatsoever character therefrom~~ *revenue from them*. The department shall proceed immediately with the construction of the works ~~upon~~ *as soon as* funds ~~being~~ *are* made available ~~therefor~~ and shall ~~prosecute~~ *complete* the works ~~to completion~~ as rapidly as possible."

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 85, chapter 1, and the provisions of Title 85, chapter 1, apply to [sections 1 through 11].

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Section 21. Effective date. [This act] is effective July 1, 1995.

Approved March 30, 1995

CHAPTER NO. 302

[SB 204]

AN ACT CLARIFYING EXISTING ENFORCEMENT AUTHORITY UNDER THE PUBLIC WATER SUPPLY LAWS; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CONSIDER ESTABLISHED CRITERIA WHEN SEEKING CIVIL OR ADMINISTRATIVE PENALTIES; AND AMENDING SECTIONS 75-6-109 AND 75-6-114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Enforcement response. (1) Whenever, on the basis of information available to the department, tbe department finds that a person is in violation of tbis part, a rule adopted under this part, or a condition, requirement of an approval, or order issued pursuant to this part, the department shall initiate an enforcement response, which may include any of the following actions:

(a) issuance of a letter notifying the person of the violation and requiring compliance;

(b) issuance of an order requiring the person to correct the violation pursuant to 75-6-104 and 75-6-109;

(c) bringing a judicial action as authorized by 75-6-111; or

(d) seeking administrative or judicial penalties as provided under 75-6-109, 75-6-113, and 75-6-114.

(2) Unless an alleged violation represents an imminent threat to human health, safety, or welfare or to the environment, the department shall first issue a letter notifying the person of the violation and requiring compliance. If the person fails to respond to tbe conditions in the department's letter, then the department shall take further action as provided in subsection (1).

(3) The provisions of this part do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties, prior to initiating an administrative action authorized by this part.

Section 2. Section 75-6-109, MCA, is amended to read:

"75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or ~~his~~ *the violator's* agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time, which must be stated in the order. Service by mail is complete on the date of filing.

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(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) An action initiated under this part may include an administrative penalty not to exceed $500 for each day of violation. Administrative penalties collected under this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(7) *In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under 75-6-103(2)(j).*

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

Section 3. Section 75-6-114, MCA, is amended to read:

"**75-6-114. Civil penalty.** (1) A *In an action initiated by the department to collect civil penalties against a* person who *is found to have* ~~violates~~ *violated* this part or a rule, order, or condition of approval issued under this part, *the person* is subject to a civil penalty not to exceed $10,000.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) *When seeking penalties under this section, the department shall take into account the following factors in determining an appropriate settlement or judgment, as appropriate:*

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and other matters that justice may require.

(5) Civil penalties collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 6, part 1, and the provisions of Title 75, chapter 6, part 1, apply to [section 1].

Approved March 30, 1995

CHAPTER NO. 303

[SB 211]

AN ACT REVISING THE LAWS RELATING TO A PROPERTY OWNER'S LIABILITY TOWARD PERSONS WHO MAKE RECREATIONAL USE OF THE PROPERTY; AND AMENDING SECTIONS 70-16-301 AND 70-16-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-16-301, MCA, is amended to read:

"**70-16-301. Recreational purposes defined.** "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, *biking,* winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions."

Section 2. Section 70-16-302, MCA, is amended to read:

"**70-16-302. Restriction on liability of landowner ~~or his agent or~~ tenant.** (1) A person who ~~makes recreational use of any property in the possession or under the control of another~~ *uses property, including property owned or leased by a public entity, for recreational purposes,* with or without permission ~~and without giving a valuable consideration therefor~~, does so without any assurance from the landowner~~, his agent, or his tenant~~ that the property is safe for any purpose *if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property.* The landowner~~, his agent, or his tenant~~ owes the person no duty of care with respect to the condition of the property, except that the landowner~~, his agent, or his tenant~~ is liable to such *the* person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. *For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.*

(2) As used in this part, "landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement,

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water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

(3) As used in this part, "property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

~~(2)~~*(4)* The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operater on the property, does not extend any assurance that ~~such~~ *the* property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless ~~such~~ *the* act or omission constitutes willful or wanton misconduct."

Approved March 30, 1995

CHAPTER NO. 304

[SB 298]

AN ACT PROVIDING FOR A SERVICE CHARGE UPON THE DISHONOR OR STOP PAYMENT OF A CHECK, DRAFT, OR ORDER FOR PAYMENT; AND AMENDING SECTION 27-1-717, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-717, MCA, is amended to read:

"**27-1-717. Issuing a bad check or stopping payment — civil liability.** (1) A person who issues a check, draft, or ~~an~~ order for the payment of money is liable for *a service charge, as provided in subsection (2), or for* damages in a civil action, as provided in subsection ~~(2)~~ *(3)*, to the ~~person~~ *payee* to whom the check, draft, or order is issued, *or the payee's assignee,* if the check, draft, or order is:

(a) dishonored for lack of funds or credit or because the issuer has no account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) *The person who issues the check, draft, or order is liable to the payee or the payee's assignee for a service charge in a reasonable amount, not greater than $30. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay the value of the check, draft, or order and service charge and must state the service charge provided for in this section.*

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(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the *service charge plus the* greater of $100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than $500.

~~(3)~~*(4)* The remedy provided by ~~this section~~ *subsection (3)* is available only if:

(a) the ~~person to whom the check, draft, or order was issued~~ *payee or the payee's assignee* has made *the* written demand~~, mailed to the last known address or the address shown on the check, to the drawer for payment of the amount of the check, draft, or order~~ *required in subsection (2)* not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded *under subsection (2)* prior to the commencement of the action.

~~(4)~~*(5)* The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the ~~drawer~~ *issuer* provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3)."

Approved March 30, 1995

CHAPTER NO. 305

[SB 374]

AN ACT REVISING CERTAIN STATE FUND INSURANCE LAWS; AUTHORIZING THE STATE FUND TO REFUSE WORKERS' COMPENSATION COVERAGE TO AN EMPLOYER OR AN EMPLOYER'S PRINCIPALS WHO HAVE DEFAULTED ON A STATE FUND OBLIGATION; PROVIDING THE STATE FUND BOARD OF DIRECTORS WITH DISCRETION TO ASSESS A POLICY CHARGE, A MINIMUM PREMIUM, OR BOTH, IN LIEU OF A MINIMUM YEARLY PREMIUM; AUTHORIZING THE STATE FUND TO PROVIDE EMPLOYERS' LIABILITY INSURANCE AS PART OF THE REQUIRED COVERAGE; REQUIRING THE STATE FUND TO BELONG TO A LICENSED ADVISORY OR RATING ORGANIZATION; PROHIBITING, WITH EXCEPTIONS, THE SALE OR DISTRIBUTION OF INFORMATION PROVIDED TO A WORKERS' COMPENSATION RATING ORGANIZATION; REDUCING TO 20 DAYS THE TIME REQUIRED FOR NOTIFYING AN EMPLOYER OF THE CANCELLATION OF COVERAGE;

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AMENDING SECTIONS 39-71-2311, 39-71-2313, 39-71-2316, AND 39-71-2339, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2311, MCA, is amended to read:

"**39-71-2311. Intent and purpose of plan.** It is the intent and purpose of the state fund to allow employers ~~the~~ *an* option to insure their liability for workers' compensation and occupational disease coverage with ~~a mutual insurance~~ *the state* fund. ~~The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer.~~ The stato fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a facter or facters may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, ~~it must~~ *the state fund shall* implement variable pricing levels as provided in 39-71-2341 *and the board of directors may, in its discretion, assess a policy charge, a minimum premium, or both.*"

Section 2. Section 39-71-2313, MCA, is amended to read:

"**39-71-2313. State compensation insurance fund ereated — *obligation to insure.*** *(1)* There is a state compensation insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter.

(2) The state fund is required to insure any employer in this state who requests coverage, and it may not refuse to provide coverage unless an employer or the employer's principals have defaulted on a state fund obligation and the default remains unsatisfied."

Section 3. Section 39-71-2316, MCA, is amended to read:

"**39-71-2316. Powers of ~~the~~ state fund.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state *and, as part of the coverage, provide related employers' liability insurance upon approval of the board.* ~~The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.~~

(2) sue and be sued;

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(3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(4) collect and disburse money received;

(5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and facters set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such *the* rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund must *is required to* belong to ~~the national council on compensation insurance~~ *a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4,* and shall *may* use the classifications of employment adopted by ~~the national council~~ *the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10,* and corresponding rates as a basis for setting its own rates. *Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.*

(6) pay the amounts determined due under a policy of insurance issued by the state fund;

(7) hire personnel;

(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside, money that can he declared as a dividend must be transferred to the account created hy 39-71-2321 for claims for injuries resulting from accidents that occurred hefore July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(9) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund."

Section 4. Section 39-71-2339, MCA, is amended to read:

"39-71-2339. Cancellation of coverage — thirty *twenty* days' notice required. The state fund may cancel an employer's coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured at least 30 *20* days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 30 *20* days after the due date. The state fund shall notify the department of the names and

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effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. ~~Nothing in this~~ *This* section ~~prevents~~ *does not prevent* the state fund from canceling an insurance policy before a replacement policy is issued to the insured. After the cancellation dato, the employer has the same status as an employer who is not enrolled under the Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued."

Section 5. Coordination instruction. If [this act] is passed and approved and if it amends 39-71-2316, then Senate Bill No. 21 is void.

Section 6. Effective date. [This act] is effective July 1, 1995.

Approved March 29, 1995

CHAPTER NO. 306

[HB 357]

AN ACT CREATING A COMMISSION ON SENTENCING TO STUDY SENTENCING PRACTICES AND GUIDELINES AND THE EFFECTS OF SENTENCES; PROVIDING FOR THE SUBMISSION OF PROPOSED SENTENCING GUIDELINES TO THE LEGISLATURE BY THE COMMISSION; PROVIDING FOR RECOMMENDATIONS TO THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislaturc of the State of Montana:

Section 1. Commission on sentencing. (1) There is a commission on sentencing. The commission is allocated to the department of corrections and human services for administrative purposes only, as provided in 2-15-121.

(2) The commission consists of:

(a) two members of the house of representatives, selected by the speaker of tbe house of representatives, no more than one of whom may be from the same political party;

(b) two members of the senate, selected by the president of the senate, no more than one of whom may be from the same political party;

(c) two district court judges selected by the chief justice of tbe Montana supreme court;

(d) the director of the department of corrections and human services or the director's designee; and

(e) the following persons appointed by the governor:

(i) a county attorney;

(ii) a criminal defense atterney;

(iii) a probation and parole officer;

(iv) a county sheriff;

(v) a chief of police;

(vi) a member of the board of pardons;

(vii) an employee of the department of justice; and

(viii) two members of the public, one of whom must be a victim of a crime for which a sentence of death or of imprisonment for more than 1 year was imposed.

(3) Appointments under subsection (2) must be made within 60 days after [the effective date of this act].

(4) The commission shall select a presiding officer from its members.

(5) The commission shall meet at least quarterly.

Section 2. Duties. The commission may:

(1) collect and study data, studies, and research from public and private entities concerning sentencing processes and guidelines;

(2) publish or distribute material concerning sentencing processes, sentencing guidelines, sentences imposed, and the effect of those sentences;

(3) make recommendations to the 55th legislature concerning modification or enactment of sentencing and correctional statutes that the commission believes is necessary or advisable to carry out an effective, humane, and rational sentencing policy;

(4) make a recommendation to the 55th legislature as to whether the commission should be continued in existence;

(5) identify the impact of good time credits and sentencing guidelines on the criminal justice system; and

(6) make a recommendation to the 55th legislature concerning the advisability of good time credits.

Section 3. Sentencing guidelines. (1) The commission shall determine the advisability of proposing advisory sentencing guidelines to the 55th legislature.

(2) If submitted to the legislature for consideration, the guidelines must specify:

(a) the range of sentences applicable to each crime;

(b) a range of sentences for a defendant previously convicted of a felony or felonies or convicted of a crime involving the use of a deadly weapon;

(c) variations from the range of applicable sentences due to aggravating or mitigating circumstances;

(d) the circumstances under which imprisonment of an offender is proper;

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(e) a presumptive sentence for offenders for whom imprisonment is proper, based upon an appropriate evaluation of the crime committed, the prospects of rehabilitation of the offender, the circumstsnces under which the crime was committed, and the criminal history of the offender; and

(f) appropriate sanctions for an offender for whom imprisonment is not proper.

(3) In establishing the sentencing guidelines, the primary consideration of the commission must be public safety and the resteration of the victim. The commission shall also consider the prospects of rehabilitation, responsibility, and accountability of the offender; current sentencing and release practices; and correctional resources.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Termination. [This act] terminates May 31, 1997.

Approved March 31, 1995

CHAPTER NO. 307

[HB 409]

AN ACT REVISING THE LAW REGARDING DETACHED FACILITIES OF BANKS; AMENDING SECTION 32-1-372, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-372, MCA, is amended te read:

"**32-1-372. Branch bank — detached facilities.** (1) A bank may establish and maintain a branch bank only as provided in 32-1-371 and this section and, in the case of a bank organized under the laws of this state, with the prior approval of the state banking board, provided that nothing in this section prohibits ordinary clearinghouse transactions between banks.

(2) (a) With the prior approval of the department, a bank or branch bank, *but not a detached facility,* doing business in this state may establish and maintain:

(i) one detached drive-in and walk-up facility consisting of one or more teller windows; or

(ii) if the bank or branch bank is doing business in a city or consolidated government with a population of more than 20,000 as indicated in the most recent United States census, two drive-in or walk-up facilities consisting of one or more teller windows.

(b) A detached facility must be in the city or within 3,000 feet of the city limits of the city in which the main banking house or branch bank is located. A facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement te be made in a straight line from the closest points of the closest

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structures involved. The distances specified in this subsection in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. ~~The service of a facility must be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank or the branch bank, and other transactions that are normally and usually conducted or handled at teller windows in the main banking house or branch bank.~~

(c) A detached facility may offer all services and conduct all business authorized to be offered or conducted by the bank.

(d) A detached facility authorized under this subsection (2) may not be considered a branch bank.

(3) A bank authorized to do banking business in this state may ~~utilize~~ *use* a satellite terminal as defined in the Montana Electronic Funds Transfer Act and at any location permitted by the Montana Electronic Funds Transfer Act. The use of satellite terminals is not subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.

(4) A bank, other than a bank owned by a holding company not located in Montana, may establish, maintain, and operate a branch bank in a city in which no bank or branch bank is located at the time the branch bank is to be established if that city is in the county or a county adjoining the county in which the main banking house of the branch bank is located.

(5) Common ownership notwithstanding, a bank located in this state may acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority.

(6) A branch bank must have a community advisory board."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 31, 1995

CHAPTER NO. 308

[SB 156]

AN ACT REVISING CERTAIN STATUTES RELATING TO THE UNIVERSITY SYSTEM; RESTRUCTURING THE UNIVERSITY SYSTEM BY INCORPORATING THE VOCATIONAL-TECHNICAL CENTERS INTO THE SYSTEM; REMOVING THE VOCATIONAL-TECHNICAL CENTER REPRESENTATIVE FROM THE GUARANTEED STUDENT LOAN ADVISORY COUNCIL; DELETING REFERENCES TO VOCATIONAL-EDUCATIONAL CENTERS; REMOVING

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VOCATIONAL-TECHNICAL CENTER STUDENTS FROM WORKERS' COMPENSATION COVERAGE; REQUIRING FIVE COUNTIES TO LEVY 1 1/2 MILLS TO SUPPORT VOCATIONAL-TECHNICAL EDUCATION; ELIMINATING CERTAIN MISCELLANEOUS FINANCE PROVISIONS RELATING TO UNIVERSITY SYSTEM CONSTRUCTION AND BOND PROJECTS; REVISING THE NAMES OF THE UNITS OF THE UNIVERSITY SYSTEM; CLARIFYING THE DEFINITION OF RESIDENT STUDENT AND PROVISIONS RELATING TO DOMICILE; AMENDING SECTIONS 2-15-1520, 2-18-401, 17-1-102, 17-2-102, 17-2-107, 17-2-110, 17-7-102, 17-7-304, 19-3-403, 19-20-302, 20-1-101, 20-5-402, 20-7-701, 20-9-212, 20-25-201, 20-25-211, 20-25-301, 20-25-303, 20-25-501, 20-25-503, 20-32-101, 20-32-102, 20-32-103, 23-1-313, 37-8-102, 37-31-304, 39-29-101, 39-30-103, 39-71-117, 39-71-118, 39-71-744, 50-40-204, AND 50-74-305, MCA; REPEALING SECTIONS 20-16-101, 20-16-102, 20-16-103, 20-16-104, 20-16-105, 20-16-106, 20-16-107, 20-16-108, 20-16-109, 20-16-201, 20-16-202, 20-16-203, 20-16-204, 20-16-205, 20-16-206, 20-16-207, 20-25-251, 20-25-401, 20-25-431, 20-25-432, 20-25-433, 20-25-434, AND 60-2-216, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1520, MCA, is amended to read:

"**2-15-1520. Guaranteed student loan advisory council — terms, — compensation.** (1) There is a student loan advisory council appointed by the board of regents.

(2) The council consists of seven members. Each member ~~shall~~ *must* be appointed for a term of 3 years.

(3) Appointments to the council must conform to the following requirements:

(a) One member must be a representative of a private eligible educational institution, as defined in 20-26-1101.

(b) Two members must be representatives of a puhlic eligible educational institution, as defined in 20-26-1101. ~~One must be a representative of higher education, and one must be a representative for the vocational-technical centers.~~

(c) Two members must be representatives of approved lenders.

(d) One member must be a full-time student registered at an eligihle educational institution, as defined in 20-26-1101.

(e) One member must be a representative of the office of the commissioner of higher education.

(4) A ~~chairman~~ *presiding officer* must be selected hy the council from its membership at the first meeting of each fiscal year.

(5) Each member of the council is entitled to compensation and reimbursement for travel expenses as provided in 2-15-122(5)."

Section 2. Section 2-18-401, MCA, is amended to read:

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"2-18-401. Central payroll system — department to provide for inclusion of agencies. The department of administration shall install and operate a uniform state central payroll system for all state agencies, including units of the Montana university system ~~and the vocational-technical centers~~. The department may provide for the orderly inclusion of state agencies into the system and may make exceptions from the operation of the system for periods *that* it determines necessary."

Section 3. Section 17-1-102, MCA, is amended to read:

"17-1-102. Uniform accounting system and expenditure control. (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees *may be* eliminated, public service *may be* improved, and the cost of government *may be* reduced.

(2) The department shall prescribe and install uniform accounting and reporting for all state agencies and institutions, showing the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles, and shall develop plans for improvements and economies in the organization and operation ~~thereof~~ *of state agencies and institutions*, which ~~shall~~ *must* be submitted to the respective heads of agencies and institutions. Copies of all ~~such~~ plans ~~shall~~ *must* be delivered to the governor, and additional copies ~~shall~~ *must* be retained in the office of the department for inspection by the members of the legislature.

(3) The uniform accounting and reporting system must contain three levels of expenditure. The first level must include general categories, such as personal services, operating expenses, equipment, capital outlay, local assistance, grants, benefits and claims, transfers, and debt service. The second level of expenditure must include specific categories of expenditures within each first-level category. The third level of expenditure must include specific items of expenditure within each category of the second level.

(4) The department shall examine all financial affairs of ~~every~~ *each* state agency and institution for the purpose of developing plans for improvements and economies in the organization and operation ~~thereof~~ *of the agencies and institutions* and for the purpose of enabling the department to properly perform any of the duties imposed upon the department by this part.

(5) All state agencies, including units of the university system, *but* excluding community colleges~~, and the vocational-technical centers~~, shall input all necessary transactions to the accounting system prescribed in subsection (2) before the accounts are closed at the end of the fiscal year in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles, except that for budgetary control purposes, encumbrances ~~which~~ *that* are required by generally accepted accounting principles to be reported as a reservation of fund balance ~~shall~~ *must* be recorded as expenditures and liabilities on the accounting records."

Section 4. Section 17-2-102, MCA, is amended to read:

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"**17-2-102. Fund structure.** (1) There are in the state treasury only the following fund categories and types:

(a) the governmental fund category, which includes:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(iii) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) the proprietary fund category, which includes:

(i) the enterprise fund type, which accounts for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services te the general puhlic on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, puhlic policy, management control, accountability, or other purposes; and

(ii) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

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(i) expendable trust fund type;

(ii) nonexpendable trust fund type;

(iii) pension trust fund type; and

(iv) agency fund type.

(d) the higher education funds, which include:

(i) the current fund, which accounts for money deposited in the state treasury that is used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system ~~and vocational-technical centers~~. The financial activities of the current fund are subdivided, for operational purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments ~~wherein~~ *in which* the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(D) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the student loan fund, which accounts for money deposited in the state treasury that may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system ~~and vocational-technical centers~~;

(iii) the endowment fund, which accounts for money deposited in the state treasury by the Montana university system ~~and vocational-technical centers~~ wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the annuity and life income fund, which accounts for money deposited in the state treasury by the Montana university system ~~and vocational-technical centers~~ under an agreement whereby the money is made available on condition that the receiving unit of the Montana university system ~~or vocational-technical~~

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~~center~~ binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system ~~and vocational-technical centers~~ for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the agency fund, which accounts for money deposited in the state treasury wherein the Montana university system ~~or a vocational-technical center~~ acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1), there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v); and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v)."

Section 5. Section 17-2-107, MCA, is amended to read:

"17-2-107. Accurate accounting records and interentity loans. (1) The department of administration shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each accounting entity. The department of administration shall adopt the necessary procedures to ~~insure~~ *ensure* that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and ~~revenues~~ *revenue*.

(2) (a) When the expenditure of an appropriation from a fund designated in 17-2-102(1)(a) through (1)(c) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department of administration may authorize a temporary loan, bearing no interest, of unrestricted money from otber accounting entities if there is reasonable evidence that the income will be sufficiont to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(1)(d)(i)(A) through (1)(d)(vi) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the

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commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4), of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(1)(d)(i)(A) through (1)(d)(vi) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date *on which* the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department of administration or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings, other than investment earnings on student activity fees used to support student governments at units of the university system, are credited to the state general fund.

(5) If for ~~two~~ *2* consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department of administration or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for ~~two~~ *2* consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(1)(d)(i) through (1)(d)(vi) has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan te address any problems concerning the accounting entity's negative cash balance or solvency.

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(7) (a) An accounting entity in a fund designated in 17-2-102(1)(a) through (1)(c) may not have a negative cash balance at fiscal yearend. The department of administration may, however, allow an accounting entity to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii), a unit of the university system ~~or vocational-technical center~~ shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department of administration may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department of administration may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary ~~due to~~ *because of* the timing of the receipt of agreed upon reimbursements from federal, private, or other governmental entity sources for disbursements made. The department of administration may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under ~~such~~ terms and conditions as may be determined by the department of administration or by specific legislative authorization."

Section 6. Section 17-2-110, MCA, is amended to read:

"17-2-110. Fiscal year and financial reports. (1) The fiscal year for state purposes commences on July 1 of each year and ends on June 30 of each year.

(2) At the close of each fiscal year, the fiscal records of each state office, department, bureau, commission, institution, university unit, ~~vocational-technical center,~~ and agency (~~hereinafter~~ collectively referred to as "state agency") ~~shall~~ *must* be closed as of the end of the fiscal year. Each state agency shall prepare ~~such~~ *the* financial statoments and reconciliations for the fiscal year as the department of administration may prescribe. These financial reports are to be completed and distributed not more than 31 days following the close of each fiscal year. The department of administration may extend this time limit if a state agency can show necessity ~~therefor~~ *for the extension*.

(3) The reports are to be distributed te the department of administration and the legislative auditor and any other state agency *that* the department of administration may prescribe. It is the intent of this provision that these reports accurately and comprehensively present the financial activities of the reporting state agency in accordance with generally accepted accounting principles so that the reports can be effectively ~~utilized~~ *used* by the executive and legislative branches of state government.

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(4) Upon consolidation of the reports, the annual financial report by the department of administration ~~will~~ *must* be available for other individuals and organizations interested in the financial affairs of the state of Montana."

Section 7. Section 17-7-102, MCA, is amended to read:

"17-7-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government, except for purposes of capital projects administered by the department of administration, for which institutions are treated as one department and university units as one system.

(3) "Approved long-range building program budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within an agency to increase the appropriation of another capital project within that agency or to obtain financing to expand a project with funds that were not available for consideration by the legislature.

(4) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(5) "Base budget" means that level of funding authorized by the previous legislature.

(6) "Budget amendment" means a legislative appropriation to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund, contingent on total compliance with all budget amendment procedures.

(7) "Present law base" means that additional level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

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(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(8) "Effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained.

(9) "Emergency" means a catastropbe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time *that* an agency's appropriation was made, tbat was clearly not witbin the contemplation of the legislature and the governor, and tbat affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(10) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(11) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existonce of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(12) "Priority listing" means a ranking of proposed expenditures in order of importance.

(13) "Program" means a combination of resources and activities designed to achieve an objective or objectives.

(14) "Program size" means the magnitude of a program, such as the size of clientele served or the volume of service in relation to the population or area.

(15) "Program size indicator" means a measure to indicate the magnitude of a program.

(16) "Requesting agency" means tbe agency of state government that has requested a specific budget amendment.

(17) "University system unit" means the board of regents of higher education,; office of the commissioner of higher education,; university of Montana, *with campuses* at Missoula, *Butte, Dillon, and Helena;* Montana state university, *with campuses* at Bozeman, *Billings, Havre, and Great Falls;* ~~Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon,~~ tbe agricultural experiment station, with central offices at Bozeman,; the forest and conservation experiment station, with central offices at Missoula,; the cooperative extension service, with central offices at Bozeman,; tbe bureau of mines and geology, with central offices at

Butte,; the fire services training school at Great Falls,; ~~the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula, or~~ *and* the community colleges at Miles City, Glendive, and Kalispell."

Section 8. Section 17-7-304, MCA, is amended to read:

"17-7-304. (Temporary) Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana *campuses* at Missoula, *Butte, Dillon, and Helena and the* Montana state university *campuses* at Bozeman, *Billings, Havre, and Great Falls* ~~Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon~~, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, *and* the bureau of mines and geology with central offices in Butte~~, and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula~~ must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) For the 2 years following the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning. (Terminates June 30, 1996—sec. 23, Ch. 787, L. 1991; sec. 5, Ch. 5, Sp. L. July 1992.)

17-7-304. (Effective July 1, 1996) Disposal of unexpended appropriations. (1) Except as provided in subsection (2), all money appropriated for any specific purpose must, after the expiration of the time for

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which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) For the 2 years following the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning. (Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)

17-7-304. (Effective July 1, 1997) Disposal of unexpended appropriations. All money appropriated for any specific purpose must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made."

Section 9. Section 19-3-403, MCA, is amended to read:

"**19-3-403. Exclusions from membership.** The following persons may not become members of the retirement system:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training, but who receive compensation;

(3) independent contractors, unless there is a written contract that specifies the creation of an employer-employee relationship for purposes of retirement coverage under the retirement system;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and *is* purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the stato, is required to become a member of any other system described in this subsection is considered, solely for the purposes of making regular contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement allowances, or other payments from any source on account of

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employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6) full-time students employed at and attending the same public elementary school, high school, ~~vocational-technical center, or~~ community college, or ~~any~~ unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive credited service for the excluded service under the provisions of 19-3-505."

Section 10. Section 19-20-302, MCA, is amended to read:

"**19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of:

~~(i) a vocational-technical center; or~~

~~(ii)~~ a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) any person employed as a speech therapist, school nurse, or school psychologist or in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) any person who has elected not to become a member of the retirement system and *who* is reentering service in a capacity prescribed by *subsection (1)*(a), *(1)*(b), *(1)*(c), or *(1)*(d) ~~of this subsection (1)~~;

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by *subsection (1)*(a), *(1)*(b), *(1)*(c), or *(1)*(d) ~~of this subsection (1)~~ since the time of the election, and who may elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(3) (a) A substitute teacher:

(i) may elect to become an active member of the retirement system on the first day of employment in any fiscal year; or

(ii) ~~shall~~ *is required to* become an active member of the retirement system on the 31st day of employment in any fiscal year if the substitute teacher has not elected membership under subsection (3)(a)(i).

(b) The employer shall give written notification to a substitute teacher on the first day of employment in any fiscal year of the option to elect membership under subsection (3)(a)(i).

(4) A substitute teacher who did not elect membership under subsection (3)(a)(i) and subsequently becomes a member must be awarded creditable service for substitute teaching service if the substitute teacher contributes:

(a) an amount equal to the combined employee and employer contributions that would have been made if the substitute teacher had elected membership; plus

(b) interest at the rate *that* the contributions would have earned if they had been on deposit with the retirement system.

(5) At any time *that* a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances ~~shall~~ *must* be treated alike."

Section 11. Section 20-1-101, MCA, is amended to read:

"**20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university-*Bozeman*.

(2) "Average number belonging" or "ANB" ~~shall mean~~ *means* the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) ~~The "board~~ *"Board* of public education" ~~is~~ *means* the board created by Article X, section 9, subsection (3), of the ~~1972~~ Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the ~~1972~~ Montana constitution and 2-15-1505.

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(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the ~~1972~~ Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means ~~any~~ *a* person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of puhlic education and who has been employed by a district as a district superintendent.

(8) "K-12 vocational education" means vocational education in public school kindergarten through grade 12.

(9) "Principal" means ~~any~~ *a* person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has heen employed by a district as a principal. For the purposes of this title, any reference to a teacher ~~shall~~ *must* be construed as including a principal~~, as herein defined~~.

(10) "Pupil" means ~~any~~ *a* child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustoes under 20-5-101(3) but has not yet reached ~~his 19th birthday~~ *19 years of age* and who is enrolled in a school established and maintained under the laws of the stato ~~of Montana~~ at public expense. For purposes of calculating the average number belonging ~~(ANB)~~ pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached ~~his 19th birthday~~ *19 years of age* by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

(11) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(12) "Regents" means the board of regents of higher education.

(13) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and ~~shall include~~ *includes* any food service financially assisted through funds or commodities provided by the United States government.

(14) ~~The "state~~ *"State* board of education" ~~is~~ *means* the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the ~~1972~~ Montana constitution.

(15) "State university" means ~~the~~ Montana state ~~university, located at Bozeman~~ *university-Bozeman*.

(16) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the ~~constitution of~~ Montana *constitution*.

(17) "System" means the Montana university systom.

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(18) "Teacher" means ~~any~~ *a* person, except a district superintendent, who holds a valid Montana teacher certificate that has heen issued hy the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher ~~shall also include~~ *includes a* ~~any~~ person for whom an emergency authorization of employment ~~of such person~~ has been issued under the provisions of 20-4-111.

(19) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(20) "Textbook dealer" means ~~any~~ *a* party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state ~~of Montana~~.

(21) "Trustees" means the governing board of a district.

(22) "University" means the university of ~~Montana, located at Missoula~~ *Montana-Missoula*.

(23) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. Tbis definition of vocational education ~~shall include~~ *includes* guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment.

~~(24) "Vocational-technical center" means an institution used principally for the provision of vocational-technical education to persons who qualify as vocational-technical students. These centers are designated by the board of regents upon direction by the legislature. All other public or private institutions or schools are hereby prohibited from using this title.~~

~~(25)~~*(24)* "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a ~~vocational-technical center,~~ a unit of the Montana university system~~,~~ or a community college, as designated by the board of regents."

Section 12. Section 20-5-402, MCA, is amended to read:

"20-5-402. Definitions. For the purposes of this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school, preschool, or postsecondary school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health department" means a city, city-county, county, or district health department.

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(5) "Local health officer" means a city, city-county, county, or district health officer.

(6) "Postsecondary school" means ~~a vocational-technical center,~~ a community college, a unit of the Montana university system, or a private university or college.

(7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

(a) serves no child under 5 years of age for more than 3 hours a day; and

(b) serves no child 5 years of age for more than 6 hours a day.

(8) "School" means a place or institution for the teaching of individuals, the curriculum of which is ~~comprised~~ *composed* of the work of:

(a) any combination of kindergarten through grade 12;

(b) a postsecondary school; or

(c) a preschool."

Section 13. Section 20-7-701, MCA, is amended to read:

"**20-7-701. Definition of adult basic education and adult education.** ~~(1)~~ As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

~~(a)~~*(1)* ~~The term "adult~~ *"Adult* basic education" means instruction in basic skills, such as reading, writing, arithmetic, and other skills required to function in society, offered to persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. Adult basic education may include any subject normally offered in the basic curricula of an accredited elementary or secondary school in the state.

~~(b)~~*(2)* ~~The term "adult~~ *"Adult* education" means the instruction of persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation.

~~(2) Neither definition may include the instruction in vocational-technical centers.~~"

Section 14. Section 20-9-212, MCA, is amended to read:

"**20-9-212. Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supportod by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary BASE aid;

(b) the basic special tax for high schools in support of the high school BASE aid;

(c) the county tax in support of the transportation scbedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, ~~which~~ *that* may be authorized by law and levied by the county commissioners.

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(5) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custedian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) invest the money of any district as directed by the trustees of the district within 3 working days of the direction;

(10) each month give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance;

(11) remit promptly to the state treasurer receipts for the county tax for a vocational-technical ~~center~~ *education* when levied by the board of county commissioners under the provisions of ~~20-16-202~~ *[section 34]*;

(12) invest the money received from the basic county tax, the basic special tax, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissihle investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) remit on a monthly basis to the state treasurer, in accordance with the provisions of 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned and excluding any amount required for high school out-of-county tuition under the provisions of 20-9-334, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 15. Section 20-25-201, MCA, is amended to read:

"**20-25-201. Units constituting university system.** The Montana university system is composed of the following units, each designated by its legal name:

(1) ~~University~~ *The university* of Montana, *with campuses* ~~located~~ at *the following locations:*

(a) Missoula;

(b) Butte;

(c) Dillon; and

(d) Helena.

(2) Montana state university, *with campuses* located at *the following locations:*

(a) Bozeman;

(b) Billings;

(c) Havre; and

(d) Great Falls.

~~(3) Montana college of mineral science and technology, located at Butte;~~

~~(4) Western Montana college of the university of Montana, located at Dillon;~~

~~(5) Eastern Montana college, located at Billings; and~~

~~(6) Northern Montana college, located at Havre.~~"

Section 16. Section 20-25-211, MCA, is amended to read:

"20-25-211. Montana ~~college of mineral science and technology~~ *tech of the university of Montana* — purpose — fees for assays. (1) ~~The~~ Montana ~~college of mineral science and technology~~ *tech of the university of Montana* has for its purpose instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics and drawing, and the laws of the United States and Montana relating to mining.

(2) A department designated as "the Montana state bureau of mines and geology", which ~~shall be~~ *is* under the direction of the regents, is established at ~~the college~~ *Montana tech of the university of Montana*.

(3) The ~~president~~ *chancellor* of Montana ~~college of mineral science and technology~~ *tech of the university of Montana* may charge and collect reasonable fees for any assays and analyses made by the college.

(4) The ~~president~~ *chancellor* shall keep an account of ~~such~~ *the* fees and pay them monthly to the treasurer for deposit te the college fund."

Section 17. Section 20-25-301, MCA, is amended to read:

"20-25-301. Regents' powers and duties. The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings with the university system, and ~~shall~~:

(1) *must* have general control and supervision of the units of the Montana university system, which is considered for all purposes one university;

(2) *shall* adopt rules~~, not inconsistent~~ *for its own government that are consistent* with the constitution and the laws of the state~~, for its own government which~~ *and that* are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) *shall* provide, subject to the laws of the state, rules for the government of the system;

(4) *shall* grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion te confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of the institutions;

(5) *shall* keep a record of its proceedings;

(6) *must* have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) *must* receive from the board of land commissioners, *from* other boards, *or* persons, or from the government of the United States all funds, incomes, and other property the system may be entitled te and use and appropriate the property for the specific purpose of the grant or donation;

(8) *must* have general control of all receipts and disbursements of the system;

(9) *shall* appoint a president *or chancellor* and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

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(10) *shall* confer upon the executive board of each of the units of the system authority that may be considered expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;

(11) *shall* confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(12) *shall* prevent unnecessary duplication of courses at the units of the system;

(13) *shall* appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who is the state geologist, and appoint any other necessary assistants and employees and fix their compensation.

(14) *shall* supervise and control the agricultural experiment station, along with any executive or subordinate board or authority ~~which~~ *that* may be appointed by the governor with the advice and consent of the regents;

(15) *shall* adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents ~~which~~ *that* may require it;

(16) *shall* ~~assure~~ *ensure* an adequate level of security for data and information technology resources, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in 2-15-114.

(17) shall offer courses in vocational-technical education of a type and in a manner considered necessary or practical by the regents."

Section 18. Section 20-25-303, MCA, is amended to read:

"20-25-303. Local executive boards — terms and compensation. (1) There is a local executive board ~~for each unit of the~~ *within each county in which a university* system *campus is located.*

(2) (a) Each local executive board ~~shall consist~~ *consists* of three members appointed by the governor with the advice and consent of the regents.

(b) The president of ~~each~~ *a* unit ~~shall~~ *or the chancellor of a campus may* not be a member of the local executive board.

(c) Two of the members must reside in the county where the unit is located.

(d) The members shall hold office for 3 years beginning the third Monday in April of the year appointed. The term of office of one member shall expire each year.

(e) The members may be removed by the governor or the regents.

(f) The members shall qualify by filing their oath of office with the regents.

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(3) All vacancies ~~shall~~ *must* be filled by appointment by the governor and referred *for confirmation* to the regents at their first meeting ~~thereafter for confirmation~~ *after appointment.*

(4) Each local executive board shall elect a ~~chairman~~ *presiding officer* and appoint a secretary.

(5) The compensation for the members ~~shall~~ *must* be fixed by the regents. It ~~shall~~ *may* not exceed $5 for each day spent in discharging their duties or $125 in any ~~one~~ year for each member. The members ~~shall~~ *must* be reimbursed from the amount appropriated by the legislature for the maintenance and support of the units for all expenses necessarily incurred in discharge of their duties."

Section 19. Section 20-25-501, MCA, is amended to read:

"**20-25-501. Definitions.** (1) Terms used in this part are defined as follows:

(a) "Domicile" means a person's true, fixed, and permanent home and place of habitation.

(b) "Emancipated minor" means a person under the age of 18 years who ~~supports himself~~ *is self-supporting* from ~~his own~~ *personal* earnings or is married. A person who received more than 25% of the cost of ~~supporting himself~~ *support* from any person other than an agency of the government ~~shall~~ *may* not be considered an emancipated minor.

(c) "Minor" means a male or female person who has not obtained the age of 18 years.

(d) "Qualified person" means a person legally qualified to determine ~~his~~ *the person's* own domicile.

(e) "Resident student" means:

(i) a student who has been domiciled in Montana for 1 year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education ~~shall~~ *is* not alone ~~be~~ sufficient to qualify for residence in Montana.

(ii) any graduate of a Montana high school *who is a citizen or resident alien of the United States and* whose parents, parent, or guardian ~~have~~ *has* resided in Montana at least 1 full year of the 2 years immediately preceding ~~his~~ *the student's* graduation from high school. ~~Such~~ *The* classification ~~shall continue~~ *continues* for not more than 4 academic years if the student remains in continuous attendance at a unit; or

(iii) a member of the armed forces of the United States assigned to and residing in Montana, ~~his~~ *the member's* spouse, or ~~his~~ *the member's* dependent children.

(2) In the event *that* the definition of residency or any portion thereof is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system ~~shall have authority to~~ *may* make rules on what constitutes adequate evidence of residency status not inconsistent with ~~such~~ *those* court decisions."

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Section 20. Section 20-25-503, MCA, is amended to read:

"**20-25-503. Presumptions and rules as to domicile.** (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of ~~his~~ *the minor's* guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) Residence is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if ~~he~~ *the person* is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates *who are citizens or resident aliens of the United States* are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; or

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for ~~his~~ *the adult's* spouse or any dependent minor child, or both. If ~~such~~ *the* person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and renounces ~~his~~ residency in any other state and is not ~~himself~~ in the state primarily as a student, ~~his~~ *the person's* spouse or any dependent minor child, or ~~both~~, may at the next registration after qualifying be classified at the in-state rate so long as ~~he~~ *the person* continues ~~his~~ *a* Montana domicile. In the administration of this subsection, neither the full-time employee or spouse ~~shall be~~ *is* eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse."

Section 21. Section 20-32-101, MCA, is amended to read:

"**20-32-101. Purpose — definition.** (1) The purpose of this part is to establish a Montana educational telecommunications network.

(2) For the purposes of this part, "network" means the Montana educational telecommunications network (METNET).

(3) The aims of the network are to provide:

(a) instructional and educational coursework and materials through telecommunications delivery to students in kindergarten through 12th grade in the Montana public school system;

(b) instructional and educational coursework and materials through telecommunications delivery to students enrolled in units of the Montana university system~~, the vocational-technical centers,~~ and the community colleges;

(c) instructional and professional development or other appropriate inservice training for teachers in the schools of the state; and

(d) telecommunications capabilities to agencies, subdivisions of state government, and public libraries in order to improve their ability to perform their responsibilities and duties."

Section 2. Section 20-32-102, MCA, is amended to read:

"**20-32-102. Agency cooperation — responsibilities.** (1) To meet the objectives of the network, the following entities shall cooperate with one another:

(a) the department of administration, with its responsibilities for telecommunications for agencies of state government;

(b) the superintendent of public instruction, with a supervisory role over the public system of elementary and high schools; and

(c) the commissioner of higher education, with responsibilities to the Montana university system~~, the vocational-technical centers,~~ and the community colleges.

(2) The responsibilities of the superintendent of public instruction to the network include but are not limited to:

(a) general supervision of delivery of educational materials through telecommunications to elementary and high school districts in the state;

(b) compilation, maintenance, and dissemination to participating school districts of information that identifies the educational programming available from within and from outside the state;

(c) training of teachers and other school personnel in the use of telecommunications technologies for instructional purposes;

(d) assistance to school districts in identifying and procuring the telecommunications technologies needed to interface with the network;

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(e) identification of production capability for telecommunication of educational materials;

(f) assistance to participating school districts with group purchases of instructional and educational materials;

(g) coordination with the commissioner of higher education and the units of the Montana university system to offer advanced placement courses, teacher inservice training, and other instruction through the network;

(h) payment of the superintendent's share of the network costs to the department of administration, as provided in 20-32-104;

(i) coordination with the department of administration to ensure compatibility of network components, to minimize duplication of efforts on behalf of the network, and to maximize use of the network by school districts; and

(j) determination of kinds of equipment, inservice, and district accounting necessary to implement the provisions of this part for school districts.

(3) The responsibilities of the department of administration to the network include but are not limited to:

(a) provision of technical support to the coordinating agencies referred to in subsection (1);

(b) development of standards of compatibility for the network;

(c) procurement and management of network equipment and facilities that have shared use by multiple users or agencies;

(d) assistance with procurement, installation, maintenance, and operation of end-terminal equipment and facilities of the network;

(e) minimizing any duplication of equipment and facilities within the network and in conjunction with the department of administration's other networking capabilities;

(f) coordination of use of the network by state agencies, subdivisions of the state, and public libraries in a manner that does not interfere with the delivery of the primary network function of providing educational services to school districts and state units of higher education;

(g) studying the use of the network by Native American tribal colleges and other nonpublic education institutions in the state, with the long-range goal of coordinating the use of the network with those entities; and

(h) maintenance of cost and usage records and a billing system for user agencies for services rendered that incur marginal costs for the network.

(4) The responsibilities of the commissioner of higher education to the network include but are not limited to:

(a) coordination of the use of the network among the units of higher education and with the superintendent of public instruction and the department of administration;

(b) assistance to the units of the Montana university system to provide college credit courses through the network te students throughout the state;

(c) coordination with the superintendent of public instruction to develop advance placement courses for high school students in Montana, teacher inservice training, and other services and instruction through the network;

(d) assistance to the units of the Montana university system~~, the vocational-technical centers,~~ and the community colleges in defining their specific needs for interfacing with the network;

(e) assistance to participating units, centers, and colleges with group purchases of instructional and educational materials; and

(f) determination of the kinds of equipment, inservice, and accounting necessary to implement the provisions of this part for the university system, *and* community colleges~~, and vocational-technical centers~~."

Section 23. Section 20-32-103, MCA, is amended to read:

"**20-32-103. Fee collection and disposition for operational costs.** As a condition of participation in the network, the Montana university system, ~~vocational-technical centers,~~ and community colleges shall collect from appropriate discretionary funds in a manner approved by the board of regents an amount not to exceed $5 for each full-time equivalent student enrolled in the units~~, centers,~~ or colleges. The funds collected must be deposited with the commissioner of higher education by July 1 for the purposes of 20-32-102(4). The commissioner of higher education shall pay the department of administration the commissioner's share of the network costs."

Section 24. Section 23-1-313, MCA, is amended te read:

"**23-1-313. Term of enrollment — compensation — exemption from employee benefits.** (1) A corpsmember will be placed for a period not to exceed 12 months. The program operator shall refer the names of corpsmembers who successfully complete their participation in the corps to the job service for assistance in securing private secter employment or for enrollment in additional job training programs. The program operater may also, upon approval of the corpsmember, provide the name of a corpsmember who successfully completes his participation in the corps to private sector employers requesting referrals.

(2) A corpsmember may not be scheduled to work for more than 40 bours per week. Job training and placement services must be provided to corpsmembers during regular work hours. Corpsmembers must be compensated as provided in subsection (3) for participation in job training and placement service programs.

(3) A corpsmember must be compensated at a rate set by the department that is not less than the federal minimum wage.

(4) A corpsmember is not entitled to any employee benefits provided to permanent department or agency employees except for holiday pay and workers' compensation benefits that are provided through the funds appropriated to carry out this part. Service as a corpsmember does not qualify an individual for unemployment compensation benefits.

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(5) If funds are available, a person who is employed as a corpsmember for the full period of enrollment and who receives a satisfactory employment evaluation may be awarded an incentive voucher valid for up to 3 years at any Montana institution of higher education ~~or vocational-technical center~~."

Section 25. Section 37-8-102, MCA, is amended to read:

"**37-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1844.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical ~~center~~ *institution* or junior college.

(5) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice ~~utilizes~~ *uses* standardized procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians,

advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 26. Section 37-31-304, MCA, is amended to read:

"**37-31-304. Qualifications of applicants for license to practice.** (1) Before a person may practice cosmetology, the person shall obtain a license to practice cosmetology from the department. Before a person may practice manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant may not be less than 18 years of age, must be of good moral character, and must possess a high school diploma or the equivalent of a high school diploma recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or the equivalent of a high school diploma. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a registered cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file with the department a written application to take the examination and shall deposit with the department the required examination fee and pass an examination as to fitness to practice cosmetology.

(3) (a) To be eligible to take the examination to practice manicuring, an applicant may not be less than 18 years of age; must be of good moral character; possess a high school diploma, the equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical ~~center~~ program; and must have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma, the equivalent of a high school diploma, or a vocational-technical ~~center~~*program* certificate of completion. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (3)(a) shall file with the department a written application to take the examination and deposit with the department the required examination fee."

Section 27. Section 39-29-101, MCA, is amended to read:

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"39-29-101. **Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

(2) "Armed forces" means the United States:

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs.

(3) "Disabled veteran" means a person:

(a) whether or not the person is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the department of veterans affairs or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the motber's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(5) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position or a similar permanent, temporary, or seasonal position with a public employer other than the state. The term does not include:

(a) a state or local elected office;

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(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system ~~or a vocational-technical center~~;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that result in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training; or

(b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C. 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions."

Section 28. Section 39-30-103, MCA, is amended to read:

"**39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use ~~his~~ *the* employment preference because of ~~his~~ *the person's* disability.

(2) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections *(3)*(a)(i) through *(3)*(a)(v) ~~of this subsection (3)~~, current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections *(3)*(a)(i) through *(3)*(a)(v) ~~of this subsection (3)~~, or current participants in a federally authorized employment program is not an initial hiring.

(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contracter or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of tbe government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical ~~center or~~ program, a community college, tbe board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that tbe qualifications held by one person are significantly bettor suited for the position than the qualifications held by the other persons."

Section 29. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, *and* irrigation district~~;~~*;* all other districts established by law~~;~~*;* ~~and~~ all public corporations and quasi-public corporations and public agencies therein*;* ~~and every~~ *each* person~~;~~*;* ~~every~~ *each* prime contractor~~;~~*;* ~~and every~~ *each* firm, voluntary association, and private corporation, including any public service corporation and including an independent contracter who has any person in service under any appointment or contract of hire, expressed or implied, oral or written~~;~~*;* and the legal representative of any deceased employer or the receiver or trustee ~~thereof~~ *of the deceased employer*;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chaptor; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community

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service participants, as ~~defined~~ *described* in 39-71-118~~(1)(f)~~*(1)(e)*, with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract motor carrier doing business in this stato who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 30. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the electod and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

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(h) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

~~(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;~~

~~(e)~~*(d)* an aircrew member or other person employed as a volunteer under 67-2-105;

~~(f)~~*(e)* a person, other than a juvenile as defined in subsection (1)(h), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection ~~(f)~~*(e)*:

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

~~(g)~~*(f)* an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any

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memher of the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner or sole proprietor is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must he based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(5) The trustoes of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(6) An employee or worker in tbis state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

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(8) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under subsection (7)(d)."

Section 31. Section 39-71-744, MCA, is amended to read:

"**39-71-744. Benefits not due while claimant is incarcerated — exceptions.** (1) Except as provided in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118~~(1)(f)~~*(1)(e)*."

Section 32. Section 50-40-204, MCA, is amended to read:

"**50-40-204. Smoke-free buildings — designated smoking areas.** (1) In buildings both owned and occupied by the state, smoking is prohibited in the following areas:

(a) general office space;

(b) auditoriums, classrooms, and conference rooms;

(c) elevators;

(d) corridors, lobbies, restrooms, and stairways;

(e) medical care facilities;

(f) libraries; and

(g) hazardous areas.

(2) (a) Subject to subsection (1), in state-owned buildings, an agency head shall establish at least one designated smoking area in the building occupied by the agency, provided that the building is suited by architectural design and functional purpose to have a designated smoking area as defined in 50-40-203.

(b) Buildings in the Montana university system~~, including the vocational-technical centers,~~ and buildings housing items of artistic or historic value that may be damaged by smoke are exempt from the provisions of subsection (2)(a).

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(3) In establishing designated smoking areas, as provided in subsection (2), an agency head shall consider:

(a) the number of smokers and nonsmokers in the agency;

(b) the building ventilation system;

(c) the availability of space;

(d) the protection of nonsmokers from involuntary exposure to smoke; and

(e) available resources.

(4) (a) Agencies in multitenant buildings are encouraged to work together to identify designated smoking areas.

(b) The legislature shall establish designated smoking areas in the capitol in areas used by the legislature."

Section 33. Section 50-74-305, MCA, is amended to read:

"**50-74-305. Exceptions to requirements for engineer's license.** Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification ~~holding~~ *who holds* a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, *who* successfully ~~passing~~ *passes* a written examination prescribed by the department, and *who is* found to be competent to operate a boiler and steam-driven machinery in that classification ~~shall~~ *must* be granted a license in that classification.

(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the department may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant having training in the operation of steam or water boilers and steam machinery who has been certified as having satisfactorily completed a prescribed training course from a ~~recognized vocational-technical training school or center or other~~ department-approved institution or training program in the classification for which ~~he~~ *the applicant* is applying may, at the discretion of the department, be credited with a maximum of 6 months' experience toward a first-, second-, or third-class engineer's license."

Section 34. Vocational-technical education — mill levy required. (1) The boards of county commissioners of Cascade, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties shall in each calendar year levy a tax of 1 1/2 mills on the dollar value of all taxable property, real and personal, located within the respective county.

(2) The funds from the mill levy must be deposited in the general fund and must be distributed for vocational-technical education on the basis of budgets approved by the board of regents.

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Section 35. Repealer. (1) Sections 20-16-101, 20-16-102, 20-16-103, 20-16-104, 20-16-105, 20-16-106, 20-16-107, 20-16-108, 20-16-109, 20-16-201, 20-16-203, 20-16-204, 20-16-205, 20-16-206, 20-16-207, 20-25-251, 20-25-401, 20-25-431, 20-25-432, 20-25-433, 20-25-434, and 60-2-216, MCA, are repealed.

(2) Section 20-16-202, MCA, is repealed.

Section 36. Name change — directions to code commissioner. (1) Wherever the name "university of Montana" appears in the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is directed to change the name to "university of Montana-Missoula".

(2) Wherever the name "Montana state university" appears in the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is directed to change the name to "Montana state university-Bozeman".

(3) Wherever the name "eastern Montana college" appears in the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is directed to change the name to "Montana state university-Billings".

(4) Wherever the name "northern Montana college" appears in the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is directed to change the name to "Montana state university-northern".

(5) Wherever the name "Montana college of mineral science and technology" or "Montana tech" appears in the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is directed to change the name to "Montana tech of the university of Montana".

Section 37. Codification instruction. [Section 34] is intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [section 34].

Section 38. Effective dates — applicability. (1) [Section 35(2)] is effective December 31, 1995.

(2) [Section 34] is effective January 1, 1996, and applies to the operation of the vocational-technical system beginning in fiscal year 1997.

(3) [Sections 1 through 33, 35(1), 36, and 37 and this section] are effective July 1, 1995.

Approved March 31, 1995

CHAPTER NO. 309

[SB 207]

AN ACT PROVIDING PROTECTION FOR AGRICULTURAL ACTIVITIES FROM GOVERNMENTAL ZONING AND NUISANCE RESTRICTIONS.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Agricultural activities — legislative finding and purpose. (1) The legislature finds that agricultural lands and the ability and right of farmers and ranchers to produce a safe, abundant, and secure food and fiber supply have been the basis of economic growth and development of all sectors of Montana's economy. In order to sustain Montana's valuable farm economy and land bases associated with it, farmers and ranchers must be encouraged and have the right to stay in farming.

(2) It is therefore the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances.

Section 2. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Agricultural activity" means a condition or activity that provides an annual gross income of not less tban $1,500 or that occurs on land classified as agricultural or forest land for taxation purposes. The condition or activity must occur in connection with the commercial production of farm products and includes but is not limited to:

(a) produce marketed at roadside stands or farm markets;

(b) noise;

(c) odors;

(d) dust;

(e) fumes;

(f) operation of machinery and irrigation pumps;

(g) movement of water for agricultural activities, including but not limited to use of existing county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities;

(h) ground and aerial application of seed, fertilizers, conditioners, and plant protection products;

(i) employment and use of labor;

(j) roadway movement of equipment and livestock;

(k) protection from damage from wildlife;

(l) prevention of trespass;

(m) construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of stream banks and water courses;

(n) conversion from one agricultural activity to another, provided that the conversion does not adversely impact adjacent property owners;

(o) timber harvesting, thinning, and timber regeneration;

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(p) burning and stubble and slash disposal; and

(q) plant nursery and commercial greenhouse activities.

(2) "Commercial production of farm products" means the growing, raising, or marketing of plants or animals by the owner, owner's agent, or lessee of land that provides an annual gross income of not less than $1,500 or that occurs on land that is classified as agricultural or forest land for taxation purposes. The term includes but is not limited to:

(a) forages and sod crops;

(b) dairy and dairy products;

(c) poultry and poultry products;

(d) livestock, including breeding, feeding, and grazing of livestock and recreational equine use;

(e) fruits;

(f) vegetables;

(g) flowers;

(h) seeds;

(i) grasses;

(j) trees, including commercial timber;

(k) fresh water fish and fish products;

(l) apiaries;

(m) equine and other similar products; or

(n) any other product that incorporates the use of food, feed, fiber, or fur.

Section 3. Local ordinances. A city, county, taxing district, or other political subdivision of this state may not adopt an ordinance or resolution that prohibits any existing agricultural activities or forces the termination of any existing agricultural activities outside the boundaries of an incorporated city or town. Zoning and nuisance ordinances may not prohibit agricultural activities that were established outside the corporate limits of a municipality and then incorporated into that municipality by annexation.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 76, chapter 2, and the provisions of Title 76, chapter 2, apply to [sections 1 through 3].

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

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invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 31, 1995

CHAPTER NO. 310

[SB 246]

AN ACT PROVIDING FOR THE ISSUANCE OF AN ADMINISTRATIVE WARRANT DIRECTING A PAWNBROKER TO HOLD PROPERTY FOR 30 DAYS; PROVIDING FOR A CHALLENGE TO AN ADMINISTRATIVE WARRANT; AUTHORIZING RESTITUTION TO A PERSON SUFFERING ECONOMIC LOSS AS A RESULT OF THE CRIME; AND AMENDING SECTIONS 46-5-212 AND 46-18-241, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-5-212, MCA, is amended to read:

"**46-5-212. Pawnbroker to surrender stolen property — *warrant.*** *(1)* When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to or purchased by the pawnbroker or dealer is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days ~~unless demanded~~ *upon issuance of an administrative warrant* by a peace officer. ~~and, upon demand,~~ *Following expiration of the 30-day period, the pawnbroker or dealer* shall surrender the property to the peace officer *upon demand*. The peace officer shall give the pawnbroker or dealer a receipt for any property surrendered by the pawnbroker or dealer. *During the 30-day period, the pawnbroker or dealer may appeal the validity of the administrative warrant in justice's court or municipal court.*

(2) As used in this section, "administrative warrant" means a warrant:

(a) issued by the chief law enforcement officer of the jurisdiction;

(b) that describes the property to be held; and

(c) that states that the pawnbroker shall hold the property for 30 days from the date of receipt."

Section 2. Section 46-18-241, MCA, is amended to read:

"**46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court may require an offender to make restitution to any victim of the offense, *including a person suffering an economic loss as a result of the crime.*

(2) The court may require the offender to pay the cost of supervising the payment of restitution as provided in 46-18-245 by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5 or more than $250. Payment must be made to the court, which shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245."

Approved March 31, 1995

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CHAPTER NO. 311

[SB 251]

AN ACT PROVIDING A TRANSPORTATION ENERGY POLICY FOR THE STATE OF MONTANA; PROVIDING AN ALTERNATIVE FUELS POLICY AND IMPLEMENTING GUIDELINES; AND AMENDING SECTION 90-4-1001, MCA.

WHEREAS, in section 90-4-1003, MCA, the Legislature adopted a process for the incremental development of a comprehensive state energy policy; and

WHEREAS, under the provisions of that statute, the Department of Natural Resources and Conservation recommended to the Environmental Quality Council the development of a transportation energy policy as one component of a comprehensive state energy policy; and

WHEREAS, the Environmental Quality Council assigned a broad-based working group of stakeholders in the issues relating to development of a transportation energy policy to use a collaborative, consensus process to develop that policy; and

WHEREAS, these stakeholders included tbe Montana Department of Transportation, members of the Montana Highway Commission, the Department of Natural Resources and Conservation, representatives of state and local governments, highway users, railroad interests, utilities, commercial transportation interests, environmental groups, agricultural producers, bicycle and pedestrian interests, transportation planners, and representatives of petroleum producers; and

WHEREAS, the collaborative working group met regularly over an 8-month period to develop the following transportation energy policy goal statement and to recommend a specific component of a transportation energy policy on alternative fuels, along witb implementing guidelines.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-1001, MCA, is amended to read:

"**90-4-1001. State energy policy goal statement.** (1) It is the policy of the state of Montana to promote energy conservation, production, and consumption of a reliable and efficient mix of energy sources tbat represent the least social, environmental, and economic costs and tbe greatest long-term benefits to Montana citizens.

(2) In pursuing this goal, it is the policy of the state of Montana to:

(a) recognize that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets; ~~and~~

(b) maintain a continual process to review this energy policy statement and any future changes so that Montana's energy strategy will provide for a balance between a sustainable environment and a viable economy.*; and*

(c) adopt a state transportation energy policy as provided in [section 2] and an alternative fuels policy and implementing guidelines as provided in [section 3]."

Section 2. Transportation energy policy. It is the transportation energy policy of the state of Montana to promote actions that encourage the conservation of energy through the environmentally responsible management and planning of efficient transportation systems. This policy further recognizes that energy conservation must be balanced with the state's interest in establishing, preserving, and maintaining a safe, efficient transportation system that equitably meets the mobility needs of Montana's citizens and connects them to the nation's economy.

Section 3. Alternative fuels policy — implementing guidelines. (1) The state of Montana encourages the use of alternative fuels and fuel blends to the extent that doing so produces environmental and economic benefits to the citizens of Montana.

(2) To implement the policy stated in subsection (1), the legislature recommends the following guidelines:

(a) All policies and programs should have in-state benefits.

(b) Policies and programs should be coordinated among the affected agencies.

(c) The state recognizes incentives as a temporary tool te implement the alternative fuels policy. Recipients of those incentives should develop a plan, including an educational component, to phase out the incentive. In determining incentives, the state should:

(i) consider incentives for the producer, retail, and consumer levels;

(ii) establish a logical link between revenue sources and incentives; and

(iii) encourage the use of self-sufficient markets.

(d) Any state alternative fuels program should have measurable benefits that are communicated to the public.

(e) State and local governments should be encouraged to set an example with their vehicle fleets in the use of alternative fuels and fuel blends.

(f) Consistent with the guidelines in subsections (2)(a) through (2)(e), the state encourages production of alternative fuels and fuel blends.

Approved March 31, 1995

CHAPTER NO. 312

[SB 281]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ISSUE A TERM PERMIT FOR A TRUCK TRACTOR-SEMITRAILER COMBINATION WHEN THE SEMITRAILER EXCEEDS 53 FEET IN

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LENGTH BUT DOES NOT EXCEED 57 FEET IN LENGTH; AND AMENDING SECTION 61-10-124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-124, MCA, is amended to read:

"61-10-124. Special permits — fee — cranes. (1) As used in this section, "crane" means a self-propelled single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

(2) Except as provided in subsections (3)(b), (3)(d), and (6), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(3) (a) Except as provided in subsections (3)(b), (3)(d), (6), and (7), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length, and the long semitrailer cargo unit of the combination may not exceed 48 feet in length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (6) and (7). Special permits for vehicle combinations may specify and special permits under subsections (6) and (7) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (3)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (2), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

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(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(4) Except as provided in subsection (3)(b), a permit may not he issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the stato governs the issuance of a special permit.

(5) Tbe owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for overweight if the crane has a current special mobile equipment identification plate and if the department of transportation has approved the configuration of the crane through a weight analysis completed within tbe same calendar year. The permit is not transferable, and the fee for the permit is $200.

(6) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system as defined in 60-1-103 and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the intercbange.

(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) tbe combination must have a restricted route permit under 61-10-107(3) and a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(7) The department of transportation may issue special permits under subsection (6) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations."

Approved March 31, 1995

CHAPTER NO. 313

[SB 283]

AN ACT REVISING THE TYPE OF VEHICLE COMBINATION USED FOR HAULING RAW LOGS THAT IS SUBJECT TO LENGTH RESTRICTIONS; AND AMENDING SECTION 61-10-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-104, MCA, is amended to read:

"**61-10-104. Length — definitions.** (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 45 feet.

(2)(a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 1/2 feet each in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists

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of more than two units, the rear units of the combination must he equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it hy the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), nor may this combination have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have a length in excess of 65 feet.

(5) (a) The length of a vehicle combination consisting of a truck or truck-tractor and one ~~trailer,~~ pole trailer, or semitrailer hauling raw logs may not exceed 75 feet in overall length. As used in this subsection (a), the term "length" means the total length of the vehicle combination beginning at the front of the front bumper of the truck or truck-tractor and extending to the most distant end of the logs being hauled. A term permit for an overlength vehicle combination, as provided in 61-10-124(3), does not apply to the vehicle combination described in this subsection (a). A vehicle combination exceeding 75 feet must have a trip permit.

(b) The maximum overhang of any log may not exceed 15 feet, except by special, single-trip permit. Overhang is measured from the center of the rear-most axle to the most distant end of the logs being hauled.

(c) The provisions in subsections (5)(a) and (5)(b) do not apply to a vehicle combination hauling utility poles.

(6) As used in this chaptor, the following definitions apply:

(a) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(b) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the back of the last trailer, including the connection tongues and loads.

(c) "Length", except as provided in subsection (5)(a), means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastoning devices, and hydraulic lift gates.

(d) "Rocky Mountain double" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer."

Approved March 31, 1995

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CHAPTER NO. 314

[SB 294]

AN ACT DEFINING A FERTILIZER SPREADER TRUCK OR TRAILER AS SPECIAL MOBILE EQUIPMENT FOR CERTAIN PURPOSES; EXEMPTING FERTILIZER SPREADER TRUCKS AND TRAILERS FROM CERTAIN GVW FEES; AMENDING SECTIONS 61-1-104 AND 61-10-206, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-104, MCA, is amended to read:

"**61-1-104. Special mobile equipment.** *(1)* "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, ~~trailers used to apply fertilizer in the field,~~ and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this section is partial and does not exclude other vehicles that are within the general terms of this section.

(2) For purposes of Title 61, chapter 3, and Title 61, chapter 10, part 2, a motor vehicle or a trailer designed and used to apply fertilizer to agricultural land must be treated as special mobile equipment."

Section 2. Section 61-10-206, MCA, is amended to read:

"**61-10-206. Special fees — certain farm vehicles.** (1) Except for motortrucks owned and operated by cooperative associations or cooperative marketing associations, there must be paid and collected annually a fee equal to 35% of the fees provided in Schedule I and Schedule II on:

(a) motortrucks owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard, or dairy, or of supplies or commodities to be used on the farm, orchard, or dairy; *and*

(b) one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture~~; and~~

~~(c) fertilizer spreader trucks and spreader trailers used exclusively to transport and apply fertilizer to agricultural fields and plots.~~

~~(2) The applicant under the fertilizer exception for special fees under subsection (1)(c) shall show, when the fee is paid as provided in 61-10-222, a valid fertilizer dealer license issued by the department of agriculture as provided in 80-10-202.~~

~~(3)~~*(2)* The minimum fee is $6."

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Section 3. Effective date. [This act] is effective January 1, 1996.

Approved March 31, 1995

CHAPTER NO. 315

[SB 296]

AN ACT ALLOWING NONPROFIT ORGANIZATIONS TO SELL BAKED GOODS AND PRESERVES; EXEMPTING GARDENERS, FARM OWNERS, AND FARM OPERATORS WHO SELL RAW AND UNPROCESSED FARM PRODUCTS AT A FARMER'S MARKET FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; ALLOWING PERSONS TO SELL BAKED GOODS AND PRESERVES AT FARMER'S MARKETS AND EXEMPTING THEM FROM LICENSURE UNDER FOOD ESTABLISHMENT LAWS; REQUIRING ORGANIZED FARMER'S MARKETS AUTHORIZED BY A MUNICIPAL OR COUNTY AUTHORITY TO KEEP RECORDS; AMENDING SECTIONS 50-50-102, 50-50-103, AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-50-102, MCA, is amended to read:

"**50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

~~(1)~~*(2)* "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

~~(2)~~*(3) (a)* "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

~~(3)~~*(4)* "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

~~(4)~~*(5)* "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

(6) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

~~(5)~~*(7)* "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

~~(6)~~*(8)* "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not

include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

~~(7)~~*(9) (a)* "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

(b) The term does not include establishments, vendors, or vending machines ~~which~~ *that* sell or serve only packaged, nonperishable foods in their unbroken, original containers or a private organization serving food only te its members.

~~(8)~~*(10)* "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets, but does not include a wine, beer, or soft drink warehouse that is separato from facilities where brewing occurs.

~~(9)~~*(11)* "Frozen food plant" means a place used to freeze, process, or stere food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

~~(10)~~*(12)* "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

~~(11)~~*(13)* "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

~~(10)~~*(14)* "Perishable food dealer" means a person or commercial establishment ~~which~~ *that* is in the business of purchasing and selling perishable food to the public.

~~(13)~~*(15)* "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(16) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of Clostridium botulinum.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include :

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24°C (75°F);

(iii) a food with a water activity (a_w) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

(17) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24°C (75°F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include :

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (17)(a).

(18) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures."

Section 2. Section 50-50-103, MCA, is amended to read:

"50-50-103. Department authorized to adopt rules. *(1)* To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

(2) (a) The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons at farmer's markets.

(b) The department and local health authorities may not require that foods sold pursuant to this subsection (2) be prepared in certified or commercial kitchens."

Section 3. Section 50-50-202, MCA, is amended to read:

"50-50-202. Establishments exempt from license requirement — *farmer's market records.* (1) Establishments owned or operated hy the state or a political suhdivision of the state are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) ~~No~~ *A* license is *not* required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection must:

(a) be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(b) prior to each operation, register with the local health officer or sanitarian on forms provided by the department.

(3) (a) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products at a farmer's market.

(b) A license is not required of a person selling baked goods or preserves at a farmer's market.

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 31, 1995

CHAPTER NO. 316

[HB 304]

AN ACT AUTHORIZING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES AND LOCAL GOVERNMENTAL ENTITIES TO CONTRACT FOR THE DESIGN, FINANCING, CONSTRUCTION, OR OPERATION OF REGIONAL CORRECTIONAL FACILITIES; AUTHORIZING THE DEPARTMENT TO GRANT A LOCAL GOVERNMENTAL ENTITY AN OPTION TO PURCHASE A REGIONAL CORRECTIONAL FACILITY OWNED SOLELY BY THE STATE; PROVIDING FOR CONTRACT TERMS AND A TIME LIMIT ON CONTRACTS; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; AMENDING SECTION 53-21-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of corrections and human services in adopting rules relating to regional correctional facilities. It is the intent of the legislature that in selecting sites for regional correctional facilities, the department should consider the ability of the community to provide rehabilitative services to inmates, the community's willingness and ability to enter into a long-term agreement with the department for a regional correctional facility, and the need for a regional correctional facility in the area.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be known and cited as the "Regional Correctional Facility Act".

Section 2. Purpose. It is the purpose of [sections 1 through 7] to provide a method by which the state and local governments can make the most efficient use of their powers and resources by enabling them to cooperate to fulfill their respective responsibilities of providing services and facilities for the incarceration and rehabilitation of criminal offenders at regional correctional facilities. The state and local governments are encouraged to use innovative means in accomplishing this purpose.

Section 3. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Department" means the department of corrections and human services.

(2) "Interlocal cooperation commission" means a commission established in accordance with Title 7, chapter 11, part 2.

(3) "Local governmental entity" means:

(a) a local governmental unit;

(b) a multijurisdictional service district; or

(c) an interlocal cooperation commission.

(4) "Multijurisdictional service district" means a district established in accordance with Title 7, chapter 11, part 11.

(5) "Regional correctional facility" means a correctional facility, except the Montana state prison, the women's correctional center, or the Swan River boot camp, designed, constructed, or operated under [sections 1 through 7] by a local governmental entity or the department, or both, for the housing of convicted felons.

Section 4. Authority to enter into contracts — terms — financing. (1) The department may contract with one or more local governmental entities for the housing of and provision of services to inmates sentenced to the department or the department's correctional institutions at a regional correctional facility designed, financed, constructed, or operated by a local governmental entity, the department, or both.

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(2) The contract must be authorized and approved by the governor, the department, and the governing body of the local governmental entity. The contract must set forth fully tbe purposes, powers, rights, and responsibilities of each party to the contract and address necessary and proper matters set forth in 7-11-105.

(3) A contract may include an agreement to jointly design, finance, construct, and operate a regional correctional facility.

(4) Tbe department may not enter into a contract unless the local governmental entity has the legal authority and the ability to finance its share of the costs under the contract.

(5) A regional correctional facility may be constructed on real property owned by the stato of Montana or a local governmental entity or jointly owned by both.

(6) The proceeds of long-range building program general obligation bonds authorized to be issued in accordance with Title 17, chapter 5, part 8, may he used, in whole or in part, to construct a regional correctional facility, whether or not the facility or any part of it is to be owned and operated by the state. If the proceeds of long-range building program general obligation bonds or other state revenue is to be used in wbole or in part to construct a regional correctional facility that is to be owned and operated by a local governmental entity, the department of administration is not required to procure the design, engineering, or construction services for the facility. The contract may provide that tbe local governmental entity shall procure the services, but must also provide that the department of administration must be involved in the development and approval of the plans and specifications for the facility prior to the time the facility is let to bid.

(7) The department shall use the proceeds of long-range building program bonds and other state revenue appropriated for regional correctional facilities to negotiate with local government entities or private providers to obtain the greatest number of beds that is consistent with program objectives for the least cost to the state.

Section 5. Contract time limit. A contract entered into under [section 4] may not exceed a term of 30 years and must contain provisions for renegotiation after 30 years. The provisions of 18-3-104 and 18-4-313 that limit the term of a contract do not apply to a contract authorized by [section 4].

Section 6. Local governmental entity option to purchase facility owned by state. If, under a contract entered into under [section 4], the state constructs and owns a regional correctional facility, the contract may provide an option for the local governmental entity to purchase the facility.

Section 7. Rulemaking authority. The department may adopt rules to implement [sections 1 through 7], including rules for the determination of how sites are to be chosen for regional correctional facilities. The rules must provide that in selecting a site the department shall consider the need for a regional correctional facility in the area, the ability and willingness of the local governmental entity to enter into a long-term contract with the department, and the availability of rehabilitative services to inmates.

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Section 8. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department. The department shall:

(1) adopt rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law; ~~however~~ *However*, ~~no such~~ *the* rules may *not* amend or alter the statutory powers and duties of the state board of pardons;

(2) subject te the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine which are of ~~such~~ *a* character ~~as~~ to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(3) *(a)* contract with private nonprofit Montana corporations to establish and maintain community based prerelease centers for purposes of preparing inmates of the Montana stato prison who are approaching parole eligibility or discharge for release into the community; ~~the~~ *The* centers sball provide a less restrictive environment than the prison while maintaining adequate security; ~~the~~ *The* centers ~~shall~~ *must* be operated in coordination witb other department correctional programs, including the supervised release program provided for in Title 46, chapter 23, part 4.

(b) ~~Nothing in this~~ *This* subsection *(3)* ~~shall~~ *does not* affect the department's authority to operate and maintain community based prerelease centers in existence on July 14, 1982.

(c) The department and a private, nonprofit Montana corporation may not enter into a contract under this subsection (3) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that limit the term of a contract do not apply to a contract authorized by this subsection (3).

(4) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(5) propose programs to the legislature to meet the projected long-range noeds of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

(6) encourage the establishment of programs at the local level for the prevention and rehabilitation of disabilities as they relate te mental illness and chemical dependency and encourage the establishment of programs at the local and institutional level for the rehabilitation and education of adult felony offenders."

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 3, 1995

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CHAPTER NO. 317

[HB 332]

AN ACT ESTABLISHING INDIVIDUAL LICENSURE FOR LAWFUL POSSESSION OF A FIREARM FOR THE PURPOSES OF THE FEDERAL GUN-FREE SCHOOL ZONES ACT OF 1990.

Be it enacted by the Legislature of the State of Montana:

Section 1. Establishment of individual licensure. In consideration that the right to keep and bear arms is protected and reserved to the people in Article II, section 12, of the Montana constitution, a person who has not been convicted of a violent felony crime and who is lawfully able to own or to possess a firearm under the Montana constitution is considered to be individually licensed and verified by the state of Montana within the meaning of the provisions regarding individual licensure and verification in the federal Gun-Free School Zones Act of 1990.

Section 2. Codification instruction. [Section 1] is intended te be codified as an integral part of Title 45, and the provisions of Title 45 apply to [section 1].

Approved April 3, 1995

CHAPTER NO. 318

[HB 343]

AN ACT PROVIDING AN EXEMPTION FROM THE COAL SEVERANCE TAX FOR A CERTAIN AMOUNT OF COAL PRODUCED FOR A COAL ENHANCEMENT FACILITY; AMENDING SECTIONS 15-23-703, 15-35-102, AND 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-102, MCA, is amended to read:

"15-35-102. (Temporary) Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

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(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water 1 degree Fahrenheit.

(6) "Coal enhancement facility" means a processing facility located at the site of the mine that produces a solid, liquid, or gaseous fuel from coal as its primary product and thermally or chemically alters the characteristics of coal by:

(a) improving the Btu value per pound of the coal by at least 25%; or

(b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.

~~(5)~~*(7)* "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how ~~such~~ *the* royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

~~(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;~~

~~(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;~~

~~(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and~~

~~(d) for quarterly periods ending on and after September 30, 1987,~~ 15 cents per ton.

~~(6)~~*(8)* "Department" means the department of revenue.

~~(7)~~*(9)* "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

~~(6)~~*(10)* "Extended depth auger method" means a method of mining that penetrates a coal deposit and removes the coal through a series of circular openings with bored shafts averaging at least 300 feet in depth.

(11) "Feedstock" means raw coal processed by a coal enhancement facility.

~~(9)~~*(12)* "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

~~(10)~~*(13)* "Produced" means severed from the earth.

~~(11)~~*(14)* "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

~~(12)~~*(15)* "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

~~(13)~~*(16)* "Strip mining" is defined in 82-4-203 and includes "surface mining" but does not include the extended depth auger method of mining.

~~(14)~~*(17)* "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from tbe sale of coal, or any license fee.

~~(15)~~*(18)* "Ton" means 2,000 pounds.

~~(16)~~*(19)* "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203. (Terminates June 30, 1997—sec. 4, Ch. 580, L. 1993.)

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15-35-102. (Effective July 1, 1997) Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means tbe lesser of:

(i) the volume of coal purcbased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purcbased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of tbe maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less tban one-third of the volume calculated in subsection (2)(a)(ii), tbe base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in suhsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold te a purcbaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of tbe amount calculated in subsection (3)(a)(i), tbe base production level is tbe amount calculated in suhsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water 1 degree Fahrenheit.

(6) "Coal enhancement facility" means a processing facility located at the site of the mine that produces a solid, liquid, or gaseous fuel from coal as its primary product and thermally or chemically alters the characteristics of coal by:

(a) improving the Btu value per pound of the coal by at least 25%; or

(b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.

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~~(5)~~*(7)* "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.h. mine, excluding that amount charged hy the seller to pay taxes paid on production, or a price imputed hy the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how ~~such~~ *the* royalties are calculated. However, with respect to royalties paid to the government of the Unitod Statos, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

~~(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;~~

~~(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;~~

~~(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and~~

~~(d) for quarterly periods ending on and after September 30, 1987,~~ 15 cents per ton.

~~(6)~~*(8)* "Department" means the department of revenue.

~~(7)~~*(9)* "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(10) "Feedstock" means raw coal processed by a coal enhancement facility.

~~(8)~~*(11)* "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

~~(9)~~*(12)* "Produced" means severed from the earth.

~~(10)~~*(13)* "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

~~(11)~~*(14)* "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed ~~his~~ *the purchaser's* base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

~~(12)~~*(15)* "Strip mining" is defined in 82-4-203 and includes "surface mining".

~~(12)~~*(16)* "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon

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the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

~~(14)~~*(17)* "Ton" means 2,000 pounds.

~~(15)~~*(18)* "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 2. Section 15-35-103, MCA, is amended to read:

"15-35-103. (Temporary) Severance tax — rates imposed. (1) Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit, a severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

~~(a) After June 30, 1988, and before July 1, 1990:~~

~~Heating quality (Btu per pound of coal):~~	~~Surface Mining~~	~~Underground Mining~~
~~Under 7,000~~	~~17% of value~~	~~3% of value~~
~~7,000 and over~~	~~25% of value~~	~~4% of value~~

~~(b) After June 30, 1990, and before July 1, 1991:~~

~~Heating quality (Btu per pound of coal):~~	~~Surface Mining~~	~~Underground Mining~~
~~Under 7,000~~	~~13% of value~~	~~3% of value~~
~~7,000 and over~~	~~20% of value~~	~~4% of value~~

~~(c) After June 30, 1991:~~

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining	Extended Depth Auger Mining
Under 7,000	10% of value	3% of value	7.5% of value
7,000 and over	15% of value	4% of value	7.5% of value

(2) "Value" means the contract sales price.

(3) The formula ~~which~~ *that* yields the greater amount of tax in a particular case ~~shall~~ *must* be used at each point on ~~these schedules~~ *the schedule*.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal ~~he~~ *that the person* produces in a calendar year, except that if ~~he produces~~ more than 50,000 tons of coal *are produced* in a calendar year, ~~he will be~~ *the producer is* liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(5) In addition to the exemption described in subsection (4), a person is not liable for any severance tax upon up to 2 million tons of coal that the person produces as feedstock for coal enhancement facilities in a calendar year, except

if more than 2 million tons of coal are produced as feedstock for coal enhancement facilities in a calendar year, the producer is liable for severance tax on all coal produced as feedstock for these facilities in excess of the first 2 million tons.

~~(5)~~*(6)* A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202. (Terminates June 30, 1997—sec. 4, Ch. 580, L. 1993.)

15-35-103. (Effective July 1, 1997) Severance tax — rates imposed. (1) Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit, a severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

~~(a) After June 30, 1988, and before July 1, 1990:~~

~~Heating quality (Btu per pound of coal):~~	~~Surface Mining~~	~~Underground Mining~~
~~Under 7,000~~	~~17% of value~~	~~3% of value~~
~~7,000 and over~~	~~25% of value~~	~~4% of value~~

~~(b) After June 30, 1990, and before July 1, 1991:~~

~~Heating quality (Btu per pound of coal):~~	~~Surface Mining~~	~~Underground Mining~~
~~Under 7,000~~	~~13% of value~~	~~3% of value~~
~~7,000 and over~~	~~20% of value~~	~~4% of value~~

~~(c) After June 30, 1991:~~

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(2) "Value" means the contract sales price.

(3) The formula which *that* yields the greater amount of tax in a particular case shall *must* be used at each point on ~~these schedules~~ *the schedule.*

(4) A person is not liable for any severance tax upon 50,000 tons of the coal ~~he~~ *that the person* produces in a calendar year, except that if ~~he produces~~ more than 50,000 tons of coal *are produced* in a calendar year, ~~he will be~~ *the producer is* liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(5) In addition to the exemption described in subsection (4), a person is not liable for any severance tax upon up to 2 million tons of coal that the person produces as feedstock for coal enhancement facilities in a calendar year, except if more than 2 million tons of coal are produced as feedstock for coal enhancement facilities in a calendar year, the producer is liable for severance tax on all coal produced as feedstock for these facilities in excess of the first 2 million tons.

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~~(5)~~*(6)* A new coal production incentive tax credit may he claimed on certain coal as provided in 15-35-202."

Section 3. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools. (1) The department shall compute from the reported gross proceeds from coal a tax roll that must he transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102~~(5)~~.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediatoly following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(h) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

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(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer te allocate the excess te any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If tbe allocation under subsection (7)(a) exceeds the tetal budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year."

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to coal produced during calendar year 1995 and in subsequent years.

Section 5. Termination. [This act] terminates on December 31, 2005.

Approved April 3, 1995

CHAPTER NO. 319

[HB 376]

AN ACT PROVIDING THAT ENGLISH IS THE OFFICIAL AND PRIMARY LANGUAGE OF THE STATE AND LOCAL GOVERNMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Englisb as official and primary language of state and local governments. (1) English is the official and primary language of:

(a) the state and local governments;

(b) government officers and employees acting in the course and scope of their employment; and

(c) government documents and records.

(2) A state statute, local government ordinance, or state or local government policy may not require a specific foreign language to be used hy government

officers and employees acting in the course and scope of their employment or for government documents and records or require a specific foreign language to be taught in a school as a student's primary language.

(3) This section is not intended to violate the federal or state constitutional right to freedom of speech of government officers and employees acting in the course and scope of their employment. This section does not prohibit a government officer or employee acting in the course and scope of employment from using a language other than English, including use in a government document or record, if the employee chooses, or prohibit the teaching of other languages in a school for general educational purposes or as secondary languages.

(4) This section is not intended to limit the use of any other language hy a tribal government. A school district and a trihe, by mutual agreement, may provide for the instruction of students that recognizes the cultural identity of Native American children and promotes the use of a common language for communication.

Approved April 1, 1995

CHAPTER NO. 320

[HB 387]

AN ACT CLARIFYING THAT AN INSURER MAY GIVE PREMIUM DISCOUNTS TO AN INSURED BASED UPON FAVORABLE ASPECTS OF THE INSURED'S CLAIMS HISTORY; AND AMENDING SECTIONS 33-16-201 AND 33-18-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-16-201, MCA, is amended to read:

"33-16-201. **Standards applicable to rates.** The following standards ~~shall~~ apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates ~~shall~~ *may* not be excessive or inadequate, ~~as herein defined, nor shall~~ *and* they *may not* be unfairly discriminatory.

(b) ~~No~~ *A* rato ~~shall~~ *may not* be held to be excessive unless ~~such~~ *the* rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which ~~such~~ *the* rate is applicable.

(c) ~~No~~ *A* rate ~~shall~~ *may not* be held to be inadequate unless ~~such~~ *the* rate is unreasonably low for the insurance provided and the continued use of ~~such~~ *the* rato endangers the solvency of the insurer using the ~~same~~ *rate* or unless ~~such~~ *the* rate is unreasonably low for the insurance provided and the use of ~~such~~ *the* rato by the insurer ~~using same~~ has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2)(a) Consideration ~~shall~~ *must* be given, ~~to the extent~~ *when* applicable, to past and prospective loss experience within and outside this state, ~~to revenues~~ *revenue* and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, ~~deemed~~ *considered* relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which ~~such~~ experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of ~~any such~~ *the* insurer or group with respect to any kind of insurance or with respect to any subdivision or combination ~~thereof~~ *of insurance*.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans ~~which~~ *that* establish standards for measuring variations in hazards or expense provisions, or both. ~~Such~~ *The* standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations~~;~~. ~~except that~~ *Special risk classifications may be established based upon favorable aspects of an insured's claims history that is 3 years old or older. However,* ~~no~~ *a* special risk classification may *not* be established based on anything adverse to the insured in a driving record ~~which~~ *that* is 3 years old or older. ~~Such classifications~~ *Classifications* and modifications ~~shall~~ apply to all risks under the same or substantially the same circumstances or conditions."

Section 2. Section 33-18-210, MCA, is amended to read:

"33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances. (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extont provided for in an applicable filing with the commissioner as provided by law.

(2) An insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) This section may not be construed as prohibiting the payment of commissions or other compensation to duly licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk~~,~~ or *on* the personal property contained ~~therein,~~ *in the residence* because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandato.

(7) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual~~, but~~. *However*, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; ~~however~~ *However*, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) An insurer may not refuse to insure, refuse te continue to insure, charge higher rates, or limit the amount of coverage available to an individual based solely on adverse information contained in a driving record that is 3 years old or older. *However, an insurer may provide discounts to an insured bascd on favorable aspects of an insured's claims history that is 3 years old or older.*

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if tbe insured was not at fault."

Approved April 3, 1995

CHAPTER NO. 321

[HB 442]

AN ACT CLARIFYING THAT ONLY A PHYSICIAN MAY PERFORM AN ABORTION; AND AMENDING SECTIONS 37-20-103 AND 50-20-109, MCA.

Be it enacted by thc Legislature of the State of Montana:

Section 1. Section 37-20-103, MCA, is amended to read:

"**37-20-103. Limitations on authority conferred — exception.** Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a physician assistant-certified to perform those functions and duties specifically delegated by law to persons licensed as optometrists, as defined under Title 37, chapter 10. *A physician assistant-certified may not perform an abortion.*"

Section 2. Section 50-20-109, MCA, is amended to read:

"**50-20-109. Control of practice of abortion.** (1) ~~No~~ *An* abortion may *not* be performed witbin the state of Montana:

(a) except by a licensed physician;

(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

(c) after viability of the fetus, unless in appropriate medical judgment, the abortion is necessary to preserve the life or health of the mother.

(2) An abortion under subsection (1)(c) may only be performed if:

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(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by ~~him~~ *the physician,* setting forth in detail the facts *relied* upon ~~which he relies~~ in making ~~such~~ *the* judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with ~~such~~ *the* judgment. The ~~foregoing~~ certification and concurrence *in this subsection (2)(b)* is not required if a licensed physician certifies *that* the abortion is necessary to preserve the life of the motber.

(3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101(37). The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) ~~No~~ *A* pbysician, facility, or other person or agency ~~shall~~ *may not* engage in solicitation, advertising, or other form of communication ~~having~~ *that has* the purpose of inviting, inducing, or attracting any person to come to ~~such~~ *the* physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) The utilization plan of a physician assistant-certified may not provide for performing abortions.

~~(5)~~*(6)* Violation of subsections (1), (2), ~~and~~ (3), *and (5)* ~~of this section~~ is a felony. Violation of subsection (4) ~~of this section~~ is a misdemeanor."

Approved April 3, 1995

CHAPTER NO. 322

[HB 472]

AN ACT ALLOWING AN EXISTING APPROPRIATIVE WATER RIGHT TO BE TEMPORARILY CHANGED TO INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE; ESTABLISHING ADDITIONAL CRITERIA FOR AND LIMITATIONS ON CHANGES TO INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE; AMENDING SECTIONS 85-2-402 AND 85-2-407, MCA; AND PROVIDING A TERMINATION DATE.

STATEMENT OF INTENT

This legislation, jointly developed by representatives from the agricultural, recreation, and conservation communities, is intended to authorize the temporary use of existing water rights for instream flow to benefit the fishery resource. In establishing the use of water rights for authorized instream flow to benefit the fishery resource, it is the intent of the legislature that the authorization respect and work within the prior appropriation water rights system.

This legislation creates an opportunity for citizens to voluntarily enter into agreements to lease existing water rights to protect fisheries and allows persons who own water rights to temporarily change the use of that water to instream flow to benefit the fishery resource.

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To monitor and review the implementation of this instream flow program, the legislature directs the office of the governor to convene on an ongoing and regular basis a working group that includes representatives from the agricultural, recreation, and conservation communities. This working group shall consult with the department of natural resources and consorvation on relevant changes in water use and shall submit a report to the governor and the legislature in 2001 outlining the status of the program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Temporary change authorization for instream flow — additional requirements. (1) The department shall accept and process an application for a temporary change in appropriation rights to maintain or enhance instream flow to benefit the fishery resource under the provisions of 85-2-402, 85-2-407, and this section.

(2) (a) A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:

(i) change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or

(ii) lease a consumptive use water right to another person for instream flow to benefit the fishery resource.

(b) For the purpose of this section, "person" means and is limited to an individual, association, partnership, or corporation.

(3) In addition to the requirements of 85-2-402 and 85-2-407, an applicant for a change authorization under this section shall prove by a preponderance of evidence that:

(a) the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed use is needed to maintain or enhance instream flows to benefit the fishery resource.

(4) The department shall approve the method of measurement of the water to maintain and enhance instream flow te benefit the fishery resource through a temporary change authorization as provided in this section.

(5) For the purpose of identifying and consulting with individuals or groups that may be affected by the proposed change authorization, the applicant shall, 30 days before submitting the application to the department, publish notice of the proposed change authorization in a local newspaper of general circulation in the county or counties affected.

(6) Only the owner of the water right may seek enforcement of the temporary change authorization or object under 85-2-308.

(7) A temporary change authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

Section 2. Section 85-2-402, MCA, is amended to read:

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"**85-2-402. (Temporary) Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) Except for a lease authorization pursuant to 85-2-436 ~~that~~ *or a temporary change authorization for instream use to benefit the fishery resource pursuant to [section 1] when either authorization* does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) ~~The~~ *Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant to [section 1] for instream flow to benefit the fishery resource, the* applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water

supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chaptor 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department tben petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(b)(ii) and (6)(b)(iii)

will he met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projectod water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extond time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

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(12) A person holding an issued permit or change approval that has not heen perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or througb an agent, officer, or employee, attempt to cbange an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

85-2-402. (Effective July 1, 1999) Changes in appropriation rights. (1) An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a cbange in appropriation rigbt if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) ~~The~~ *Except for a temporary change authorization pursuant to [section 1] that does not require appropriation works, the* proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) Tbe proposed use of water is a beneficial use.

(d) ~~The~~ *Except for a temporary change authorization pursuant to [section 1] for instream flow to benefit the fishery resource, the* applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not he adversely affected.

(g) The ability of a discharge permitholder te satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

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(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for tho withdrawal and transportation of appropriated water for use outside the state unless the appropriater proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

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(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(b)(ii) and (6)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change

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approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section."

Section 3. Section 85-2-407, MCA, is amended to read:

"85-2-407. **Temporary changes in appropriation right.** (1) An appropriator may not make a temporary change in appropriation right for ~~his~~ *the appropriator's* use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriater, other than an appropriator described in subsection (7), is adversely affected.

(4) *(a)* During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department."

Section 4. Temporary change validity — limitations. All temporary changes authorized under [section 1] entered into prior to June 30, 2005, remain valid until the expiration date of the temporary change. A temporary change authorized under [section 1] may not be renewed or otherwise extended after June 30, 2005.

Section 5. Codification instruction. [Sections 1 and 4] are intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [sections 1 and 4].

Section 6. Termination. [Sections 1, 2, and 4] terminate June 30, 2005.

Approved March 31, 1995

CHAPTER NO. 323

[HB 542]

AN ACT CREATING THE MONTANA PUBLIC HEALTH IMPROVEMENT TASK FORCE; PROVIDING FOR THE APPOINTMENT AND DUTIES OF THE TASK FORCE; REQUIRING A PUBLIC HEALTH IMPROVEMENT PLAN; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO AWARD GRANTS FOR PUBLIC HEALTH IMPROVEMENT DEMONSTRATION PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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WHEREAS, core public health functions are vital to protecting the health of Montanans and to reducing health care costs by preventing disease, injury, disability, and premature death; and

WHEREAS, core public health functions are distinct from medical care, and if neglected, the health and economy of the stato will suffer; and

WHEREAS, proved public health services are the most inexpensive, effective measures by which to protect Montanans' health; and

WHEREAS, Montana's local public health systems are not adequate to protect the public from preventable public health threats, yet resources are limited.

THEREFORE, the Montana Public Health Improvement Act is enacted to strengthen the ability to prevent health problems and to focus public health resources on the public health threats determined to be priorities in communities and the state.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 6] may be cited as the "Montana Public Health Improvement Act".

Section 2. Legislative findings and purpose. (1) The legislature finds that a strong public health system belps control public health care costs through the prevention of disease and premature deatb. The legislature also finds that many local puhlic health systems in Montana do not have sufficient capacity in core functions, such as prevention of communicable and chronic diseases, provision of public health nursing services, protection of environmental health, and promotion of healthy behaviors to provide adequate protection to Montanans from public health threats.

(2) The legislature declares that the purpose of the Montana Public Health Improvement Act is to assist local governments and community organizations to determine the most serious threats to public health, to determine a method to address those threats, and to provide local and state decisionmakers with a framework for prioritizing a public response to those threats.

Section 3. Definitions. Unless a contrary intent is indicated, the following definitions apply in [sections 1 through 6]:

(1) "Core functions" means the ability of a public health department to:

(a) prevent epidemics;

(b) promote healthy behaviors;

(c) provide public health nursing services;

(d) provide environmental health protection;

(e) monitor health status;

(f) develop health-based policies;

(g) mobilize communities;

(h) respond to disasters; and

(i) provide health services to high-risk persons who are hard to reach.

(2) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(3) "Health care provider" means an individual licensed by the state to provide health care within the scope of the individual's license.

(4) "Local board of health" or "local board" means a local board as defined in 50-2-101.

(5) "Municipality" means a city or town.

(6) "Public health improvement plan" or "plan" means the public health improvement plan required by [section 5].

(7) "Rural county" means a county with a population density of six or fewer people per square mile.

(8) "Task force" means the Montana public health improvement task force created in [section 4].

Section 4. Montana public health improvement task force. (1) There is a Montana public health improvement task force consisting of the following members:

(a) two representatives of local boards of health or health departments, from one of the state's four largest municipalities, with expertise in each of the following subject areas:

(i) one representative, maternal and child health or health promotion; and

(ii) one representative, environmental health;

(b) two county health officers or county health department directors from the counties containing the state's four largest municipalities;

(c) two representatives of local boards of health or health departments from the state's rural counties with populations over 5,000 residents;

(d) one public health representative from a county with fewer than 5,000 residents;

(e) one representative of the Indian health service or Montana Indian tribes;

(f) one member of the Montana house of representatives;

(g) one member of the Montana senate;

(h) one health care provider;

(i) one citizen concerned with puhlic health;

(j) one member of the Montana health care authority; and

(k) the director and one member of the staff of the department.

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(2) Members of the task force must be appointed by the governor by June 30, 1995.

(3) The director of the department shall serve as presiding officer of the task force.

(4) Members of the task force serve without compensation but must be reimbursed for their expenses.

(5) The task force is attached to the department for administrative purposes only as provided in 2-15-121. The department shall provide staff assistance to the task force.

Section 5. Task force to prepare public health improvement plan. (1) The task force shall prepare a public health improvement plan that addresses the following subjects:

(a) the ability or capacity of local boards to provide core functions and the standards by which that capacity must be measured, including:

(i) a determination of public health strengths and weaknesses in communities and the state;

(ii) a determination of which municipalities do not meet the capacity standards established by the task force;

(iii) an analysis of the costs and benefits of adoption of capacity standards; and

(iv) a plan for municipalities in order to achieve the capacity standards established by the task force;

(b) strategies for improving state and local public health programs, including:

(i) a determination of the needs of local boards, municipalities, and state agencies in order to achieve the capacity standards established by the task force in the most critical core functions;

(ii) an examination of a strategy, such as establishment of geographic regions, for cost-effective administration and delivery of public health services;

(iii) identification of methods to network local public health services to each other and to state public health services; and

(iv) a review of laws, rules, ordinances, and policies pertaining to public health;

(c) consideration of population-based public health activities, including:

(i) assessment of health data;

(ii) surveillance of chronic and infectious diseases;

(iii) rapid response to outbreaks of communicable diseases;

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(iv) efforts to prevent and control communicable diseases, such as tuberculosis and acquired immunodeficiency syndrome;

(v) health education to promote healtby behaviors and to reduce the prevalence of chronic diseases, such as those linked to the use of tobacco, including poor nutrition, and physical activity, cardiovascular disease, cancer, and diabetes;

(vi) access to primary care in coordination with community-based health care organizations;

(vii) programs to ensure that children are born as healthy as possible and that they can receive immunizations and adequate nutrition;

(viii) efforts to prevent injury;

(ix) programs to ensure the safety of drinking water and food supplies;

(x) control of poisons;

(xi) services for treatment of trauma; and

(xii) other activities that have tbe potential to improve the health of the population or special populations and to reduce the need for or costs of health services;

(d) a plan for the funding of other parts of tbe plan, including:

(i) a recommended level for funding public health services, to be expressed in a percentage of total healtb services expenditures in the state or in a set per capita amount;

(ii) methods to ensure that proposed funding does not supplant existing funding; and

(iii) identification of federal and private funding opportunities;

(e) identification of methods of integrating health status data into the health planning process and into local and regional planning;

(f) recommendations for coordinating public healtb improvements with health care reform efforts and for continuance of the task force beyond 1996; and

(g) a plan for implementing the recommendations contained in the plan in the years 1997 through 1999.

(2) The task force shall send a copy of the public health improvement plan to the governor and to the legislature on or before September 30, 1996.

(3) Local boards, municipalities, and state agencies shall cooperate with the task force in the preparation of the plan required by this section.

Section 6. Department to request proposals for public health improvement demonstration projects — grants to counties or regions. (1) The department shall advertise for proposals to conduct public health improvement demonstration projects. Proposals may be submitted by counties

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or by individuals or community organizations within the health care planning regions established by 50-4-401. The department shall award at least one demonstration project grant within each region established by 50-4-401, unless the demonstration project proposals submitted from a region fail, in the judgment of the department, to meet the requirements of subsection (2). If a grant is not awarded within a region, the department shall use the project grant money not awarded for grants within other regions.

(2) The department shall award a demonstration project grant for a project that will best assist a county or region to:

(a) mobilize a local or regional coalition to conduct health monitoring and planning;

(b) prepare a local health status profile;

(c) prepare a community-based action plan to identify and address public health priorities;

(d) integrate the county or region with the use of a state health data base and state health planning; or

(e) evaluate progress in implementing the public health improvement plan, the effect of the plan on health policy, and the use of public health resources.

(3) The department shall require that each county, individual, or organization receiving a grant provide the department with a detailed report, at the time and in the form determined by the department, concerning the use of the grant money awarded to the county, individual, or organization.

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Termination. [This act] terminates September 30, 1996.

Approved April 3, 1995

CHAPTER NO. 324

[HB 557]

AN ACT ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL HEALTH BOARDS TO ESTABLISH SANITATION STANDARDS REGULATING THE PRACTICE OF TATTOOING; AND AMENDING SECTIONS 50-1-202 AND 50-2-116, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1-202, MCA, is amended to read:

"50-1-202. General powers and duties. The department shall:

(1) study conditions affecting tbe citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4) ~~of this section~~, submit a written report on sanitary conditions to the governor and to the director of corrections and human services or commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise stato agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) organize laboratory services and provide equipment and personnel for those services;

(8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(10) conduct health education programs;

(11) provide consultation to school and local community health nurses in the performance of their duties;

(12) consult with the superintendent of public instruction on health measures for schools;

(13) develop, adopt, and administer rules setting standards for a program to provide services to handicapped children, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

(14) provide consultation to local boards of health;

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

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(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(18) after consultation with the board, adopt rules imposing fees for the tests and services performed hy tbe laboratory of the department. Fees, established on an annual basis, should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees ~~shall~~ *must* be deposited in the state special revenue fund for the use of the department in performing tests and services.

(19) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; ~~and~~

(20) adopt and enforce rules regarding the transportation of dead human bodies*; and*

(21) adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public hcalth and the prevention of communicable disease."

Section 2. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in puhlic health or the equivalent and with appropriate experience, as determined by the department, and shall fix ~~his~~ *the health officer's* salary;

(b) elect a ~~chairman~~ *presiding officer* and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) adopt necessary regulations that are ~~no~~ *not* less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of health and environmental sciences and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things that are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. ~~(~~*The* fees must be deposited with the county treasurer~~)~~.

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; ~~and~~

(v) for the maintenance of sewage treatment systems that do not discharge an effluent directly inte state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401~~.~~*; and*

(vi) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors."

Approved April 3, 1995

CHAPTER NO. 325

[HB 563]

AN ACT TRANSFERRING THE WARRANT WRITING AND BAD DEBT MANAGEMENT FUNCTIONS OF THE STATE AUDITOR TO THE

DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION, WHO IS THE EX OFFICIO STATE TREASURER; AMENDING SECTIONS 2-18-411, 2-18-412, 2-18-702, 3-2-503, 7-4-2502, 17-1-101, 17-1-111, 17-1-122, 17-3-1004, 17-4-101, 17-4-102, 17-4-103, 17-4-104, 17-4-105, 17-4-106, 17-4-107, 17-4-108, 17-6-212, 17-8-211, 17-8-301, 17-8-303, 17-8-305, 17-8-306, 17-8-307, 23-7-312, 32-1-537, 39-3-213, 39-51-3207, 44-2-314, 53-18-102, 85-8-612, 87-1-206, AND 87-1-603, MCA; REPEALING SECTION 17-1-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-411, MCA, is amended to read:

"2-18-411. Lost warrants — duplicate. (1) Upon receipt of proof satisfactory to the ~~state auditor~~ *treasurer* that a payroll warrant issued by the state ~~auditor~~ *treasurer* has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state ~~auditor~~ *treasurer* shall, upon certification by the payee's appointing power, issue a duplicate warrant in payment of the same amount without requiring a bond from the payee ~~and any~~. *Any* loss incurred in connection ~~therewith shall~~ *with the warrant must* be charged against the account from which the payment was derived.

(2) A payroll warrant ~~shall be~~ *is* considered to have been lost if it has been sent to the payee but not received by ~~him~~ *the payee* within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a state officer or employee for delivery to the payee or for forwarding to another state officer or employee for ~~such~~ delivery and has not been received within ~~such~~ *a* reasonable time."

Section 2. Section 2-18-412, MCA, is amended to read:

"2-18-412. Designation of person to receive decedent's warrants — reissuance. ~~Any~~ *A* person ~~now or hereafter~~ employed by the state may file with ~~his~~ *the person's* appointing power a designation of a person who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had ~~he~~ *the employee* survived. The employee may change the designation from time to time. A person ~~so~~ designated shall claim ~~such~~ *the* warrants from the state ~~auditor~~ *treasurer* and on sufficient proof of identity, the ~~state auditor~~ *treasurer* shall reissue the warrant in the name of the designated person and deliver said *the* warrant to the designated person."

Section 3. Section 2-18-702, MCA, is amended to read:

"2-18-702. Group insurance for public employees and officers. (1) All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, ~~and/or~~ *or* group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

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(2) State employees and elected officials, as defined in 2-18-701, may participate in state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the ~~auditor~~ *state treasurer* shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If tbe board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

Section 4. Section 3-2-503, MCA, is amended te read:

"**3-2-503. Accounts of marshal.** All accounts of the marshal must be filed in the supreme court in a bill of items under oath certified by the chief justice and, when properly cbargeable against the state and approved by the department of administration, must be paid out of the state treasury upon the warrant of the state ~~auditor~~ *treasurer*."

Section 5. Section 7-4-2502, MCA, is amended to read:

"**7-4-2502. Payment of salaries of county officials and assistants.** (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salaries of the county attorney and deputy county attorneys authorized by 7-4-2703 are payable monthly, with the salary of the county attorney payable one-half from the general fund of the county and, if the county has supplied the information to the department of justice for inclusion in its budget, the other one-half from the state treasury upon the warrant of the state ~~auditor~~ *treasurer*. If the county has not supplied information concerning any scheduled or proposed increase in salary for the county attorney to the department of justice for inclusion in material submitted to the budget director under Title 17, chapter 7, part 1, the county is responsible for any increased salary.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the department of justice. The department shall notify the state ~~auditor~~ *treasurer* of the salary of the county attorney. The ~~auditor~~ *state treasurer* sball draw warrants for the county

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attorney salaries in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the department of justice, and the department shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under ~~such~~ limitations and restrictions ~~as are~~ prescribed by law, to fix the compensation of all county officers not otherwise fixed by law and to provide for the payment of the compensation and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level."

Section 6. Section 17-1-101, MCA, is amended to read:

"17-1-101. **Definition of department.** Except in chaptor 3, part 3, ~~and chapter 4, part 1,~~ and unless the context requires otherwise, in this title, "department" means the department of administration provided for in Title 2, chapter 15, part 10."

Section 7. Section 17-1-111, MCA, is amended to read:

"17-1-111. **General fiscal duties of state treasurer.** (1) The state treasurer ~~shall be~~ *is* the custodian of all ~~moneys~~ *money* and securities of the state unless otherwise expressly provided by law.

(2) It is the duty of the stato treasurer to:

(a) receive and account for all ~~moneys~~ *money* belonging to the state, not expressly required by law to be received and kept by some other person;

(b) pay warrants out of the funds upon which they are drawn;

(c) upon payment of any warrant, take upon the back ~~thereof~~ *of the warrant* the receipt of the person to whom it is paid;

(d) keep an account of all ~~moneys~~ *money* received and disbursed;

(e) at the request of either house of the legislature or of any *legislative* committee ~~thereof~~, give information in writing as to the condition of the treasury or ~~upon~~ *on* any subject relating te the duties of ~~his~~ *the* office *of state treasurer*;

(f) *superintend the fiscal concerns of the state;*

(g) suggest plans for the improvement and management of the public revenue;

(h) keep an account of all warrants drawn upon the treasury and of other appropriation records that the treasurer determines to be essential for the support of the accounting records maintained in the department;

(i) charge the outgoing state treasurer with the balance that was in the treasury when the outgoing treasurer came into office and with all money received and credit the outgoing treasurer with all warrants drawn on and paid;

(j) keep a register of warrants, showing the fund upon which each warrant is drawn, each warrant's number, who received the warrant, and the datc issued;

(k) require all persons who have received money belonging to the state but who have not accounted for it to settle their accounts;

(l) draw warrants on the state treasury for the payment of money directed by law to be paid out of the treasury, except that a warrant may not be drawn unless authorized by law;

(m) authenticate with the official seal of the state all warrants drawn and all copies of papers issued from the office of state treasurer;

(n) collect and pay into the state treasury all fees received; and

(o) discharge ~~such~~ other duties as may be imposed upon ~~him~~ *the state treasurer* by law."

Section 8. Section 17-1-122, MCA, is amended to read:

"17-1-122. Discretionary ~~duties~~ *authority* of stato ~~auditor~~ *treasurer*. ~~In his discretion it is the duty of the state auditor to~~ *The state treasurer may*:

(1) inspect the books of any persons charged with the receipt, safekeeping, or disbursement of public ~~moneys~~ *money*;

(2) require all persons who have received ~~moneys or securities~~ *money* or *who* have had the disposition or management of any property of the stato of which an account is kept in ~~his office~~ *the department* to render statoments ~~thereof~~ to ~~him~~ *the treasurer*~~, and all such persons~~. *A statement* must ~~render statements~~ *be rendered* at ~~such~~ times and in ~~such~~ *the* form ~~as he may require~~ *prescribed by the department*;.

(3) promulgate rules regarding the distribution and processing of warrants issued; *and*

(4) establish~~, under the joint control of the department of administration and the state auditor,~~ a system of filing and storage of the original copy of claims paid by state warrant."

Section 9. Authority of state auditor concerning securities. The state auditor may require a person who has received securities of which the auditor keeps account to render to the auditor a statement concerning the securities. The statement must be made at the time and in the form prescribed by the auditor.

Section 10. Section 17-3-1004, MCA, is amended to read:

"17-3-1004. Dishursement of funds. (1) The money received by the state treasurer under the provisions of 17-3-1003 ~~shall~~ *may* be paid out ~~by him~~ *of the treasury* only on *a* warrant issued by the ~~state auditor~~ *treasurer* in payment of claims for expenses actually incurred for the support and maintenance of the institution filing the ~~same~~ *claims*.

(2) In the payment of claims presented by a state institution entitled to interest and income from land grants or ~~moneys arising therefrom~~ *money from a land grant*, ~~no~~ *a* warrant ~~shall~~ *may not* be drawn against the appropriation made by the stato out of the general fund for the maintenance of the institution filing the claim until interest and income ~~moneys~~ *money*~~, insofar as they are~~ available for the payment of the items in the claim~~, are~~ *is* exhausted."

Section 11. Section 17-4-101, MCA, is amended to read:

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"**17-4-101. Definitions.** In this part, the following definitions apply:

(1) ~~The word "department"~~ *"Department"* means the department of ~~revenue~~ *administration*.

(2) ~~The term "state~~ *"State* agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government."

Section 12. Section 17-4-102, MCA, is amended to read:

"**17-4-102. Accounts of persons indebted to state.** (1) ~~In his discretion it is the duty of the state auditor to~~ *The department may*:

(a) examine and settle the accounts of persons indebted to the state ~~and~~, certify the amount ~~to the treasurer and, upon presentation and filing of the treasurer's receipt therefor, to~~ *owed, and* give ~~such~~ *the* person a discharge ~~and charge the treasurer therewith~~;

(b) require any person presenting an account for settlement to be sworn ~~before him~~ and to answer, orally or in writing, as to any facts relating to ~~it~~ *the debt*.

(2) The certificate mentioned in subsection (1)(a) must show by whom the payment is to be made, the amount ~~thereof~~ *of the payment*, and the fund into which ~~it~~ *the payment* is to be ~~paid and must~~ *deposited. The certificates must* be numbered in order, beginning with number 1 at the commencement of each fiscal year."

Section 13. Section 17-4-103, MCA, is amended to read:

"**17-4-103. Collection of claims by ~~state auditor~~ *department*.** (1) ~~In his discretion, it is the duty of the state auditor to~~ *The department may* examine the collection of money due the state and institute suits in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue, ~~and~~ against persons who possess public money or property and fail to pay over or deliver the money or property, and against debtors of the state. The courts of the county where the seat of government ~~may be~~ *is* located have jurisdiction, without regard to the residence of the defendants, over the collection suits authorized by this section.

(2) Whenever a person has money or other personal property that belongs to the state by escheat or otherwise or has been entrusted with the collection, management, or disbursement of money, bonds, or interest accruing from the money or bonds, belonging to or held in trust by the state, and fails to render an account of the money or personal property to and make settlement with the ~~state auditor~~ *department* within the time prescribed by law or, when ~~no~~ *a* particular time is *not* specified, fails to render an account and make settlement or ~~who~~ fails to pay into the state treasury the money belonging to the state, upon being required to do so by the ~~state auditor~~ *department*, within 20 days after the requisition, the state auditor shall state an account with that person, charging 25% damages and interest at the rate of 10% a year from the time of the failure. A copy of the account in a suit is prima facie evidence of the things stated in the account, but when the ~~state auditor~~ *department* cannot for want of information state an account, ~~he~~ *the department* may in an action brought by

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~~him~~ *the department* aver that fact and allege generally the amount of money or other property due or belonging to the stato.

(3) The ~~state auditor~~ *department* may assist in the collection of a delinquent account owing to any stato agency and may separately charge the state agency tbat transferred the debt for the cost of assistance. The ~~state auditor~~ *department* may designate the percentage of collected proceeds to be retained for the cost of assistance.

(4) The ~~state auditor~~ *department* may provide a collection service for the general purpose of centralizing tbe collection of all debts owing to the state."

Section 14. Section 17-4-104, MCA, is amended to read:

"17-4-104. Circumstances when ~~state auditor~~ *department* ~~must~~ *shall* assist. Subject to and in accordance with rules adopted by the ~~state auditor~~ *department*, the ~~state auditor~~ *department* shall render assistance in the collection of accounts owing to any state agency if all of the following procedures have been completed to ~~his~~ *the department's* satisfaction:

(1) A state agency ~~must~~ *shall* make all reasonable efforts to collect money owed to it and ~~must~~ *shall* determine that the money and any interest or penalties ~~therefor~~ are uncollectible in accordance with criteria for uncollectibility formulated by that agency.

(2) Once a state agency has determined *that* an account owed to it *is* uncollectible, it shall certify to the ~~state auditor~~ *department* the amount of the money, interest, and penalties, as accurately as can be determined. The ~~state auditor~~ *department* may require ~~submission by~~ the agency ~~of~~ *to submit* all relevant evidence and other information regarding the debt and may examine the records of any other state agency ~~which~~ *that* may be pertinent in determining the uncollectibility of the debt, unless examination is specifically prohibited by law.

(3) If the ~~state auditor~~ *department* finds that the debt is uncollectible in accordance with the criteria for uncollectibility of money due that state agency, ~~he~~ *the department* shall direct the agency to write off the debt on its accounts and transfer the debt to ~~him~~ *the department*.

(4) Debts described in 17-4-105(4) need not be determined uncollectible for purposes of this section."

Section 15. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt — offsets. (1) Once a debt of a state agency has been transferred to the ~~state auditor~~ *department*, the ~~state auditor has the authority to~~ *department may* collect it. The ~~state auditor~~ *department* may contract with commercial collection agencies for recovery of debts owed tbe state.

(2) The ~~state auditor~~ *department* shall offset any amount due a state agency from a person or entity against any amount, including refunds or taxes, owing the person or entity by any stato agency.~~, provided the state auditor~~ *The department* may not exercise this right of offset until the debtor has first been notified by the ~~state auditor~~ *department* and been given an opportunity for a

hearing. An offset may not be made against any amount paid out as child support collected by the department of social and rehabilitation services. The ~~state auditor~~ *department* shall deduct from the claim and draw warrants for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available must be applied first te debts owed by reason of the nonpayment of child support and then in the manner ~~as~~ *that* the ~~state auditor~~ *department*, in ~~the state auditor's~~ *its* discretion, determines.

(3) (a) The department *of revenue* retains the power to offset tax refunds due individuals against taxes owed the state, provided *that* the department *of revenue* may not exercise this right of offset until the taxpayer has been notified by the department *of revenue* and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department *of revenue* shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department *of revenue* after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and any decision made as a result of that proceeding has become final.

(4) (a) A debt owed to the department of social and rehabilitation services or being collected by the department of social and rehabilitation services on behalf of any person or agency may be offset by the ~~state auditor~~ *department of administration* if the debt is being enforced or collected by the department of social and rehabilitation services under Title IV-D of the Social Security Act.

(b) The debt need not be determined to be uncollectible, as provided for in 17-4-104, before being transferred to the ~~state auditor~~ *department* for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided *for* in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and any decision made as a result of that proceeding has become final. The hearing must be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of social and rehabilitation services shall adopt rules necessary to determine the hearing procedures.

(5) If, in the discretion of the ~~state auditor~~ *department*, the person or entity refuses or neglects to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity; ~~if.~~ *If* approved by the department ~~of administration~~, it ~~shall have~~ *has* the same force and effect as though filed by the person or entity. The amount due any

person or entity from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset, as provided in this section."

Section 16. Section 17-4-106, MCA, is amended to read:

"**17-4-106. Agency owed debt to receive all money collected — exception.** (1) All money collected by the ~~state auditor~~ *department* on debts transferred to ~~him~~ *the department* by the various state agencies, except funds collected under 17-4-103(3), must be deposited to the account or fund of the agency to which the debt was originally owing.

(2) Funds collected under 17-4-103(3) must be deposited in an account in the internal service fund for the cost of assistance of debt collection by the ~~state auditor~~ *department*. Funds deposited in excess of the amount appropriated for operation of the debt collection program must be carried forward into the next fiscal year for operation of the debt collection program. Any excess carried forward into the next fiscal year ~~will~~ *must* be used to reduce the designated percentage of the collected proceeds charged to the various state agencies. At the end of each biennium, any fund balance in excess of $10,000 must be transferred ~~back~~ to the general fund."

Section 17. Section 17-4-107, MCA, is amended to read:

"**17-4-107. ~~Write-off~~ *Writeoff* procedures.** (1) The ~~state auditor~~ *department* may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies that have been transferred to the ~~state auditor's office~~ *department* pursuant to 17-4-104 and that are uncollectible or the continued pursuance of the collection of accounts would cost the state more than the amount collected. The procedures must be established in accordance with subsection (2).

(2) The department ~~of administration~~ may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies ~~which~~ *that* are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. The procedures must include the reporting to the budget director of any canceling and writing off of accounts receivable."

Section 18. Section 17-4-108, MCA, is amended to read:

"**17-4-108. Circumstances under which previously written-off debt may be collected.** If a debt previously written off under 17-4-107(1) subsequently becomes collectible, the ~~state auditor~~ *department* shall proceed to collect the money due pursuant to 17-4-105(1) and 17-4-106."

Section 19. Section 17-6-212, MCA, is amended to read:

"**17-6-212. State purchase of general fund warrants.** (1) The state ~~hereby~~ reserves ~~to itself~~ a preference right, prior to the right of any person, company, or corporation, to purchase state general fund warrants issued with funds under the control of the board of investments and subject to investment.

(2) When the board of investments has under its control any funds subject to investment ~~which~~ *that* in its judgment it would be advantageous to have invested in state general fund warrants and there are not sufficient funds in the

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state general fund to pay warrants issued against the fund at the time they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase stato general fund warrants, designating the fund or funds to be so invested and fixing the amount or amounts. ~~It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amounts.~~

(3) The ~~auditor~~ *state treasurer* shall attach to or stamp, write, or print upon each general fund warrant ~~thereafter~~ *after the funding shortfall* issued, until warrants totaling the amounts ~~so~~ designated have been issued, a notice that the state will exercise its preference right to purchase the warrant.

(4) The state treasurer shall, ~~thereafter~~ when the warrant is presented, ~~to him~~ pay it out of the proper fund as designated by the board, and the warrant ~~so~~ purcbased ~~shall~~ *must* be registered as other state warrants and *must* bear interest as provided by law.

(5) When the designated amounts have been invested, the state treasurer shall notify the board of investments, which shall ~~thereupon~~ issue orders upon the proper funds addressed to the state auditor for warrants to be issued in favor of the treasurer."

Section 20. Section 17-8-211, MCA, is amended to read:

"17-8-211. Notice required for assignment of claims against state. (1) All transfers and assignments made of any claim against the state, or any part ~~thereof~~ *of* or interest ~~thereon~~ *on the claim*, except as ~~hereinafter~~ provided *in this section*, ~~shall be absolutely null and~~ *are* void and unenforceable against the state unless the assignee ~~thereof~~ files written notice of the assignment on ~~such~~ forms as *that* may be required by the ~~state auditor~~ *department of administration*, together with a true copy of the instrument of assignment.

(2) The ~~state auditor~~ *department* may promulgate rules regarding the form of assignment, the procedures for filing assignments, and the submission of claims covering assigned funds.

(3) Unless otherwise expressly permitted by the ~~state auditor~~ *department*, no more than one assignment of a claim ~~shall be~~ *is* effective at one time, and ~~no~~ *an* assignment ~~shall~~ *may not* be made to more than one party, except that an assignment may be made to one party as agent or trustee for two or more parties. An assignment ~~shall~~ *may* not be subject to further assignment."

Section 21. Section 17-8-301, MCA, is amended to read:

"17-8-301. State ~~moneys~~ *money* — how expended by treasurer. (1) Except as ~~herein~~ provided *in this section*, ~~no moneys~~ *money* received by the state treasurer may *not* be paid out ~~by him~~ except upon *a* state warrant issued by the ~~state auditor~~ *treasurer* or on electronic funds transfer authorized by the state ~~auditor~~ *treasurer*. The state ~~auditor~~ *treasurer* may not issue ~~his~~ *a* warrant or authorize an electronic funds transfer upon the state ~~treasurer~~ *treasury* except upon a claim ~~duly~~ approved by the department of administration in accordance with the laws governing the expenditure of state ~~moneys;~~ *money*. ~~however~~ *However*, interest and principal on the public debt may he paid by treasurer's check from the ~~moneys~~ *money* pledged for ~~such~~ payment, and the provisions of

this section do not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer.

(2) As used in 2-18-405 and this section, "electronic funds transfer" means any transfer of funds, other than a transaction originatod by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape and that orders, instructs, or authorizes the state ~~auditor~~ *treasurer* to debit or credit an account."

Section 22. Section 17-8-303, MCA, is amended te read:

"**17-8-303. Warrants — presentation and cancellation.** (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state ~~auditor~~ *treasurer* on the state treasury ~~shall~~ *must* be presented for payment within 6 monlbs after the dato of the issue ~~thereof~~.

(b) Warrants issued for tbe department of social and rehabilitation services that are funded to any extent with federal money ~~shall~~ *must* be presented for payment within 180 days after the date of issue.

(2) ~~Should~~ *If* tbe payee or legal holder of any warrant ~~fail~~ *fails* to present it for payment within the time specified in subsection (1), the state ~~auditor~~ *treasurer* shall enter the ~~same~~ *warrant* as canceled on the books of ~~his~~ *the treasurer's* office and the amount ~~shall~~ *must* be credited to a separate agency fund account administered by the ~~state auditor~~ *treasurer*. ~~Should~~ *If* the payee or legal owner of any canceled warrant ~~present~~*presents* it for payment or ~~present~~ *presents* a claim for payment within 4 years from the date of issue, the state ~~auditor~~ *treasurer* may, upon proper showing by affidavit, issue a new warrant in lieu ~~thereof~~ *of the canceled warrant*.

(3) Three years and 6 months after cancellation, the warrant ~~shall~~ *must* be classed as unclaimed property subject to the provisions of Title 70, chapter 9, parts 1 through 3. ~~Should~~ *If* the payee or legal owner of any canceled warrant ~~present~~ *presents* it for payment or ~~present~~ *presents* a claim for payment, ~~such~~ *the* presentation ~~shall~~ *must* be to the department of revenue as provided in 70-9-310."

Section 23. Section 17-8-305, MCA, is amended to read:

"**17-8-305. Cost accounting for warrant.** In ~~his~~ *the treasurer's* discretion, it is the duty of the state ~~auditor~~ *treasurer* to establish a cost accounting system to determine the unit cost of issuing and processing warrants and provide for a system of charges for services rendered in issuing and processing warrants for claims submitted by any department or agency of the state. ~~No such~~ *A* charge ~~shall~~ *may not* be made for warrants issued against the general fund. Funds collected under this section for budgeted programs ~~shall~~ *must* be deposited to the credit of the general fund. Funds collected for new or unforeseen programs may be deposited to the credit of a state special revenue fund account and expended for the purposes of paying the processing expenses incurred as a result of the new program."

Section 24. Section 17-8-306, MCA, is amended to read:

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"17-8-306. Issuance of duplicate warrant. (1) The state ~~auditor~~ *treasurer* may issue a duplicate warrant whenever any warrant drawn by the state ~~auditor upon the treasurer of the state~~ is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate". A duplicate warrant may not he issued or delivered unless the person entitled to receive it deposits with the state ~~auditor~~ *treasurer* a bond in double the amount for which the duplicate warrant is issued indemnifying the state and its officers and employees from any loss resulting from the issuance of the duplicate warrant.

(2) A bond of indemnity is not required when:

(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) the owner or custodian is the state of Montana or any agency or officer of the state;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by tbe state of Montana;

(d) the state ~~auditor~~ *treasurer* has chosen to waive the requirement upon receipt of evidence that the original warrant has been lost or destroyed as a result of a disaster or other major occurrence;

(e) the amount of the lost or destroyed warrant is less than $300;

(f) it can be established that a crime has heen committed and that as a result a Montana warrant has been stolen or destroyed;

(g) it can be established that a Montana warrant has been mailed to an incorrect payee;

(h) the payee is a vendor or contractor doing business with the state of Montana;

(i) the payee is a recipient of public assistance under Title 53;

(j) the payee is a recipient of a monthly annuity under Title 19;

(k) the payee is a recipient of student financial assistance administered or insured by the guaranteed student loan program pursuant to Title 20, chapter 26; or

(l) a state agency approves the issuance of the duplicate warrant and agrees to assume the risk of the original warrant being cashed.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(d), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l), a step-payment order must be placed on the original warrant by the state ~~auditor~~ *treasurer*.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l), the

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application must include an agreement to indemnify the state and its officers and employees from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant must be charged against the account from which the payment was derived."

Section 25. Section 17-8-307, MCA, is amended to read:

"17-8-307. Board's power to prevent payment of ~~auditor's~~ *treasurer's* warrants. Whenever the board of examiners has reason to believe that the state ~~auditor~~ *treasurer* has drawn or is about to draw ~~his~~ *a* warrant without authority of law or for a larger amount than the state actually owes, the board ~~must~~ *shall* notify the ~~state~~ treasurer not to pay the warrant ~~so~~ drawn or to be drawn~~;~~. ~~and thereupon the~~ *The state* treasurer is prohibited from paying the warrant, whether already drawn or not, until ~~he is~~ otherwise directed by the legislature or the board."

Section 26. Section 23-7-312, MCA, is amended to read:

"23-7-312. Lien on lottery winnings for debt collected by IV-D agency — notice to agency — payment to agency — procedure. (1) For purposes of this section, "IV-D agency" means the state child support enforcement agency created pursuant to Title IV-D of the Social Security Act and providing services under Title 40, chapter 5.

(2) The IV-D agency shall periodically certify to the state lottery the names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(3) Prior to the payment of lottery winnings in excess of $600, the state lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(4) (a) If the winner is on the list of persons owing a debt to or collected by the IV-D agency, the state lottery shall make a good faith attempt to notify the IV-D agency and the agency then has a lien against the winnings in the amount of the debt owed to or collected by the IV-D agency. The stato lottery has no liability to the IV-D agency or the individual on whose behalf the IV-D agency is collecting the debt if the state lottery fails to match a winner's name to a name on the list or is unable to notify the IV-D agency of a match. The IV-D agency shall provide the state lottery with written notice of a support lien promptly upon the stato lottery's notification of a match.

(b) If the lottery winnings are to be paid through the state ~~auditor~~ *treasurer*, the lottery winner is entitled to notice and opportunity for hearing under Title 17, chapter 4, part 1, prior to any offset of the debt against the winnings.

(c) If the lottery winnings are to be paid directly hy the state lottery, the amount of the debt owed to or collected by the IV-D agency must be held hy the lottery for a period of 30 days from the lottory's confirmation of the amount of the debt to allow the IV-D agency to institute any necessary garnishment or withholding proceedings. If a garnishment or withholding proceeding is not initiated within the 30-day period, the lottory shall release the payment to the winner.

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(d) The IV-D agency, in its discretion, may release or partially release the support lien upon written notice to the state lottery.

(e) A support lien under this section is in addition to any other lien created by law."

Section 27. Section 32-1-537, MCA, is amended to read:

"**32-1-537. Disposition of unclaimed funds.** (1) The department shall certify to the state treasurer a complete list of funds remaining with it that are uncalled for and that have been left with it in its official capacity in trust for depositors in and creditors of a liquidated bank after they have been held by it for 6 months from the date of the final liquidation of the institution. Along with this certificato, the department shall transmit to the stato treasurer the funds, with accumulated interest on them, that it has held in trust for 6 months. A copy of the certificate must also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to the person's credit as certified to the state treasurer may apply to the department for the amount due. The depositor or creditor shall make an affidavit and offer proof of identity and of the amount due. When satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to the ~~auditor~~ *state treasurer* who shall audit the claim and, if found correct, certify the claim to the department. If the department approves the claim, it shall pay the claim to the depositor or creditor. The money deposited in the general fund pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of paying approved claims."

Section 28. Section 39-3-213, MCA, is amended to read:

"**39-3-213. Disposition of wages.** (1) The commissioner of labor ~~and industry~~ shall deposit wages collected ~~by him~~ under parts 2 and 4 of this chapter into the agency fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the agency fund are not interest bearing. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) ~~which~~ *that* remain unclaimed for more than 1 year from the date of issuance ~~shall~~ *must* be returned to the state ~~auditor~~ *treasurer* for cancellation in accordance with 17-8-303."

Section 29. Section 39-51-3207, MCA, is amended to read:

"**39-51-3207. Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection.** (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404(4), and penalties and interest ~~thereon~~, or overpaid benefits under 39-51-3206 and interest ~~thereon~~, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the ~~state auditor~~ *department of administration* for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the ~~state auditor~~ *department of administration* may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the ~~state auditor~~ *department of administration*. If less than the full amount of the debt is collected, the state auditor shall retain only a proportionate share of the collection fees or costs."

Section 30. Section 44-2-314, MCA, is amended to read:

"**44-2-314. Use of ~~moneys~~ *money* — records.** The state ~~auditor~~ *treasurer* is ~~hereby~~ authorized to draw warrants on this account upon request of the attorney general when ~~such moneys are~~ *money is* needed to pay any of the costs of keeping the system operative. A strict accounting ~~shall~~ *must* be kept of all receipts and disbursements and ~~shall~~ *must* be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties."

Section 31. Section 53-18-102, MCA, is amended to read:

"**53-18-102. Creation of self-sufficiency trust account.** (1) There is created a self-sufficiency trust account in the stato treasury. The state treasurer shall deposit to the credit of the trust account money received from a self-sufficiency trust for that purpose. The state ~~auditor~~ *treasurer* shall direct payments from the trust account upon claims certified by the director of the department.

(2) The assets of the trust account must be preserved, investod, and expended in the manner and for the purposes provided in 53-18-103. At the end of each fiscal year, the unexpended account balance must carry forward to the next fiscal year and may not revert to the stato general fund."

Section 32. Section 85-8-612, MCA, is amended to read:

"**85-8-612. Lien of assessments — payment of assessments against state lands.** (1) From the time of the entry of said order, assessments for construction of new work and additional assessments and interest thereon shall be a lien upon the lands assessed, until paid. Any owner of land or any corporation assessed for construction may, at any time within 30 days after the confirmation of said report, pay into court the amount of the assessment against his land or any tract thereof or against any such corporation. Said payment shall relieve said lands from the lien of said assessment and said corporation from all liability on said assessment.

(2) Upon presentation to the state ~~auditor~~ *treasurer* of an order of the district court having jurisdiction of ~~such~~ *the* drainage district, properly certified, the ~~auditor~~ *department of administration* shall draw ~~his~~ *a* warrant on the ~~treasurer~~ *treasury* on the common school fund in favor of the commissioners of ~~such~~ *the* drainage district for the total amount that may be assessed against any lands included in ~~such~~ *the* district, the title to which is in the stato of Montana~~, and upon~~. *Upon* ~~the~~ payment of ~~such~~ *the* warrant, ~~such~~ *the* lands ~~shall thereby be~~ *are* relieved from the lien ~~theretofore~~ created for ~~such~~ *the* costs of construction."

Section 33. Section 87-1-206, MCA, is amended to read:

"87-1-206. Bounty claims for wild animals. (1) The department of fish, wildlife, and parks shall pay bounty claims for wild animals which have been filed with and approved by the board of livestock. The department shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and fishermen, bounties on predatory wild animals as the bounty claims are presented, not exceeding $7,500 per calendar year.

(2) The board of livestock shall, after approving the bounty claim, deliver the claim to the department of fish, wildlife, and parks for rejection or approval. If the claim or certificate is rejected, it shall be returned by the department to the board of livestock. If approved, it shall be delivered to the department of administration for allowance or disallowance. Nothing in this section takes from the department of fish, wildlife, and parks the exclusive power to administer the fish and game moneys at its discretion.

(3) If the department of administration allows the claim, ~~it must send it to the auditor. The auditor must~~ *the department shall* draw ~~his~~ *a* warrant on the state fish and game ~~moneys~~ *money* in the state special revenue fund for the amount approved in favor of the claimant, in the order in which the claim is approved."

Section 34. Section 87-1-603, MCA, is amended te read:

"87-1-603. Payments to counties for department-owned land — exceptions. Before November 30 of each year, the treasurer of each county in which the department owns any land shall describe the land, state the number of acres in each parcel, and request the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen. The director shall approve or disapprove the request. The director may disapprove a request only if ~~he~~ *the director* finds it to be inconsistent with this section. If the director disapproves a request, ~~he~~ *the director* shall return it with an explanation detailing the reasons for the disapproval to the appropriate county treasurer for correction. If the director approves a request, ~~he~~ *the director* shall transmit it to the ~~state auditor~~ *department of administration*, ~~whe~~ *which* shall draw a warrant payable to the county in the amount shown on the request and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks. ~~No~~ *A* payment may *not* be made to a county in which the department owns less than 100 acres. ~~No~~ *A* payment may *not* be made to a county for lands owned by the department for game or bird farms or for fish hatchery purposes or lands acquired and managed for the purposes of Title 23, chapter 1."

Section 35. Repealer. Section 17-1-121, MCA, is repealed.

Section 36. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 17, chapter 1, part 1, and the provisions of Title 17, chapter 1, part 1, apply to [section 5].

Section 37. Effective date. [This act] is effective July 1, 1995.

Approved April 1, 1995

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CHAPTER NO. 326

[SB 244]

AN ACT REQUIRING THE DEPARTMENT OF FAMILY SERVICES TO DEVELOP A STATE POLICY AND PLAN FOR PERMANENT PLACEMENT FOR CHILDREN IN THE CHILD WELFARE SYSTEM; DIRECTING THE DEPARTMENT TO CONDUCT AN INTERIM REVIEW OF ADOPTION LAWS TO FACILITATE IMPLEMENTATION OF THE PERMANENT PLACEMENT POLICY AND PLAN AND TO IMPROVE THE ADOPTION PROCESS; AND REQUIRING A REPORT TO THE 1997 LEGISLATURE.

WHEREAS, the best interests and future well-being of Montana's children and families continue to be paramount considerations in maintaining the health and prosperity of this state; and

WHEREAS, according to data supplied hy the Department of Family Services' foster care payment system, over 500 identified children have been in continuous out-of-home placement for 2 years or longer; and

WHEREAS, it is in the interests of the Legislature and the people of the state of Montana that all children in custedy of the Department of Family Services have a lifelong family connection, either by a safe and productive return to their birth family or, if that is not possible, by finding those children a permanent home; and

WHEREAS, the Joint Oversight Committee on Children and Families has recommended development of a state policy and plan for permanent placement for children in the state's child welfare system; and

WHEREAS, Montana's Uniform Adoption Act, as enacted in 1957 and revised periodically, may again be in need of amendment or further revision to address the problem of permanent placement of Montana's children.

Be it enacted by the Legislature of the State of Montana:

Section 1. Development of state permanent placement policy and plan. The department shall develop a state permanent placement policy and plan for children in the state's child welfare system. The state plan must include, at a minimum:

(1) a plan that includes locating a permanent home for any child that has been in foster care for more than 1 year;

(2) the number of children impacted by the plan;

(3) identification of priorities in placement alternatives;

(4) identification of various strategies for improvement of the child welfare system and of an action plan to implement these strategies;

(5) interim findings and identification of barriers to permanent placement of children and recommendations to reduce or eliminate those harriers; and

(6) steps taken by the department to sustain systemic change in placement of children in out-of-home care.

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Section 2. Interim review of adoption law. (1) As part of the implementation of a state permanent placement policy and plan for children as required under [section 1], the department shall conduct a study of Montana adoption laws and policy. The study must include hut is not limited to a review of Montana's current adoption laws and the Uniform Adoption Act of 1994 adopted by the national conference of commissioners on uniform state laws. The department shall facilitate the study through appointment of a volunteer advisory committee composed of persons representing groups or associations interested in the various aspects of policies pertaining to permanent placement of children and to adoption. The department may provide staff, facilities, and related expertise in conducting the study. The advisory committee shall:

(a) review the provisions of Montana's current adoption laws and the Uniform Adoption Act of 1994;

(b) identify areas of Montana adoption law that may need amendment, revision, or restructuring in order to implement the policy and plan for permanent placement of children developed under [section 1];

(c) identify any other aspects of Montana adoption law in which revision, amendment, or replacement would facilitate or improve the adoption process;

(d) coordinate with the Montana supreme court regarding the permanent placement study and the court's federal court improvement grant; and

(e) report any recommendations or suggestions to the department for subsequent report to the legislature.

(2) Upon receipt of any committee recommendations or suggestions, the department shall submit the findings, along with any related department suggestions and recommendations, as part of the permanent placement report required under [section 3].

Section 3. Report to legislature — recommendations. The department shall report to the 1997 legislature, by September 1, 1996, on the state permanent placement policy and plan required under [section 1]. The report must include:

(1) interim findings, recommendations, or suggestions to enhance implementation and a description of any related changes made to present policy in order to implement the state policy and plan; and

(2) the results of the interim review of adoption law conducted under [section 2] and any suggestions or recommendations for amendment or revision that would enhance or improve the adoption process or that would facilitate implementation of the permanent placement policy and plan developed under [section 1].

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 52, chapter 2, part 1, and the provisions of Title 52, chapter 2, part 1, apply to [section 1].

Approved April 4, 1995

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CHAPTER NO. 327

[SB 310]

AN ACT ALLOWING PHYSICIAN ASSISTANTS-CERTIFIED TO PRESCRIBE, DISPENSE, AND ADMINISTER A SCHEDULE II DRUG FOR UP TO 34 DAYS; GRANTING A PHYSICIAN ASSISTANT-CERTIFIED AND A NUTRITIONIST WHO ARE MEMBERS OF THE BOARD OF MEDICAL EXAMINERS FULL VOTING RIGHTS; AND AMENDING SECTIONS 2-15-1841 AND 37-20-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1841, MCA, is amended to read:

"**2-15-1841. Board of medical examiners.** (1) There is a Montana state board of medical examiners.

(2) The board consists of 11 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist;

(d) one memher who is a licensed nutritionist;

(e) one member who is a licensed physician assistant-certified; and

(f) two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member must be a citizen of the United States. Each member, except for public members, must have been licensed and must have practiced medicine or dietetics-nutrition in this state for at least 5 years and must have been a resident of this stato for at least 5 years.

~~(5) The member who is a licensed nutritionist may vote only on issues that affect the licensure and regulation of nutritionists.~~

~~(6) The member who is a licensed physician assistant-certified may vote only on issues that affect the licensure and regulation of physician assistants-certified.~~

~~(7)~~*(5)* Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

~~(8)~~*(6)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

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Section 2. Section 37-20-404, MCA, is amended to read:

"37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority. (1) A physician assistant-certified may prescribe, dispense, and administer drugs to the extent authorized by the board by rule, hy the utilization plan, or both. The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician may impose additional limitations on the prescribing and dispensing authority granted by the board.

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician assistant-certified may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232; is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed ~~72 hours~~ *34 days*.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant-certified shall maintain registration with the federal drug enforcement administration.

(e) Prescriptions written by physician assistants-certified must comply with regulations relating te prescription requirements adopted by the board of pharmacy.

(f) The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified."

Approved April 4, 1995

CHAPTER NO. 328

[HB 196]

AN ACT GENERALLY REVISING THE LAW RELATING TO OUTFITTERS AND GUIDES; CREATING THE PROFESSIONAL GUIDE LICENSE; REVISING LICENSING REQUIREMENTS AND QUALIFICATIONS FOR OUTFITTERS AND GUIDES; REQUIRING SUBMISSION OF AN OPERATIONS PLAN FOR OUTFITTERS AND ESTABLISHING A SYSTEM FOR REVIEW OF THE PLAN; REVISING DUTIES AND LIABILITIES RELATED TO OUTFITTING TO INCLUDE PROFESSIONAL GUIDES; REVISING QUALIFICATIONS AND CONDITIONS APPLICABLE TO OUTFITTER-SPONSORED CLASS B-10 AND B-11 LICENSES; ALLOWING THE BOARD OF OUTFITTERS TO HIRE QUALIFIED INVESTIGATORS;

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GRANTING THE EXECUTIVE DIRECTOR OF THE BOARD OF OUTFITTERS AND BOARD INVESTIGATORS EX OFFICIO WARDEN STATUS; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-306, 37-47-307, 37-47-341, 37-47-343, 37-47-345, 37-47-401, 37-47-402, 37-47-403, 37-47-404, 87-2-511, AND 87-1-503, MCA; REPEALING SECTIONS 37-47-102 AND 37-47-309, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the board of outfitters in 37-47-201 requiring the board to establish qualifications for two levels of guides and to review proposed operations plans and changes to operations plans.

The legislature intends that at a minimum the rules on professional guide qualifications address experience, and if the board considers it appropriate, additional training and a qualifying examination to ensure that licensed professional guides are qualified to safely provide services for compensation to clients of the endorsing outfitter.

The legislature intends that rules on operations plans be directed toward a reduction in new hunting uses of areas by outfitters when the new uses will cause undue conflict with existing hunting uses of the areas.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-47-101, MCA, is amended to read:

"**37-47-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) *"Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.*

(2) "Board" means the board of outfitters provided for in 2-15-1883.

(3) "Consideration" means something of value given or done in exchange for something of value given or done by another.

~~(2)~~*(4)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

~~(2)~~*(6)* "License year" means that period ~~commencing~~ *beginning* January 1 and ending December 31 of the same year.

~~(4)~~*(7)* "Nonresident" means a person other than a resident.

~~(5)~~*(8)* "Outfitter" means any person, except a person providing services on real property that ~~he~~ *the person* owns for the primary pursuit of bona fide agricultural interests, who:

~~(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;~~

~~(b)~~ for consideration provides any saddle or pack animal*; facilities; camping equipment; vehicle, watercraft, or other conveyance;* or personal service ~~for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats,~~ for any person to hunt, trap, capture, take, ~~or~~ kill, *or pursue* any game, *including fish,* and *who* accompanies ~~such a party or~~ *that* person, *either part or all of the way,* on an expedition for any of these purposes *or supervises a licensed guide or professional guide in accompanying that person*~~;~~.

~~(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or~~

~~(d) for consideration aids or assists any person in locating or pursuing any game animal.~~

~~(6)~~*(9)* "Participant" means a person using the services offered by a licensed outfitter ~~or professional guide~~.

~~(7) "Professional guide" and "guide" mean a person:~~

~~(a) who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; or~~

~~(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds or fish. A guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use.~~

(10) "Professional guide" means a guide who has met experience, training, and testing qualifications for designation as a professional guide, as set by board rule.

~~(8)~~*(11)* "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102."

Section 2. Shuttle and rental services — exemption. (1) Nothing in this chapter prohibits the furnishing of shuttle or rental services as long as those services do not include in-field assistance to a customer.

(2) In-field assistance includes but is not limited to:

(a) setting up a camp;

(b) field instruction for the activity to be conducted by the customer; or

(c) other services considered to be services of an outfitter, as defined in 37-47-101.

Section 3. Section 37-47-201, MCA, is amended to read:

"37-47-201. Powers and duties of board relating to outfitters, *guides,* and *professional* guides. The board shall:

(1) prepare and publish an information pamphlet ~~which~~ *that* contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet ~~shall~~ *must* contain ~~the~~ names and addresses of only those outfitters who ~~have~~ a valid license for the current license year.

(2) cooperate with ~~the~~ federal government in matters of mutual concern regarding ~~the~~ business of outfitting and guiding in Montana;

(3) enforce the provisions of this ~~chapter~~ and rules adopted pursuant to this ~~chapter~~;

(4) establish outfitter standards, ~~and professional~~ guide standards, *and professional guide standards*;

(5) adopt:

(a) rules of procedure;

(b) rules to administer and enforce this chapter, including ~~but not limited to~~ rules prescribing all requisite qualifications for licensure *as an outfitter, guide, or professional guide*. ~~These qualifications~~ *Qualifications for outfitters* must include training, *testing,* experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting~~,~~ and condition and type of gear and equipment, *and the filing of an operations plan.*

(c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the *public* health, safety, and welfare ~~of those persons using the services of outfitters and for the protection of landowners, the general public, and outfitters' employees, agents, and representatives~~, *including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide*;

(d) rules specifying standards for review and approval of proposed new operations plans involving hunting use or the proposed expansion of net client hunting use under an outfitter's existing operations plan in order to determine if the proposal will cause an undue conflict with existing hunting use of the area, constituting a threat to the public health, safety, or welfare. The board may not approve a new operations plan or the proposed expansion of net client hunting use under the existing operations plan if it finds that the proposal will cause an undue conflict with existing hunting use of the area. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter. Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services.

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters, ~~and professional~~ guides, *and professional guides* for due cause."

Section 4. Section 37-47-301, MCA, is amended to read:

"37-47-301. License required — services performed — standards. (1) A person may not act as an outfitter, ~~or professional~~ guide, *or professional guide* or advertise ~~as~~ *or otherwise represent to the public that the person is* an outfitter, *guide, or professional guide* without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by ~~any person~~ *a participant*, the outfitter shall keep and submit records as required by the board.

(3) Outfitters~~, professional~~ *and* guides, *professional guides,* and ~~their~~ *other* employees *of an outfitter* may not shoot, kill, or take big game animals for or in competition with those employing them while acting ~~under employment~~ as outfitters, ~~or professional~~ guides, *professional guides, or employees of an outfitter.*

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with environmental protection standards established for these lands.

(5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their employees, agents, and representatives shall take every reasonable measure to provide their advertised services to their clients.

(7) ~~A person may not hold more than one Montana outfitter's license or hold an outfitter's license for more than one corporation, proprietorship, or partnership.~~ *An outfitter may not hire or retain a guide or professional guide who does not hold a current license as provided under this part."*

Section 5. Section 37-47-302, MCA, is amended to read:

"37-47-302. Outfitter's qualifications. ~~Each~~ *An* applicant for ~~and holder~~ ~~of~~ an outfitter's license or ~~any~~ renewal of a license ~~shall~~ *must* meet the following qualifications:

(1) he ~~a person of at least~~ 18 years of age ~~who is~~ *or older, be* physically capable and mentally competent to perform the duties of an outfitter, *and meet experience, training, and testing requirements* as prescribed by ~~the~~ board *rule*;

(2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities ~~as~~ *that* are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent);

(3) ~~be a person who has~~ *have* demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws ~~as~~ *related* to ~~matters of~~ fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem;

~~(4) have not been convicted or forfeited bond of $100 or more on more than one violation of this chapter or the fish and game laws or applicable regulations of any state or the United States within the past 5 years;~~

~~(5)~~ have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, ~~professional~~ guide's, *professional guide's,* or conservation license from the state of Montana;

~~(6)~~*(5)* have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

~~(7) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or professional guide during the 2 years preceding that for which the application is made;~~

~~(8) have not committed any negligent act or misconduct while acting as an outfitter or professional guide that caused a danger or unreasonable risk of danger to person or property of any client of the outfitter or professional guide during the license year immediately preceding that for which the application is made;~~

~~(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. A person may not apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony.~~"

Section 6. Section 37-47-303, MCA, is amended to read:

"**37-47-303. ~~Professional~~ *Guide's and professional* guide's qualifications.** (1) An applicant for a ~~professional~~ guide's *or professional guide's* license ~~shall~~ *must* meet the following ~~requirements~~ *qualifications*:

(a) be ~~a person of at least~~ 18 years of age ~~who is~~ *or older and be* physically capable and mentally competent to perform the duties of a ~~professional~~ guide *or professional guide*;

(b) be endorsed and recommended by an outfitter with a valid license; *and*

~~(c) have not been convicted or forfeited bond of $100 or more on more than one violation of this chapter or the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;~~

~~(d) have not committed any gross negligent act or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;~~

~~(e) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. A person may not apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony.~~ *have been issued a valid wildlife conservation license.*

(2) ~~A professional guide shall have been issued a valid wildlife conservation license.~~ *In addition to the requirements listed in subsection (1), an applicant for*

licensure as a professional guide must meet additional experience requirements, to be set by board rule, and may be required to show proof of training or pass a qualifying examination when required by board rule."

Section 7. Section 37-47-304, MCA, is amended to read:

"**37-47-304. Application.** (1) Each applicant for an outfitter's, ~~or professional~~ guide's, *or professional guide's* license shall make application for license ~~upon~~ *on* a form ~~to be~~ prescribed and furnished by the board.

(2) The application for an outfitter's license ~~which shall~~ *forms the basis for the outfitter's operations plan and must* include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of the applicant's principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including years of experience as an outfitter, ~~or professional~~ guide, *or professional guide; the applicant's* knowledge of areas in which the applicant has operated and intends to operate~~,~~*;* and *the applicant's* ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter ~~by whom the professional guide is~~ *for each guide and professional guide* to be employed or retained as an independent contractor *stating* that the ~~professional~~ guide *or professional guide* is ~~in fact~~ to be employed ~~or retained as an independent contractor~~ by the outfitter and stating that the outfitter recommends the ~~applicant~~ *guide or professional guide* for ~~the applicant's qualifications~~ *licensure*;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of ~~guests~~ *participants* to be ~~taken~~ *accompanied* at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant will provide services or establish hunting camps~~.~~*; and*

(i) the boundaries of the proposed operation, stating when applicable:

(i) the name and portion of river;

(ii) the county of location;

(iii) the legal owner of the property;

(iv) the name of the ranch;

(v) the proposed service, including the type of game sought;

(vi) the name of the agency granting use authority; and

(vii) other means of identifying boundaries as established by board rule.

~~(2)~~*(3)* Applications for an outfitter's license must be in the name of an individual person only. Applications involving corporations, proprietorships, or partnerships must be made by one individual person who qualifies under the provisions of this part. ~~Any~~ *A* license issued pursuant to this part must be in the name of that person. The license must specifically state that the license is issued for the use and benefit of the named corporation, proprietorship, or partnership involved. Any revocation or suspension of a license is binding upon the individual person and the corporation, proprietorship, or partnership for the use and benefit of which the license was originally issued.

~~(3)~~*(4)* Application must be made to and filed with the board.

~~(4)~~*(5)* Only one application for an outfitter's license may be made in any ~~one~~ license year. If ~~any~~ *an* application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

Section 8. Section 37-47-305, MCA, is amended to read:

"**37-47-305. Outfitter's examination.** Each applicant for an outfittor's license ~~shall~~, *after meeting the experience and training specifications and other qualifications set by this chapter or rules adopted pursuant to this chapter, is entitled to take and must* pass a standard examination administered by the board or its agent. The examination must require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of ~~persons employing the services~~ *participants*. The examination must test the applicant's knowledge of subjects that apply to the type of license applied for and may include the following subjects:

(1) federal and state fish and game laws and regulations;

(2) practical woodsmanship;

(3) general knowledge of big game;

(4) field preparation of trophies;

(5) care of game meat;

(6) use of outfitter's gear as listed on the application;

(7) knowledge of area and terrain;

(8) knowledge of firearms;

(9) federal and state regulations as applicable to outfitting;

(10) first aid;

(11) boat safety;

(12) water safety;

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(13) care and safety of livestock."

Section 9. Section 37-47-306, MCA, is amended to read:

"**37-47-306. Fees.** (1) The board shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications ~~shall~~ *must* be accompanied by a license fee as specified by ~~the~~ board *rule*.

(3) If a nonresident resides in a state requiring residents of the state of Montana to pay in excess of the amount established by the board for a similar license, the fee for ~~such~~ *the* nonresident outfitter's, ~~or professional~~ guide's, *or professional guide's* license ~~shall~~ *must* he the same amount as the higher fee charged in the state where the nonresident resides.

(4) The license fees must be depositod in the stato special revenue fund and must be used by the board te investigato the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6)."

Section 10. Section 37-47-307, MCA, is amended to read:

"**37-47-307. Investigation of applicant — issuance or denial of license.** (1) The board shall investigate each applicant for an outfitter's, ~~or professional~~ guide's, *or professional guide's* license and determine the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this ~~section~~ *chapter* or *rules adopted pursuant to this chapter*. In the event that any application for license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) ~~Final decision as to issuance of renewal licenses must be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.~~

~~(4)~~ A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter ~~and renewal deadlines and fees imposed by rule of the board~~ *or rules adopted pursuant to this chapter* and *upon* completing an application for license renewal on a form provided by the board."

Section 11. License for previously licensed guide. The board shall issue a guide's license to an applicant who meets the following qualifications as of July 1, 1995:

(1) previous licensure as a guide in this state and practice as a guide for at least one season, as defined by board rule;

(2) payment of a license fee; and

(3) submission of a current cardiopulmonary resuscitation card, a first-aid card, or an equivalent card issued by a board-approved certifying agency.

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Section 12. Section 37-47-341, MCA, is amended to read:

"37-47-341. Grounds for *denial*, suspension, or revocation of license. ~~Every~~ *A* license or right to apply for and hold ~~the~~ *a* license *issued under this part* may be denied, suspended, or revoked *or other disciplinary conditions may be applied* upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, *as required under this chapter and rules adopted pursuant to this chapter*;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;. *A person may not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended.*

(5) ~~two convictions~~ *one conviction* or bond ~~forfeitures of $100 or more~~ *forfeiture* as to ~~violations~~ *a violation* of the fish and game or outfitting laws or regulations of any state or the United States ~~within the past 5 years~~;

(6) a substantial breach of ~~any~~ *a* contract with ~~any person using the services of the license holder~~ *a participant* provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide *or professional guide* by an outfitter;

(8) negligence or misconduct while acting as an outfitter, ~~or professional~~ guide, *or professional guide* that causes an accident or injury to *the* person or property of ~~any client of the outfitter or professional guide~~ *a participant*; ~~or~~

(9) misconduct as defined by board rule; *or*

(10) any violation of this chapter or a rule adopted pursuant to this chapter."

Section 13. Section 37-47-343, MCA, is amended to read:

"37-47-343. Appeal procedure. ~~Any~~ *A* person who feels aggrieved by a final order of the board denying issuance of~~, suspension of, or revocation of~~ *a license or suspending or revoking* a license as an outfitter, ~~or professional~~ guide, *or professional guide* may petition for judicial review as provided in Title 2, chaptor 4, part 7."

Section 14. Section 37-47-345, MCA, is amended to read:

"37-47-345. Enforcement. Investigations and arrests for violations of this chapter *or rules adopted pursuant to this chapter* may be made by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency enforcement personnel."

Section 15. Section 37-47-401, MCA, is amended to read:

"**37-47-401. Purpose.** It is recognized that some activities conducted by outfitters, *guides,* and *professional* guides within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that ~~can~~ *may* be taken. It is the purpose of this part to define those areas of responsibility and affirmative acts or omissions for which outfitters, *guides,* and *professional* guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or ~~shall be~~ *is* considered to have voluntarily assumed the risk of loss or damage."

Section 16. Section 37-47-402, MCA, is amended to read:

"**37-47-402. Duties of outfitters, *guides,* and *professional* guides.** An outfitter, *guide,* or *professional* guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed by a licensed member of the profession;

(2) comply with all standards adopted by *board* rule ~~by the board~~."

Section 17. Section 37-47-403, MCA, is amended to read:

"**37-47-403. Duties of participants.** (1) A participant shall:

(a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter, *guide,* or *professional* guide in this state;

(b) receive permission from the outfitter, *guide,* or *professional* guide prior to embarking on any self-initiated activity and inform the outfitter, *guide,* or *professional* guide of ~~his~~ *the participant's* plans and intentions upon receiving permission to engage in ~~such~~ *the* self-initiated activity.

(2) A participant may not:

(a) interfere with the running or operation of an outfitter's, *guide's,* or *professional* guide's activities when ~~such~~ *those* activities conform to the standards of care set forth in 37-47-402;

(b) use the outfitter's, *guide's,* or *professional* guide's equipment, facilities, or services unless the participant has requested and received permission from the outfitter, *guide,* or *professional* guide;

(c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to ~~himself~~ *the participant* or any other person."

Section 18. Section 37-47-404, MCA, is amended to read:

"**37-47-404. Responsibility for violations of law.** (1) ~~Any~~ *A* person accompanying a hunting or fishing party as an outfitter or ~~agent~~ *guide, professional guide,* or *other* employee of the outfitter is equally responsible with any person or party employing the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, ~~agent~~ *guide, professional guide,* or employee and the outfitter, ~~agent~~ *guide, professional guide,* or employee was not an active participant. An outfitter or ~~agent~~ *guide, professional guide,* or *other* employee of an outfitter who willfully

fails or refuses to report any violation of fish and game laws is liable to the penalties provided in this section. If any ~~professional~~ guide *or professional guide* violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter employing the guide *or professional guide*, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter, *guide,* or ~~professional~~ *professional* guide shall report any violation or suspected violation of fish and game laws that the outfitter, *guide,* or *professional* guide knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain ~~any~~ *an* outfitter ~~or professional guide~~ unless the outfitter ~~or professional guide~~ is currently licensed in accordance with the laws of the state of Montana. *A person may not use the services of a guide or professional guide and a guide or professional guide may not offer services unless the services are obtained through an endorsing outfitter."*

Section 19. Section 87-2-511, MCA, is amended to read:

"**87-2-511. Sale of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and 2,000 Class B-11 licenses reserved for applicants ~~indicating their intent to use~~ *using* the services of a licensed outfitter~~,~~ and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a ~~reserved~~ *resident-sponsored* license under subsection (1) must contain a written affirmation *by the applicant* that the applicant intends to hunt with ~~a licensed outfitter or~~ a resident sponsor and must indicate the name of the ~~licensed outfitter or~~ resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a ~~licensed outfitter or~~ resident sponsor and ~~which~~ *that* affirms that the ~~outfitter or~~ resident *sponsor* will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with ~~him~~ *the resident sponsor*, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in *Title 37, chapter 47, and* this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor.

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(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

(a) accompany the applicant;

(b) provide guiding services for the species hunted by the applicant;

(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;

(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and

(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

~~(4)~~*(6)* The department shall make the reserved Class B-10 and Class B-11 licenses that remain unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed outfitter or resident sponsor.

~~(5)~~*(7)* All Class B-10 and Class B-11 licenses *that are* not reserved under subsection (1) and all unsold reserved licenses *that are* available under subsection ~~(4)~~ *(6)* must be issued by a drawing among all applicants for the respective unreserved licenses."

Section 20. Investigators — qualifications. (1) The department may hire investigators to assist the board in investigations and inspections authorized by this chapter.

(2) To qualify as an investigator, a person must:

(a) be a citizen of the United States and be a Montana resident;

(b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide, or professional guide or as a regulator of the outfitting profession; and

(c) have not less than 2 years' experience as a licensed private investigator or as an investigator, detective, special agent, or peace officer of a city, county, or state or of a federal agency.

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Section 21. Section 87-1-503, MCA, is amended to read:

"**87-1-503. Ex officio wardens.** All sheriffs and their deputies~~,~~; *all* constables~~,~~; all peace officers of the state or any subdivision of the state~~,~~; *the executive director and investigators of the board of outfitters;* all state forest officers~~, and~~; as authorized by cooperative agreement, ~~all~~ *any* officers of the United States forest service, agente of the United States fish and wildlife service, *and* peace officers of the bureau of land management, national park service, and corps of engineers that are assigned to duty in this state~~,~~; and field personnel of the department~~,~~ as the directer may appoint~~,~~ are ex officio wardens, without pay, except that the department may, in its discretion, allow ~~traveling~~ *travel* expenses as provided for in 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and game funds. Ex officio wardens have the same powers with reference to the enforcement of the fish and game laws of this state and the laws relating to parks and outdoor recreation contained in ~~chapters 1 and 2 of~~ Title 23, *chapters 1 and 2,* except chapter 2, part 7, as regularly appointed wardens, and it is their duty to assist, whenever possible, in the enforcement of those laws."

Section 22. Repealer. Sections 37-47-102 and 37-47-309, MCA, are repealed.

Section 23. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 24. Codification instruction. [Sections 2 and 20] are intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [sections 2 and 20].

Section 25. Effective dates. (1) [Sections 20 and 21 and this section] are effective July 1, 1995.

(2) [Sections 1 through 19, 22 through 24, and 26] are effective October 1, 1995.

Section 26. Termination. [Section 11] terminates October 1, 1996.

Approved April 5, 1995

CHAPTER NO. 329

[SB 186]

AN ACT EXPANDING THE AUTHORITY OF THE DEPARTMENT OF STATE LANDS TO RECLAIM ARANDONED HARD-ROCK AND OPENCUT MINE SITES; AUTHORIZING THE FILING OF LIENS; LIMITING REDISTURBANCE OF RECLAIMED SITES; AMENDING SECTION 82-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-305, MCA, is amended to read:

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"82-4-305. **Exemption — small miners — written agreement.** (1) Except as provided in subsections (3) through (9), the provisions of this part do not apply to ~~any~~ *a* small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminato any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that the small miner shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

(a) if the small miner is ~~a natural person~~ *an individual*, that:

(i) no business association or partnership of which tbe small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting steck has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's actual cost of reclaiming the disturbed land, although the bond may not exceed $5,000 per operation. However, if the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its

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reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and *for* state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state te the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs te the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails te commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs *that* it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs *that* it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of the small miner's operation ~~where~~ *in which* the cyanide ore-processing reagent will be used or disposed of.

(8) The exemption provided in this section does not apply to *a person*:

(a) ~~a person~~ whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resultod in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) ~~a person~~ who has not paid a penalty for which the department has obtained a judgment pursuant te 82-4-361;

(c) ~~a person~~ who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the hond should have been posted has heen reclaimed by that person or reclaimed by the

department and the person has reimhursed the department for the cost of the reclamation; or

(d) ~~a person~~ who has failed to comply with an ahatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) The exemption provided in this section does not apply to *an area:*

(a) ~~an area~~ under permit pursuant to 82-4-335*;*

(b) ~~or to an area~~ that has heen permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency*; or*

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds."

Section 2. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may entor upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitatod in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effecte of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right te enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agente, employees, or contracters to enter upon the property to restere or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abato, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

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(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The board may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.

Section 3. Filing of lien for abandoned mine reclamation project. (1) Before commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent adverse effects of past mining practices on private property, the department may file a notice of the right to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

(2) If the department expends or allocates public funds conducting mine reclamation work under this part and if the department determines, based on an appraisal by an independent qualified appraiser chosen by the department, that the work has resulted or will result in a significant increase in the fair market value of property, the department may file a lien against the property reclaimed.

(3) Within 6 months after the completion of the project, the department shall itemize the funds expended and may file a lien statement. The lien statement must include:

(a) the value of the property before commencing the work of restoration or reclamation or abatement, control, or prevention of adverse effects of the past mining practices;

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(b) the value of the property after the work has been completed;

(c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and the location where those appraisals may be examined;

(d) the amount of public funds spent by the department on the project; and

(e) the amount of the lien.

(4) The amount of the lien must be the lesser of either the increase in the value of the property or the amount of public funds actually expended by the department.

(5) A lien may not be filed under this section against the property of a person who owned the surface rights prior to May 2, 1977, and who did not consent to, participato in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address, copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.

(7) The lien provided in this section is effective as of the date of expenditure of the public funds and has priority over all other liens or security interests that have attached to the property that is the subject of the lien, whenever those liens may have arisen, second only to real estate taxes imposed upon the property.

(8) Within 60 days after the department files the lien, the owner of the property to which the lien provided for in this section attaches may petition the district court for the county in which the majority of the property is locatod asking the district court to resolve disputes regarding the amount of actual funds spent by the department or to determine the increase in the market value of the property as a result of the restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining practices. If it differs from the department's statement, the amount found by the court to be the lesser of the actual funds spent or the increase in market value is the amount of the lien and that amount must be recorded with the department's statement.

(9) A lien placed on property under this section may be satisfied by payment to the department of the amount of the lien. The department may accept partial payments on torms and conditions that the department specifies, but the lien is satisfied only to the extont of the value of the consideration received. A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument releasing the lien in whole or in part.

(10) A lien placed on property under this section renews automatically without a requirement on the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be accumulated at the rato of 10% a year and may not be compounded.

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(11) Funds derived from the satisfaction of liens established under this part must be deposited in the abandoned mine reclamation fund account from which the project was funded.

Section 4. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of:

(1) Title 82, chaptor 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [sections 2 and 3];

(2) Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [sections 2 and 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 330

[SB 212]

AN ACT PROVIDING PROCEDURAL SAFEGUARDS FOR JOINT AND SEVERAL LIABILITY DETERMINATIONS; PERMITTING THE CONSIDERATION OF NEGLIGENCE BY AN EMPLOYER OR COEMPLOYEE IN CERTAIN CIVIL ACTIONS; AMENDING SECTION 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, on August 29, 1994, the Montana Supreme Court, in *Newville v. State of Montana Department of Family Services*, 883 P.2d 793, 51 St. Rptr. 758 (1994), struck down as unconstitutional part of section 27-1-703, MCA, limiting the common-law doctrine of joint and several liability; and

WHEREAS, the basis of the holding was that the statute lacked certain procedural safeguards; and

WHEREAS, the Legislature wishes to provide for procedural safeguards considered necessary hy the Montana Supreme Court; and

WHEREAS, on January 18, 1995, the Montana Supreme Court, in *Wetch v. Unique Concrete Co.*, ___P.2d___, 52 St. Rptr. 5 (1995), interpreted section 27-1-703, MCA, to preclude the trier of fact from hearing about or considering the negligence of the plaintiff's employer in a case in which that negligence should have absolved or substantially limited the liability of a contractor doing work on the employer's office building; and

WHEREAS, the Legislature wishes to provide that negligence on the part of the claimant's employer or coemployee may be considered and determined as part of a nonparty defense, as provided in this bill.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-703, MCA, is amended to read:

"27-1-703. Multiple defendants — determination of liability. (1) Except as provided in subsections (2) and (3), whenever the negligence of ~~any~~ *a*

party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) ~~Any~~ *A* party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the amount of negligence attributable to ~~him~~ *that party*, except as provided in subsection (3). The remaining parties are jointly and severally liable for tbe total less the amount attributable to the claimant.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the otber.

(4) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining tlie percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, *and* third-party defendants~~, persons released from liability by the claimant, persons immune from liability to the claimant, and any other persons who have a defense against the claimant~~. *The liability of nonparties, including persons released from liability by the elaimant and persons immune from liability to the claimant, must also be considered by the trier of fact, as provided in subsection (6).* The trier of fact shall apportion the percentage of negligence of all ~~such~~ persons *listed in this subsection*. ~~However, in attributing negligence among persons, the trier of fact may not consider or determine any amount of negligence on the part of any injured person's employer or coemployee to the extent that such employer or coemployee has tort immunity under the Workers' Compensation Act or the Occupational Disease Act of this state, of any other state, or of the federal government.~~ Contribution ~~shall~~ *must* be proportional to the liability of the parties against whom recovery is allowed. Nothing contained in this section ~~shall make~~ *makes* any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contributien under this section only up to the percentage of negligence attributed to ~~him~~ *that party*.

(6) (a) In an action based on negligence, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a nonparty, which may be referred to as a nonparty defense.

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of nonparties, including persons released from liability by the claimant and persons immune from liability to the claimant, if a nonparty defense is properly asserted in

accordance with this subsection (6). A finding of negligence of a nonparty is not a presumptive or conclusive finding as to that nonparty for purposes of a prior or subsequent action involving that nonparty.

(c) The burden of proof as to a nonparty's liability is on the defendant or defendants who affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to the injury of the claimant or alter other proof requirements.

(d) A nonparty defense must be affirmatively pleaded as a part of the answer. A defendant who gains actual knowledge of a nonparty defense after the filing of that defendant's answer may plead the defense with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a nonparty defense;

(ii) giving the claimant a reasonable opportunity to defend against a nonparty defense; and

(iii) giving the claimant a reasonable opportunity, if appropriate, to add the nonparty as an additional defendant to the action before the expiration of the period of limitation applicable to the claim. However, this subsection (iii) does not extend the period of limitation or revive the action if the period of limitation has expired.

(e) If a defendant asserts a nonparty defense, the defendant shall notify each nonparty who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each nonparty at the nonparty's last-known address by certified mail, return receipt requested."

Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. Applicability. [This act] applies to all claims for relief not reduced to final judgment on [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 331

[SB 288]

AN ACT CLARIFYING THE BURDEN OF PROOF FOR ACTIONS IN WHICH AN AGENCY DETERMINES NOT TO CONDUCT AN ENVIRONMENTAL IMPACT STATEMENT; EXEMPTING THE LEGISLATURE FROM THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING SECTION 75-1-201, MCA.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state ~~shall~~ *must* be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except *the legislature and except* as provided in ~~subsection~~ *subsection* (2), shall:

(i) ~~utilize~~ *use* a systematic, interdisciplinary approach ~~which~~ *that* will ~~insure~~ *ensure* the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking ~~which~~ *that* may have an impact on ~~man's~~ *the* environment;

(ii) identify and develop methods and procedures ~~which~~ *that* will ~~insure~~ *ensure* that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) include in ~~every~~ *each* recommendation or report on proposals for projects, programs, ~~legislation,~~ and other major actions of state government significantly affecting the quality of the human environment~~,~~ a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects ~~which~~ *that* cannot be avoided ~~should~~ *if* the proposal ~~be~~ *is* implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of ~~man's~~ *the* environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources ~~which~~ *that* would be involved in the proposed action ~~should~~ *if* it ~~be~~ *is* implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal ~~which~~ *that* involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, ~~where~~ *when* consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of ~~mankind's~~ *the* world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and ~~utilize~~ *use* ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established hy 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the commenta of any state agency ~~which~~ *that* has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of ~~such~~ *the* statement and the commente and views of the appropriate state, federal, and local agencies ~~which~~ *that* are authorized te develop and enforce environmental standards ~~shall~~ *must* be made available to the governor, the environmental quality council, and the public and ~~shall~~ *must* accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, *s* exempt from the provisions of parts 1 through 3.

~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).~~

~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31, 1989, that must include but not be limited to:~~

~~(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;~~

~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;~~

~~(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;~~

~~(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;~~

~~(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and~~

~~(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.~~

(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statsment. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems

necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.

~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council.~~

(3) In any action challenging or seeking review of an agency's determination that a statement pursuant to subsection (1)(b)(iii) is not required, the burden of proof is on the person challenging the decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law."

Approved April 5, 1995

CHAPTER NO. 332

[SB 63]

AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION WHEN THE DEFENDANT IS AN OUT-OF-STATE CORPORATION; AND AMENDING SECTION 25-2-122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-2-122, MCA, is amended to read:

"**25-2-122. Torts.** *(1)* ~~The~~ *Except as provided in subsection (2), the* proper place of trial for a tort action is:

~~(1)~~*(a)* the county in which the defendants, or any of them, reside at the commencement of the action; or

~~(2)~~*(b)* the county where the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county where the contract was to be performed.

(2) If the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation's resident agent is located, as required by law, or in the first judicial district."

Approved April 8, 1995

CHAPTER NO. 333

[HB 280]

AN ACT GENERALLY REVISING THE LAWS RELATING TO MILK CONTROL; REALLOCATING THE BOARD OF MILK CONTROL FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF LIVESTOCK; TRANSFERRING THE RESPONSIBILITIES FOR MILK CONTROL FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF LIVESTOCK; AMENDING SECTIONS 2-15-1802, 81-23-101, 81-23-103, 81-23-105, 81-23-202, 81-23-203, 81-23-302, AND 81-23-406, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

It is the intent of the legislature that the rules promulgated by the department of commerce regarding the control of milk prices will be continued and enforced by the department of livestock.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1802, MCA, is amended to read:

"2-15-1802. Board of milk control — membership — allocation — quasi-judicial. (1) There is a hoard of milk control.

(2) The board consists of five members. A member may not be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products. A memher may not have held an elective or appointive public office during the 2 years immediately preceding appointment, and a member may not hold a public office, either elective or appointive, during a term on the board. Not more than three members may be of the same political party.

(3) The board is allocated to the department *of livestock* for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 2. Section 81-23-101, MCA, is amended to read:

"81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-1802.

(b) "Class I milk" includes all hottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

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(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(g) ~~"Department" means the department of commerce provided for in Title 2, chapter 15, part 18.~~

~~(h)~~ "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

~~(i)~~*(h)* "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

~~(j)~~*(i)* "Licensee" means a person who holds a license from the department.

~~(k)~~*(j)* "Market" means an area of the state designated by the department as a natural marketing area.

~~(l)~~*(k)* "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constitutod health authority and also includes those secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

~~(m)~~*(l)* "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections and human services at the Montana state prison.

~~(n)~~*(m)* "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

~~(o)~~*(n)* "Producer prices" means those prices at which milk owned by a producer is sold in bulk te a distributor.

~~(p)~~*(o)* "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

~~(q)~~*(p)* "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail or for consumption on the premises.

~~(r)~~*(q)* "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities,

sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

~~(s)~~*(r)* "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, te a retailer.

(2) The department may assign new milk products, not expressly included in one of tlie classes defined in this section, to the class which in its discretion it determines to be proper."

Section 3. Section 81-23-103, MCA, is amended to read:

"**81-23-103. General powers of the department.** (1) The department shall supervise, regulato, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force, or operation of any provision of public health laws ~~or the law under which the department of livestock is constituted together with the department of livestock rules~~, county board of health rules, or municipal ordinances for the promotion or protection of the public health. The department may cooperate with the department of health and environmental sciences, ~~the board of livestock, any~~ *a* county or city board of health, or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this stato and conduct hearings upon any subject pertinent to the administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter and may take depositions of witnesses who are sick or absent from the stato or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness."

Section 4. Section 81-23-105, MCA, is amended to read:

"**81-23-105. Testing of milk.** (1) For the purpose of determining the value of milk supplied by producers during routine audits of milk processing plants ~~which~~ *that* receive raw milk directly from producers, the department ~~of commerce~~ may establish a program of testing ~~such~~ raw milk.

(2) The department ~~of commerce~~ may levy an assessment on licensed producers to secure the necessary funds to administer this program. This assessment is in addition to those provided in 81-23-202.

(3) All personnel employed in the sampling and testing program ~~shall~~ *must* be licensed by the animal health division of the department ~~of livestock~~.

(4) The department ~~of commerce~~ may conduct all types of sampling, grading, and testing techniques ~~which it~~ *that the department* considers necessary to carry out the intent of this section."

Section 5. Section 81-23-202, MCA, is amended to read:

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"**81-23-202. Licenses — disposition of income.** (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this stato without first having obtained a license from the department ~~of livestock~~, *as provided in 81-22-202,* or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chaptor by the department. The annual fee for the license from the department is $2 and is due before July 1 and must be deposited by the department to the credit of the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the stato of Montana.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold hy a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) In addition to the fees established in subsections (1) through (3), the department shall assess a fee of 14.97 cents per hundredweight on the volume of class I milk produced and sold by a producer to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department ~~of livestock~~. The board shall include this fee in its formulas for fixing by rule the minimum producer, wholesale, jobber, and retail prices for class I milk in 81-23-302.

(5) The assessments upon producer-distributors, producers, and distributors must be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the assessments must be computed by applying the fee designated by the department and the fee established in subsection (4) to the volume of milk sold in the preceding calendar quarter.

(6) Failure of a producer, producer-distributor, or distributor to pay an assessment when due is a violation of this chaptsr, and a license under this chaptor automatically terminates and is void. A terminated license must be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment ~~which~~ *that* was due.

(7) ~~Except for the assessment provided for in subsection (4), all~~ *All* assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering *chapter 22 and* this

chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of *chapter 22 and* this chapter, must be paid out of the board money in that fund.

(8) ~~The assessment provided for in subsection (4) must be deposited by the department in an account in the state special revenue fund. Money in the account must be used to carry out the purposes of Title 81, chapter 22.~~

~~(9)~~ The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

Section 6. Section 81-23-203, MCA, is amended to read:

"**81-23-203. Application for licenses.** An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared ~~under authority of~~ *by* the department~~,~~ and ~~an applicant shall state facts concerning his circumstances and the nature of the business to be conducted which in the opinion of the department are necessary for the administration of this chapter~~ *containing the information required by the department.* The application ~~shall~~ *must* certify the applicant to be the holder of all licenses required by the department ~~of livestock~~ for the conduct of ~~his~~ *the applicant's* business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The application ~~shall~~ *must* be accompanied by the license fee required to be paid."

Section 7. Section 81-23-302, MCA, is amended to read:

"**81-23-302. Establishment of minimum prices.** (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk and minimum producer prices only for class II and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish ~~such~~ prices by means of flexible formulas ~~which shall~~ *that must* be devised so that they bring about ~~such~~ automatic changes in all minimum prices as *that* are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices ~~which~~ *that* are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors ~~which shall~~ *that must* be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution ~~which~~ *that* preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity te be heard and to question or rebut ~~such~~ *the* considerations as a matter of record.

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(5) ~~Such~~ *The* specific factors may include but ~~shall~~ *are* not ~~be~~ limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for ~~such~~ milk for all purposes;

(b) the ability and willingness of consumers to purchase, which ~~shall~~ *must* include among other things per capita disposable income statistics, consumer price indexes, and wholesale price indexes;

(c) the cost factors in producing milk, which ~~shall~~ *must* include among other things the prices paid by farmers generally (as used in parity calculations of the United States department of agriculture), prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(d) the alternative opportunities, both farm and nonfarm, open to milk producers, which ~~shall~~ *must* include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) the prices of butter, nonfat dry milk, and cheese;

(f) the cost factors in distributing milk, which ~~shall~~ *must* include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) the cost factors in jobbing milk, which ~~shall~~ *must* include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor ~~which~~ *that* may properly be allocatod to the handling of milk to the point at which ~~such~~ *the* milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;

(b) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or ~~any~~ part of ~~any~~ *an* official order establishing or revising ~~any~~ milk pricing formulas upon facts within its own knowledge, as distinguished from evidence ~~which~~ *that* may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, ~~cause notice to be given to~~ *notify* the consuming public and the milk industry of the specific facts within its own knowledge ~~which~~ *that* it will consider, so that all interested parties will bave opportunity to be heard and to question or rebut ~~such~~ *the* facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula whereby minimum:

(a) producer prices for milk in classes I, II, and III ~~shall~~ *must* be computed;

(b) wholesale prices for milk in class I ~~shall~~ *must* be computed;

(c) jobber prices for milk in class I ~~shall~~ *must* be computed;

(d) retail prices for milk in class I ~~shall~~ *must* be computed.

(8) This section ~~shall~~ *may* not be construed as requiring the board to promulgato ~~any~~ *a* specific number of formulas, but *it* ~~shall~~ *must* be construed liberally so that the board may adopt ~~any~~ *a* reasonable method of expression to accomplish the objective set forth in subsection (7). If the evidence presented to the board at ~~any~~ *a* public hearing for the establishment or revision of milk pricing formulas is found by the board te require the establisbment of separate and varying wholesale prices for ~~any~~ particular uses, the board shall designate the reasons ~~therefor~~ *for the separate and varying prices* and establish ~~such~~ *the* separate formulas.

(9) Each rule establisbing or revising ~~any~~ milk pricing formulas shall classify milk by forms, classes, grades, or uses as the board ~~may deem~~ *considers* advisable and shall specify the minimum prices ~~therefor~~ *for the forms, classes, grades, and uses.*

(10) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates ~~which~~ *that* distributors, contract haulers, and others charge producers for both farm-to-plant and interplant transportation of milk. ~~No~~ *An* allowance for transportation of milk between plants may *not* be permitted unless it is found by the board to be necessary te permit the movement of milk in the public interest.

(11) All milk purchased by a distributor ~~shall~~ *must* be purchased on a uniform basis. The basis to be used ~~shall~~ *must* be established by the board after the producers and the distributors have been consulted.

(12) The board may amend ~~any~~ *an* official rule in the same manner provided ~~herein~~ *in this section* for the original establishment of milk pricing formulas. The board may in its discretion, when it determines the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(13) Upon petition of a distributor or a majority of ~~his~~ *the distributor's* producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that tbe evidence ~~adduced~~ *presented* at ~~such~~ *the* hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(14) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by ~~any~~ *a* licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at ~~such~~ *the* hearing the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices ~~which~~ *that* have historically prevailed statewide. If the board finds that the evidence ~~adduced~~ *presented* at ~~such~~ *the* hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by official order to establish the same; but ~~such~~ *the* official order ~~shall be~~ *is* of no force or effect until it is approved in a

referendum conducted by the board by mail and by secret ballot among affected producers, producer-distributers, and distributers. The board shall keep confidential the vote of each producer, producer-distrihuter, and distributor voting in the referendum. The official order must he approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the hoard may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions as the hoard considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statowide base or quota plan contemplatod in subsection (13);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the estahlishment of a pool expense fund for the purpose of offsetting the costs to the department of administoring the pool, funded hy a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but ~~any~~ withdrawals from the cash reserve must be reimhursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (14)(a). ~~Such~~ *The* order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public bearing as required under the Montana Administrative Procedure Act.

(15) The requirements ~~hereinabove set forth~~ *of this section* concerning notices of hearings for the estahlishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment ~~thereof~~ *of base or quota plans or statewide pooling arrangements.*

(16) Rules adopted pursuant to this section ~~shall~~ *must* be enforced and audited for compliance hy ~~the milk control bureau of~~ the department ~~of commerce~~."

Section 8. Section 81-23-406, MCA, is amended to read:

"**81-23-406. Additional remedies.** The department may hegin any proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the department may apply to the district court of the district where the action arises for relief by injunction,

mandamus, or any other appropriate remedy in equity without heing compelled te allege or prove that an adequate remedy at law does not otherwise exist. The department may not be required to post bond in an action to which it is a party wbether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department of ~~commerce~~ *livestock*, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The department may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of ~~his~~ *the county attorney's* county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in ~~any~~ court."

Section 9. Code commissioner instruction. The code commissioner shall recodify 2-15-1802 in Title 2, chapter 15, part 31, and change affected references accordingly.

Section 10. Effective date. [This act] is effective July 1, 1995.

Approved April 7, 1995

CHAPTER NO. 334

[HB 294]

AN ACT INCREASING THE PENALTY FOR PASSING IN A NO-PASSING ZONE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. No-passing zone violation — penalty. A person convicted of a violation of 61-8-326 shall be punished upon conviction by imprisonment for a period of not more than 6 months or by a fine of not less than $50 or more than $500 or by both fine and imprisonment.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 1995

CHAPTER NO. 335

[HB 322]

AN ACT ESTABLISHING THAT INNKEEPERS MAY EVICT GUESTS OR REFUSE ACCOMMODATIONS AND SERVICES UNDER CERTAIN CONDITIONS; ESTABLISHING THE LIABILITY OF INNKEEPERS IN INCIDENTS INVOLVING THE UNLAWFUL CONSUMPTION OR POSSESSION OF ALCOHOL AT HOTELS; AND ESTABLISHING PARENTS' OR GUARDIANS' LIABILITY FOR MINORS' DAMAGE TO PUBLIC ACCOMMODATIONS.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Eviction of guests. (1) An innkeeper may evict a guest of a hotel, as defined in 50-51-102, who refuses or has otherwise failed to pay the bill when due. Before evicting a guest, the innkeeper shall demand payment of the bill and shall ask the guest to vacate the premises. If the guest does not pay the bill or leave following these requests, the innkeeper may lock the door to the guest's room, removo the guest's baggage and other personal property, or evict the guest by any other peaceful means. The innkeeper may hold the guest's baggage and other personal property but is subject to liability as provided in 70-6-501.

(2) An innkeeper may also evict a person, whether or not the person is a guest of the hotel, who:

(a) is under the influence of alcohol, drugs, or any other intoxicating substance and acts in a disorderly fashion so as to disturb the peace of other guests or is not in compliance with state liquor laws;

(b) acts in a disorderly fashion so as to disturb the peace of other guests;

(c) seeks to use the hotel for an unlawful purpose;

(d) seeks to bring into the hotel:

(i) an unlawfully possessed firearm; or

(ii) something, including an explosive or a hazardous or toxic substance, that it is unlawful to possess and that may be dangerous to other persons;

(e) destroys, damages, defaces, or threatens harm to hotel property or guests;

(f) causes or permits persons to exceed the maximum allowablo occupancy of a hotel room as established by the innkeeper;

(g) refuses to abide by reasonable standards or policies established by the innkeeper for operation and management of the hotel.

Section 2. Innkeeper's responsibilities — limits. (1) An innkeeper may not be required to provide accommodations, facilities, or privileges of a hotol, as defined in 50-51-102, to a person who:

(a) is unwilling or unable to pay for the accommodations and services of the hotel. An innkeeper may require a prospective guest to demonstrate the ability to pay for the accommodations and services by paying a damage deposit in cash or with an accepted credit card.

(b) the innkeeper reasonably believes to be under the influence of alcohol, drugs, or another intoxicating substance or who acts in a disorderly fashion so as to disturb the peace of other guests;

(c) the innkeeper reasonably believes seeks te bring into the hotel :

(i) an unlawfully possessed firearm; or

(ii) something, including an explosive or a hazardous or toxic substance, that it is unlawful to possess and that may be dangerous to other persons;

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(d) destroys, damages, defaces, or threatens harm to hotel property or guests;

(e) refuses te abide by reasonable standards or policies established by the innkeeper for operation and management of the hotel; or

(f) causes or permits persons to exceed the maximum allowable occupancy of a hotel room as established by the innkeeper.

(2) This section does not relieve an innkeeper from the responsibility to not engage in unlawful discriminatory practices as defined in 49-2-304 and other provisions of Title 49, chapter 2.

Section 3. Consumption or possession of alcohol — civil liability — licensure protection. The provisions of 27-1-710 apply to an innkeeper. A license to serve beer, wine, or liquor that is issued to an innkeeper may not be suspended, revoked, or refused renewal because of the unlawful consumption or possession of alcohol by a guest or occupant except under the provisions of Title 16, Chapter 4.

Section 4. Liability of parent or guardian for minor's damage to public accommodation. If a minor willfully defaces or damages hotel property, the parent or guardian of the minor is liable for the cost of repair or replacement as provided in 40-6-237 and 40-6-238.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 70, chapter 6, and the provisions of Title 70, chapter 6, apply to [sections 1 through 4].

Approved April 7, 1995

CHAPTER NO. 336

[HB 393]

AN ACT ALLOWING COUNTY COMMISSIONERS TO ASSIGN THE SUPERVISION OF COUNTY ROADS TO EITHER A COUNTY SURVEYOR OR A COUNTY ROAD SUPERINTENDENT; AND AMENDING SECTIONS 7-4-2812, 7-14-2102, AND 7-14-2301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2812, MCA, is amended to read:

"7-4-2812. Duties ~~of county surveyor~~ related to roads and bridges ~~in certain counties~~. (1) ~~The county surveyor of all counties having a total registered vote of 20,000 or over at the last general election shall be responsible~~ *The board of county commissioners may assign responsibility* for *the* supervision and direction of all highways, bridges, and causeways within ~~his~~ *the* county *to a county surveyor or to a county road superintendent. The board may allocate the duties between the surveyor and the superintendent.*

(2) ~~In the exercise of such control, supervision, and direction, he shall~~ *The duties are to*:

(a) keep all highways and bridges free and clear of all obstructions;

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(b) ~~cause highways to be graded, when needed, and~~ *grade,* maintain, and repair ~~the same~~ *all highways*;

(c) ~~cause~~ *construct, maintain, and repair* all bridges and causeways ~~to be made, when needed, and keep the same maintained and in good repair and renew the same when destroyed~~;

(d) make all surveys;

(e) establish grades;

(f) prepare plans, specifications, and estimates;

(g) keep accurate cost data;

(h) approve all claims against the county for all highway, bridge, and causeway construction, maintenance, and repair, prior to presentation to the board of county commissioners;

(i) employ *and assign* deputies~~, men, and teams and discharge at his pleasure such deputies, men, and teams and determine how, when, and where such deputies, men, and teams shall work~~ *and staff*;

(j) purchase and secure all highway and bridge machinery and machinery equipment and tools to be used upon highways and bridges, with the approval of the board;

(k) purchase and secure all highway, bridge, and causeway supplies and materials, with the approval of the board;

(l) from time to time, make reports and estimates of all matters relating to highways and bridges when required by the board; and

(m) perform ~~such~~ other duties ~~as are now or which may be hereafter~~ required by law.

(3) ~~In the exercise of such control, supervision, and direction, he shall~~ *The surveyor must* receive the annual salary provided by law for salaried county surveyors and other county officials."

Section 2. Section 7-14-2102, MCA, is amended to read:

"7-14-2102. General powers relating to county roads — *assignment of responsibility.* Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts. *The board may assign responsibility for the supervision of county roads to a county surveyor or to a county road superintendent or may allocate the duties between the county surveyor and the county road superintendent.*"

Section 3. Section 7-14-2301, MCA, is amended to read:

"7-14-2301. County road superintendent — appointment and compensation. (1) ~~In counties without a county surveyor, each~~ *A* board of county commissioners may appoint a county road superintendent. ~~He shall~~ *The superintendent* ~~have such~~ *has the* duties, powers, and responsibilities ~~as are~~ set forth in this part. After ~~his~~ *the* appointment, the county road superintendent shall serve at the pleasure of and under the direction and control of the board.

~~He~~ *The superintendent* shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of ~~his~~ *the superintendent's* duties.

(2) ~~He shall~~ *The superintendent must* receive ~~such~~ compensation as ~~is~~ determined by the board."

Approved April 7, 1995

CHAPTER NO. 337

[HB 513]

AN ACT EXCEPTING A PERSON WHO BUYS AGRICULTURAL COMMODITIES EXCLUSIVELY FOR THE FEEDING OF LIVESTOCK FROM THE DEFINITION OF COMMODITY DEALER; PROVIDING PENALTIES; AMENDING SECTIONS 80-4-402 AND 80-4-429, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-402, MCA, is amended to read:

"80-4-402. **Definitions.** As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means any person who contracts for or solicits any agricultural commodities from a producer or warehouse operator or negotiates the consignment or purchase of any agricultural commodity on behalf of any commodity dealer.

(2) "Agricultural commodity" means any grain, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed, or other small seed, and other agricultural commodities designated by rule of the department.

(3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(4) "Commodity dealer" means any person who engages in a business involving or, as part of the business, participatos in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural commodity in the state of Montana. The term does not include:

(a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(b) a person who buys agricultural commodities from a licensed commodity dealer;

(c) a person who does not purchase more than $30,000 worth of agricultural commodities from producers during a licensing year; however, once a person exceeds the $30,000 exemption, the person shall obtain a license and is not eligible for the exemption for the succeeding year;

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(d) a person who is the producer of agricultural commodities that the person actually plants, nurtures, and harvests; or

(e) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange; *or*

(f) a person who buys agricultural commodities used exclusively for the feeding of livestock and not for resale.

(5) "Delayed payment contract" means a written contract for the sale of an agricultural commodity when the sale price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, no-price-established contracts, or price-later contracts. A delayed payment contract does not include those contracts in which the parties intend payment to be made immediately upon determination of weights and grades.

(6) "Department" means the department of agriculture provided for in 2-15-3001.

(7) "Depositor" means any person who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment or who is the owner or legal holder of an outstanding warehouse receipt or who is lawfully entitled to possession of the agricultural commodity.

(8) "Director" means the director of the department of agriculture.

(9) "Grain" means all grains for which standards have been established under the United States Grain Standards Act, (7 U.S.C. 71 through 87), and all other agricultural commodities, such as mustard, oil seed crops, or other crops which may be designated by rule of the department.

(10) "Grain Standards Act" means the United States Grain Standards Act, (7 U.S.C. 71 through 87).

(11) "Inspector" means any person designated by the directer to assist in the administration of parts 4 through 6 of this chapter. The term includes warehouse auditors or examiners.

(12) "Official grain inspectors" means any official personnel who perform or supervise tbe performance of official inspection services and certify the results of inspections, including the grade of the grain.

(13) "Official grain samplers" or "samplers" means any official personnel who perform or supervise the performance of official sampling services and certify the results of the sampling.

(14) "Official grain standards" means the standards of quality and condition of grain that establish the grades defined by the Grain Standards Act.

(15) "Official grain weighers" means any official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results thereof, including the weight of the grain.

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(16) "Person" means any individual, firm, association, corporation, partnership, or any other form of business enterprise.

(17) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(18) "Public warehouse" or "warehouse" means any elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities which commingle commodities belonging to different lots of agricultural commodities.

(19) "Purchase contract" means a delayed payment contract or other written contract for the purchase of agricultural commodities by a commodity dealer.

(20) "Receipt" means a warehouse receipt.

(21) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositer by a warehouse operator licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

(22) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

(23) "Subterminal warehouse" means any warehouse at which an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(24) "Terminal grain warehouse" means any warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(25) "Warehouse operator" means a person operating or controlling a public warehouse.

(26) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouse operator, except scale weight tickets."

Section 2. Section 80-4-429, MCA, is amended to read:

"**80-4-429. Penalty.** (1) Except as otherwise provided, any person who violates any provision of parts 4 through 6 of this chapter or rules promulgated under parts 4 through 6 or who impedes, obstructs, hinders, or otherwise prevents or attempts te prevent the director or an authorized representative in the performance of a duty under parts 4 through 6 of this chapter is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than $1,000, or both.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

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(3) A person acting as a commodity dealer or warehouse operator who knowingly sells warehouse-receipted agricultural commodities that the person is not authorized te sell or who fails to pay for purchased agricultural commodities is guilty of a felony.

(4) A person exempted from licensure as a commodity dealer under the provisions of 80-4-402(4)(f) who fails to pay in full all amounts due to a commodity dealer for the sale of agricultural commodities is guilty of a felony and is also subject to any additional administrative penalty authorized by this chapter."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 1995

CHAPTER NO. 338

[SB 185]

AN ACT GENERALLY REVISING THE PROCESS BY WHICH A HABITUAL TRAFFIC OFFENDER IS PENALIZED; PROVIDING FOR ADMINISTRATIVE REVOCATION OF A HABITUAL TRAFFIC OFFENDER'S DRIVING PRIVILEGES; PROVIDING A METHOD FOR AN OFFENDER TO CONTEST THE DECLARATION; PROVIDING THAT CERTIFIED DRIVING RECORDS ARE EVIDENCE OF CONVICTIONS; PROVIDING FOR A MANDATORY MINIMUM SENTENCE FOR A PERSON DRIVING WHILE A LICENSE IS REVOKED BECAUSE OF A HABITUAL TRAFFIC OFFENDER DECLARATION; AMENDING SECTIONS 61-11-204, 61-11-207, 61-11-210, 61-11-211, 61-11-212, AND 61-11-213, MCA; AND REPEALING SECTIONS 61-11-205, 61-11-206, 61-11-208, AND 61-11-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-204, MCA, is amended to read:

"61-11-204. Department's duties. ~~Whenever it appears from~~ *(1) If* the records maintained in *by* the department *show* that a person's driving record brings ~~him~~ *the person* within the definition of ~~an~~ *a* habitual traffic offender, as ~~defined in 61-11-203(2),~~ the department shall:

(a) declare the person a habitual traffic offender;

(b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

(c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified copy of the ~~forthwith certify two copies of that~~ person's driving record and ~~two~~ copies of all relevant abstracts of ~~conviction~~ *convictions and bond forfeitures.* ~~One copy of the record and abstracts shall be certified to the attorney general and one copy of the record and abstracts shall be certified to the county attorney for the county~~

~~wherein the person is found. If the person is not licensed by Montana to drive a motor vehicle but is licensed in another state, the department may certify the copy of the records and abstracts to the attorney general and also to the county attorney for the county in which the person is found or, in the alternative, to the county attorney for the county of Lewis and Clark.~~ *The notice must inform the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing.*"

Section 2. Section 61-11-207, MCA, is amended to read:

"**61-11-207. Abstracts admissible as evidence.** ~~Official~~ *A copy of a driving record maintained by the department, including* abstracts of the records of convictions and bond forfeitures in the custody of the department, certified in writing by the department to be a correct account of ~~the said convictions and bond forfeitures~~ *its records*, may be admitted in evidence in ~~any~~ *a* judicial proceeding under this part ~~upon establishing the proper foundation~~. *A certified driving record is evidence that the person was convicted of each offense shown in the record. A copy of a driving record may be a copy of an original paper record, a digital image of a paper record, or an electronically transmitted copy of a record.*"

Section 3. Section 61-11-210, MCA, is amended to read:

"**61-11-210. ~~Court hearing~~ *Appeals.*** *(1) A person declared to be a habitual traffic offender may file a petition in the district court in the county in which the person resides, or in Lewis and Clark County if the person is not a resident of the state, challenging the declaration and revocation. The petition must be filed within 30 days after the person received notice under 61-11-204. Receipt under 61-11-204 is presumed to be on the third day after the date of mailing. After the petition is filed, a copy must be promptly served on the county attorney of the county in which the petition was filed. The county attorney shall represent the department in the proceeding. Proof of service must be filed with the clerk of the court prior to a hearing or grant of relief. Untimely service or lack of service upon the county attorney waives the right to a hearing. The filing of the petition does not stay enforcement of the revocation.*

(2) Upon receipt from the county attorney of notice of the petition, the department shall give the county attorney a certified copy of the abstracts of the records of convictions and bond forfeitures upon which the habitual traffic offender declaration was based.

(3) A hearing date must be set and at least 10 days' notice of the date must be given to the parties. The scope of the hearing is limited to whether ~~At the time and place designated in the order, the court shall hold a hearing upon the show cause order. If the court finds that~~ the ~~defendant~~ *petitioner* is ~~not~~ the person named in the ~~verified complaint or that he is not~~ *certified abstracts of convictions and bond forfeitures upon which the habitual traffic offender declaration was based and whether the petitioner is* ~~an~~ *a* habitual traffic offender ~~as defined in 61-11-203(2), the proceedings shall be dismissed~~. *The petitioner has the burden of proving that the department's actions are invalid or that its recorde are erroneous.*

(4) If the court finds that the ~~defendant~~ *petitioner* is the ~~same~~ person ~~named in the verified complaint~~ *declared by the department to be a habitual traffic*

offender and that the ~~defendant~~ *petitioner* is ~~an~~ *a* habitual traffic offender ~~as defined in 61-11-203(2)~~, the court shall ~~so find and adjudge the defendant an habitual traffic offender, and by appropriate order direct the person so adjudged to surrender to the court his license to operate a motor vehicle on the streets and highways of this state~~ *dismiss the petition. If the court finds that the petitioner is not the person declared by the department to be a habitual traffic offender or that the petitioner is not a habitual traffic offender, the court shall grant the petition and provide the petitioner with appropriate relief, which must include an order that the department reimburse the petitioner for court fees paid by the petitioner.*

(5) Upon a finding adverse to the ~~defendant~~ *petitioner*, the clerk of the court ~~wherein the hearing is held~~ shall file with the department a copy of the court's order, together with the ~~defendant's~~ *petitioner's driver's* license *if the license has not been previously surrendered.* If the ~~proceeding is dismissed~~ *petition is granted*, the clerk of the court ~~wherein the hearing is held~~ shall file with the department a copy of the court's order ~~dismissing the proceeding, which~~ *granting the petition. The* order ~~shall~~ *must* state the grounds upon which the ~~dismissal~~ *relief* was ~~based,~~ *granted* and ~~shall~~ *must* specify the court findings on the conviction points, *if any,* ~~which~~ *that* have been accrued by the ~~defendant~~ *petitioner. The department shall then correct the petitioner's driving record to comport with the court's specific findings.*"

Section 4. Section 61-11-211, MCA, is amended to read:

"61-11-211. **Department to revoke license of habitual offender — method of removal of points upon revocation.** ~~Upon receipt of a court order declaring an individual a~~ *After it declares a person to be a* habitual offender, the department shall revoke the *person's* driver's license or driving privilege ~~of the individual named in the order~~ for a period of 3 years from the date of the ~~order~~ *declaration*, subject to the provisions of 61-2-302. ~~Additionally, the~~ *The* department shall remove from ~~that individual's~~ *the person's* record ~~those~~ *the* habitual offender points ~~that were certified to the county attorney in the certification required by 61-11-204~~ *upon which the habitual traffic offender designation was based.*"

Section 5. Section 61-11-212, MCA, is amended te read:

"61-11-212. **Penalties.** A person who has been ~~adjudged a~~ *declared to be a* habitual traffic offender may not be issued a license to operato a motor vehicle in this state until:

(1) a period of 3 years has elapsed from the date of the ~~final order of the court adjudging the person a habitual traffic offender~~ *declaration*, subject te the provisions of 61-2-302;

(2) the person has met the requirements of all applicable laws and rules relating te the licensing of moter vehicle operaters in this state; and

(3) the person files with the department, and maintains for a period of 3 years, proof of ~~his~~ financial responsibility in the limits required by law."

Section 6. Section 61-11-213, MCA, is amended te read:

"**61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor.** A person ~~found~~ *who is declared* to he a habitual traffic offender under this part ~~and~~ who operates a motor vehicle in this stato ~~while the order of the court prohibiting the operation remains in effect~~ *during the period of revocation of the person's driver's license or driving privileges* is guilty of a misdemeanor and upon conviction shall be imprisoned for a period of not *less than 14 days or* more than 1 year or fined not more than $1,000, or both, and the department, upon receiving a record of the conviction of a person under this section, shall extend the period of revocation for an additional 1 year. However, in cases in which the prohibited operation of a motor vehicle hy a habitual traffic offender is necessitated in a situation of extreme emergency in order to save life, limb, or property, ~~he~~ *the person* may not be considered guilty of a violation under this part."

Section 7. Repealer. Sections 61-11-205, 61-11-206, 61-11-208, and 61-11-209, MCA, are repealed.

Approved April 7, 1995

CHAPTER NO. 339

[SB 265]

AN ACT ESTABLISHING AN EXPENDABLE TRUST TO BE USED FOR PROVIDING LIBRARY SERVICE TO MONTANANS; PROVIDING THAT DONATIONS TO THE MONTANA STATE LIBRARY BE USED TO FUND THE TRUST; PROVIDING AN EXCEPTION TO THE REQUIREMENT THAT NONGENERAL FUND MONEY BE EXPENDED PRIOR TO GENERAL FUND MONEY; AMENDING SECTIONS 17-2-108 AND 22-1-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana state library trust — interest retention. (1) There is an account in the fiduciary fund category expendable trust fund type to be known as the Montana state library trust, to be used as provided in [section 2].

(2) Interest and earnings of the account must he retained by the account.

Section 2. Use of Montana state library trust. (1) The principal of the Montana state library trust established in [section 1] is intended to be an expendable trust subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) Unless otherwise provided hy the donor, donations received pursuant to 22-1-103 must be placed in the Montana state library trust.

(3) Interest earned on the principal of the Montana state library trust may be used for providing library service to Montanans, including those who, because of disability, cannot read standard print.

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(4) Revenue that is not expended on the service authorized in subsection (3) and that is not expended at the end of each fiscal year remains in the Montana state library trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made availahle te the lihrary from the Montana state library trust.

Section 3. Section 17-2-108, MCA, is amended to read:

"**17-2-108. Expenditure of nongeneral fund money first.** (1) Except for the ~~exemption~~ *exemptions* applicable to the Montana historical society in 22-3-114(5) *and the Montana state library in [section 2(5)]*, an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations.

(2) The approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency hy the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decroase is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to he funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease."

Section 4. Section 22-1-103, MCA, is amended to read:

"**22-1-103. State library commission — authority.** The state library commission ~~shall have~~ *has* the power to:

(1) give assistance and advice to all tax-supported or puhlic libraries in the state and to all counties, cities, towns, or regions in the stato ~~which~~ *that* may propose to establish libraries, as to the best means of estahlishing and improving ~~such~~ *those* libraries;

(2) maintain and operate the state library and make provision for its housing;

(3)*(a)* accept and expend in accordance with the terms ~~thereof~~*of a grant* any grant of federal funds ~~which~~ *that* may become availahle to the state for library purposes;

(b) accept, receive, and administer any gifts, donations, bequests, and legacies made to the Montana state library. Unless otherwise provided by the donor, gifts,

donations, bequests, and legacies must be deposited in the Montana state library trust established in [section 1].

(4) make rules and establish standards for the administration of the state library and for the control, distribution, and lending of books and materials;

(5) serve as the agency of the state to accept and administer any state, federal, or private funds or property appropriated for or granted to it for library service or foster libraries in the stato and establish regulations under which funds ~~shall~~ *must* be disbursed;

(6) provide library services for the blind and physically handicapped;

(7) furnisb, by contract or otherwise, library assistance and information services to state officials, state departments, and residents of tbose parts of the state ir.adequately serviced by libraries;

(8) act as a state board of professional standards and library examiners, ~~and~~ develop standards for public libraries, and adopt rules for the certification of librarians;

(9) designate areas for the establishment of federations of libraries and designate the headquarters library for ~~such~~ *the* federations."

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 22, chapter 1, and the provisions of Title 22, chapter 1, apply to [sections 1 and 2].

Section 6. Effective date. [This act] is effective July 1, 1995.

Approved April 7, 1995

CHAPTER NO. 340

[SB 307]

AN ACT CLARIFYING THE DEFINITION OF ACUPUNCTURE; PROHIBITING UNLICENSED PERSONS FROM PURPORTING TO PRACTICE ACUPUNCTURE; AND AMENDING SECTIONS 37-13-103, 37-13-104, AND 37-13-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-13-103, MCA, is amended to read:

"**37-13-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Acupuncture" means the *diagnosis,* treatment, *or correction* of ~~the human body~~ *human conditions, ailments, diseases, injuries, or infirmities* by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles. *The term includes the use of acupressure and the use of oriental food remedies and herbs.*

(2) "Acupuncturist" means a natural person licensed by the board of medical examiners to practice acupuncture.

(3) "Board" means the Montana state board of medical examiners.

(4) "School of acupuncture" means a school ~~where~~ *in which* acupuncture is taught that has been recognized and designated by the board of medical examiners."

Section 2. Section 37-13-104, MCA, is amended to read:

"**37-13-104. Partial exemptions.** *(1) (a)* ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects ~~which~~ *that* are or may be required for licensure in their respective professions~~;. but no~~

(b) A doctor of medicine, osteopathy, chiropractic, dentistry, or podiatry ~~shall~~ *may not* practice acupuncture in this state unless ~~and until he~~ *that doctor* has completed a course and passed an examination in acupuncture as required by this chapter.

(2) Except as provided in 37-13-301 and with particular regard to the insertion of solid needles used to perform acupuncture, this chapter is not intended to limit, interfere with, or prevent a licensed health professional from practicing within the scope of the health professional's license.

(3) This chapter does not affect the practice of an occupation by an individual who does not represent to the public that the individual is licensed under this chapter."

Section 3. Section 37-13-301, MCA, is amended to read:

"**37-13-301. License required for practice.** *(1)* ~~No~~ *A* person may *not* engage in the practice of acupuncture in this state unless ~~he~~ *the person* is licensed under the provisions of this chapter.

(2) A person may not purport to practice acupuncture or use the title "acupuncturist" or any similar title unless the person is licensed under the provisions of this chapter."

Approved April 7, 1995

CHAPTER NO. 341

[HB 273]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V, SECTION 6, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE LEGISLATURE SHALL MEET IN REGULAR SESSION BIENNIALLY IN EVEN-NUMBERED YEARS OR IN ODD-NUMBERED YEARS; AND PROVIDING A DELAYED EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Article V, section 6, of The Constitution of the State of Montana is amended to read:

"Section 6. Sessions. The legislature shall meet ~~each odd-numbered year~~ *biennially* in regular session of not more than 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members."

Section 2. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election te be held in November 1996 by printing on the ballot the full title of this act and the following:

☐ FOR restricting the legislature to meeting in regular session for 90 days in either even-numbered or odd-numbered years, but not both.

☐ AGAINST restricting the legislature to meeting in regular session for 90 days in either even-numbered or odd-numbered years, but not both.

Section 3. Effective date. [This act] is effective January 1, 1998.

CHAPTER NO. 342

[HB 307]

AN ACT CREATING AN EXPRESS "TITLE ONLY" PROCEDURE FOR CERTAIN DEALERS OF USED MOTOR VEHICLES; ALLOWING A MOTOR VEHICLE DEALER, BROKER, OR WHOLESALER TO TRANSFER A USED MOTOR VEHICLE TO ANOTHER MOTOR VEHICLE DEALER, BROKER, OR WHOLESALER BY USE OF A DEALER REASSIGNMENT SECTION ON A CERTIFICATE OF OWNERSHIP; REQUIRING A FEE; REQUIRING APPLICATION FOR A CERTIFICATE OF OWNERSHIP IN CERTAIN CIRCUMSTANCES; APPROPRIATING MONEY FROM THE GENERAL FUND TO THE DEPARTMENT OF JUSTICE FOR IMPLEMENTATION; AMENDING SECTIONS 61-3-203, 61-4-111, 61-4-112, AND 61-10-222, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-203, MCA, is amended to read:

"61-3-203. Fee for original certificate of ownership and transfer of registration — disposition. *(1)* A *Except as provided in subsection (2), a* charge of $5 must be made for issuance of an original certificate of ownership of title and for a transfer of registration, which must be collected by the county treasurer. The fees must be distributed as follows:

~~(1)~~*(a) The amount of* $3.50 of each fee must be remitted to the department by the county treasurer, as provided in 15-1-504, for each application for original certificate of ownership or transfer of registration.

~~(2)~~*(b)* Each March, the county commissioners of each county shall divide the fees retained by the county to:

~~(a)~~*(i)* the city road fund of each city and town within tbe county based on the number of motor vehicles registered inside the corporate limits of each city or town; and

~~(b)~~*(ii)* the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

(2) Upon transfer of any interest in a used motor vehicle by a dealer, broker, or wholesaler as provided in 61-4-111(1), a charge of $5 must be paid to the department."

Section 2. Section 61-4-111, MCA, is amended to read:

"61-4-111. Used motor vehicles — transfer to and from dealers. (1) ~~The provisions of 61-3-201(2) shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle, but upon his transfer of ownership thereof to a person other than a licensed motor vehicle dealer~~ *A licensed dealer, broker, or wholesaler who intends to resell a used motor vehicle and who operates the vehicle only for demonstration purposes:*

(a) is exempt from registration under 61-3-201(2) when applying for a certificate of ownership; and

(b) may transfer or receive ownership of a motor vehicle by use of a dealer reassignment section on a certificate of ownership; however, when the allotted number of dealer reassignment sections on a certificate of ownership has been completed, ownership of the vehicle may not be transferred until an application for a certificate of ownership has been submitted by the dealer to the department and a new certificate of ownership has been issued.

(2) Upon the transfer of a used motor vehicle to a person other than a licensed dealer, broker, or wholesaler, the following acts ~~shall be~~ *are* required of the dealer on or before the times ~~herein~~ set forth *in this subsection*:

(a) Prior to ~~his~~ delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of ~~said~~ *the* vehicle a ~~sticker~~ *20-day permit* in *a* form to be prescribed by the department and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There ~~shall~~ *must* be imprinted ~~upon said sticker~~ *on the permit* in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". One copy of ~~said sticker~~ *the permit* ~~shall~~ *must* be delivered by the dealer to the county treasurer in the manner prescribed in subsection ~~(1)(b)~~ *(2)(b)* ~~hereof~~, and a copy ~~shall~~ *must* be retained by the dealer for ~~his~~ *the dealer's* file. It is unlawful for the dealer to issue more than one ~~sticker~~ *permit* per vehicle sale.

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(b) Within 4 working days following the date of delivery of ~~said~~ *the* vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides the certificate of ownership and certificate of registration (if the ~~same~~ *certificates* are then in ~~his~~ *the dealer's* possession), with an application for registration executed by the new owner in accordance with the provisions of 61-3-322, and a copy of the ~~sticker~~ *permit* affixed to ~~said~~ *the* vehicle by the dealer~~, and the~~. *The* department, upon receipt of ~~said~~ *the* documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration, together with a statement of any conditional sales contract, mortgage, or other lien as provided in 61-3-202. Transmission of ~~said~~ *the* documents by the dealer to the county treasurer may be accomplished either by personal delivery or by ~~first-class~~ *first-class* mail, in which event they ~~shall be deemed~~ *are considered* to have been delivered at the time of mailing.

(c) If the dealer is unable to forward the certificate of ownership ~~and/or~~ *or* certificate of registration within the time set forth in subsection ~~(1)(b)~~ *(2)(b)* ~~hereof~~, because the ~~same are~~ *certificate is* lost, ~~are~~ *is* in the possession of third parties, or ~~are~~ *is* in *the* process of reissuance in this state or elsewhere, ~~he~~ *the dealer* shall comply in all other respects with the provisions of subsection~~(1)(b)~~ *(2)(b)* and shall forward the missing document or documents to the county treasurer, either personally or by ~~first class~~ *first-class* mail, within 3 days after ~~their~~ receipt.

~~(2)~~*(3)* Upon compliance by the dealer with the requirements ~~set forth~~ in this section, title to ~~said~~ *the* motor vehicle ~~shall be deemed~~ *is considered* to have passed to the purchaser as of the date of the delivery of ~~said~~ *the* vehicle to ~~him~~ *the purchaser* by the dealer, and the dealer ~~shall have~~ *has* no further liability or responsibility with respect to the processing of registration.

(4) For purposes of this section, "motor vehicle" includes a trailer as defined in 61-1-111."

Section 3. Section 61-4-112, MCA, is amended to read:

"**61-4-112. New motor vehicles — transfers by dealers.** (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a ~~sticker~~ *permit* as prescribed in 61-4-111~~(1)(a)~~*(2)(a)* for transfers of used moter vehicles and retain a copy of the ~~sticker~~ *permit*;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the ~~sticker~~ *permit* issued under subsection (1)(a);

(ii) an application for certificate of title with a notice of security interest, if any, executed by the purcbaser or recipient; and

(iii) a statement of origin as prescribed in 61-3-502(8)(b).

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of ownership and

certificate of registration, together with a statement of lien as provided in 61-3-202."

Section 4. Section 61-10-222, MCA, is amended to read:

"61-10-222. Time for payment of fees. (1) Prior to or at the time of registration of the vehicle as required under chapter 3 or chapter 4 or prior to the operation of the vehicle on the public highways, fees provided in this part ~~shall~~ *must* be paid in the full amount unless otherwise provided by law. With respect to vehicles operating on the highways with a current ~~rear windshield sticker~~ *20-day permit* issued under the provisions of 61-4-111 or 61-4-112, the fees provided in this part ~~shall be~~ *are* due and payable at the time of registration.

(2) A person who ~~makes application~~ *applies* for a GVW license after July 1 of any year shall pay one-half of the fees provided in this part.

(3) When a person ~~makes application~~ *applies* for registration required under chapter 3 for a period of time other than the calendar year, the fees provided in this part ~~shall~~ *must* be computed for the registration period at one-twelfth of the applicable fee for each month or part of month in the registration period."

Section 5. Appropriation. There is appropriated $61,165 from the general fund to the department of justice for fiscal year 1996 and $83,312 for fiscal year 1997 for implementation of [section 2].

Section 6. Applicability. [This act] applies to motor vehicle transfers occurring on or after January 1, 1996.

Section 7. Effective date. [This act] is effective January 1, 1996.

Approved April 10, 1995

CHAPTER NO. 343

[HB 485]

AN ACT RELATING TO PRESERVATION OF HERITAGE PROPERTY; CHANGING THE MEMBERSHIP OF THE PRESERVATION REVIEW BOARD; PROVIDING FOR THE APPOINTMENT PROCEDURE AND SUPERVISION OF THE HISTORIC PRESERVATION OFFICER; REQUIRING THE DEVELOPMENT OF PROCEDURES AND GUIDELINES FOR INVENTORYING, DOCUMENTING, AND EVALUATING HERITAGE PROPERTIES; PROVIDING A PROCEDURE FOR NOMINATION OF PROPERTY TO THE NATIONAL REGISTER OF HISTORIC PLACES; REQUIRING AVOIDANCE AND MITIGATION IN THE DEVELOPMENT OF CERTAIN PROPERTY; AMENDING SECTIONS 2-15-1512, 22-3-421, AND 22-3-423, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1512, MCA, is amended to read:

"2-15-1512. Boards and offices associated with state historical society. (1) (a) There is a board of trustees of the state historical society ~~which~~ *that* is created in Title 22, chapter 3.

(b) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(2) (a) There is a preservation review board within the Montana historical society consisting of nine members.

(b) Members ~~shall~~ *must* be appointed by the governor in the following manner:

(i) five professional persons recognized in the fields of archaeology, history, *paleontology, historic property administration, curation, planning, landscape architecture, conservation, folklore, cultural anthropology, traditional cultural property expertise,* architecture, or architectural history~~; however~~. *However*, no more than two members may be appointed from any one of these fields; *and*

~~(ii) a professional paleontologist;~~

~~(iii) the state liaison officer for the federal land and water conservation fund;~~

~~(iv)~~*(ii)* ~~two~~ *four* members of the public ~~who have actively demonstrated an interest in historic preservation matters~~ *who represent a broad spectrum of montana society, who have demonstrated an interest in historic preservation, and whose views reflect the rich cultural heritage of the past as well as the opportunities of the future.*

(c) Each member shall serve a 4-year term. A member may be reappointed.

(d) Members ~~shall~~ *must* be compensated and receive travel expenses as provided for in 2-15-124.

(3) (a) There is established the historic preservation office within the Montana historical society, to consist of an historic preservation officer and a qualified professional staff.

(b) The historic preservation officer is appointed by the governor *from a list of three nominees submitted to the governor by the director of the Montana historical society with the approval of the Montana historical society board of trustees.*

(c) The historic preservation officer is supervised by the director of the Montana historical society."

Section 2. Section 22-3-421, MCA, is amended to read:

"22-3-421. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Affected property owner" means a person or entity whose real property will be physically affected by the activity of an applicant or whose real property is proposed for incorporation into a historic district proposed as eligible for listing in the National Register of Historic Places.

~~(1)~~*(2)* "Antiquities permit" means the permit granted for excavation, removal, or restoration of heritage properties or paleontological remains provided for in 22-3-432.

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(3) "Applicant" means a person who applies to a governmental entity, including a federal, state, or local governmental entity, for a permit, license, or lease on property owned by the governmental entity.

~~(2)~~*(4)* "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

~~(2)~~*(5)* "Historic preservation office" means the office within the Montana historical society provided for in 2-15-1512.

~~(4)~~*(6)* "Historic preservation officer" means the officer provided for in 2-15-1512.

~~(5)~~*(7)* "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

~~(6)~~*(8)* "Preservation review board" means the board provided for in 2-15-1512.

~~(7)~~*(9)* "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

~~(6)~~*(10)* "Registered property" means any heritage property listed in the register.

~~(9)~~*(11)* "State agency" means any executive agency of the state of Montana."

Section 3. Section 22-3-423, MCA, is amended to read:

"**22-3-423. Duties of historic preservation officer.** ~~The~~ *Subject to the supervision of the director of the historical society, the* historic preservation officer has the following duties and responsibilities:

(1) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;

(2) conduct an ongoing statewide survey ~~to~~ identify and document heritage properties and paleontological remains;

(3) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all ~~such~~ inventory work done in the state;

(4) evaluate and formally nominate potential register properties according to the criteria established by the register;

(5) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;

(6) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;

(7) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;

(8) enter inte cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;

(9) adopt rules outlining procedures by which a state agency that has no approved rules under 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter ~~such~~ *the* properties;

(10) respond to requests for consultation under section 106 of the National Historic Preservation Act, as provided for in [section 5];

(11) develop procedures and guidelines for the evaluation of heritage property or paleontological remains as provided in [section 4];

~~(10)~~*(12)* protect from disclosure to the public any information relating to the location or character of beritage properties when disclosure would create a substantial risk of harm, theft, or destruction to ~~such~~ *the* resources or to the area or place where the resources are located; and

~~(11)~~*(13)* any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of this part."

Section 4. Heritage property — procedures and guidelines required. The historic preservation officer shall adopt standardized procedures and guidelines for inventorying, collecting data on, documenting, and evaluating all types of heritage property. In adopting the standardized procedures and guidelines, the histeric preservation officer may consult with state and federal agencies experienced in reviewing and mitigating environmental and cultural impacts caused by development of properties.

Section 5. Requests for consultation — public notice — appeal of findings. (1) A federal or stato entity that acts upon a proposed federal or state action or an application for a federal, state, or local permit, license, lease, or funding may request the views of the histeric preservation officer concerning:

(a) the recommended eligibility for a register listing of any heritage property or paleontological remains;

(b) the effects of a proposed action, activity, or undertaking on heritage property or remains that are found to be eligible for register listing; and

(c) the appropriateness of a proposed plan for the avoidance or mitigation of effects.

(2) A request for comment pursuant to 16 U.S.C. 470(f) may be made simultaneously with a request pursuant to subsection (1). The historic preservation officer shall respond in writing to a request within 30 calendar days of receiving the request and shall address each property in the request and each topic of the request. In the event that an agency requests simultaneous consultation for two or more criteria under this section, the agency and historic

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preservation officer may extend the 30-day review period by mutual agreement. If the historic preservation officer fails to comment within that time, that failure is construed as concurrence with the agency's recommendation. In the event of failure to comment on a specific undertaking, the historic preservation officer may not change a finding for a heritage property at a later date.

(3) If the proposed finding is that a heritage property or paleontological remains are involved and that a proposed activity will have an adverse impact on the property or remains, the proposed finding must address all properties or remains involved and describe the characteristics that illustrate the qualities that make the property or remains eligible for inclusion in the register. If the proposed finding includes a conclusion that a property or remains may be eligible but additional information or study is needed to reach an eligibility finding, the finding must specify the type and amount of information required in accordance with standards and guidelines as provided in [section 4].

(4) At the time that the state or federal agency requests the views of the historic preservation officer as provided in subsection (1), the agency shall provide notice to the applicant, affected property owners, and other interested persons of the request for consultation and shall identify locations where the submitted materials may be reviewed.

(5) The applicant and any affected property owners have 20 days in which to appeal the histeric preservation officer's finding to the director. The appeal notice must include a written statement of reasons for the appeal and any additional supporting information.

(6) The director of the historical society shall issue a final finding within 30 days of the expiration of the 20-day appeal period provided for under subsection (5). The issuance of this finding does not limit the rights of any applicant or affected property owner to challenge a finding under an existing federal law, regulation, or regulatory or administrative process.

(7) If the applicant or an affected property owner is not satisfied with the finding of the director of the historical society concerning the eligibility of the property or remains for listing in the register or a finding of adverse effect to the property, the entity or property owner may appeal the finding to the district court in either Lewis and Clark County or a county in which affected property is located. Appeal may be taken by filing a petition with the district court citing the decision by the director of the historical society and the evidence upon which the director relied. On appeal, the district court may consider any documents supporting or not supporting the finding, the written comments received by the director of the historical society, and any additional evidence that may be submitted to the court. The district court may substitute its judgment for the judgment of the directer of the historical society as te the weight of the evidence.

Section 6. Avoidance and mitigation of impacts. (1) Avoidance of impacts to heritage property or paleontological remains is preferred. Avoidance may not be construed to constitute neglect of the property or anticipatory demolition.

(2) If it is not feasible to avoid impacts to heritage property or paleontological remains, a mitigation plan must be developed by the agency, in consultation with the applicant, to minimize adverse effects to the property or remains.

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Mitigation must he directed at the characteristics of the property that make it eligible for listing in the register. If requested by the agency, the histeric preservation officer shall identify suggested mitigation actions in writing at the time that the historic preservation officer submits a proposed finding under [section 5].

Section 7. Codification instruction. [Sections 4 through 6] are intended to be codified as an integral part of Title 22, chapter 3, part 4, and the provisions of Title 22, chapter 3, part 4, apply to [sections 4 through 6].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 10, 1995

CHAPTER NO. 344

[SB 264]

AN ACT ESTABLISHING THE MONTANA PROFESSIONAL EMPLOYER ORGANIZATIONS LICENSING ACT; REQUIRING LICENSING OF AND STANDARDS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; REQUIRING PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS TO PROVIDE WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE COVERAGE; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING EXEMPTIONS AND PENALTIES; AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] authorizes the department of labor and industry to adopt rules regarding professional employer organization and group licensing. It is intended that the department develop rules similar to those adopted by other states that regulate professional employer licensing organizations and groups and develop rules to provide for the reciprocal licensing provisions provided for in [this act].

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title — purpose. (1) [Sections 1 through 17] may be cited as the "Montana Professional Employer Organizations and Groups Licensing Act".

(2) The legislature recoguizes that there is a public need for professional employer services and finds it necessary in the interest of public health, safety, and welfare to establish standards for the operation, regulation, and licensing of professional employer organizations and groups in this state.

Section 2. Definitions. As used in [sections 1 through 17], unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under [sections 1 through 17].

(2) "Client" means a person who obtains all or part of its workforce from another person through a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.

(4) "Department" means the department of labor and industry.

(5) "Employee leasing arrangement" means an arrangement hy contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) "Licensee" means a person licensed as a professional employer organization or group under [sections 1 through 17].

(7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.

(8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

(i) a professional employer organization or group assigns employees to perform services for a client;

(ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

(iii) the employer responsibilities are shared hy the professional employer organization or group and the client.

(b) The term does not include:

(i) services performed hy a temporary service contracter;

(ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering inte professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group; and

(iii) arrangements exist for employment of an independent contractor as defined in 39-71-120.

(9) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

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(10) "Professional employer organization" means:

(a) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

(b) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(11) "Temporary service contractor" means a person conducting a business that hires its own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

Section 3. License required — exemption — rulemaking authority. (1) On or after [the effective date of this act], a person who acts as a professional employer organization or group by entering into a professional employer arrangement or an employee leasing arrangement with a client in this state without a license or who violatos the provisions of [sections 1 through 17] may be subject to the penalties provided in [section 11].

(2) The provisions of [sections 1 through 17] do not apply to a labor organization, the state or its political subdivisions, the United States, or any programs or agencies of those entities.

(3) A license issued under [sections 1 through 17] remains the property of the department and may not be transferred.

(4) The department may adopt rules to implement the provisions of [sections 1 through 17].

Section 4. Initial license application — application fee — standards. (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of [sections 1 through 17]. The application fee is:

(a) $750 for a resident or nonresident unrestricted license; and

(b) $500 for a restricted license.

(3) As a condition of licensure under [sections 1 through 17], an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group shall meet the following standards:

(a) An individual must be 18 years of age or older.

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(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that no written partnership agreement exists.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation and provide a certificate of good standing from the secretary of state demonstrating that the corporation is qualified to do business in this stato.

(d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company and provide a certificate of good standing from the secretary of state demonstrating that the company is qualified to do business in this state.

(e) A group:

(i) must be authorized to act on behalf of the group;

(ii) shall include for each professional employer organization within the group the information required in subsection (4); and

(iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.

(5) An applicant shall also provide:

(a) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.

(b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and

(c) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

(6) Except for an applicant who is granted a restricted license under subsection (8), an applicant shall maintain a tangible accounting net worth of not less than $50,000, evidenced by providing a financial statement prepared in accordance with generally accepted accounting principles and accompanied by a compilation report by an independent certified public accountant. Documents submitted to establish net worth must reflect net worth as of a date not more

than 6 months prior te the date on which the application is submitted. A financial statement submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group. In meeting the specified net worth requirement, the applicant may provide to the department a surety bond, letter of credit, or marketable securities acceptable to the department. A surety will not be acceptable to satisfy this requirement unless the applicant submits sufficient evidence te satisfy the department that the surety has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification by the department or its agent.

(7) The applicant shall maintain a positive working capital, as determined in accordance with generally accepted accounting principles.

(8) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

(a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups, the applicant is licensed and in good standing in the state of residence or domicile, and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this stato and that are licensed under [sections 1 through 17];

(b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

(9) An applicant for a nonresident or restricted license shall file, on a form provided by the department, an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this state.

(10) A license issued under this section remains the property of the department and may not be transferred.

Section 5. Denial of license application or renewal — hearing. (1) The department shall deny a license application or an application to renew a license if:

(a) the application is not fully completed or properly executed;

(b) documents required to supplement the application are not included in the application packet or are inadequate;

(c) the nonrefundable application or license fee is not submitted or is incorrectly submitted with the application packet;

(d) the applicant or any person named in the application misrepresents material in the application;

(e) the applicant is determined hy the department to lack good moral character, husiness integrity, or financial responsihility; or

(f) the department determines that the applicant has failed to meet or maintain any requirement of [sections 1 through 17].

(2) Conviction of a crime within the last 7 years does not automatically bar an applicant from obtaining a license or bar a licensee from renewing a license. The department shall consider the type of crime committed, the crime's relevancy to the employee leasing industry, the length of time since the conviction, and any other factor considered relevant by the department.

(3) The department or its agent shall furnish the applicant with a written statement of the reason or reasons for denying the license or license renewal application.

(4) An applicant or licensee may request a hearing before the department within 30 days after receiving the written denial statement. Tbe hearing and appeal must follow the procedures provided in Title 2, chapter 4, parts 6 and 7.

(5) During tbe hearing and appeal process, a licensee may continue to operate unless the circumstances warrant the ordering of immediate cessation of operations. If the renewal application is rejected, the licensee shall cease operations within this state 30 days after receiving written notification. A licensee who does not comply with the department's order to cease is subject to the penalties provided in [section 11].

(6) The department may institute and maintain in the name of the state, througb the attorney general or the county attorney of the county in which the violation of an order to cease occurs, an action for an injunction, order, or other civil remedy in district court to enforce its order.

(7) An applicant or licensee is ineligible to reapply for a license for 1 year following final department action denying the issuance of or renewal of a license. The 1-year restriction does not apply to an administrative denial or nonrenewal if tbe denial or nonrenewal was caused:

(a) by an inadvertent error or omission on the application;

(b) by experience that was insufficiently documented to the department at the time of tbe previous application;

(c) by a failure to submit the required fees; or

(d) when the applicant or licensee was determined to be ineligible because an individual no longer associated with the professional employer organization or group was determined to lack good moral character, business integrity, or financial responsibility.

Section 6. License renewal. (1) Except as provided in subsection (5), a license issued under [sections 1 through 17] is valid for 1 year from the date of issuance unless suspended or revoked.

(2) At least 30 days prior to the expiration of the license, the licensee shall submit an application for renewal of a license on a form prescribed by tbe department and accompanied by tbe license fee, as provided in [section 7].

(3) A late renewal application may not be processed prior to the expiration of the licensee's current license. A person engaged in an unlicensed activity is subject to the penalty established in [section 11].

(4) Denial of a renewal license is subject to review under the provisions of [section 5].

(5) If the application fee required in [section 4] is paid and accepted, then no additional license fee is required for the first year.

Section 7. Renewal fees. (1) The fee for the renewal of a resident or nonresident unrestricted license is $750.

(2) The fee for the renewal of a restricted license is $500.

(3) The application fee required in [section 4] does not apply to the renewal of an unrestricted license.

(4) A restricted license may not be granted to a professional employer organization or group that is a resident of or domiciled in another stato if the state requires licensing but does not grant a similar privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.

(5) Fees collected must be used by the department te implement [sections 1 through 17].

Section 8. License suspension, revocation, or nonrenewal. (1) In addition to the penalty provided in [section 11], the department may suspend for up to 1 year, may permanently revoke, or may refuse to renew a license issued under [sections 1 through 17] if, after notice to the licensee of the charges and after a hearing, the department finds that any of the following exists:

(a) a cause for which issuance of the license could have been refused had it been known to the department at the time of issuance;

(b) a violation of an order of the department or noncompliance with any provision of [sections 1 through 17];

(c) procurement of or attempting to procure a license through misrepresentation or fraud;

(d) failure to provide a written response to a written inquiry from the department or its agent within 30 days after receiving an inquiry; or

(e) failure to meet or maintain any other requirement of [sections 1 through 17].

(2) If a license is suspended, revoked, or not renewed, the department shall:

(a) immediately notify by certified mail the licensee and the licensee's workers' compensation carrier; and

(b) require the licensee to:

(i) notify each client by certified mail, return receipt requested, of the suspension, revocation, or nonrenewal using language furnished by the department;

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(ii) notify each client in writing that the client shares joint and several liability, retroactive to the date of the client's entering into a contract with the licensee, for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and

(iii) provide the department with evidence of client notification.

(3) Upon notification, the licensee may appeal the decision of the department pursuant to the procedure provided in [section 5].

Section 9. Requirements of licensee. (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, workers' compensation premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker supplied to a client by a professional employer organization or group, the client shares joint and several liability for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group and that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and

(d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The disclosure must provide that the professional employer organization:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be

unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right te accept or cancel the assignment of an employee.

(b) suhmit to the department, within 90 days of the end of each calendar quarter, information certified hy an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter.

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating an employee leasing arrangement or professional employer arrangement.

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state. When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization is the employing unit, as defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its clients.

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof

of workers' compensation coverage for all employees assigned to any client location in this state.

(5) A professional employer organization or group is the employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements.

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

(d) the policy limits on each insurance policy; and

(e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974, as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(h).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of [sections 1 through 17]. Subject to the provisions of [sections 1 through 17], a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including hut not limited to:

(a) the client employer's corporate or business name;

(b) the client employer's taxpayer or employer identification number;

(c) the client employer's risk identification number;

(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and

(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to [sections 1 through 17] does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee benefit program as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers,renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is exempt under 33-17-103(4).

(12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.

Section 10. Deceptive practices prohibited. A professional employer organization or group may not:

(1) make, issue, circulate, or cause to be made, issued, or circulated an estimate, illustration, circular, statement, advertisement, sales presentation, omission, or comparison that misrepresents the benefits, advantages, conditions, or terms of a professional employer arrangement or that is otherwise untrue, deceptive, or misleading;

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(2) enter into an agreement to commit or by concerted action commit an act of boycott, coercion, or intimidation that results in unreasonable restraint of or monopoly in the business of professional employer services;

(3) file with the department or other public official or make, publish, disseminate, circulate, or deliver to a person a false statoment of financial condition with the intent to deceive;

(4) knowingly:

(a) make a false entry of a material fact in a book, report, or statement of a person; or

(b) omit a material fact pertaining to the business of the person from a book, report, or statement of that person;

(5) permit the use or filing of a name, trade name, fictitious name, or business identity that is the same as or similar to or that may be confused with the name, trade name, fictitious name, or business identity of an existing licensee, governmental agency, or nonprofit organization; or

(6) commit any other practice determined by department rule to be deceptive.

Section 11. Disciplinary action against licensee — penalties. (1) The department may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person who:

(a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

(b) engages in fraud, deceit, misrepresentation, or misconduct in:

(i) obtaining or providing workers' compensation or health coverage;

(ii) the classification of employees;

(iii) the reporting of employee wages for purposes of unemployment insurance or workers' compensation benefits; or

(iv) the operation of a professional employer organization or group;

(c) conducts business without a valid license;

(d) fails to maintain evidence of workers' compensation insurance coverage;

(e) transfers or attompts to transfer a license issued pursuant to [sections 1 through 17]; or

(f) violates the provisions of [sections 1 through 17] or a rule issued pursuant to [sections 1 through 17].

(2) A person who fails to comply with the provisions of [sections 1 through 17] is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to $1,000, imprisonment for not more than 1 year, or both.

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Section 12. Practice without license — investigation of complaint — injunction. (1) The department shall investigate complaints concerning practice hy an unlicensed person of activities for which a license is required under [sections 1 through 17].

(2) The department may file an action to enjoin a person from practicing without a license as a professional employer organization or group.

Section 13. Violation of injunction — penalty. A person who violates an injunction issued under [section 12] shall pay a civil penalty, as determined by the court, of not more than $5,000. Fifty percent of tbe penalty must be deposited in tbe general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

Section 14. Investigations — audits — reviews. (1) The department or its agent may perform an investigation, audit, or review necessary to determine whether a person has violated any provision of [sections 1 through 17] or any rule promulgated by the department to implement [sections 1 through 17].

(2) Except as provided in subsection (3), material compiled by the department or its agent in an investigation, audit, or review pursuant to this section is a public record and may be disclosed.

(3) Financial information, client lists, and lists of workers that are assigned by a professional employer organization or group and that are obtained by the department or its agent during an investigation, audit, or review are confidential and may not be published or be open to public inspection, except to public employees in the performance of tbeir public duties.

Section 15. Disclosure of information. (1) The department may not disclose to any person the records, statements, or documents received from an applicant, client, or professional employer organization or group, except:

(a) information necessary for public employees in the performance of their public duties; or

(b) in response to an order received by a court of competent jurisdiction upon a finding that the disclosure of the record, statement, or document is necessary because the merits of disclosure clearly exceed the demand for individual privacy.

(2) The department may publish or make available to the public reasonable statistical data or reports regarding professional employer organizations or groups if the data or reports protect the identity of an applicant, client, or professional employer organization or group.

Section 16. Other law. (1) [Sections 1 through 17] do not exempt a client of a professional employer organization or group or an employee assigned to a client by a professional employer organization or group from other local, state, or federal license or registration requirements.

(2) An employee who is licensed, registered, or certified under law and who is assigned to a client location is an employee of the client for purposes of the license, registration, or certification.

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(3) Except as provided in a professional employer arrangement, a professional employer organization or group is not liahle for the general dehts, obligations, profit losses, husiness goodwill, or other damages of a client with which it has entered into a professional employer arrangement.

Section 17. Workers' compensation insurer requirements. (1) An insurer that provides workers' compensation insurance to a professional employer organization shall base classifications and rates applicable to the payroll of a worker who is subject to either a professional employer arrangement or an employee leasing arrangement as though the worker has heen a direct employee of the client employer. If an experience modification has been established for the client employer, that experience modification must he audited using the factors in subsection (3) and must be applied by the insurer to the premium for the client employer's workers.

(2) The insurer of a professional employer organization shall report to the workers' compensation advisory or rating organization of which the insurer is required to be a member under Title 33, cbapter 16, part 10, all data by client, including payroll by classification and liabilities for each client during the term of the policy.

(3) An insurer shall audit policies issued to a professional employer organization within 90 days of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to determine whether all classifications, experience modification factors, and estimated payroll used with respect to the development of the premium charged are appropriate.

(4) All operations of a client, whether or not all or a portion of the client's operations are subject to a professional employer arrangement or employee leasing arrangement, must be insured by the same insurer.

Section 18. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

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(3) ~~An~~ *Except as provided in [sections 1 through 17], an* employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker te another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) ~~Notwithstanding the provisions of subsection (3), an~~ *An* interstato or intrastate common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 19. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party.

However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chaptor and wbether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, cbapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate working in a federally certified prison industries program autborized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services otber tban meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any member of the partnersbip or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner

or sole proprietor is not considered an employee within this chapter until notice has heen given.

(c) A change in elected wages must he in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation henefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability henefits under Title 19, chapter 17.

(6) An *Except as provided in [sections 1 through 17], an* employee or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(8) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under subsection (7)(d)."

Section 20. Codification instruction. [Sections 1 through 17] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 17].

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Section 21. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. Effective date. [This act] is effective July 1, 1995.

Approved April 10, 1995

CHAPTER NO. 345

[SB 303]

AN ACT PROHIBITING A PERSON FROM OPERATING A PERSONAL WATERCRAFT AT GREATER THAN NO-WAKE SPEED WITHIN 100 FEET OF A DOCK, SWIMMER, SWIMMING RAFT, NONMOTORIZED BOAT, OR ANCHORED VESSEL ON A LAKE OR WITHIN 50 FEET OF A DOCK, SWIMMER, SWIMMING RAFT, NONMOTORIZED BOAT, OR ANCHORED VESSEL ON A RIVER; CLARIFYING THE AGE REQUIREMENTS FOR OPERATION OF A MOTORBOAT OR PERSONAL WATERCRAFT; AMENDING SECTIONS 23-2-523 AND 23-2-531, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-523, MCA, is amended to read:

"**23-2-523. Prohibited operation and mooring — enforcement.** (1) A person may not operate or knowingly permit a person to operate a motorboat or vessel or manipulate ~~any~~ water skis, *a* surfboard, or *a* similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of ~~any~~ *a* person by:

(a) engaging in maneuvers that unreasonably or unnecessarily endanger life, limb, or property, including but not limited to weaving through congested vessel traffic or jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed and including swerving at the last possible moment to avoid collision, following directly behind a waterskier, speeding in confined or restricted areas, and buzzing or wetting down others, which constitute reckless operation of a vessel;

(b) crossing or jumping the wake of another vessel when within 100 yards of the vessel or within 100 yards of a waterskier being towed by the vessel, except when directly entering or leaving a public or private marina, waterski facility, or other watercraft docking or loading area.

(2) A person may not operate ~~any~~ *a* motorboat, including a sailboat propelled by a motor of any kind, or manipulate ~~any~~ water skis, *a* surfboard, or *a* similar device attached to a motorboat while under the influence of alcohol, drugs, or a combination of the two.

(3) It is unlawful for the owner of a motorboat or vessel or a person having the motorboat or vessel in charge or in control to authorize or knowingly permit

the same to be operated by a person who by reason of physical or mental disability is incapable of operating the watercraft under the prevailing circumstances.

(4) A person may not operato or knowingly permit a person to operate a motorboat or vessel at a rate of speed greater than will permit the person, in the exercise of reasonable care, to bring the vessel te a step within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta that is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) A person may not make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a United States coast guard approved personal flotation device in good and serviceable condition.

(7) A person may not moor a vessel to buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to ~~such~~ *a* buoy or beacon, except in the act of maintenance work on the buoy or beacon, ner may any person deface, remove, or destroy a buoy, beacon, or other authorized navigational marker maintained in the waters of this stato.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in ~~his~~ *the officer's* judgment ~~such~~ *the* use creatos an especially hazardous condition, ~~he~~ *the officer* may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to a mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

(9) The population density and heavy recreational use of certain lakes require a noise standard more restrictive than the standard set in 23-2-526, in order to protect the public health and safety. Unless operated on a river or stream in compliance with a commission rule adopted under 23-2-521(9), a person may not operate a moterboat or personal watercraft on Flathead Lake, situated in Lake and Flathead Counties, Echo Lake, situated in Flathead County, or Swan Lake, situated in Lake County, in proximity to the shoreline if the noise emitted is greater than 75 dbA measured at the shoreline in accordance with the shoreline sound level measurement procedure (SAE J1970).

(10) Unless accompanied by a person 18 years of age or older, a person 12 years of age or younger may not operate a motorboat or a personal watercraft that is powered by a motor rated at more than 10 horsepower. ~~After December 31, 1993, a~~ *A* person ~~under 15 years of age~~ *13 or 14 years of age* may not operate a vessel or personal watercraft powered by a motor rated at more than 10 horsepower without possessing a valid Montana motorboat operator's safety certificato or evidence of completion of a Montana-approved water safety course *or unless accompanied by a person 18 years of age or older.*

(11) A person who owns or has charge or control of a motorboat or personal watercraft powered by a motor rated at more than 10 horsepower may not authorize or knowingly permit the motorboat or personal watercraft to be operated:

(a) by a person 12 years of age or younger unless accompanied by a person 18 years of age or older; or

(b) ~~after December 31, 1993,~~ by a person ~~under 15 years of age~~ *13 or 14 years of age* unless the person possesses a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course or is accompanied by a person 18 years of age or older.

(12) A person may not rent a moterboat or a personal watercraft powered by a motor rated at more than 10 horsepower to a person under 18 years of age."

Section 2. Section 23-2-531, MCA, is amended to read:

"**23-2-531. Personal watercraft operation.** In addition to ~~all other~~ applicable provisions in this part, a person may not operate a personal watercraft:

(1) unless ~~each~~ *a* person operating or riding on the vessel is wearing a United States coast guard approved type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the lanyard is attached to the operator's person, clothing, or personal flotation device as is appropriate for the specific vessel; ~~or~~

(3) (a) except as provided for standup personal watercraft in subsection (3)(b), at greater than no-wake speed within 100 feet of a dock, swimmer, swimming raft, nonmotorized boat, or anchored vessel on a lake or within 50 feet of a dock, swimmer, swimming raft, nonmotorized boat, or anchored vessel on a river, except as provided in 23-2-525(4); or

(b) at greater than minimum maneuvering speed for a standup personal watercraft when leaving or returning directly from or to a dock or shore for the purpose of launching or docking; or

~~(3)~~*(4)* in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 10, 1995

CHAPTER NO. 346

[SB 312]

AN ACT REQUIRING THE DEPARTMENT OF LIVESTOCK TO TAKE CERTAIN ACTIONS WITH REGARD TO WILD BUFFALO OR BISON ENTERING THE STATE OF MONTANA; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO COOPERATE WITH THE DEPARTMENT OF LIVESTOCK IN MANAGING CERTAIN WILD BUFFALO

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OR BISON AS A SPECIES REQUIRING DISEASE CONTROL; REPEALING SECTION 87-1-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of livestock is authorized in [section 1] to adopt rules with regard to management of publicly owned wild buffalo or bison that enter Montana on private or public land and that are from a herd that is infectod with a contagious disease that may spread to persons or livestock and may jeopardize compliance with federally administered livestock disease control programs. The department may determine that rulemaking is necessary with regard to feasible methods of taking wild buffalo or bison allowed within [section 1(1)] or with regard to disposal of the carcasses of wild buffalo or bison as provided for in [section 1(2) and (3)].

A statement of intent is also required because [section 2] authorizes the department of fish, wildlife, and parks to adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to person or property. The department may determine that rulemaking is necessary if management of wild buffalo or bison under the provisions of [section 2] includes public hunting.

Be it enacted by the Legislature of the State of Montana:

Section 1. Management of wild buffalo or bison for disease control. (1) Whenever a publicly owned wild buffalo or bison from a herd that is infectod with a dangerous disease enters tbe state of Montana on public or privato land and the disease may spread to persons or livestock or whenever the presence of wild buffalo or bison may jeopardize Montana's compliance with federally administered livestock disease control programs, the department of livestock may, under a plan approved by the governor, use any feasible method in taking one or more of the following actions:

(a) The live wild buffalo or bison may be physically removed by the safest and most expeditious means from within the state boundaries, including but not limited to hazing and aversion tactics or capture, transportation, or delivery to a department-approved slaughterhouse.

(b) The live wild buffalo or bison may be destroyed by the use of firearms. If a firearm cannot be used for reasons of public safety or regard for public or private property, the animal may be relocated to a place that is free from public or private hazards and destroyed by firearms or by a humane means of euthanasia.

(2) Whenever the department is responsible for the death of a wild buffalo or bison, either purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery to a department-approved slaughterhouse or slaughter destination.

(3) In disposing of the carcass, the department:

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(a) as first priority, may donate a wild buffalo or bison carcass to a charity or to an Indian tribal organization; or

(b) may sell a wild buffalo or bison carcass to help defray expenses of the department. If the carcass is sold in this manner, the department shall deposit any revenue derived from the sale of the wild buffalo or bison carcass to the state special revenue fund to the credit of the department.

(4) The department may adopt rules with regard to management of publicly owned wild buffalo or bison that enter Montana on private or public land and that are from a herd tbat is infected with a contagious disease that may spread to persons or livestock and may jeopardize compliance with federally administered livestock disease control programs.

Section 2. Wild buffalo or bison as species in need of management — policy — department duties. (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this section:

(a) to designate publicly owned wild buffalo or bison originating from Yellowstone national park as a species requiring disease control;

(b) to designate other wild buffalo or bison as a species in need of management; and

(c) to set out specific duties for the department of fisb, wildlife, and parks for management of the species.

(2) The department:

(a) is responsible for the management, including but not limited to public hunting, of wild buffalo or bison in this stato that have not been exposed to or infected with a dangerous or contagious disease but may threaten persons or property;

(b) shall consult and coordinate with the department of livestock on implementation of the provisions of subsection (2)(a) to the extent necessary to ensure that wild buffalo or bison remain disease free; and

(c) shall cooperate with the department of livestock in managing puhlicly owned wild buffalo or bison that enter the stato on public or private land from a herd that is infected with a dangerous disease, as provided in [section 1], under a plan approved by the governor. The department of livestock is authorized under the provisions of [section 1] te regulate publicly owned wild huffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease.

(3) The department and the department of livestock are strongly urged to enter into an agreement with the national park service for the long-torm management of the Yellowstene national park wild buffalo or bison herd. If the national park service does not proceed in good faith in a timely manner to enter a long-term management agreement that, in the determination of the department and the department of livestock, responds adequately te the needs of Montana, the departments are strongly urged to take appropriato court

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action. The department and the department of livestock shall prepare a joint report to the 55th legislature regarding the present state of wild buffalo or bison management in Montana and any progress on an agreement for the long-term management of the Yellowstene national park herd.

(4) The department may adopt rules with regard te wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage te person or property.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 81, chaptor 2, part 1, and the provisions of Title 81, chapter 2, part 1, apply te [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87 apply te [section 2].

Section 4. Repealer. Section 87-1-215, MCA, is repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 10, 1995

CHAPTER NO. 347

[SB.328]

AN ACT CLARIFYING THAT THE PROPERTY TAX IMPOSED ON PERSONAL PROPERTY OWNED BY A BUSINESS IS A BUSINESS EQUIPMENT TAX; REQUIRING THE DEPARTMENT OF REVENUE TO NOTIFY TAXPAYERS THAT THE STATEMENT FOR REPORTING PERSONAL PROPERTY OWNED BY A BUSINESS IS FOR BUSINESS EQUIPMENT AND OTHER BUSINESS PERSONAL PROPERTY; AND AMENDING SECTION 15-8-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Business equipment tax on business personal property. A personal property tax applied to any class of personal property, excluding livestock, described in this part that belongs to, is claimed by, or is in the possession of or under the control or management of a sole proprietor, firm, association, partnership, business, corporation, or limited liability company is a business equipment tax.

Section 2. Section 15-8-301, MCA, is amended to read:

"**15-8-301. Statement — what to contain.** (1) The department may require from a person a statement under oath setting forth specifically all the real and personal property owned by, in possession of, or under the control of the person at midnight on January 1. The statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of the person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which the person is a member;

(c) all property belonging to, claimed by, or in the possession or under the control or management of any corporation of which the person is president, secretary, cashier, or managing agent;

(d) the county in which the property is situatod or in which the property is liable to taxation and, if liable to taxation in the county in which the statement is made, also the city, town, school district, road district, or other revenue districts in which the property is situatod;

(e) an exact description of all lands, improvements, and personal property;

(f) all depots, shops, stations, buildings, and other structures erected on the space covered by the right-of-way and all other property owned by any person owning or operating any railroad within the county.

(2) The department shall notify the taxpayer in the statement for reporting personal property owned by a business or used in a business that the statement is for reporting business equipment and other business personal property described in Title 15, chapter 6, part 1.

~~(2)~~*(3)* Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer is not required to include the property in that person's statement hut the statement must show the name of the person or officer who made tbe statement in which the property is included.

~~(3)~~*(4)* The fact that a statement is not required or that a person has not made a statement, under oath or otherwise, does not relieve the person's property from taxation."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15, chapter 6, part 1, apply to [section 1].

Approved April 10, 1995

CHAPTER NO. 348

[SB 393]

AN ACT CLARIFYING THE REQUIREMENTS FOR BRINGING A CLASS ACTION FOR TAX REFUNDS; CLARIFYING THAT A MEMBER OF THE CLASS MUST HAVE PAID THE TAX UNDER PROTEST; AMENDING SECTIONS 15-1-406 AND 15-1-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-406, MCA, is amended to read:

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"**15-1-406. Declaratory judgment.** (1) An aggrieved taxpayer may bring a declaratory judgment action in the district court seeking a declaration that:

(a) an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the department of revenue is illegal or improper; or

(b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform tax review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision. The court shall consolidate all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to all similarly situated taxpayers, except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid *under protest* when due as a condition of continuing the action. Property taxes ~~may be~~ *are* paid under protest as provided in 15-1-402. *All other taxes administered by the department, except inheritance and estate taxes, are paid under protest by filing timely claims for refund and by following the uniform tax review procedures of 15-1-211. Inheritance and estate taxes are paid under protest by following the procedures set forth in Title 72.*

(4) The remedy authorized by this section may not be used to challenge the:

(a) market value of property under a property tax unless the challenge is to the legality of a particular methodology that is being applied to similarly situated taxpayers; or

(b) legality of a tax other than a property tax, inheritance tax, or estate tax unless the review pursuant to 15-1-211 has been completed.

(5) The remedy authorized by this section is the exclusive method of obtaining a declaratery judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section does not affect actions for declaratory judgments under 2-4-506."

Section 2. Section 15-1-407, MCA, is amended to read:

"**15-1-407. Alternative remedy — procedure.** (1) Except as provided in subsection (2), an action pursuant to 15-1-406 is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under 15-1-406 may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, rule 23. *This includes the requirement that to be a member of the class, a taxpayer must be similarly situated to the representative class member and must have paid the tax under protest as provided in 15-1-406(3).*~~; or~~

(b) the procedure provided for in subsection (3).

(3) (a) A party bringing an action under 15-1-406 may elect to give notice as provided in this subsection. A party so electing ~~must~~ *shall* publish notice that an action has been brought. The notice must be published at least once each week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice ~~shall~~ *must* advise each similarly situated taxpayer that:

(i) the court will exclude ~~him~~ *the taxpayer* from the class if ~~he~~ *the taxpayer* so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if he *the taxpayer* desires, enter an appearance.

(b) The court shall exclude a taxpayer from an action brought pursuant to 15-1-406 if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice.

(c) An election to give notice under subsection (3) ~~of this section~~ does not prevent any party to the action from serving process on other interested parties.

(d) This section governs alternative notice. This section does not alter the requirement under Rule 23, Montana Rules of Civil Procedure, that to be a member of the class, a taxpayer must have paid the tax under protest as provided in 15-1-406(3).

(4) In a proceeding under 15-1-406 all issues ~~shall~~ *must* be tried by the court."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 10, 1995

CHAPTER NO. 349

[HB 531]

AN ACT PROVIDING FOR THE DESIGN OF CONSUMER REPORT CARDS ON HEALTH CARE SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Consumer report cards. (1) The department of social and rehabilitation services shall, in cooperation with consumers, employers, health insurers, hospitals, health care providers, and legislators, design a consumer report card that will enhance consumer responsibility in the use of health care services.

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(2) The department of social and rehabilitation services shall, by October 1, 1996, submit to the legislature a proposal that contains the information needed to prepare the consumer report card. The information must include:

(a) uniform data, including charges, that will enable consumers to evaluate the cost of medical procedures;

(b) data about insurance plans, such as benefit and cost provisions;

(c) additional information that may assist consumers in making informed choices about their medical care; and

(d) any further applicable information generated as a result of efforts undertaken pursuant to 50-4-502.

(3) The department of social and rehabilitation services shall also develop standards for uniform data to be provided by health insurers, hospitals, and health care providers and shall take into account the feasibility and cost-effectiveness of the standards.

(4) To the extent possible, data collected for the consumer report card must be provided by data sources that currently exist.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [section 1].

Section 3. Coordination instruction. (1) If House Bill No. 511 is passed and approved, [section 1(1)] must read as follows:

"(1) The Montana health care advisory council shall appoint a task force of consumers, employers, health insurers, hospitals, health care providers, and legislators to design a consumer report card that will enhance consumer responsibility in the use of health care services."

(2) If House Bill No. 511 is passed and approved, the first sentence of [section 1(2)] must read as follows:

"(2) The Montana health care advisory council shall, by October 1, 1996, submit the task force's proposal to the legislature containing the information needed to prepare the consumer report card."

(3) If House Bill No. 511 is passed and approved, [section 1(3)] must read as follows:

"(3) The Montana health care advisory council shall also develop standards for uniform data to be provided by health insurers, hospitals, and health care providers and shall take into account the feasibility and cost-effectiveness of the standards."

Approved April 10, 1995

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CHAPTER NO. 350

[SB 278]

AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; CHANGING THE NAME OF THE OFFENSE OF DOMESTIC ABUSE TO PARTNER OR FAMILY MEMBER ASSAULT; AUTHORIZING LOCAL GOVERNMENTS TO ESTABLISH MISDEMEANOR PROBATION OFFICES; PROVIDING FOR A NOTICE OF RIGHTS TO VICTIMS; AUTHORIZING THE SEIZURE OF WEAPONS BY A POLICE OFFICER IN A PARTNER OR FAMILY MEMBER ASSAULT SITUATION; REQUIRING HEALTH CARE PROVIDERS TO PROVIDE SUSPECTED VICTIMS WITH A NOTICE OF RIGHTS; PROVIDING FOR TEMPORARY ORDERS OF PROTECTION, ORDERS OF PROTECTION, AND A PROCEDURE FOR ISSUANCE OF THOSE ORDERS; AND AMENDING SECTIONS 3-10-301, 7-32-2227, 27-19-201, 27-19-316, 40-4-121, 40-4-123, 40-4-124, 40-4-217, 40-4-219, 45-5-206, 45-5-220, 45-5-626, 46-6-105, 46-6-311, 46-6-602, 46-9-302, AND 46-18-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-301, MCA, is amended to read:

"**3-10-301. Civil jurisdiction.** (1) Except as provided in ~~subsection (2) and~~ in 3-11-103 *and in subsection (2) of this section*, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $5,000, exclusive of court costs;

(b) in actions for damages not exceeding $5,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding $5,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions te recover the possession of personal property if the value of the property does not exceed $5,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding $5,000, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving tbe legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $5,000, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $5,000, exclusive of court costs;

(h) to issue temporary restraining orders, as provided in 40-4-121~~(3)~~, *and orders of protection, as provided in [sections 21 through 29].*

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 2. Section 7-32-2227, MCA, is amended to read:

"**7-32-2227. Inmate eligibility for participation.** A person may be permitted to participate in a county jail work program if ~~he~~ *the person*:

(1) has been sentenced to the county jail for an offense and is not confined in the county jail upon process in a civil action or prior to examination or trial;

(2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson, burglary, kidnapping, escape, assault, ~~domestic abuse~~ *partner or family member assault*, incest, or any other offense in which violence is an element of the crime or for an offense during the course of which bodily injury occurred;

(3) was not prohibited from participating in the county work program by the sentencing judge, magistrate, or justice of the peace~~,~~ or ~~his~~ *by the judge's, magistrate's, or justice's* successor; and

(4) has applied to participate to the county sheriff and the sheriff, pursuant to written policy, has approved the participation."

Section 3. Section 27-19-201, MCA, is amended to read:

"**27-19-201. When preliminary injunction may be granted.** An injunction order may be granted in the following cases:

(1) when it ~~shall appear~~ *appears* that the applicant is entitled to the relief demanded and ~~such~~ *the* relief or any part ~~thereof~~ *of the relief* consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it ~~shall appear~~ *appears* that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it ~~shall appear~~ *appears* during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of ~~his~~ *the adverse party's* property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears *that* the applicant has ~~suffered or may suffer physical abuse~~ *applied for an order* under the provisions of 40-4-121 *or an order of protection under [sections 21 through 29]*."

Section 4. Section 27-19-316, MCA, is amended to read:

"27-19-316. Contents and filing of restraining order granted without notice. Each temporary restraining order granted without notice must:

(1) be endorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why ~~such~~ *the* injury is irreparable and why the order was granted without notice; and

(4) except as provided in 40-4-121 *or [sections 21 through 29]*, expire by its terms within ~~such~~ *the* time after entry, not to exceed 10 days, as the court or judge fixes."

Section 5. Section 40-4-121, MCA, is amended to read:

"40-4-121. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court ~~which~~ *that* lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court;

(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment; ~~and~~

(f) providing other injunctive relief proper in the circumstances*; and*

(g) providing additional relief available under [sections 21 through 29].

(3) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

~~(a) (i) alleging physical abuse, harm, or bodily injury against the petitioner by a family member or partner or the threat of physical abuse, harm, or bodily injury against the petitioner by a family member or partner that causes the~~

~~petitioner to reasonably believe that the offender has the present ability to execute the threat; or~~

~~(ii) alleging a violation of 45-5-220; and~~

~~(b)~~ requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate. ~~Persons who may request relief under this subsection include family members, partners, and persons alleging a violation of 45-5-220.~~

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) At the time of the hearing, the court shall determine whether good cause exists for the injunction to continue for 1 year.

~~(7) If the court determines, on the basis of a party's history of violence and the testimony presented at the hearing or on the basis of credible evidence that a party has violated 45-5-220, that the other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may order that the injunction be effective permanently.~~

~~(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to a dissolution proceeding upon presentation of evidence of a party's history of violence showing that the other party may suffer permanent injury or harm if a permanent injunction is not issued. A permanent injunction may also be issued enjoining a party from stalking upon presentation of credible evidence that the party has violated 45-5-220 if the court determines that the stalked party needs permanent protection.~~

~~(9) Except when the alleged conduct to be restrained is a violation of 45-5-220, restraining orders issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in addition to the respondent, has engaged in abusive or assaultive behavior as described by subsection (3)(a).~~

~~(10)~~*(7)* On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

~~(11)~~*(8)* A temporary order or injunction ~~or permanent injunction~~, *entered pursuant to this section or [sections 21 through 29]*:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208 ~~or order under Title 27, chapter 19, part 3, as appropriate~~;

(b) terminates upon order of the court or when the petition is voluntarily dismissed; and

(c) when issued under this section, must conspicuously hear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

~~(12)~~*(9)* When the petitioner has fled the parties' residence, notice of *the* petitioner's new residence must be withheld except by order of the court for good cause shown.

~~(13) As used in this section, the following definitions apply:~~

~~(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.~~

~~(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.~~

~~(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.~~"

Section 6. Section 40-4-123, MCA, is amended to read:

"**40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-4-121~~(3)~~.

(2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage~~,~~ or *for* child custody is pending between the parties. From the time of the certification of ~~such~~ *the* pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced ~~therein~~ *in district court*.

(3) An action brought under 40-4-121~~(3)~~ may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse."

Section 7. Section 40-4-124, MCA, is amended to read:

"**40-4-124. Review or removal — district court.** (1) An order issued by a municipal court, ~~justice~~ *justice's* court, or city court pursuant to 40-4-121~~(3)~~ is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court, ~~justice~~ *justice's* court, or city court made pursuant to 40-4-121~~(3)~~.

(2) Any case in which an order has been issued by a municipal court, ~~justice~~ *justice's* court, or city court pursuant to 40-4-121~~(3)~~ may be removed to district court upon filing of a notice of removal."

Section 8. Section 40-4-217, MCA, is amended to read:

"**40-4-217. Visitation.** (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; ~~but~~ *however,* the court may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) So long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custedial parent shall, before changing the child's residence te another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of his *the parent's* visitation schedule.

(6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent ~~shall have~~ *has* 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

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(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) incest, as described in 45-5-507;

(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) ~~domestic abuse~~ *partner or family member assault* of the type described in 45-5-206(1)(a);

(ix) sexual abuse of children, as described in 45-5-625."

Section 9. Section 40-4-219, MCA, is amended to read:

"40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or ~~his~~ *the child's* custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously ~~his~~ *the child's* physical, mental, moral, or emotional health and *that* the harm likely to be caused by a change of environment is outweighed by its advantages to ~~him~~ *the child*;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e) or (8).

(4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

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(5) Attorney fees and costs ~~shall~~ *must* be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(6) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding.

(8) (a) If a parent has been convicted of any of the crimes listed in subsection (8)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection to the current custody order with the court. The parent or other person having custody shall give notice to the convicted parent of the objection as provided by the Montana Rules of Civil Procedure, and the convicted parent ~~shall have~~ *has* 20 days from the notice to respond. If the convicted parent fails to respond within 20 days, the custody rights of the convicted parent are suspended until further order of the court. If the convicted parent responds and objects, a hearing must be held within 30 days of the response.

(b) The convicted parent has the burden at the hearing to prove that custody by the convicted parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.

(c) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) incest, as described in 45-5-507;

(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) ~~domestic abuse~~ *partner or family member assault* of the type described in 45-5-206(1)(a);

(ix) sexual abuse of children, as described in 45-5-625."

Section 10. Section 45-5-206, MCA, is amended to read:

"45-5-206. ~~**Domestic abuse**~~ ***Partner or family member assault — penalty.*** (1) A person commits the offense of ~~domestic abuse~~ *partner or family member assault* if the person:

(a) purposely or knowingly causes bodily injury to a ~~family member or~~ partner *or family member*;

(b) negligently causes bodily injury to a ~~family member or~~ partner *or family member* with a weapon ~~during or in connection with a quarrel, fight, or abusive behavior~~; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a *partner or* family member ~~or partner~~. ~~The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused must be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or partner, whether or not the offender believes the firearm to be loaded.~~

(2) For the purposes of 46-6-311, *[sections 21 through 29],* and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, *in-laws,* and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) ~~"Partner"~~ *"Partners"* means spouses, former spouses, *persons who have a child in common,* and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) *(a)* ~~A person~~ *An offender* convicted of ~~domestic abuse for the first or second time~~ *partner or family member assault* shall be fined not ~~to exceed~~ *less than $100 or more than* $1,000 ~~or~~ *and* be imprisoned in tbe county jail not to exceed 1 year~~, or both~~ *or not less than 24 hours for a first offense. An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in [section 18].* On a third or subsequent conviction for ~~domestic abuse~~ *partner or family member assault,* the ~~person convicted~~ *offender* shall be fined not less than $500 and not more than $50,000 and be imprisoned in the county jail or in the state prison for a term not less than ~~10~~ *30* days and not more than 5 years, or both.

(b) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.

(4) (a) ~~A person~~ *An offender* convicted of ~~domestic abuse~~ *partner or family member assault* shall be required te pay for and complete ~~at least 6 months of counseling, totaling at least 25 hours~~ *a counseling assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow through on all recommendations made by the counseling provider. The counselor must be approved by the court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the counseling must be:*

(i) with a person licensed under Title 37, chapter ~~3,~~ 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the ~~convicted person~~ *offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 25 hours.* Subsection (4)(a) does not prohibit the placement of the ~~convicted person~~ *offender* in other appropriate treatment if the court determines *that* there is no available treatment program directed te the violent conduct of the ~~convicted person~~ *offender.*

~~(c) Upon completion of the minimum counseling requirements, the counselor shall notify the court that the defendant has completed the minimum counseling requirements and shall provide the court with a recommendation as to whether or not the defendant requires additional counseling. Upon recommendation of the counselor and direction of the court, the defendant may be required to pay for and complete additional counseling or treatment, such as chemical dependency treatment, or both.~~

~~(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court.~~

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender shall be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) At the time of sentencing, the court shall provide an offender a written copy of the offender's sentence."

Section 11. Section 45-5-220, MCA, is amended te read:

"45-5-220. Stalking — exemption — penalty. (1) A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or by other action, device, or method.

(2) This section does not apply to a constitutionally protected activity.

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(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed $1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed $10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in ~~40-4-121~~ *[sections 21 through 29]*, restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person."

Section 12. Section 45-5-626, MCA, is amended to read:

"45-5-626. Violation of ~~protective~~ order *of protection* — ~~misdemeanor~~. (1) A person commits the offense of violation of ~~a protective~~ *an* order *of protection* if ~~he~~ *the person*, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-121 *or an order of protection under [sections 21 through 29]. It may be inferred that the defendant had knowledge of an order at the time of an offense if the defendant had been served with the order before the time of the offense. Service of the order is not required upon a showing that the defendant had knowledge of the order and its content.*

(2) Only the respondent under an order of protection may be cited for a violation of the order. The petitioner who filed for an order of protection may not be cited for a violation of that order of protection.

~~(2)~~*(3)* ~~A person~~ *An offender* convicted of violation of ~~a protective~~ *an* order *of protection* shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, *for a first offense. Upon conviction for a second offense, an offender shall be fined not less than $200 and not more than $500 and be imprisoned in the county jail not less than 24 hours and not more than 6 months. Upon conviction for a third or subsequent offense, an offender shall be fined not less than $500 and not more than $2,000 and be*

imprisoned in the county jail or state prison for a term not less than 10 days and not more than 2 years."

Section 13. Section 46-6-105, MCA, is amended to read:

"46-6-105. Time of making arrest. An arrest may be made at any time of the day or night, except that a person may not be arrested in the person's home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a judge endorsed upon an arrest warrant. However, a person may be arrested in the person's home or private dwelling at night if the person is being arrested pursuant to 46-6-311 for the offense of ~~domestic abuse~~ *partner or family member assault.*"

Section 14. Section 46-6-311, MCA, is amended to read:

"46-6-311. Basis for arrest without warrant. (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a ~~family member or~~ partner *or family member* constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in ~~domestic abuse~~ *partner or family member assault* cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim."

Section 15. Section 46-6-602, MCA, is amended to read:

"46-6-602. Notice of rights to victim ~~upon arrest in domestic violence situation~~ *partner or family member assault.* Whenever a peace officer arrests a person for ~~domestic abuse~~ *partner or family member assault*, as defined in 45-5-206, ~~if the victim is present,~~ *or responds to a call in which partner or family member assault is suspected,* the officer, *outside the presence of the offender,* shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"~~IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the~~ *The city or* county attorney's office can file criminal charges against ~~your abuser~~ *an offender if the offender committed the offense of partner or family member assault.*

In addition to the criminal charges filed by the state of Montana, you are entitled to the following civil remedies:

You ~~have the right to~~ *may* go to court and file a petition requesting any of the following orders for relief:

(1) an order *of protection* ~~restraining your abuser~~ *that prohibits the offender* from ~~abusing~~ *threatening to hurt you or hurting* you;

(2) an order *of protection* ~~directing your abuser~~ *that directs the offender* to leave your ~~household~~ *home and prohibits the offender from having any contact with you*;

(3) a. order *of protection* ~~preventing your abuser~~ *that prevents the offender* from transferring any property except in the usual course of business;

(4) an order ~~awarding you or the other parent custody of or visitation with a minor child or children~~ *of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you, any named family member, and your worksite or other specified place*;

~~(5) an order restraining your abuser from molesting or interfering with minor children in your custody or a family member or partner, as defined in 45-5-206; or~~

~~(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so~~"

(5) an order of protection that gives you possession of neccssary personal property;

(6) an order of protection that prohibits the offender from possessing or using the firearm used in the assault.

If you file a petition in district court, the district court may order all of the above and may award custody of your minor children to you or to the other parent. The district court may order visitation of your children between the parents. The district court may order the offender to pay support payments to you if the offender has a legal obligation to pay you support payments.

The forms that you need to obtain an order of protection are at _____. You may call _____ at _____ for additional information about an order of protection.

You may file a petition in district court at _____.

You may be eligible for restitution payments from the offender (the offender would repay you for costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a fund administered by the state of Montana for innocent victims of crime). You may call _____ at _____ for additional information about restitution or crime victims compensation.

The following agencies may be able to give you additional information or emergency help. (List telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary of services that are available.)"

Section 16. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule — acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is ~~domestic abuse~~ *partner or family member assault*, ~~any assault against a family member or a partner~~, as defined in 45-5-206, or stalking, as defined in 45-5-220.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

Section 17. Section 46-18-202, MCA, is amended to read:

"**46-18-202. Additional restrictions on sentence.** (1) The ~~district~~ court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of the defendant's owning or carrying a dangerous weapon;

(c) restrictions on the defendant's freedom of association;

(d) restrictions on the defendant's freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving that term. If ~~such a~~ *the* restriction is to be imposed, the court shall stato the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~ *must* contain a statement of the reasons for the restriction.

~~(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsection (1)(a).~~

~~(4)~~*(3)* When the ~~district~~ court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition."

Section 18. Misdemeanor probation offices — officers — costs. (1) A local government may establish a misdemeanor probation office associated with a justice's court, municipal court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence compliance and restitution payments. An offender is considered a fugitive under the conditions provided in 46-23-1014.

(2) A local government may appoint misdemeanor probation officers and other employees necessary to administer this section. Misdemeanor probation officers:

(a) must have the minimum training required in 46-23-1003;

(b) shall follow the supervision guidelines required in 46-23-1011; and

(c) may order the arrest of an offender as provided in 46-23-1012.

(3) An offender who is convicted of the offense of partner or family member assault under 45-5-206 or of a violation of an order of protection under 45-5-626 and who is ordered to be supervised by misdemeanor probation must be ordered to pay for the cost of the misdemeanor probation. The actual cost of probation supervision over the offender's sentence must be paid by the offender unless the offender can show that the offender is unable to pay those costs. The costs of misdemeanor probation are in addition to any other fines, restitution, or counseling ordered.

Section 19. Partner or family member assault — seizure of weapon. (1) A peace officer who responds to a call relating to partner or family member assault shall seize the weapon used or threatened to be used in the alleged assault.

(2) The responding officer may, as appropriate:

(a) take reasonable action necessary to provide for the safety of a victim and any other member of the household;

(b) transport or arrange for the transportation of the victim and any other member of the household to a safe location; and

(c) assist a victim and any other member of the household to remove necessary personal items.

(3) A weapon seized under this section may not be returned to the offender until acquittal or until the return is ordered by the court.

Section 20. Notice of rights when partner or family member assault is suspected. (1) Whenever a patient seeks health care and the health care provider suspects that partner or family member assault has occurred, the health care provider, outside the presence of the suspected offender, may advise the suspected victim of the availability of a shelter or other services in the community and give the suspected victim immediate notice of any legal rights and remedies available. The notice must include furnishing the suspected victim with a copy of the following statement:

"The city or county attorney's office can file criminal charges against the offender if the offender committed the offense of partner or family member assault.

In addition to the criminal charges filed by the state of Montana, you are entitled to the civil remedies listed below.

You may go to court and file a petition requesting any of the following orders for relief:

(1) an order of protection that prohibits the offender from threatening to hurt you or hurting you;

(2) an order of protection that directs the offender to leave your home and prohibits the offender from having any contact with you;

(3) an order of protection that prevents the offender from transferring any property except in the usual course of business;

(4) an order of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you, any named family member, and your worksite or other specified place;

(5) an order of protection that gives you possession of necessary personal property;

(6) an order of protection that prohibits the offender from possessing or using the firearm used in the assault.

If you file a petition in district court, the district court may order all of the above and may award custody of your minor children to you or the other parent. The district court may order visitation of your children between the parents. The district court may order the offender to pay support payments to you if the offender has a legal obligation to pay you support payments.

The forms that you need to obtain an order of protection are at _____. You may call _____ at _____ for additional information about an order of protection.

You may file a petition in district court at _____.

You may be eligible for restitution payments from the offender (the offender would repay you for costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a fund administered by the state of Montana for innocent victims of crime). You may call _____ at _____ for additional information about restitution or crime victims compensation.

The following agencies may be able to give you additional information or emergency help. (List telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary of services that are available.)"

(2) Partner or family member assault may be suspected by health care workers in circumstances in which a patient repeatedly seeks health care for trauma type injuries or a patient gives an explanation for injuries that is not consistent with the injuries that are observed.

(3) For purposes of this section, "health care provider" has the meaning provided in 50-16-504.

Section 21. Purpose. The purpose of [sections 21 through 29] is to promote the safety and protection of all victims of partner and family member assault, victims of sexual assault, and victims of stalking.

Section 22. Eligibility for order of protection. (1) A person may file a petition for an order of protoction if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) unlawful restraint as defined in 45-5-301;

(viii) kidnapping as defined in 45-5-302;

(ix) aggravated kidnapping as defined in 45-5-303; or

(x) arson as defined in 45-6-103.

(2) A victim of stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503 is eligible for an order of protection against the offender regardless of the petitioner's relationship to the offender.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant.

Section 23. Temporary order of protection. (1) A petitioner may seek a temporary order of protection from a court listed in [section 27]. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in [section 22], has a relationship to the respondent if required by [section 22], and is in danger of harm if the court does not issue a temporary order of protection immediately.

(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders:

(a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;

(b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;

(c) prohibiting the respondent from removing a child from the jurisdiction of the court;

(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family or household member;

(e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;

(f) prohibiting the respondent from possessing or using the firearm used in the assault;

(g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;

(h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal of essential personal property;

(i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;

(j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.

(3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld, except by order of the court for good cause shown.

(4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding has elapsed.

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Section 24. Order of protection — hearing. (1) A hearing must be conducted within 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent.

(2) The respondent may request an emergency hearing before the end of the 20-day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 working days of the filing of the affidavit.

(3) The order of protection may not be made mutually effective by the court. The respondent may obtain an order of protection from the petitioner only by filing an application for an order of protection and following the procedure described in [sections 21 through 29].

Section 25. Attorney general to provide forms. The attorney general shall prepare uniform sample instructions, petition forms, and order forms for temporary orders of protection and for orders of protection. The attorney general shall distribute samples of the instructions, petitions, and forms te the clerk of the district court in each county and te justices', municipal, and city courts. The clerk of the district court, justices of the peace, and municipal and city court judges shall make forms available to the public at no charge.

Section 26. Written orders of protection. (1) The court may determine, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, that, to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently.

(2) In a dissolution proceeding, the district court may, upon request, issue either an order of protection for an appropriate period of time or a permanent order of protection.

(3) An order of protection may include all of the relief listed in [section 23], when appropriate.

(4) An order of protection may include restraining the respondent from any other named family member who is a minor. If this restriction is included, the respondent must be restrained from having contact with the minor for an appropriate time period as directed by the court or permanently if the court finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

(5) An order of protection issued under this section may continue for an appropriate time period as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be terminated upon the petitioner's request that the order be dismissed.

(6) An order of protection must include a section that indicates whether there are any other civil or criminal actions pending involving the parties, a brief description of the action, and the court in which the action is filed.

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(7) An amendment to a temporary order of protection or to an order of protection is effective only after it has been served in writing on the opposing party.

(8) There is no cost for service of an order of protection.

(9) Any temporary order of protection or order of protection must conspicuously bear the following:

"Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties of up to $10,000 in fines and up to a 5-year jail sentence.

This order is issued by the court, and the respondent is forbidden to do any act listed in the order, even if invited by the petitioner or another person. This order may be amended only by further order of this court or another court that assumes jurisdiction over this matter."

Section 27. Jurisdiction and venue. (1) District courts, justices' courts, municipal courts, and city courts have concurrent jurisdiction to hear and issue orders under [section 23].

(2) When a divorce or custody action involving the parties is pending in district court, a person may file a petition for an order of protection in a justice's, municipal, or city court only if the district court judge assigned to that case is unavailable or if the petitioner, to escape further abuse, left the county where the abuse occurred. The petitioner shall provide a copy of relevant district court documents to the justice's, municipal, or city court, along with the petition. The justice of the peace, municipal court judge, or city court judge shall immediately certify the pleadings to the original district court after signing an order of protection under this subsection. If the district court is unable to conduct a hearing within 20 days of receipt of the certified pleadings, it may conduct a hearing within 45 days of the receipt.

(3) An action brought under [sections 21 through 29] may be filed in the county where the petitioner currently or temporarily resides, the county where the respondent resides, or the county where the abuse occurred. There is no minimum length of residency required to file a petition under [sections 21 through 29].

(4) The right to petition for relief may not be denied because the petitioner has vacated the residence or household to avoid abuse.

(5) An order of protection issued under this section is effective throughout the state. Courts and law enforcement officials shall give full faith and credit to all orders of protection issued within the state.

(6) A certified copy of an order of protection from another state, along with proof of service, may be filed in a Montana court with jurisdiction over orders of protection in the county where the petitioner resides. If properly filed in Montana, an order of protection issued in another state must be enforced in the same manner as an order of protection issued in Montana.

Section 28. Appeal to district court. (1) An order issued by a justice's court, municipal court, or city court pursuant to [section 23] is immediately reviewable by the district judge upon the filing of a notice of appeal. The district

judge may affirm, dissolve, or modify an order of a justice's court, municipal court, or city court made pursuant to [section 23 or section 26].

(2) A case in which an order has been issued by a justice's court, municipal court, or city court pursuant to [section 23 or section 26] may be removed to district court upon filing of a notice of removal.

Section 29. Registration of orders. (1) The clerk of court, justice of the peace, municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order under [section 23, section 26, or section 27], mail a copy of the order or any extension, modification, or termination of the order, along with a copy of the proof of service, to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification, to ensure that peace officers at the scene of an alleged violation of an order of protection are informed of the existence and terms of the order.

Section 30. Codification instruction. (1) [Section 18] is intended to be codified as an integral part of Title 46, chapter 23, and the provisions of Title 46, chapter 23, apply to [section 18].

(2) [Section 19] is intended to be codified as an integral part of Title 46, chapter 6, part 6, and the provisions of Title 46, chapter 6, part 6, apply te [section 19].

(3) [Sections 20 through 29] are intended to be codified as an integral part of Title 40, and the provisions of Title 40 apply to [sections 20 through 29].

Section 31. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 32. Code commissioner instruction. Unless inconsistent with [sections 1 through 29], any reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature te "domestic abuse" is changed te "partner or family member assault". The code commissioner shall conform intornal references and grammar to these changes.

Approved April 10, 1995

CHAPTER NO. 351

[HB 347]

AN ACT GENERALLY REVISING THE LAW RELATING TO THE CRIME OF THREATENING PUBLIC OFFICIALS; EXPANDING THE OFFENSE OF THREATENING A PUBLIC OFFICIAL TO INCLUDE INJURY TO THE PUBLIC OFFICIAL'S PERSON, SPOUSE, CHILD, PARENT, SIBLING, OR PROPERTY; REVISING THE PENALTY FOR THREATENING A PUBLIC OFFICIAL; INCREASING THE PENALTY FOR IMPERSONATING A

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PUBLIC OFFICIAL; AMENDING SECTIONS 45-7-102 AND 45-7-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-7-102, MCA, is amended to read:

"45-7-102. Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if ~~he~~ *the person* purposely or knowingly:

(a)*(i)* threatens ~~unlawful~~ harm to any person, *the person's spouse, child, parent, or sibling, or the person's property* with the purpose to influence ~~his~~ *the person's* decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or votor;

~~(b)~~*(ii)* threatens harm to any public servant, *to the public servant's spouse, child, parent, or sibling, or to the public servant's property* with the purpose to influence ~~his~~ *the public servant's* decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

~~(c)~~*(iii)* threatens harm to any public servant or party official, *the person's spouse, child, parent, or sibling, or the person's property* with the purpose to influence ~~him~~ *the person* to violate ~~his~~ *the person's* duty *or to prevent the public servant or party official from accepting or holding any public office*;

~~(d)~~*(iv)* privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law; ~~or~~

~~(e)~~*(v)* as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before ~~such~~ *the* jury, except according to the regular course of proceedings.*; or*

(b) injures the person or property of a public servant or injures the servant's spouse, child, parent, or sibling because of the public servant's lawful discharge of the duties of the office or to prevent the public servant from discharging the public servant's official duties.

(2) It is no defense to prosecution under subsections (1)(a)*(i)* through ~~(1)(d)~~ *(1)(a)(iv) and (1)(b)* that a person whom the offender sought to influence was not qualified to act in the desired way, whether because ~~he~~ *the person* had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section ~~shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender~~ shall be fined not to exceed $50,000 or be imprisoned in the state prison for ~~any~~ *a* term not to exceed 10 years, or both."

Section 2. Section 45-7-209, MCA, is amended to read:

"45-7-209. ~~Impersonating~~ *Impersonation of* a public servant. (1) A person commits the offense of impersonating a puhlic servant if ~~he~~ *the person*

falsely pretends to hold a position in the public service with *the* purpose to induce another *individual* to submit to ~~such~~ *the* pretended official authority or otherwise to act in reliance upon that pretense to ~~his~~ *the individual's* prejudice.

(2) A person convicted of impersonating a public servant shall be fined not to exceed ~~$500~~ *$5,000* or be imprisoned in the ~~county jail~~ *state prison* for any term not to exceed ~~6 months~~ *5 years*, or both."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 11, 1995

CHAPTER NO. 352

[SB 231]

AN ACT REVISING THE PURPOSE AND POLICY OF THE MONTANA ENVIRONMENTAL POLICY ACT TO INCLUDE PRIVATE PROPERTY RIGHT CONSIDERATIONS AND IMPACTS OF STATE GOVERNMENT ACTIONS; AND AMENDING SECTIONS 75-1-102, 75-1-103, AND 75-1-201, MCA.

STATEMENT OF INTENT

Whenever Montana Environmental Policy Act analysis is required, it is the intent of the legislature that actions that regulate the use of private property are evaluated to ensure that alternatives that reduce, minimize, or eliminate regulatory restrictions are considered. It is not the intent of the legislature to affect in any manner other economic or social considerations or any other analysis conducted under the Montana Environmental Policy Act.

It is not the intent of the legislature to diminish or affect in any manner a property owner's rights under nuisance or takings law. Furthermore, it is not the intent of the legislature to affect the law of eminent domain in any manner.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-102, MCA, is amended to read:

"**75-1-102. Purpose.** The purpose of parts 1 through 3 is to declare a state policy ~~which~~ *that* will encourage productive and enjoyable harmony between ~~man~~ *humans* and ~~his~~ *their* environment, *to protect the right to use and enjoy private property free of undue government regulation,* to promote efforts ~~which~~ *that* will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of ~~man~~ *humans*, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council."

Section 2. Section 75-1-103, MCA, is amended to read:

"**75-1-103. Policy.** (1) The legislature, recognizing the profound impact of ~~man's~~ *human* activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, ~~and~~ recognizing ~~further~~ the critical importance of restoring and maintaining environmental quality to the overall

welfare and *human* development, ~~of man~~ *and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property*, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, ~~and~~ local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which ~~man~~ *humans* and nature can coexist in productive harmony, *to recognize the right to use and enjoy private property free of undue government regulation,* and *to* fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources ~~to the end~~ *so* that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) ~~assure~~ *ensure* for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) protect the right to use and enjoy private property free of undue government regulation;

~~(d)~~*(e)* preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment ~~which~~ *that* supports diversity and variety of individual choice;

~~(e)~~*(f)* achieve a balance between population and resource use ~~which~~ *that* will permit high standards of living and a wide sharing of life's amenities; and

~~(f)~~*(g)* enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person ~~shall be~~ *is* entitled to a healthful environment, *that each person is entitled to use and enjoy that person's private property free of undue government regulation,* and that each person has a responsibility to contribute to the preservation and enhancement of the environment."

Section 3. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state ~~shall~~ *must* be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) ~~utilize~~ *use* a systematic, interdisciplinary approach ~~which~~ *that* will ~~insure~~ *ensure* the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking ~~which~~ *that* may have an impact on ~~man's~~ *the* environment;

(ii) identify and develop methods and procedures ~~which~~ *that* will ~~insure~~ *ensure* that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

~~(iii)~~*(iv)* include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects ~~which~~ *that* cannot be avoided should the proposal be implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

~~(D)~~*(E)* the relationship between local short-term uses of ~~man's~~ *the* environment and the maintenance and enhancement of long-term productivity; and

~~(E)~~*(F)* any irreversible and irretrievable commitments of resources ~~which~~ *that* would be involved in the proposed action should it be implemented;

~~(iv)~~*(v)* study, develop, and describe appropriate alternatives te recommend courses of action in any proposal ~~which~~ *that* involves unresolved conflicts concerning alternative uses of available resources;

~~(v)~~*(vi)* recognize the national and long-range character of environmental problems and, ~~where~~ *when* consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of ~~mankind's~~ *the* world environment;

~~(vi)~~*(vii)* make available to counties, municipalities, institutions, and individuals advice and information useful in restering, maintaining, and enhancing the quality of the environment;

~~(vii)~~*(viii)* initiate and ~~utilize~~ *use* ecological information in the planning and development of resource-oriented projects; and

~~(viii)~~*(ix)* assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)~~(iii)~~*(iv)*, the responsible state official shall consult with and obtain the comments of any state agency ~~which~~ *that* has jurisdiction by law or special expertise with respect te any environmental impact involved. *The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved.* Copies of ~~such~~ *the* statement and the comments and views of the appropriate state, federal, and local agencies ~~which~~ *that* are authorized to develop and enforce environmental standards ~~shall~~ *must* be made available to the governor, the environmental quality council, and the public and ~~shall~~ *must* accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).~~

~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31, 1989, that must include but not be limited to:~~

~~(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;~~

~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;~~

~~(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;~~

~~(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;~~

~~(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and~~

~~(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.~~

~~(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf~~

~~of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council.~~"

Section 4. Private property protection — ongoing programs of state government. Nothing in [sections 1 through 3] expands or diminishes private property protection afforded in the U.S. or Montana constitutions. Nothing in [sections 1 through 3] may be construed to preclude ongoing programs of state government pending the completion of any statements that may be required by [sections 1 through 3].

Approved April 11, 1995

CHAPTER NO. 353

[SB 242]

AN ACT REVISING THE MEMBERSHIP OF THE BOARD OF HORSERACING; ALLOWING THE GOVERNOR TO MAKE IMMEDIATE APPOINTMENTS TO IMPLEMENT THE REVISIONS; AMENDING SECTION 2-15-1881, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1881, MCA, is amended to read:

"**2-15-1881. Board of horseracing.** (1) There is a board of horseracing.

(2) *(a)* The board consists of ~~five~~ *seven* members, appointed by the governor with the consent of the senate, who ~~shall~~ *must* be citizens, residents, and qualified electors of this state. ~~No person holding a financial interest in a racetrack or race meet, member of a county fair board, or owner, trainer, or breeder of a racehorse is eligible for membership on the board~~

(b) Two board members must be in the horseracing industry and may not represent the same district as described in subsection (3). The other five members may not be in the horseracing industry.

(c) ~~No~~ *A* member of the board may *not* wager at any licensed racing meet in this state.

(3) ~~The~~ *Except for members appointed pursuant to subsection (2)(b), the* governor may not appoint any member who would have a conflict of interest during ~~his~~ *the member's* term of appointment. The governor shall appoint, on the basis of experience and qualifications, one member from each of the following districts:

(a) first district, consisting of Blaine, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Phillips, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Treasure, Valley, and Wibaux Counties;

(b) second district, consisting of Big Horn, Carbon, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Sweet Grass, Stillwater, Wheatland, and Yellowstone Counties;

(c) third district, consisting of Cascade, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties;

(d) fourth district, consisting of Beaverhead, Broadwater, Deer Lodge, Gallatin, Jefferson, Lewis and Clark, Madison, Meagher, Park, and Silver Bow Counties; and

(e) fifth district, consisting of Flathead, Granite, Lake, Lincoln, Missoula, Mineral, Powell, Ravalli, and Sanders Counties.

(4) Each member shall serve for a ~~staggered~~ term of 3 years. *The terms of the members must be staggered.* A member may be removed from office by the governor only for cause.

(5) A board member may ~~succeed himself upon reappointment~~ *be reappointed* by the governor. A vacancy on the board must be filled for the unexpired term by appointment by the governor, with the consent of the senate, as provided in this section.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Transition — new appointments. To provide for an orderly transition to the new board membership, the governor may replace present board members by immediately appointing new members who are in compliance with the new board membership requirements. The new members shall serve the remainder of the existing terms to provide for the staggered terms required under 2-15-1881(4).

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 11, 1995

CHAPTER NO. 354

[SB 293]

AN ACT GENERALLY REVISING THE LAWS RELATED TO MEDICAID FRAUD AND ABUSE, RECOVERY OF MEDICAID OVERPAYMENTS, AND IMPOSITION OF SANCTIONS FOR MEDICAID FRAUD AND ABUSE AND

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FOR FAILURE OF HEALTH CARE FACILITIES TO COMPLY WITH APPLICABLE STANDARDS AND REQUIREMENTS; ESTABLISHING A MEDICAID FRAUD CONTROL UNIT IN THE DEPARTMENT OF JUSTICE; SPECIFYING THE POWERS AND DUTIES OF THE UNIT; ESTABLISHING CRIMINAL OFFENSES RELATED TO MEDICAID FRAUD; SPECIFYING CERTAIN DUTIES OF MEDICAID APPLICANTS, RECIPIENTS, AND PROVIDERS WITH RESPECT TO THE TRUTH, COMPLETENESS, AND ACCURACY OF DOCUMENTS AND INFORMATION SUBMITTED FOR MEDICAID PURPOSES; SPECIFYING THE SANCTIONS THAT MAY BE APPLIED TO PROVIDERS AND OTHER PERSONS WHO ENGAGE IN MEDICAID FRAUD AND ABUSE AND TO HEALTH CARE FACILITIES THAT FAIL TO COMPLY WITH APPLICABLE STANDARDS AND REQUIREMENTS; AMENDING SECTIONS 45-2-101, 45-2-103, 45-2-104, 50-20-109, 53-6-106, 53-6-107, 53-6-108, 53-6-111, AND 61-5-405, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Abuse" means conduct by an applicant, recipient, provider, or other person involving disregard of and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical assistance program when the disregard or failure results or may result in an incorrect determination that a person is eligible for medical assistance or payment by a medicaid agency of medical assistance payments to which the provider is not entitled.

(2) "Applicant" means a person:

(a) who has submitted an application for determination of medicaid eligibility to a medicaid agency on the person's own behalf or on behalf of another person; or

(b) on whose behalf an application has been submitted.

(3) "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form, that is used to claim specific services or items as payable or reimbursable under the medicaid program or that states income, expense, or other information that is or may he used to determine entitlement to or the rate of payment under the medicaid program. The term includes any documents submitted as part of or in support of the claim.

(5) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(6) "Document" means any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, or other form.

(7) "Fraud" means any conduct or activity prohibited hy statute, regulation, or rule involving purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid payments or henefits to which the

applicant, recipient, or provider is not entitled. Fraud includes but is not limited to any conduct or omission under the medicaid program that would constitute a criminal offense under Title 45, chapter 6 or 7.

(8) "Medicaid" means the Montana medical assistance program estahlished under Title 53, chapter 6.

(9) "Medicaid agency" means any agency or entity of state, county, or local government that administers any part of the medicaid program, whether under direct statutory authority or under contract with an authorized agency of the state or federal government. The term includes hut is not limited to the department, the department of health and environmental sciences, the department of corrections and human services, county offices of human services and public welfare, and other local and state agencies and their agents, contractors, and employees, when acting with respect to medicaid eligibility, claims processing or payment, utilization review, case management, provider certification, investigation, or other administration of the medicaid program.

(10) "Misappropriation of patient property" means exploitation, deliberate misplacement, or wrongful use or taking of a patient's property, whether temporary or permanent, without authorization hy the patient or the patient's designated representative. Misappropriation of patient property includes hut is not limited to any conduct with respect to a patient's property that would constitute a criminal offense under Title 45, chapter 6, part 3.

(11) "Patient abuse" means the willful infliction of physical or mental injury of a patient or unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or mental anguish of a patient. Patient abuse includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under Title 45, chapter 5.

(12) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission, to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental illness when an omission is not caused by factors beyond the person's control or by good faith errors in judgment. Patient neglect includes but is not limitod te any conduct with respect to a patient that would constitute a criminal offense under 45-5-208.

(13) "Provider" means an individual, company, partnership, corporation, institution, facility, or other entity or business association that has enrolled or applied to enroll as a provider of services or items under the medical assistance program established under this part.

(14) "Recipient" means a person:

(a) who has been determined by a medicaid agency te be eligible for medicaid benefits, whether or not the person actually has received any benefits; or

(b) who actually receives medicaid benefits, whether or not determined eligible.

(15) (a) "Records" means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:

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(i) pertaining to the provision of treatment, care, services, or items to a recipient;

(ii) pertaining to the income and expenses of the provider; or

(iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment or reimbursement under the medicaid program.

(b) The torm includes all records and documents, regardless of whether the records are required by medicaid laws, regulations, rules, or policies to be made and maintained by the provider.

Section 2. Medicaid fraud control unit. (1) There is a medicaid fraud control unit in the department of justice. The unit is under the supervision and control of the attorney general and, subject to the availability of appropriated funds, consists of the agents and employees of the department of justice whom the attorney general considers necessary and appropriate, including but not limited to:

(a) persons qualified by education, training, experience, and high professional competence in criminal and civil investigative procedures;

(b) at least one person licensed to practice law in Montana and qualified by education, training, experience, and high professional competence to prosecute crimes; and

(c) auditors and other additional professional and support staff.

(2) The medicaid fraud control unit is a criminal justice agency within the meaning of 44-5-103. Agents designated by the attorney general have peace officer status and authority, including but not limited to search, seizure, and arrest.

Section 3. Powers and duties of medicaid fraud control unit. (1) The medicaid fraud control unit shall:

(a) investigate and prosecuto under applicable criminal statutes fraud and abuse by applicants, recipients, providers, or other persons under the medical assistance program established under this chapter, including but not limited to cases referred by the department;

(b) review any complaint of patient abuse, patient neglect, and misappropriation of patient property by providers or their employees or agents and, when appropriate, shall investigate and initiate criminal proceedings or refer the complaint to another state agency for action;

(c) refer to the department for collection and, when appropriate, consideration and imposition of appropriate recipient restrictions or provider sanctions cases involving recipient or provider overpayments, fraud, abuse, inappropriate use of services, or other improper activities discovered by the unit in carrying out its activities;

(d) communicate and cooperate with and, subject to applicable confidentiality laws, provide information to other state and federal agencies involved in the investigation and prosecution of health care fraud, abuse, and other improper activities related to the medicaid program;

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(e) transmit to other stato and federal agencies, in accordance with law reports of convictions, copies of judgments and sentonces imposed and other information and documents for purposes of program exclusions or other sanctions or penalties under medicaid, medicare, or other stato or federal benefit or assistance programs; and

(f) recommend to state agencies appropriate or necessary adoption or revision of statutos, regulations, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper activities under tbe medicaid program.

(2) The medicaid fraud control unit may:

(a) initiate criminal prosecutions related to the medicaid program in any court of competent jurisdiction in the state of Montana;

(b) upon written request, obtain information and records from applicants, recipients, and providers;

(c) exercise the authority grantod to prosecutors with respect to criminal investigative subpoenas under Title 46, cbapter 4, part 3;

(d) subject to applicable federal confidentiality laws and regulations and for purposes related to any investigation or prosecution related to the medicaid program, obtain from the department, county welfare and human services offices, and other local, county, or state government departments or agencies records and other information, including but not limited to applicant and recipient applications, provider enrollment forms, claims and reports, individual or entity tax returns, or other information provided to or in the possession of the department of revenue or the state auditor;

(e) refer appropriate cases to other state or federal agencies for investigation, prosecution, or imposition of penalties, restrictions, or sanctions;

(f) enter into agreements with the department and other stato and federal agencies in furtherance of the unit's mission; and

(g) do all things necessary to comply with 42 U.S.C. 1396a(a)(61) and 42 U.S.C. 1396b(q) and any implementing federal regulations and policies that require the state to operate a medicaid fraud control unit.

Section 4. Cooperation of governmental agencies with medicaid fraud control unit. All local, county, and state departments and agencies shall cooperate with the medicaid fraud control unit and its agents and employees to effectuate the purposes of the unit.

Section 5. Permitted disclosure of information obtained in medicaid fraud control unit investigations. Records, documents, and other information obtained in the course of an investigation by the medicaid fraud control unit or its agents, employees, or atterneys may be disclosed:

(1) in accordance with the Montana Criminal Justice Information Act of 1979, as provided in Title 44, chapter 5; and

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(2) to a medicaid agency for purposes related to administration of the medicaid program.

Section 6. Truthfulness, completeness, and accuracy of submissions to medicaid agencies. (1) A person who submits to a medicaid agency an application, claim, report, document, or other information that is or may be used to determine eligibility for medicaid benefits, eligibility to participate as a provider, or the right to or the amount of payment under the medicaid program is considered to represent to the department, to the best of the person's knowledge and belief, that the item is genuine and that its contents, including all statements, claims, and representations contsined in the document, are true, complete, accurate, and not misleading.

(2) (a) A provider has a duty to exercise reasonable care to ensure the truthfulness, completeness, and accuracy of all applications, claims, reports, documents, and other information and of all statements and representations made or submitted, or authorized by the provider to be made or submitted, to the department for purposes related to the medicaid program. The duty applies whether the applications, claims, reports, documents, otber information, statements, or representations were made or submitted, or authorized by the provider to be made or submitted, on behalf of the provider or on behalf of an applicant or recipient being served by the provider.

(b) A provider has a duty to exercise reasonable care to ensure that a claim made or submitted to the department or its agents or employees for payment or reimbursement under the medicaid program is one for which the provider is entitled to receive payment and that the service or item is provided and billed according to all applicable medicaid requirements, including but not limited to identification of the appropriate procedure code or level of service and provision of the service by a person, facility, or other provider entitled to receive medicaid payment for the particular service.

(3) A person is considered to have known that a claim, statement, or representation related to the medicaid program was false if the person knew, or by virtue of the person's position, authority, or responsibility should have known, of the falsity of the claim, statement, or representation.

(4) A person is considered to have made or to have authorized to be made a claim, statement, or representation if the person:

(a) had the authority or responsibility to:

(i) make the claim, statement, or representation;

(ii) supervise another who made tbe claim, statement, or representation; or

(iii) authorize the making of the claim, statement, or representation, whether by operation of law, business or professional practice, or office policy or procedure; and

(b) exercised or failed to exercise that authority or responsibility and, as a direct or indirect result, the false statement was made, resulting in a claim for a service or item when tbe person knew or had reason te know that the person was not entitled under applicable statutes, regulations, rules, or policies to

medicaid payment or benefits for the service or item or for the amount of payment requested or claimed.

(5) (a) There is an inference that a person who signs or submits a document to a medicaid agency on behalf of or in the name of a provider is authorized by the provider to do so and is acting under the provider's direction.

(b) For purposes of this section, the term "signs" includes but is not limited to the use of facsimile, computer-generated and typed, or block-letter signatures.

(6) The department shall directly or by contract provide a program of instruction and assistance to persons submitting applications, claims, reports, documents, and other information to the department concerning the completion and submission of the application, claim, report, document, or other information in a manner determined necessary by the department. The program must include:

(a) clear directions for the completion of applications, claims, reports, documents, and other information;

(b) examples of properly completed applications, claims, reports, documents, and other information;

(c) a method by which persons submitting applications, claims, reports, documents, and other information may, on a case-by-case basis, receive accurate, complete, specific, and timely advice and directions from the department before the completed applications, claims, reports, documents, and other information must be submitted to the department; and

(d) a method by which persons submitting applications, claims, reports, documents, and other information may challenge the department's interpretation or application of the manner in which the applications, claims, reports, documents, and other information must be completod.

(7) This section applies only for the purpose of civil liability under Title 53 and does not apply in a criminal proceeding.

Section 7. Medicaid fraud. (1) A person commits the offense of medicaid fraud when:

(a) the person obtains a medicaid payment or benefit for the person or another person by purposely or knowingly:

(i) making, submitting, or authorizing the making or submitting of a false or misleading medicaid claim, statement, representation, application, or document to a medicaid agency for a service or itom when the person knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed; or

(ii) making, submitting, or autborizing the making or submitting of a medicaid claim, statement, representation, application, or document under the medicaid program for a service or item when the person knows or has reason to know that the person is not entitled under applicable statutes, regulations,

rules, or policies to medicaid payment or benefit for the service or item or for the amount of payment requested or claimed;

(b) the person purposely or knowingly:

(i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the medicaid program or in return for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the medicaid program; or

(ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient to another provider for the furnishing of services or items for which payment may be made under the medicaid program; or

(c) the person, with respect to a managed care contract, health maintenance organization contract, or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to provide covered medically necessary services to eligible recipients as required by the contract.

(2) Any conduct or activity that does not violate or that is protected under the provisions of, or federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is not considered an offense under subsection (1)(b), and the conduct or activity must be accorded the same protections allowed under federal laws and regulations.

(3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance upon the written authorization or advice of the department.

(4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims not exceeding $500 in value shall he fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 and be imprisoned in the county jail for a term not less than 10 days or more than 6 months. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term not less than 30 days or more than 1 year.

(b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims exceeding $500 in value shall be fined an amount not to exceed the greater of $50,000 or 10 times the value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of payments or benefits involved is the greater of the value of medicaid payments or benefits received as a result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

(d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same transaction may be aggregated in determining the value involved.

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(e) A person convicted of the offense of medicaid fraud must be suspended from participation in the medicaid program:

(i) for any period of time not less than 1 year for a first offense, or the person may be permanently terminated from participation in the medical assistance program;

(ii) for any period of time not less than 3 years for a second offense, or the person may be permanently terminated from participation in the medical assistance program; or

(iii) permanently for a third offense.

(5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not entitled to bill or collect from the recipient, the medicaid program, or any other third-party payor for the services or items involved and shall repay to the medicaid program any payments or benefits obtained by any person for the services or items involved.

(6) The establishment of the criminal offenses specified in this section does not preclude the application of any other provision of law.

Section 8. Section 45-2-101, MCA, is amended to read:

"**45-2-101. General definitions.** Unless otherwise specified in the statuto, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scbeme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects

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the same person or the same persons or the property of the same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custedy of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in anotber an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend te perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means te withbold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely tbat the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) *"Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.*

(22) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any torm exceeding 1 year.

~~(22)~~*(23)* "Forcible felony" means any felony that involves the use or threat of physical force or violence against any individual.

~~(23)~~*(24)* A "frisk" is a search by an external patting of a person's clothing.

~~(24)~~*(25)* "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

~~(23)~~*(26)* "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected person is interestod.

~~(26)~~*(27)* A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

~~(27)~~*(28)* "Human being" means a person who has been born and is alive.

~~(26)~~*(29)* An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

~~(23)~~*(30)* "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

~~(30)~~*(31)* "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcobol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcobol by volume.

~~(31)~~*(32)* An "involuntary act" means any act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during bypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otberwise is not a product of the effort or determination of the actor, eitber conscious or habitual.

~~(32)~~*(33)* "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. Tbe term "juror" also includes a person who bas been drawn or summoned to attend as a prospective juror.

~~(33)~~*(34)* "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware tbat it is bighly probable that tbe result will be caused by tbe person's conduct. When knowledge of tbe existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a bigh probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

~~(34)~~*(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.*

(36) "Medicaid agency" has the meaning in [section 1].

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Mcdicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes any related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

~~(35)~~*(40)* "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

~~(35)~~*(41)* "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any torm or a fine, or both, or in which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

~~(37)~~*(42)* "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

~~(35)~~*(43)* "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

~~(39)~~*(44)* "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

~~(40)~~*(45)* "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

~~(41)~~*(46)* "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

~~(42)~~*(47)* "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

~~(42)~~*(48)* "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole,

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constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

~~(44)~~*(49)* "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

~~(45)~~*(50)* "Other state" means any state or territory of the United States, the District of Columhia, and the Commonwealth of Puerto Rico.

~~(45)~~*(51)* "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

~~(47)~~*(52)* "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

~~(45)~~*(53)* "Peace officer" means any person who by virtue of tbe person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

~~(49)~~*(54)* "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

~~(50)~~*(55)* "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision of government.

~~(51)~~*(56)* "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

~~(52)~~*(57)* "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

~~(53)~~*(58)* "Premises" includes any type of structure or building and any real property.

~~(54)~~*(59)* "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

~~(55)~~*(60)* "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

~~(55)~~*(61)* "Public place" means any place to which the public or any substantial group has access.

~~(57)~~*(62)* "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

~~(58)~~*(63)* "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

~~(58)~~*(64)* (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ; or

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(iii) at the time of injury, can reasonably be expected te result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

(b) The term includes serious mental illness or impairment.

~~(60)~~*(65)* "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

~~(61)~~*(66)* "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

~~(62)~~*(67)* "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

~~(62)~~*(68)* "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

~~(64)~~*(69)* "Statute" means any act of the legislature of this state.

~~(65)~~*(70)* "Stolen property" means property over which control has been obtained by theft.

~~(66)~~*(71)* A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

~~(67)~~*(72)* "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

~~(68)~~*(73)* "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

~~(69)~~*(74)* (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $500 by the standards set forth in subsection ~~(69)(a)~~ *(74)(a)*, its value is considered to be an amount less than $500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

~~(70)~~*(75)* "Vehicle" means any device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operater.

~~(71)~~*(76)* "Weapon" means any instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

~~(72)~~*(77)* "Witness" means a person whose tostimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 9. Section 45-2-103, MCA, is amended to read:

"**45-2-103. General requirements of criminal act and mental state.** (1) Except for deliberate homicide as defined in 45-5-102(1)(b) or an offense ~~which~~ *that* involves absolute liability, a person is not guilty of an offense unless, with respect to each element described by the statute defining the offense, ~~he~~ *a*

person acts while having one of the mental states ~~described~~ *of knowingly, negligently, or purposely* ~~in subsections (33), (37), and (58) of 45-2-101~~.

(2) In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental state of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).

(3) The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.

(4) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among the elements ~~thereof~~ *of the offense*, the prescribed mental state applies to each ~~such~~ element.

(5) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as ~~such~~ *an element*.

(6) A person's reasonable belief that ~~his~~ *the person's* conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order ~~which~~ *that* is not known to ~~him~~ *the person* and has not been published or otherwise made reasonably available to ~~him~~ *the person* and ~~he~~ *if the person* could not have acquired ~~such~~ *the* knowledge by the exercise of due diligence pursuant to facts known to ~~him~~ *the person*;

(b) ~~he~~ *the person* acts in reliance upon a statute ~~which~~ *that* later is determined to be invalid;

(c) he *the person* acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he *the person* acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret ~~such~~ *the* statute.

(7) If a person's reasonable belief is a defense under subsection (6), nevertheless ~~he~~ *the person* may be convicted of an included offense of which ~~he~~ *the person* would be guilty if the law were as ~~he~~ *the person* believed it to be.

(8) ~~Any~~ *A* defense based upon this section is an affirmative defense."

Section 10. Section 45-2-104, MCA, is amended to read:

"**45-2-104. Absolute liability.** A person may be guilty of an offense without having, as to each element ~~thereof~~ *of the offense*, one of the mental states ~~described in subsections (33), (37), and (58)~~ of *knowingly, negligently, or purposely* ~~45-2-101~~ only if the offense is punishable by a fine not exceeding $500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

Section 11. Section 50-20-109, MCA, is amended to read:

"**50-20-109. Control of practice of abortion.** (1) ~~No~~ *An* abortion may *not* be performed within the state of Montana:

(a) except by a licensed physician;

(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

(c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to preserve the life or health of the mother.

(2) An abortion under subsection (1)(c) may only be performed if:

(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by ~~him~~ *the physician,* setting forth in detail the facts upon which ~~he~~ *the physician* relies in making ~~such~~ *the* judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with ~~such~~ *the* judgment. The foregoing certification and concurrence ~~is~~ *are* not required if a licensed physician certifies *that* the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101~~(37)~~. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) ~~No~~ *A* physician, facility, or other person or agency ~~shall~~ *may not* engage in solicitation, advertising, or other form of communication ~~having~~ *that has* the purpose of inviting, inducing, or attracting ~~any~~ *a* person to come to ~~such~~ *the* physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) Violation of subsections (1), (2), and (3) ~~of this section~~ is a felony. Violation of subsection (4) ~~of this section~~ is a misdemeanor."

Section 12. Section 53-6-106, MCA, is amended to read:

"**53-6-106. Health care facility standards — definitions.** (1) For purposes of 53-6-106 through 53-6-108, the following definitions apply:

(a) "Department" means the department of social and rehabilitation services.

(b) "Health care facility" means a health care facility as defined in 50-5-101.

(2) The department and the department of health and environmental sciences may enter into agreements with appropriate federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

(3) The department of health and environmental sciences ~~shall~~ *may* adopt rules ~~prescribing~~ *as necessary to prescribe* minimum standards for the maintenance and operation of health care facilities~~, including standards~~. *Standards* for the quality of care provided by those facilities receiving reimbursement under the Montana medicaid program. ~~These standards~~ must

~~include, as a minimum,~~ *be consistent with* those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, (42 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations contained in *Title* 42 ~~CFR 430, et seq.~~ *of the Code of Federal Regulations*, as may be amended. The authority to prescribe standards and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department of health and environmental sciences pursuant to Title 50, chapter 5.

(4) Standards adopted by the department of health and environmental sciences may include but are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration, admission policies, patient care planning, training, medication, health services, rehabilitation services, and social services and activities."

Section 13. Section 53-6-107, MCA, is amended to read:

"**53-6-107. Sanctions — penalties.** (1) The department may suspend, terminate, or refuse to renew an agreement with a health care facility that has failed to meet the requirements for certification ~~adopted~~ for *or participation in* the Montana medicaid program under 53-6-106 through 53-6-108 *or other applicable law*. The department may also impose sanctions in the form of denial of medicaid payments for new admissions or other penalties *or sanctions* as described in 53-6-111 *or Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and any implementing federal regulations and policies.*

(2) The department may impose a civil monetary penalty, with interest not to exceed 12% ~~per annum~~ *a year*, for each day that a facility is substantially out of compliance with standards *or participation requirements provided by applicable state or federal laws, regulations, rules, or policies, including but not limited to standards* adopted by the department of health and environmental sciences under the authority of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and may be applied to the protection of the health and property of residents of health care facilities that the department finds deficient, including *but not limited to* payment for the costs of relocation of residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(3) The department may appoint temporary management personnel to oversee the operation of the facility and to ~~assure~~ *ensure* the health and safety of the facility's residents if there is a need for temporary management because:

(a) an orderly closure of the facility is necessary; or

(b) improvements are being made to bring the facility into compliance with applicable standards.

(4) The department shall, in the case of an emergency, close the facility or transfer residents in the facility to other facilities, or both."

Section 14. Section 53-6-108, MCA, is amended to read:

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"**53-6-108. Rules governing sanctions or remedies.** The department shall adopt rules governing the application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the ~~standards adopted by the department of health and environmental sciences or those federal standards established in 53-6-106~~ *applicable standards imposed by state or federal laws, regulations, rules, or policies* may not exceed ~~$1,000~~ *$10,000* for each day *that* the deficiency remains uncorrected. A health care facility aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6."

Section 15. Section 53-6-111, MCA, is amended to read:

"**53-6-111. Department charged with ~~general~~ administration *and supervision* of medical assistance *program — overpayment recovery — sanctions for fraudulent and abusive activities* — adoption of rules ~~to punish fraud~~.** (1) The department of social and rehabilitation services ~~is hereby authorized and empowered to~~ *may* administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in ~~chapter~~ *Title 53, chapter* 2, ~~of this title, as amended,~~ *and this chapter* and as ~~contemplated by the provisions of~~ *that is in compliance with* Title XIX of the ~~federal~~ Social Security Act.

(2) (a) The department is entitled to collect from a provider, and a provider is liable to the department for:

(i) the amount of a payment under this part to which the provider was not entitled, regardless of whether the incorrect payment was the result of department or provider error or other cause; and

(ii) the portion of any interim rate payment that exceeds the rate determined retrospectively by the department for the rate period.

(b) In addition to the amount of overpayment recoverable under subsection (2)(a), the department is entitled to interest on the amount of the overpayment at the rate specified in 31-1-106 from the date 30 days after the date of mailing of notice of the overpayment by the department to the provider, except that interest accrues from the date of the incorrect payment when the payment was obtained by fraud or abuse.

(c) The department may collect any amount described in subsection (2)(a) by:

(i) withholding current payments to offset the amount due;

(ii) applying methods and using a schedule mutually agreeable to the department and the provider; or

(iii) any other legal means.

(d) The department may suspend payments to a provider for disputed items pending resolution of a dispute.

(e) The fact that a provider may have ceased providing services or items under the medical assistance program, may no longer be in business, or may no longer

operate a facility, practice, or business does not excuse repayment under this subsection (2).

~~(2)~~*(3)* The department shall adopt rules establishing a system of ~~penalties and~~ sanctions applicable to providers ~~of medical assistance services and supplies~~ who engage in ~~fraudulent, abusive, or improper activities~~ *fraud and abuse.* ~~The~~ *Subject to the definitions in [section 1], the* department ~~shall define by rule those activities which are fraudulent, abusive, or improper~~ *rules must include but are not limited to specifications regarding the activities and conduct that constitute fraud and abuse.*

~~(3)~~*(4)* ~~The penalties or~~ *Subject to subsections (5) and (6), the* sanctions imposed *under rules adopted by the department under subsection (3) may* include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

~~(b) withholding of payments to offset previous improper payments to a provider;~~

~~(c) suspension of payments to a provider pending resolution of a dispute involving fraudulent, abusive, or improper activities;~~

~~(d)~~ suspension of participation in the program for a specified period of time; ~~and~~

~~(e)~~*(c)* permanent termination of participation in the medical assistance program*; and*

(d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties applicable to a specific activity, act, or omission involving intentional or knowing violation of specified standards.

~~(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent, abusive, or improper activities, together with interest at the rate set by 15-30-142 for tax deficiencies from the date of such payment.~~

(5) In all cases in which *the department may recover medicaid payments or impose* a ~~penalty or~~ sanction ~~may be imposed~~, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6. *This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to recovery of overpayment.*

(6) The remedies provided by this section are separate and cumulative to any other administrative, civil, or criminal remedies available under state or federal law, regulation, rule, or policy."

Section 16. Section 61-5-405, MCA, is amended to read:

"61-5-405. Offenses furnishing ground for suspension or revocation of license — return to licensing jurisdiction of abstracts of court records and reports of conviction. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, *the definition of felony as provided in* 45-2-101~~(21)~~, and 61-7-103, respectively.

(2) In addition to convictions mentioned ~~above~~ *in subsection (1),* the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if ~~such~~ *the* conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and

(b) three convictions of reckless driving committod within a period of 12 months (61-8-301).

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must he forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

Section 17. Codification instruction. (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [section 7].

Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. Effective dates. (1) [Sections 1 and 6 through 18 and this section] are effective on passage and approval.

(2) [Sections 2 through 5] are effective July 1, 1995.

Approved April 11, 1995

CHAPTER NO. 355

[SB 311]

AN ACT REVISING THE MONTANA SMALL BUSINESS LICENSING COORDINATION ACT; ESTABLISHING A PLAN FOR A BUSINESS REGISTRATION AND LICENSING SYSTEM; ESTABLISHING A BOARD OF REVIEW; AMENDING SECTION 30-16-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-16-103, MCA, is amended to read:

"30-16-103. **Definitions.** As used in this chapter, the following definitions apply:

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(1) "Board of review" means the body established to provide policy direction to the department in designing and recommending to the legislature the implementation of a plan for a business registration and licensing system.

~~(1)~~*(2)* "Department" means the department of commerce established in 2-15-1801.

~~(2)~~*(3) (a)* "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity.

(b) "License" does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, *and* Title 75, ~~and Title 80,~~ which are excluded from the coverage of this chapter.

~~(3)~~*(4)* "Person" means an individual, sole proprietorship, partnership, association, cooperative, *limited liability company*, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies.

(5) "Plan" means the business registration and licensing system document, which is under the administrative control of the department."

Section 2. Business registration and licensing plan — duties. (1) Before January 1, 1997, the department shall develop a plan:

(a) to establish an information service detailing all state licenses that are required in order to engage in business in Montana and the locations for applying for those licenses; and

(b) for a uniform method by which all state agencies may identify businesses.

(2) The method developed under subsection (1)(b) must include a phased approach to:

(a) complete a requirements analysis and specification document, including an overview systems design;

(b) complete a detailed requirements analysis, including a general systems design;

(c) establish interagency procedures for effectuating the plan;

(d) select those licenses that will be included in the initial implementation of the plan and the date and manner in which the licenses will be integrated into the plan; and

(e) complete a cost-benefit analysis of the final implementation of the plan.

(3) The department shall on January 2, 1997, recommend to the legislature any statutory or budgetary changes for implementing the plan.

(4) Each state agency shall review its licenses and recommend to the legislature on January 2, 1997, those licenses that should be eliminated or consolidated and justify those that should be retained.

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(5) The department shall designate a deputy director in charge of the plan whose duties include those of executive secretary of the board of review.

Section 3. Board of review. (1) There is a board of review. The board of review's duty is to provide policy direction to the department in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, commerce, health and environmental sciences, revenue, justice, social and rehabilitation services, and family services, the secretary of state, the director of the office of budget and program planning, the commissioner of labor and industry, the president of the senate or a designee, and the speaker of the house or a designee.

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter te:

(a) establish interagency policy and guidelines for the plan;

(b) review the findings, status, and problems of system operations and recommend courses of action;

(c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues; and

(d) recommend, in questionable cases, whether a particular license falls within the scope of this chapter.

(4) In developing a recommended plan for streamlined registration and licensing procedures, the board of review shall consider the experience gained from the consolidated employer registration process implemented by the department of revenue and the department of labor and industry.

Section 4. Participation of state agencies. The legislature directs full participation in the implementation of this chapter by:

(1) the departments of agriculture, commerce, health and environmental sciences, revenue, justice, labor and industry, social and rehabilitation services, and family services;

(2) the secretary of state;

(3) the public service commission; and

(4) other agencies as directed by the governor.

Section 5. Saving clause. [Section 2] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Section 7. Codification instruction. [Sections 2 through 4] are intended to be codified as an integral part of Title 30, chapter 16, and the provisions of Title 30, chapter 16, apply to [sections 2 through 4].

Section 8. Effective date. [This act] is effective July 1, 1995.

Approved April 11, 1995

CHAPTER NO. 356

[SB 321]

AN ACT INCREASING THE PERCENTAGE OF DISTRIBUTOR'S GASOLINE LICENSE TAX CREDITABLE TO THE SNOWMOBILE ACCOUNT; CLARIFYING PERCENTAGES OF THE ACCOUNT THAT MUST BE USED FOR ENFORCEMENT AND WEED CONTROL PURPOSES; AMENDING SECTION 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-201, MCA, is amended to read:

"60-3-201. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. Subject to that provision:

(a) 9/10 of 1% of all money must be deposited in the state park account;

(b) ~~23/64~~ *15/28* of 1% of all money must be deposited in a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% of all money must be deposited in an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% of all money must be deposited in the aeronautics revenue fund of the department of transportation under the provisions of 67-1-301.

(e) The remainder of the money must be used:

(i) by the department of transportation on the highways in this state selected and designated by the commission;

(ii) for collection of the license taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23, U.S.C., and the rules hy which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal comhustion engines, not less than 9/10 of 1% is used for propelling hoats on watorways of this state.

(5)*(a)* Money credited to the snowmobile account may he used only to develop and maintain facilities open to the general public at no admission cost ~~and~~, to promote snowmobile safety, *for enforcement purposes, and for the control of noxious weeds.* ~~and~~

(b) Of the amounts deposited in the snowmobile account:

(i) ~~10%~~ *13%* of the amount deposited ~~in the snowmobile account~~ must be used *by the department of fish, wildlife, and parks* to promote snowmobile safety *and education and to enforce snowmobile laws. Two-thirds of the 13% deposited must be used to promote snowmobile safety and education and one-third of the 13% deposited must be used for the enforcement of snowmobile laws.*

(ii) 1% of the amount deposited must be credited to the Montana noxious weed control trust fund.

(c) The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than ~~23/64~~ *15/28* of 1% is used for propelling *registered* snowmobiles ~~on public lands of~~ *in* this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, not less than 1/25 of 1% is used for propelling aircraft in this state."

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Section 2. Effective date. [This act] is effective July 1, 1995.

Approved April 11, 1995

CHAPTER NO. 357

[SB 341]

AN ACT GENERALLY REVISING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION PLAN; ESTABLISHING LIMITS ON ELIGIBILITY; PROHIBITING REFERRAL OF INDIVIDUALS TO THE PLAN FOR CERTAIN PURPOSES AND MAKING THOSE REFERRALS AN UNFAIR TRADE PRACTICE; MAKING OFFICERS AND DIRECTORS OF THE ASSOCIATION NOT INDIVIDUALLY LIABLE FOR CERTAIN ACTIONS; PROVIDING DEFINITIONS; DELETING PREGNANCY AS AN ASSOCIATION PLAN EXCLUSION; REVISING ASSOCIATION PLAN MINIMUM BENEFITS; ALLOWING THE ASSOCIATION BOARD AND THE COMMISSIONER OF INSURANCE TO ESTABLISH REFERRAL FEES; REQUIRING WAIVER OF PREEXISTING CONDITION EXCLUSIONS UNDER CERTAIN CIRCUMSTANCES; MODIFYING THE COMPOSITION OF THE ASSOCIATION BOARD; ADDING HEALTH SERVICE CORPORATIONS TO THE MANNER IN WHICH PREMIUMS ARE CALCULATED; AND AMENDING SECTIONS 27-1-732, 33-22-1501, 33-22-1503, 33-22-1504, 33-22-1512, 33-22-1515, 33-22-1516, AND 33-22-1521, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Limitations on eligibility. An individual who purchases a policy of insurance pursuant to 33-22-1516 is no longer eligible for insurance under an association plan and is subject to cancellation of enrollment if the individual:

(1) fails to pay the premium for the policy of insurance purchased pursuant to 33-22-1516;

(2) changes residence from Montana to another state;

(3) exceeds the lifetime maximum benefit provided in the association plan; or

(4) enrolls under another disability insurance policy or plan for health service benefits. However, the individual may maintain enrollment in the association plan during a waiting period applicable to preexisting conditions under the other policy or plan. If the individual maintains the association plan during the waiting period, the association plan may coordinate the benefits with the individual's new policy or plan and the benefits of the association plan are considered secondary to the benefits available under the individual's new policy or plan.

Section 2. Unfair referral to plan. An insurer, insurance producer, insurance broker, or third-party administrator may not refer an individual or an individual's dependent to the association plan or arrange for the individual or the individual's employee to apply to the association for enrollment under an

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association plan in order to separate the individual or the individual's dependent from coverage under a group health insurance contract, policy, or certificate obtained in connection with the individual's employment.

Section 3. Unfair referral as unfair trade practice. A referral made in violation of [section 2] is an unfair trade practice under this chapter.

Section 4. Section 27-1-732, MCA, is amended to read:

"27-1-732. Immunity of nonprofit corporation officers, directors, and volunteers. (1) ~~No~~ *An* officer, director, or volunteer of a nonprofit corporation is *not* individually liable for any action or omission made in the course and scope of ~~his~~ *the officer's, director's, or volunteer's* official capacity on behalf of the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.

(2) For purposes of this section, "nonprofit corporation" means:

(a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954; ~~or~~

(b) a corporation or organization ~~which~~ *that* is eligible for or has been granted by the department of revenue ~~tax-exempt~~ *tax-exempt* status under the provisions of 15-31-102*; or*

(c) the comprehensive health association created by 33-22-1503."

Section 5. Section 33-22-1501, MCA, is amended to read:

"33-22-1501. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Eligible person" means an individual who:

(a) is a resident of this state and applies for coverage under the association plan; ~~and~~

(b) unless the individual's eligibility is waived by the association, has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations, or has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, which has the effect of substantially reducing coverage from that received by a person considered a standard risk*; and*

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(c) is not eligible for any other form of disability insurance or health service benefits.

(5) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(6) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(7) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(8) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(9) "Medicare" means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

~~(9)~~*(10)* "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 5 years immediately preceding the filing of an application.

~~(10)~~*(11)* "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance."

Section 6. Section 33-22-1503, MCA, is amended to read:

"**33-22-1503. Comprehensive health association — mandatory membership.** (1) There is established a nonprofit legal entity, to be known as the Montana comprehensive health association, with participating membership consisting of all insurers, insurance arrangements, societies, and health service corporations licensed or authorized to do business in this state. The association is exempt from taxation under the laws of this state, and all property owned by the association is exempt from taxation.

(2) All participating members shall maintain their membership in the association as a condition for writing health care benefits policies or contracts in this stato. The association shall submit its articles, bylaws, and operating rules to the commissioner for approval.

(3) The association may:

(a) exercise the powers granted to insurers under the laws of this stato;

(b) sue or be sued;

(c) enter into contracts with insurers, administraters, similar associations in other states, or other persons for the performance of administrative functions;

(d) establish administrative and accounting procedures for the operation of the association;

(e) provide for the reinsuring of risks incurred as a result of issuing the coverages required by members of the association; ~~and~~

(f) provide for the administration by the association of policies that are reinsured pursuant to subsection (3)(e); *and*

(g) issue additional types of health insurance policies to provide optional coverage, including medicare supplemental health insurance."

Section 7. Section 33-22-1504, MCA, is amended to read:

"33-22-1504. Association board of directors — organization. (1) There is a board of directors of the association, consisting of eight individuals:

(a) one from each of the ~~seven~~ *five* participating members of the association with the highest annual premium volume of disability insurance contracts or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner; ~~and~~

(b) two members at large who must be participating members of the association, appointed by the commissioner; and

~~(b)~~*(c)* a member at large, appointed by the commissioner to represent the public interest, who shall serve in an advisory capacity only.

(2) Each of the seven board members representing the association members is entitled to a weighted average voto, in person or by proxy, based on the association member's annual Montana premium volume. However, a board member may not have more than 50% of the vote.

(3) Members of the board may be reimbursed from the money of the association for expenses incurred by them ~~due to~~ *because of* their service as board members but may not otberwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with 33-22-1513."

Section 8. Section 33-22-1512, MCA, is amended to read:

"33-22-1512. Association plan premium. The association shall establish the schedule of premiums to he charged eligihle persons for membership in the association plan. The schedule of premiums may not ~~be less than 150% or more than 400%~~ *exceed 200%* of the average premium rates charged by the five insurers *or health service corporations* with the largest premium amount of individual plans of major medical insurance in force in this state. The premium rates of the five insurers *or health service corporations* used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually ~~by all insurers~~ at the request of the commissioner. The association shall ~~utilize~~ *use* generally acceptable actuarial principles and structurally compatible rates."

Section 9. Section 33-22-1515, MCA, is amended to read:

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"33-22-1515. **Solicitation of eligible persons.** (1) The association, pursuant to a plan approved by the commissioner, shall disseminate appropriate information to the residents of this state regarding the existence of the association plan and the means of enrollment. Means of communication may include use of the press, radio, and television, as well as publication in appropriate state offices and publications.

(2) The association shall devise and implement means of maintaining public awareness of this part and shall administer this part in a manner ~~which~~ *that* facilitates public participation in the association plan.

(3) All licensed disability insurance producers may engage in the selling or marketing of the association plan. The lead carrier shall pay an insurance producer's referral fee of *at least* $25 to each licensed disability insurance producer who refers an applicant to the association plan, if the applicant is accepted. *The amount of the referral fee must be set by the board of directors of the association and is subject to the approval of the commissioner.* The referral fees must be paid by the lead carrier from money received as premiums for the association plan.

(4) An insurer, society, or health service corporation that rejects or applies underwriting restrictions to an applicant for disability insurance ~~must~~ *shall* notify the applicant of the existence of the association plan, requirements for being accepted in it, and the procedure for applying to it."

Section 10. Section 33-22-1516, MCA, is amended to read:

"33-22-1516. **Enrollment by eligible person.** (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant's residence in this state;

(b) the name, address, and age of spouse and children, if any, if they are to be insured;

(c) written evidence that he *the person* fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan.

(4) A person who obtains coverage pursuant to this section may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 5 years immediately preceding the filing of an application. ~~This subsection does not apply to a person who has had continuous coverage~~

~~under an individual, family, or group policy during the year immediately preceding the filing of an application and whose cancellation date was within 30 days prior to the date of submission of a certificate of eligibility to the lead carrier for nonelective procedures.~~ *The association shall waive any time period applicable to a preexisting condition exclusion for the period of time that an individual was covered under the following types of coverage if the coverage was continuous to a date not more than 30 days prior to submission of an application for coverage under the association plan:*

(a) an individual health insurance policy that includes coverage by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided by the association plan; or

(b) an employer-based health insurance benefit arrangement that provides benefits similar to or exceeding the benefits provided by the association plan.

~~(5) A change of residence from Montana to another state immediately terminates eligibility for renewal of coverage under the association plan.~~"

Section 11. Section 33-22-1521, MCA, is amended to read:

"**33-22-1521. Association plan — minimum benefits.** A plan of health coverage must be certified as an association plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting part 7), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) *(a)* The minimum benefits for an insured must, subject to the other provisions of this section, be equal to at least ~~80%~~ *50%* of the covered expenses required by this section in excess of an annual deductible that does not exceed $1,000 per person. The coverage must include a limitation of $5,000 per person on the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject to a maximum lifetime benefit, but ~~such~~ *the* maximums may not be less than $100,000.

(b) One association plan must be offered with coverage for 80% of the covered expenses provided in this section in excess of an annual deductible that does not exceed $1,000 per person. This association plan must provide a maximum lifetime benefit of $500,000.

(2) Covered expenses must be the usual and customary charges for the following *medically necessary* services and articles when prescribed by a physician or other licensed health care professional ~~provided for in 33-22-111~~ *and when designated in the contract*:

(a) hospital services;

(b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;

(c) use of radium or other radioactive materials;

(d) oxygen;

(e) anesthetics;

(f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

(g) services of a physical therapist;

(h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;

(i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of *durable* medical equipment, which ~~shall~~ *must* be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of $1,000;

(k) prosthetics, other than dental; ~~and~~

(l) services of a licensed home health agency, up to a maximum of 180 visits per year.*;*

(m) drugs requiring a physician's prescription that are approved for use in human beings in the manner prescribed by the United States food and drug administration, covered at 50% of the expense, up to an annual maximum of $1,000;

(n) medically necessary, nonexperimental transplants of the kidney, pancreas, heart, heart/lung, lungs, liver, cornea, and high-dose chemotherapy bone marrow transplantation, limited to a lifetime maximum of $150,000, with an additional benefit not to exceed $10,000 for expenses associated with the donor;

(o) pregnancy, including complications of pregnancy;

(p) newborn infant coverage, as required by 33-22-301;

(q) sterilization;

(r) immunizations;

(s) outpatient rehabilitation therapy;

(t) foot care for diabetics;

(u) services of a convalescent home, as an alternative to hospital services, limited to a maximum of 60 days per year; and

(v) travel, other than transportation by a licensed ambulance service, to the nearest facility qualified to treat the patient's medical condition when approved in advance by the insurer.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

~~(i) drugs requiring a physician's prescription;~~

~~(ii) services of a nursing home;~~

~~(iii)~~*(i)* home and office calls, except as specifically provided in subsection (2);

~~(iv)~~*(ii)* rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

~~(v)~~*(iii)* the first $20 of diagnostic x-ray and laboratory charges in each 14-day period;

~~(vi)~~*(iv)* oral surgery, except as specifically provided in subsection (2);

~~(vii)~~*(v)* that part of a charge for services or articles ~~which~~ *that* exceeds the prevailing charge in the locality where the service is provided; or

~~(viii)~~*(vi)* care that is primarily for custodial or domiciliary purposes ~~which~~ *that* would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition, *except as provided by subsection (2)*;

(iv) confinement in a private room to the extent *that* it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles;

~~(vi) organ transplants, including bone marrow transplants;~~

~~(vii)~~*(vi)* room and board for a nonemergency admission on Friday or Saturday;

~~(viii) pregnancy, except complications of pregnancy;~~

~~(ix)~~*(vii)* routine well baby care;

~~(x)~~*(viii)* complications to a newborn, unless no other source of coverage is available;

~~(xi)~~*(ix)* ~~sterilization or~~ reversal of sterilization;

~~(xii)~~*(x)* abortion, unless the life of the mother would be endangered if the fetus were carried to term;

~~(xiii)~~*(xi)* weight modification or modification of the body to improve the mental or emotional well-being of an insured;

~~(xiv)~~*(xii)* artificial insemination or treatment for infertility; or

~~(xv)~~*(xiii)* hreast augmentation or reduction."

Section 12. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 22, part 15, and the provisions of Title 33, chapter 22, part 15, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [section 3].

Approved April 11, 1995

CHAPTER NO. 358

[SB 378]

AN ACT ELIMINATING STATE REGULATION FOR CERTAIN MOTOR CARRIERS; TRANSFERRING THE SINGLE-STATE REGISTRATION PERMIT PROGRAM TO THE DEPARTMENT OF TRANSPORTATION; AMENDING SECTIONS 30-14-803, 39-2-304, 69-12-101, 69-12-102, AND 69-12-301, MCA; REPEALING SECTIONS 69-12-103 AND 69-12-405, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] grants rulemaking authority to the department of transportation. It is the intent of [section 1] to transfer tbe administration of the single-state registration system for interstate motor carriers from the public service commission to the department of transportation. At a minimum, the rules must address:

(1) the implementation of the single-state registration system currently administered by the public service commission; and

(2) imposition of a fee to defray the costs of administering the single-state registration permit.

Be it enacted by the Legislature of the State of Montana:

Section 1. Cooperative or reciprocal registration — filing of insurance — fee. (1) The department may enter into written agreements with agencies of other states to allow for the cooperative or reciprocal state registration of interstate or international motor carriers and authorize the agency of a participating stete to:

(a) issue interstate motor carrier registrations, stamps, and permits;

(b) accept filings of insurance, financial responsibility, and orders;

(c) collect and disburse fees;

(d) share and exchange information for audit, reporting, and enforcement purposes; and

(e) perform any other function that the department determines is justified to facilitate tlie cooperative or reciprocal registration.

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(2) (a) The department may impose a fee set by rule on an interstate or international motor carrier for the administration of this section. The fee must be paid on each motor vehicle operated by the motor carrier on the public highways of this state. At the time of initial registration and each succeeding year, at a time set by the department, the motor carrier shall pay the fee to the department.

(b) The department shall remit the fee to the state treasurer for deposit in the general fund.

Section 2. Identification of ownership of certain large motor vehicles. (1) (a) A person may not operate a motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds upon the highways of the stato unless there is displayed on both sides of each vehicle operated under its own power, either alone or in combination:

(i) the name or trade name and city and state of the person or corporation under whose jurisdiction the vehicle is being operated; or

(ii) the trade name and department of transportation number of the person or corporation under whose jurisdiction the vehicle is being operated.

(b) The display of name must be in letters in sharp contrast to the background and in size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is not in motion. The display must be kept and maintained to remain legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device that is prepared so that it meets the identification and legibility requirements of this section.

(2) This section does not apply to motor vehicles being:

(a) transported to dealers from point of manufacture;

(b) transported from one dealer to another;

(c) demonstrated to a prospective buyer; or

(d) delivered to a buyer from a dealer or a manufacturer.

Section 3. For hire defined. "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

Section 4. Motor carrier defined. "Moter carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by a court, operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis. The term does not include motor carriers regulated under Title 69, chapter 12.

Section 5. Rulemaking authority. The department of transportation may adopt and enforce rules for the administration of the single-state registration system, including the setting of a fee, and for other matters necessary to carry out the provisions of [sections 1 and 2].

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Section 6. Section 30-14-803, MCA, is amended to read:

"30-14-803. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a person who, other than through a franchise or marketing agreement, controls, is controlled by, or is under common control with any other person.

(2) "Cost of doing business", in the absence of proof of lesser cost, means 1% of the delivered cost of motor fuel for wholesale sales and 6% of the delivered cost of motor fuel for retail sales and in other cases includes all costs incurred in the conduct of business, including but not limited to:

(a) labor, including salaries of executives and officers;

(b) rent that is not less than the fair market value based on current use;

(c) interest on borrowed capital;

(d) depreciation;

(e) selling cost;

(f) maintenance of equipment;

(g) losses due to breakage or damage;

(h) credit card fees or other charges;

(i) credit losses; and

(j) all licenses, taxes, insurance, and advertising.

(3) "Customary discount for cash" means an allowance, whether part of a larger discount or not, made to a wholesaler or retailer when a person pays for motor fuel within a limited or specified time.

(4) "Delivered cost of motor fuel" means:

(a) for a distributor or retailer, the lower of the most recent cost of motor fuel to the distributor or retailer or the lowest replacement cost of motor fuel to the distributor or retailer within 5 days prior to the date of sale, in the quantity last purchased, whether within or before the 5-day period, less all trade discounts except customary discounts for cash plus transportation costs and ~~any~~ taxes that may be required by law if not already included in the invoice cost; or

(b) for a refiner, that refiner's posted rack price to the wholesale class of trade at tbe terminal used by the refiner to obtain the motor fuel, plus transportation costs and ~~any~~ taxes that may be required by law. If the refiner does not regularly sell to the wholesale class of trade at the terminal or does not post a terminal price, the refiner may use as its rack price the postod price of any other refiner at a terminal within the general trade area that has products readily available for sale to the wholesale class of trade.

(5) "Distributor" means a person engaged in the purchase of motor fuel for resale to a retail motor fuel outlet.

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(6) "Motor fuel" means gasoline, as defined in 15-70-201, alcohol blended with gasoline to produce gasohol, and special fuel as defined in 15-70-301.

(7) "Person" means an individual, a sole proprietorship, a partnership, a corporation, any other form of business entity, or ~~any~~ *an* individual acting on behalf of any of them.

(8) "Posted rack price" means the f.o.b. terminal price for a particular motor fuel that a refiner, producer, or person offers for sale or transfer to itself or ~~any~~ *a* related or unrelated person.

(9) "Refiner" means a person engaged in the production or refining of motor fuel, whether the production or refining occurs in this state or elsewhere, and includes ~~any~~ *an* affiliate of the person.

(10) "Retailer" means a person engaged in the business of selling motor fuel at a retail motor fuel outlet.

(11) "Retail motor fuel outlet" means a place of business where motor fuel is sold and delivered into the tanks of motor vehicles regardless of whether the income from the selling and delivery of the fuel is the primary source of revenue of that business.

(12) "Sale" means a transfer, gift, sale, offer for sale, or advertisement for sale in any manner or by any means of motor fuel, including a transfer of motor fuel by a person to ~~himself~~ *that person* or to ~~his~~ *an* affiliate.

(13) "Transfer price" means the price used by a person to transfer motor fuel to ~~himself~~ *that person* or to an affiliate for resale at a retail moter fuel outlet.

(14) "Transportation cost" means the actual cost of transportation of motor fuel ~~or, in the absence of proof of actual cost, the common carrier rates fixed by the public service commission for the immediate market area concerned~~.

(15) "Wholesaler" means a person engaged in the business of making sales at wholesale to a retail motor fuel outlet."

Section 7. Section 39-2-304, MCA, is amended to read:

"39-2-304. Lie detector tests prohibited — regulation of blood and urine testing. (1) A person, firm, corporation, or other business entity or *its* representative ~~thereof~~ may not require:

(a) as a condition for employment or continuation of employment, ~~any~~ *a* person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, ~~any~~ *a* person to submit to a blood or urine test, except for employment in:

(i) hazardous work environments;

(ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or

(iii) jobs involving the intrastate commercial transportation of persons or commodities by a commercial moter carrier or an employee subject to driver qualification requirements; and

(c) as a condition for continuation of employment, ~~any~~ *an* employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use, except that drug testing may be conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities.

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing.

(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide ~~him~~ *the person* the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests.

(4) Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the tost were not caused by alcohol consumption or illegal drug use.

(5) A person who violates this section is guilty of a misdemeanor.

(6) As used in this section:

(a) "commercial motor carrier" has the meaning provided in 69-12-101 *and in [section 4]*; and

(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state."

Section 8. Section 69-12-101, MCA, is amended to read:

"**69-12-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means the certificate of public convenience and necessity issued under this chapter.

(3) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

(4) "Corporation" means a corporation, company, association, or joint-stock association.

(5) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or

buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(6) "Garbage" means ashes, trash, waste, refuse, rubbish, organic or inorganic matter that is transported to a licensed transfer station, licensed landfill, licensed municipal solid waste incinerator, or licensed disposal well. The term does not include wastewater and waste tires.

(7) "Household goods" means any of the following:

(a) personal effects and property used or to be used in a dwelling when they are a part of the equipment or supply of the dwelling. The term does not include property moving from a factory or store unless the property is purchased by a householder for use in a dwelling and is transported at the request of the householder.

(b) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when those items are a part of the stock, equipment, or supply of the stores, offices, museums, institutions, hospitals, or other establishments. The term does not include the stock-in-trade of an establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving of the establishment or a portion of the establishment from one location to another.

(c) articles, including objects of art, displays, and exhibitions that because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods and other similar articles.

~~(6)~~*(8)* "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by ~~any~~ *a* court, operating motor vehicles upon ~~any~~ *a* public highway in this state for the transportation of ~~persons or property~~ *passengers, household goods, or garbage* for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. ~~The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.~~

~~(7)~~*(9)* "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

~~(8)~~*(10)* "Person" means an individual, firm, or partnership.

~~(9)~~*(11)* "Public highway" means a public street, road, highway, or way in this state.

~~(10)~~*(12)* "Railroad" means the movement of cars on rails, regardless of the motive power used.

~~(11)~~*(13)* "Recyclable" means any material diverted from the solid waste stream that can be reused *in the production of heat or energy or* as raw material for new products and for which markets exist."

Section 9. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) ~~motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products of agricultural commodities) if the motor vehicles are not used in carrying other property or passengers for compensation;~~

~~(b)~~ the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

~~(c)~~*(b)* the transportation by means of motor vehicles in the regular course of business of employees~~, supplies, and materials~~ by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees~~, supplies, and materials~~ in construction and production is concerned;

~~(d)~~*(c)* the transportation of ~~property~~ *household goods and garbage* by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas ~~thereof~~ *of a city, town, or village*, as determined hy the commission;

~~(e)~~*(d)* the transportation of newspapers, newspaper supplements, periodicals, or magazines;

~~(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;~~

~~(g)~~*(e)* motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

~~(h)~~*(f)* ambulances;

~~(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill;~~

~~(j)~~*(g)* the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

~~(k) the transportation of property by motor carrier as part of a continuous movement if that property, prior or subsequent to part of a continuous movement, has been or will be transported by an air carrier;~~

~~(l)~~*(h)* the operation of:

(i) a transportation system hy a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 44;

~~(m)~~*(i)* armored motor vehicles used ~~exclusively~~ for the transportation of ~~coins, currency, silver bullion, gold bullion, and other precious metals, precious stones,~~ valuahle paintings~~,~~ and other items of unusual value requiring special handling and security;

~~(n)~~*(j)* the transportation of ~~a commodity~~ *household goods or garbage* under an agreement between a motor carrier and an office or agency of the Unitod States government; or

~~(o)~~*(k)* the transportation of ~~handicapped~~ *disabled* or elderly persons provided by private, nonprofit organizations. As used in this subsection:

(i) ~~"handicapped"~~ *"disabled"* means an individual who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) "elderly" means a person 60 years of age or older; and

(iii) "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 10. Section 69-12-301, MCA, is amended to read:

"**69-12-301. Classification of motor carriers.** (1) Motor carriers are divided into four classes to be known as:

(a) Class A motor carriers;

(b) Class B motor carriers;

(c) Class C motor carriers; and

(d) Class D motor carriers.

(2) Class A moter carriers include all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

(3) Class B motor carriers include all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale and not between fixed termini or over a regular route.

(4) Class C motor carriers include all motor carriers ~~operating motor vehicles for distributing, delivering, or collecting wares, merchandise, or commodities or transporting persons,~~ where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking.

(5) Class D motor carriers include all motor carriers operating motor vehicles transporting ~~(including pickup and disposal) ashes, trash, waste, refuse, rubbish, garbage, organic and inorganic matter, and recyclables~~ *garbage*."

Section 11. Codification instruction. (1) [Sections 1, 2, and 5] are intended to be codified as an integral part of Title 61, chapter 3, part 7, and the provisions of Title 61, chapter 3, part 7, apply to [sections 1, 2, and 5].

(2) [Section 3] is intended to be codified as an integral part of Title 61, chapter 1, part 5, and the provisions of Title 61, chapter 1, part 5, apply to [section 3].

(3) [Section 4] is intended to be codified as an integral part of Title 61, chapter 1, part 3, and the provisions of Title 61, chapter 1, part 3, apply to [section 4].

Section 12. Repealer. Sections 69-12-103 and 69-12-405, MCA, are repealed.

Section 13. Effective date. [This act] is effective July 1, 1995.

Approved April 11, 1995

CHAPTER NO. 359

[SB 408]

AN ACT PROVIDING THAT THE STATE LOTTERY DIRECTOR MAY ENTER INTO CONTRACTS FOR MATERIALS, EQUIPMENT, SUPPLIES, AND SERVICES; EXEMPTING THE STATE LOTTERY FROM CERTAIN LAWS REGULATING CONTRACTS WITH THE STATE; AMENDING SECTIONS 18-4-132, 18-8-103, AND 23-7-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-7-211, MCA, is amended to read:

"23-7-211. Powers and duties of director. (1) The director shall:

(a) administer the operation of the state lottery in accordance with this chapter and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the operation of the state lottery;

(c) license lottery ticket or chance sales agents and suspend or revoke licenses pursuant to this chapter and commission rules; and

(d) maintain, with the assistant director for security, the security of the state lottery.

(2) (a) With the concurrence of the commission or pursuant to commission rules, the director may enter into contracts for materials, equipment, and supplies to be used in the operation of the state lottery, for the design and installation of games, for consultant services, ~~and~~ for promotion of the lottery, *for the sale of tickets and chances, and for other services.* ~~All contracts must be made in accordance with state law~~ *The state shall provide for management, security, and internal audit control.* ~~A contract is not legal or enforceable that~~

~~provides for the management of the state lottery or for the entire operation of its games by any private person or firm.~~

(b) When a contract is awarded, a performance bond satisfactory to and in an amount determined by the commission and executed by a surety company authorized to do business in this stato or otherwise secured in a manner satisfactory to the commission must be delivered to the commission. The requirements for this bond must be at least as stringent as those stated in 18-4-312(4)."

Section 2. Section 18-4-132, MCA, is amended to read:

"**18-4-132. Application.** (1) Except as provided in 18-4-313, which applies retroactively to telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984.

(2) Tbis chapter applies to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any contract; but this chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to tbe disposal of state supplies. Nothing in this chapter or in rules adopted thereunder prevents any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to construction contracts.

(4) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised hy student activity fees designated for use by the student associations of the university system.

(5) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000."

Section 3. Section 18-8-103, MCA, is amended to read:

"**18-8-103. Exemptions.** This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or health care providers;

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;

(4) consulting actuaries to the public retirement boards or the state compensation insurance fund; ~~or~~

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(5) private consultants employed hy the student associations of the university system with money raised from student activity fees designated for use by those student associations; *or*

(6) private consultants employed by the Montana state lottery."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 11, 1995

CHAPTER NO. 360

[HB 111]

AN ACT CLARIFYING THE ARREST AUTHORITY OF DEPARTMENT OF TRANSPORTATION MOTOR CARRIER SERVICES DIVISION EMPLOYEES WHO ARE APPOINTED AS PEACE OFFICERS; AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION TO APPOINT EMPLOYEES OF ANOTHER STATE TO ENFORCE MONTANA GROSS VEHICLE WEIGHT LAWS AT JOINT WEIGH STATIONS; AND AMENDING SECTIONS 61-12-201, 61-12-206, AND 61-12-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-201, MCA, is amended to read:

"61-12-201. Appointment of employees *and out-of-state personnel* as peace officers. *(1)* The director of transportation may appoint employees of the department as peace officers to carry out this part. The employees appointed may include only those employees of the department who are employed in the administration of the motor carrier services functions of the department *and employees of other states. Out-of-state personnel may be appointed only for the purpose of enforcing gross vehicle weight laws at joint weigh station facilities.* Each employee appointed must be issued a certificate of appointment and execute an oath of office, which must be entered into the records of the department.

(2) The department may enter into joint weigh station agreements with other states. If the department enters into a joint weigh station agreement with another state, the department may not reduce staff levels in the motor carrier services division of the department as a result of the agreement but may reassign staff. However, this subsection does not apply to a reduction in force for the department as a whole."

Section 2. Section 61-12-206, MCA, is amended to read:

"61-12-206. Offenses for which arrest authorized. ~~(1)~~ Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions only:

~~(a)~~*(1)* part 1, chapter 10, of this title;

~~(b)~~*(2)* part 3, chapter 4, of this title;

~~(c)~~*(3)* sections 15-24-201 through 15-24-205;

~~(d)~~*(4)* Title 15, chapter 70, parts 2 and 3;

~~(e)~~*(5)* sections 15-71-101 through 15-71-105;

(6) section 44-1-1005 and safety rules adopted under that section;

~~(f)~~*(7)* section 61-3-502(1);

~~(g)~~*(8)* sections 61-10-201, 61-10-203, 61-10-206, 61-10-209, and 61-10-211 through 61-10-215;

~~(h)~~*(9)* sections 61-10-222 through 61-10-224;

~~(i)~~*(10)* sections 61-10-231 through 61-10-233*; and*

(11) Title 69, chapter 12.

~~(2) These employees may not arrest for violations other than specified in this section.~~"

Section 3. Section 61-12-208, MCA, is amended to read:

"61-12-208. **Duty upon making an arrest — power to fix and accept bail.** ~~Such employees~~ *Employees appointed under 61-12-201*, upon making an arrest, shall deliver to the offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to report to the nearest justice of the peace. The employee may accept a deposit for appearance justifiable for the offense charged. The person *who is* arrested may be detained for a reasonable time for the purpose of issuing the notice *or of awaiting the arrival of another peace officer who has been called to the scene, or the person may be transported, as provided in 46-7-101.* If the employee accepts bail, ~~he~~ *the employee* shall give a signed receipt te the offender, setting forth the amount received. The employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the employee for the amount of bail money delivered. After the filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further appearance bail bond."

Approved April 12, 1995

CHAPTER NO. 361

[HB 176]

AN ACT REQUIRING ALL COURTS OF ORIGINAL JURISDICTION TO IMPOSE A USER SURCHARGE IN CRIMINAL, CIVIL, AND PROBATE CASES; PROVIDING THAT THE SURCHARGE BE USED FOR STATE FUNDING OF COURT INFORMATION TECHNOLOGY; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. User surcharge for court information technology — exception. (1) Except as provided in subsection (2), all courts of original jurisdiction shall impose:

(a) on a defendant in criminal cases, a $5 user surcharge upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail;

(b) on the initiating party in civil and probate cases, a $5 user surcharge at the commencement of each action, proceeding, or filing; and

(c) on each defendant or respondent in civil cases, a $5 user surcharge upon appearance.

(2) If a court determines that a defendant in a criminal case or determines pursuant to 25-10-404 that a party in a civil case is unable to pay the surcharge, the court may waive payment of the surcharge imposed by this section.

(3) The surcharge imposed by this section is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

(4) The amounts collected under this section must be forwarded to the state treasurer and deposited in the account established in [section 2] for state funding of court information technology.

Section 2. Account established for court information technology. (1) There is an account in the state special revenue fund for state funding of court information technology.

(2) Money collected pursuant to [section 1] must be deposited in this account.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 3, and the provisions of Title 3 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 3, chapter 5, part 9, and the provisions of Title 3, chapter 5, part 9, apply to [section 2].

Section 4. Effective date — termination date. (1) [This act] is effective July 1, 1995.

(2) [This act] terminates June 30, 1999.

Approved April 12, 1995

CHAPTER NO. 362

[HB 184]

AN ACT REVISING THE LICENSURE OF PSYCHOLOGISTS; DELETING THE RESIDENCY REQUIREMENT FOR APPLICANTS; PRESCRIBING A MAXIMUM OF SUPERVISED POSTGRADUATE ACTIVITY TO BE ALLOWED IN MEETING THE EXPERIENCE REQUIREMENT; ALLOWING THE ADMISSION THROUGH ENDORSEMENT OF LICENSED PSYCHOLOGISTS FROM OTHER STATES; DELETING THE PROVISION

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REGARDING RECIPROCITY IN ADMITTING LICENSEES FROM OTHER STATES; ALLOWING THE LICENSURE OF FOREIGN-TRAINED APPLICANTS; PROVIDING FOR THE LICENSURE OF SENIOR PSYCHOLOGISTS; AND AMENDING SECTIONS 37-17-302, 37-17-304, AND 37-17-308, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-17-302, MCA, is amended to read:

"37-17-302. Application — qualifications. (1) Application for examination for ~~licensing~~ *licensure as* a psychologist ~~shall~~ *must* be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that ~~he~~ *the person*:

(a) ~~is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed;~~

~~(b)~~ is ~~at least~~ 18 years of age *or older*;

~~(c)~~ *(b)* is of good moral character;

~~(d)~~ *(c)* (i) has received a doctoral degree in clinical psychology from an accredited college or university having an appropriate graduate program approved by the American psychological association;

(ii) has received a doctoral degree in psychology from an accredited college or university not approved by the American psychological association and has successfully completed a formal graduate retraining program in clinical psychology approved by the American psychological association; or

(iii) has received a doctoral degree in psychology from an accredited college or university~~,~~ and ~~whose~~ *has completed a* course of studies *that* meets minimum standards specified in rules by the board; and

~~(e)~~ *(d)* has completed at the time of application a minimum of 2 years of supervised experience in the practice~~, research, or teaching~~ of psychology. One year of this experience ~~shall~~ *must* be postdoctoral *but may not include more than 6 months of supervised research, teaching, or a combination of both.*"

Section 2. Section 37-17-304, MCA, is amended to read:

"37-17-304. Admission of licensees from other states *or jurisdictions*. A license without written examination may be issued to a psychologist licensed or certified in another state ~~where the licensing or certification requirements are substantially equivalent to the requirements of this chapter or to a psychologist who is a diplomate in good standing of the American board of professional psychology~~ *or Canadian jurisdiction upon meeting criteria or entering into an agreement established by the board.*"

Section 3. Section 37-17-308, MCA, is amended to read:

"37-17-308. **Department to publish list of licensees.** The department shall publish yearly a list of psychologists licensed under this chapter. This list ~~shall~~ *must* contain names, ~~and~~ addresses, and other information the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter~~, place a copy on file in the secretary of state's office, and furnish copies to the public on request~~."

Section 4. Foreign-trained applicants. The transcripts of a foreign-trained applicant for licensure as a psychologist must be evaluated by a board-approved agency that reviews credentials. Upon receipt of this evaluation, the board shall determine whether the number of academic credits awarded and academic areas studied meets equivalent educational standards for a doctoral degree in clinical psychology established by a graduate program approved by the American psychological association.

Section 5. Licensure of senior psychologists. The board may issue a senior psychologist's license to an applicant who:

(1) has been licensed to practice psychology in a United States or Canadian jurisdiction for at least 20 years if the license required a doctoral degree;

(2) provides documentation demonstrating at least 10 years of clinical experience in the last 15 years prior to filing the application;

(3) has not been subject to any disciplinary action during the entire period of licensure;

(4) has passed Montana's oral examination; and

(5) has submitted an application and paid the fees required in this chapter and in the rules of the board.

Section 6. Codification instruction. [Sections 4 and 5] are intended to be codified as an integral part of Title 37, chapter 17, and the provisions of Title 37, chapter 17, apply to [sections 4 and 5].

Section 7. Coordination instruction. If [this act] and House Bill No. 518 are both passed and approved and if House Bill No. 518 repeals 37-17-304, then the repeal of 37-17-304 in House Bill No. 518 is void.

Approved April 12, 1995

CHAPTER NO. 363

[HB 194]

AN ACT AMENDING THE REQUIREMENT FOR DESIGNING, ERECTING, AND MAINTAINING WELCOME AND FAREWELL SIGNS ON HIGHWAYS AT MONTANA'S BORDERS; AND AMENDING SECTION 60-2-218, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-218, MCA, is amended to read:

"60-2-218. Welcome and farewell signs — design, erection, maintenance — completion date — exceptions ~~—use of existing signs.~~ (1) ~~(a)~~ The department shall:

~~(i)~~*(a)* design, erect, and maintain welcome and farewell signs within Montana at the nearest practical location to the border of the stato where each federal-aid interstate highway, except interstato 90 at the Montana-Idaho border in Mineral County, and each federal-aid primary highway enters or leaves Montana;

~~(ii)~~*(b)* select locations for the signs consistent with the requirements for public safety and maximum visibility and with all applicable provisions of federal law; and

~~(iii)~~*(c)* subject to the exception in *this* subsection (1)~~(a)~~, complete the construction and erection of welcome and farewell signs:

~~(A)~~*(i)* on the four interstate higbways and on highway 212 in Carter County before July 1, 1991; and

~~(B)~~*(ii)* on the remainder of tbe primary highways at the earliest possible date.

~~(b)~~*(2)* However, nothing in this ~~subsection (1)~~ *section* prevents the department from constructing and erecting signs on tbe remaining primary highways before July 1, 1991.

~~(2) Except as provided in subsection (3), the welcome and farewell signs must be:~~

~~(a) (i) on the interstate system, approximately 20 feet high and 38 feet wide; and~~

~~(ii) on the primary system, approximately 8 feet high and 16 feet wide;~~

~~(b) of substantial timber and plank construction, similar to those shown in the design dated July 16, 1962, and formerly in use at Montana's borders, with the inscriptions:~~

~~(i) at each entrance to Montana:~~

~~"The Gate is Open~~
~~Welcome to~~
~~MONTANA"; and~~

~~(ii) at each exit from Montana:~~

~~"So Long!~~
~~Come Again to~~
~~MONTANA".~~

~~(3) Notwithstanding the provisions of subsection (2), welcome or farewell signs in place on the interstate highway system on April 24, 1989, and required to be replaced under the provisions of this section must be utilized at locations on the primary highway system as long as those signs remain serviceable. When those signs are no longer serviceable, they must be replaced on the primary systems with signs described in subsection (2).~~"

Approved April 12, 1995

CHAPTER NO. 364

[HB 248]

AN ACT GENERALLY REVISING LAWS PERTAINING TO DRIVER LICENSING AND EXAMINATION; CLARIFYING ELIGIBILITY REQUIREMENTS FOR DRIVER LICENSING; CREATING A COOPERATIVE DRIVER TESTING PROGRAM IN CONJUNCTION WITH A STATE-APPROVED HIGH SCHOOL TRAFFIC EDUCATION COURSE; EXTENDING THE TERM OF A DRIVER'S LICENSE IN CERTAIN CIRCUMSTANCES; PROVIDING FOR ELECTRONIC TRANSFER OF DRIVING RECORDS; ELIMINATING MAIL RENEWALS AND PROFILE PHOTOGRAPHS FOR MINORS; ADJUSTING THE DISPOSITION OF LICENSE FEES; AMENDING SECTIONS 61-5-105, 61-5-106, 61-5-107, 61-5-110, 61-5-111, AND 61-5-121, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-105, MCA, is amended to read:

"**61-5-105. Who may not be licensed.** The department ~~shall~~ *may* not issue ~~any~~ *a* license ~~hereunder~~ *under this chapter* to ~~any~~ *a* person:

(1) who is under ~~the age of~~ 16 years~~, with these exceptions~~ *of age unless*:

(a) ~~The department may issue a driver's license to a~~ *the* person ~~who~~ is *at least* 15 years of age ~~if he~~ *and* has passed a driver's education course approved by the department and the superintendent of public instruction.*; or*

(b) ~~The department may issue a restricted license to any~~ *the* person ~~who~~ is at least 13 years of age *and, because of individual hardship, to be determined by the department, needs a restricted license*;

(2) whose license ~~has been~~ *or driving privilege is currently* suspended ~~during the suspension,~~ or ~~to any person whose license has been~~ revoked~~, except as provided in 61-5-208~~ *in this or any state*;

(3) who is ~~an habitual drunkard, or is~~ addicted to the use of *alcohol or* narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, *at the time of application,* has not ~~at the time of application~~ been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination~~, unless the person shall have successfully passed such examination~~;

(6) who ~~is~~ *has not deposited proof of financial responsibility when* required under the provisions of ~~the motor vehicle financial responsibility laws of this~~

~~state to deposit proof of financial responsibility and who has not deposited such proof~~ *chapter 6 of this title; or*

(7) who ~~is suffering from any form of epileptic type seizures or similar disorders~~ *has any condition* characterized by lapse of consciousness or control, either temporary or prolonged, ~~which~~ *that* is or may become chronic~~; provided that~~. *However,* the department may in its discretion issue a license to a *an otherwise qualified* person suffering from ~~epileptic type seizures or similar disorder characterized by lapse of consciousness or control,~~ *a condition* if ~~otherwise qualified to be licensed to drive a motor vehicle, when~~ the afflicted ~~person can show through a written report from his~~ *person's* attending physician *attests in writing* that ~~he has not experienced an epileptic type seizure or similar disorder characterized by lapse of consciousness or control for a sufficient period and that the condition is stabilized as attested to by said physician~~ *the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations.*"

Section 2. Section 61-5-106, MCA, is amended to read:

"**61-5-106. Instruction and** ***permits*** **— traffic education** ***learner lieenses and*** **permits and — temporary licenses.** (1) A *The department may issue an instruction permit to a* person satisfying the age requirements specified in 61-5-105(1) ~~may apply to the department for an instruction permit. The department may in its discretion,~~ after the applicant has successfully passed ~~all parts of the examination other than the driving test, issue to the applicant an~~ *the knowledge test and the vision examination as provided in 61-5-110. An* instruction permit ~~that~~ entitles the ~~applicant~~ *permittee,* while ~~having the permit~~ in ~~the applicant's~~ immediate possession *of the permit and accompanied by a licensed driver seated beside the permittee,* to drive a motor vehicle upon the public highways for a period of 6 months ~~when accompanied by a licensed driver who is occupying a seat beside the driver~~ *from the date the fees required in 61-5-111 are paid.*

(2) ~~In addition, the~~ *The* department may issue ~~an instruction permit~~ *a traffic education learner license* to any person who is at least 14 1/2 years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction. ~~An instruction permit must be restricted to the operation of a motor vehicle~~ *A traffic education learner license entitles the licensee to operate a motor vehicle* only when accompanied by an approved instructor or licensed parent or guardian and may be ~~further~~ restricted to specific times or areas.

~~(2)~~*(3) (a)* ~~The department upon receiving proper application may in its discretion~~ *An instructor of a traffic education program approved by the department and by the superintendent of public instruction may* issue a traffic education permit *that is* effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the department ~~even though the applicant has not reached the legal age to be eligible for a driver's license~~ *and who meets the age requirements specified in 20-7-503.* ~~The permit entitles the permittee, when the permittee has a permit in the permittee's~~

(b) When in immediate possession *of the traffic education permit,* ~~to~~ *the permittee may* operate ~~only~~ on a designated highway or within a designated area*:*

(i) a motor vehicle ~~only~~ when an approved instructor is ~~occupying a seat~~ *seated* beside the permittee*;* or

(ii) a motorcycle ~~or~~ quadricycle ~~only~~ when under the immediate and proximate supervision of an approved instructor.

~~(3)~~*(4)* The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting the applicant te operate a motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The *temporary driver's* permit must be in the permittee's immediate possession while operating a motor vehicle, and it is invalid when the applicant's license has been issued or for good cause has been refused.

~~(4)~~*(5)* The department may in its discretion issue a temporary commercial driver's license to an applicant permitting the applicant to operate a commercial motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial driver's license. The temporary license must be in the applicant's immediate possession while operating a commercial moter vehicle and is invalid when the applicant's license has been issued or for good cause has been refused."

Section 3. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) ~~Every~~ *Each* application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. ~~Every~~ *Each* application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attompts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department sball accept the registration and forward the form to the election administrator.

(2) ~~Every~~ *Each* application must state the full name, date of birth, sex, and residence address of the applicant, must briefly describe the applicant, and must state whether*:*

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country~~, and whether~~*;*

(b) any commercial operator license has ever been suspended or revoked~~,~~*;* or ~~whether~~

(c) an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

(3) ~~Whenever~~ *When* application is received from an applicant previously licensed by ~~any other~~ *another* jurisdiction, the department shall request a copy

of the applicant's driving record from the previous licensing jurisdiction. *The driving record may be transmitted manually or by electronic medium.* When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

Section 4. Section 61-5-110, MCA, is amended to read:

"**61-5-110. Examination of applicants — *cooperative driver testing programs.*** (1) The department shall examine every applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, *a knowledge test examining* the applicant's ability to read and understand highway signs ~~regulating, warning, and directing traffic,~~ *and* the applicant's knowledge of the traffic laws of this state, and ~~must include an actual demonstration of~~ *a road test demonstrating the applicant's* ability to exercise ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The examination for the commercial driver's license may include additional items. *The knowledge test or road test, or both, may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (2).*

(2) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education and who agrees to:

(a) administer standardized knowledge and road tests required by the department to students participating in the district's high school traffic education courses:

(b) certify the test results to the department; and

(c) comply with regulations of the department and the superintendent of public instruction.

~~(2)~~*(3)* Within 90 days of receipt of an application for a commercial driver's license, the department shall give an examination to the applicant in the county where the applicant resides.

~~(3)~~*(4)* Except as otherwise provided by law, a resident who has a valid driver's license issued by another state may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees, *successful completion of a vision examination, and, if requested by the examiner, completion of either the knowledge test or road test, or both.* A ~~resident who obtains a Montana driver's license in this manner is exempt from the written examination and actual demonstration of the operation of a motor vehicle provided for in subsection (1) but is not exempt from the eyesight test or, in the case of commercial drivers,~~ *In addition, a resident surrendering a commercial driver's license issued by another state shall successfully complete* any examination required by federal regulations *before being issued a commercial driver's license by the department.*"

Section 5. Section 61-5-111, MCA, is amended to read:

"61-5-111. **Renewals, expirations, and fees for licenses, permits, and endorsements — notice of expiration.** (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In ~~those~~ areas ~~where~~ *in which* the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may, *in its discretion,* ~~not~~ appoint an agent *to sell receipts*. The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to ~~every~~ *each* qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department~~, except as provided in subsection (4)~~; a distinguishing number issued to the licensee; the full name, date of birth, ~~residence~~ *Montana mailing* address, and a brief description of the licensee; and either ~~a facsimile of the signature of the licensee or a space upon which the licensee shall write~~ the licensee's signature ~~in pen and ink immediately upon receipt of the license~~ *or a digital reproduction of the licensee's signature*. A license is not valid until it is signed hy the licensee.

(2) (a) ~~The~~ *When a person applies for renewal of a driver's license, the* department shall~~, when any person applies in person for renewal of a driver's license,~~ test the applicant's eyesight and ~~may also~~, in the department's discretion, *may* have the applicant ~~demonstrate~~ *complete a road test demonstrating* the applicant's ~~physical~~ ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle.

(b) In the case of a commercial driver's license, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within *6 months before or* 3 months ~~of~~ *after* the expiration of the person's license.

~~(d) The department shall mail a driver's license renewal notice to a person no earlier than 60 days and no later than 30 days prior to the expiration date of the person's license.~~

~~(e) (i) A person may renew a driver's license by mail, without the tests provided for in subsection (2)(a), for a 4-year period, provided that the person:~~

~~(A) has not accumulated five or more points on the person's driving record for the 4 years immediately preceding the expiration date; and~~

~~(B) submits a sworn affidavit on a form prescribed by the department, attesting to the person's physical and mental ability to safely operate a motor vehicle.~~

~~(ii) The department may not renew a driver's license by mail for more than one renewal period. At the expiration of the mail renewal period, a person shall apply in person for a renewal.~~

~~(iii) A person who holds a probationary or restricted license may not renew the license by mail.~~

(d) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a

commercial driver's license if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license.

(3) *(a)* A *Except as provided in subsections (3)(b) and (3)(c), a* license expires on the anniversary of the ~~date of birth of the licensee 4~~ *licensee's birthday 8* years or less after the date of issue *or on the licensee's 75th birthday, whichever occurs first. The department may adopt rules to stagger the implementation of the conversion to an 8-year license cycle over a 4-year period.*

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

~~(4) A license issued to a person under the age of 21 years must contain a photograph of the licensee's profile.~~

~~(5)~~*(4)* Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more tban 12 months~~,~~ when its records disclose that the licensee, subsequent to the issuance of the license, has been gnilty of careless or negligent driving. ~~Upon renewal the department may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form must be issued subject to other provisions of the laws of Montana.~~

~~(6)~~*(5)* It is unlawful for any person to have in the person's possession or under the person's control more than one *valid* Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle ~~until~~ *unless* the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle ~~until~~ *unless* the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial driver's license".

~~(7)~~*(6)* Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — $4 per year or fraction of a year;

(b) motorcycle endorsement — 50 cents per year or fraction of a year;

(c) commercial driver's license:

(i) interstate — $5 per year or fraction of a year;

(ii) intrastate — $3.50 per year or fraction of a year.

~~(8)~~*(7)* The holder of a *valid* chauffeur's license may convert *or renew* the chauffeur's license to a commercial driver's license by paying the appropriate fee ~~covering the remainder of the life of the license~~ and complying with the requirements established by the department.

~~(9) The holder of a valid chauffeur's license who is renewing and wishes to obtain a commercial driver's license may do so upon paying the appropriate fees and complying with the requirements established by the department.~~

~~(10) A person may not renew a driver's license by mail until the person has received a digital license issued by the department. As used in this subsection, the term "digital license" means a license having a computer-imaged photograph and signature.~~"

Section 6. Section 61-5-121, MCA, is amended to read:

"**61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses ~~provided for in 61-5-111(7)(a)~~, motorcycle endorsements ~~provided for in 61-5-111(7)(b)~~, *and* commercial driver's licenses, provided for in 61-5-111~~(7)(c)~~, and *from* duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of ~~25%~~ *16.7%* of each driver's license fee and *25%* of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of ~~3.75%~~ *2.5%* of each driver's license fee and *3.75%* of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of ~~5%~~ *3.34%* of each motercycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the general fund.

(d) The amount of ~~8.75%~~ *5.85%* of each driver's license fee and *8.75%* of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition te the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of ~~62.5%~~ *74.95%* of each driver's license fee and *62.5%* of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of ~~3.75%~~ *2.5%* of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of ~~95%~~ *63.46%* of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund, *and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.*

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit te the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and *in* the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

Section 7. Applicability. [This act] applies to a person who, on or after October 1, 1995, applies for a Montana driver's license or who seeks to renew a Montana driver's license that expires on or after October 1, 1995.

Section 8. Effective dates. (1) [Section 4 and this section] are effective on passage and approval.

(2) [Sections 1 through 3 and 5 through 7] are effective October 1, 1995.

Section 9. Coordination instruction. If [this act] is passed and approved, then subsection (2) of 61-5-110 in [sections 4 and 5] of Senate Bill No. 34 (Chapter 53, Laws of 1995) is void.

Section 10. Termination. [Section 6] terminatos September 30, 1999.

Approved April 12, 1995

CHAPTER NO. 365

[HB 287]

AN ACT PROVIDING THAT THE DEPARTMENT OF REVENUE IS A JUDGMENT LIEN CREDITOR; PROVIDING THAT THE PRIORITY DATE FOR A TAX LIEN CREATED BY A WARRANT FOR DISTRAINT IS THE DATE THE TAX WAS DUE; PROVIDING THAT THE ACCELERATED PRIORITY DATE ON REAL OR PERSONAL PROPERTY CREATED BY A WARRANT FOR DISTRAINT IS NOT VALID AGAINST PURCHASERS, CERTAIN HOLDERS OF SECURITY INTERESTS, JUDGMENT LIEN CREDITORS, AND OTHER LIENHOLDERS WHOSE INTEREST IS RECORDED PRIOR TO THE FILING OF THE WARRANT FOR DISTRAINT; AMENDING SECTION 15-1-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-701, MCA, is amended to read:

"15-1-701. Warrant for distraint. (1) A warrant for distraint is an order, under the official seal of the department of revenue or of the department of transportation, directed to a sheriff of a county of Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, *the department is a judgment lien creditor,* and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced.

(3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant. *The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.*

(4) The accelerated priority date provided for in (3) is not valid against purchasers, holders of security interests, judgment lien creditors, and those lienholders identified in Title 71, chapter 3, parts 3 through 15, whose interest is recorded prior to the filing of the warrant for distraint."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to warrants for distraint filed after December 31, 1995.

Approved April 12, 1995

CHAPTER NO. 366

[HB 301]

AN ACT RELATING TO HEALTH CARE FACILITIES; PROVIDING DEFINITIONS; CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY REQUIRE WRITTEN EVIDENCE FOR LICENSURE; REQUIRING NOTICE TO THE DEPARTMENT THAT A HEALTH CARE FACILITY IS READY TO BE INSPECTED; REMOVING THE REQUIREMENT FOR AN ANNUAL PHYSICIAN'S STATEMENT AND VISIT FOR PLACEMENT OF A RESIDENT IN A CATEGORY A PERSONAL-CARE FACILITY; DELETING MINIMUM RESIDENT REQUIREMENTS FOR CATEGORY A PERSONAL-CARE FACILITIES; PROVIDING REQUIREMENTS FOR HOME INFUSION THERAPY SERVICES, ADULT FOSTER CARE HOMES, AND FOR RETIREMENT HOMES; AMENDING SECTIONS 27-6-103, 50-4-102, 50-5-101, 50-5-103, 50-5-204, 50-5-226, 50-5-227, 50-5-301, 50-51-102, AND 50-51-201, MCA; AND REPEALING SECTIONS 52-3-301, 52-3-302, 52-3-303, 52-3-304, 52-3-305, 52-3-311, 52-3-312, 52-3-313, AND 52-3-314, MCA.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on ~~an intermittent~~ *a regularly scheduled* basis, with the care necessary to meet the needs of daily living *but that does not provide overnight care.*

(3) (a) "Adult foster care home" means a private home that offers light personal care or custodial care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner of the home.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

~~(3)~~*(4)* "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency that plans or assists in planning for health care facilities.

~~(4)~~*(5)* "Ambulatory surgical facility" means a facility~~, not part of a hospital,~~ that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

~~(5)~~*(6)* "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

~~(6)~~*(7)* "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

~~(7)~~*(8)* "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

~~(8)~~*(9)* "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

~~(9)~~*(10)* "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(10)~~*(11)* "Challenge period" means a period, not exceeding 1 month, established by department rule during which a person may apply for comparative review with an applicant whose letter of intont has been received during the preceding batching period.

~~(11)~~*(12)* "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

~~(12)~~*(13)* "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

~~(13)~~*(14)* "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(14)~~*(15)* "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

~~(15)~~*(16)* "Construction" means the physical erection of a health care facility and any stage of the pbysical erection, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(10)~~*(17)* "Department" means the department of health and environmental sciences provided for in Title 2, chaptor 15, part 21.

(18) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(17)~~*(19)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(10)~~*(20)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(19)~~*(21)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes ~~but is not limited to~~ ambulatory surgical facilities, *chemical dependency facilities, end-stage renal dialysis facilities,* health maintenance organizations, home health agencies, *home infusion therapy agencies,* hospices, hospitals, infirmaries, ~~kidney treatment centers,~~ long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, *residential care facilities, and* residential treatment facilities~~, and adult day care centers~~.

~~(20)~~*(22)* "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

~~(21)~~*(23)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(24) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(25) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(22)~~*(26)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regnlations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(22)~~*(27)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and

provides 24-hour nursing care hy licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tuhercular patients.

~~(24)~~*(28)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

~~(25)~~*(29)* "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(26) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases, including freestanding hemodialysis units.~~

~~(27)~~*(30)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, *residential care,* intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include ~~adult foster care licensed under 52-3-303,~~ community homes for the developmentally disabled licensed under 53-20-305, community homes for individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care, or juvenile and adult correctional facilities operating under tbe authority of the department of corrections and human services.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or individuals with related problems.

(e) "Personal care" means the provision of services and care for residents needing some assistance in performing the activities of daily living.

~~(28)~~*(31)* "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used te provide medical or other health services and costs a substantial sum of money.

~~(28)~~*(32)* "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

~~(30)~~*(33)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill individuals, or any combination of these services.

~~(31)~~*(34)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(32)~~*(35)* "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

~~(33)~~*(36)* "Offer" means the holding out by a health care facility that it can provide specific health services.

~~(34)~~*(37)* "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

~~(35)~~*(38)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(30)~~*(39)* "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(40) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(37)~~*(41)* "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

~~(35)~~*(42)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disahled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(30)~~*(43)* "Resident" means an individual who is in a long-term care facility ~~for intermediate or personal care~~ *or in a residential care facility.*

(44) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

~~(40)~~*(45)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral

dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(41)~~*(46)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(47) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(42)~~*(48)* "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 2. Section 50-4-102, MCA, is amended to read:

"50-4-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Authority" means the Montana health care authority created by 50-4-201.

(2) "Board" means one of the regional health care planning boards created pursuant to 50-4-401.

(3) "Certificate of public advantage" or "certificate" means a written certificate issued by tbe authority as evidence of the authority's intention that the implementation of a cooperative agreement, when actively supervised by the authority, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(4) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(5) "Data base" means the unified health care data base created pursuant to 50-4-502.

(6) "Health care" includes both physical health care and mental health care.

(7) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all *health care* facilities ~~and institutions included~~ *as defined* in 50-5-101~~(19)~~. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(8) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal

law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

(9) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(10) "Management plan" means the health care resource management plan required by 50-4-304.

(11) "Region" means one of the health care planning regions created pursuant to 50-4-401.

(12) "Statewide plan" means one of the statewide universal health care access plans for access to health care required by 50-4-301."

Section 3. Section 50-5-103, MCA, is amended to read:

"**50-5-103. Rules and standards — accreditation by joint commission.** (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 and 2.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extond a reasonable time for compliance with rules for parts 1 and 2 upon adoption.

(4) Any hospital tbat furnishes written evidence *required by the department*, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of health care organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department for purposes of the licensing process. The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when the complaints pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of health care organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards."

Section 4. Section 50-5-204, MCA, is amended to read:

"**50-5-204. Issuance and renewal of licenses — inspections.** (1) After receipt of a new application *and notice that the facility is ready to be inspected*, the department or its authorized agent shall conduct an initial inspection of the facility within 45 days.

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(2) After receipt of an application for renewal of a license, the department or its authorized agent shall inspect the facility without prior notice to the operator or staff.

(3) If the department determines that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for a period of 1 to 3 years in duration.

(4) If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

(5) The minimum standards ~~which~~ *that* home health agencies must meet in order to be licensed must be as outlined in 42 U.S.C. 1395x(o), as amended, and in rules implementing it ~~which~~ *that* add minimum standards.

(6) The department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection, and access to all records must be granted at all reasonable times."

Section 5. Section 50-5-226, MCA, is amended to read:

"**50-5-226. Placement in personal-care facilities.** (1) A personal-care facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.

(2) A resident of a personal-care facility licensed as a category A facility under 50-5-227 may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time.

(3) A resident of a personal-care facility licensed as a category B facility under 50-5-227 must have a signed statoment from a physician agreeing to the resident's admission to the facility if the resident is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administor medications.

(4) A resident of a *category B* personal-care facility who needs skilled nursing care must have a signed statoment, renewed on ~~an annual basis for a category A facility and on~~ a quarterly basis ~~for a category B facility, from~~ *by* a physician, a physician assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the facility and who:

(a) actually visited the facility within the ~~year covered by the statement for a category A facility and within the~~ calendar quarter covered by the statement ~~for a category B facility~~;

(b) has certified that the particular needs of the resident can be adequately met in the facility; and

(c) has certified that there has been no significant change in health care status that would require anether level of care.

(5) The department shall, in consultation with the department of social and rehabilitatien services, provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, the resident's physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by individuals referred to in subsection (3);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection (5)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident;

(d) standards for operating a category A personal-care facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility; and

(e) standards for operating a category B personal-care facility, which must include the standards for a category A personal-care facility and additional standards for assessment of residents, care planning, qualifications and training of staff, restraint use and reduction, prevention and care of pressure sores, incontinence care, and the storage and administration of drugs."

Section 6. Section 50-5-227, MCA, is amended to read:

"**50-5-227. Licensing personal-care facilities.** (1) The department shall, in consultation with the department of social and rehabilitation services, by rule adopt standards for licensing and operation of personal-care facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The following licensing categories must be used by the department in adopting rules under subsection (1):

(a) category A—a facility providing personal care to ~~six or more~~ residents who may not be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications; or

(b) category B—a facility providing personal care to five or fewer residents who may be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extont that bowel or bladder control is absent; or

(v) unable to self-administer medications.

(3) The department may by rule establish license fees, inspection fees, and fees for patient screening. Fees must be reasonably related to service costs."

Section 7. Section 50-5-301, MCA, is amended to read:

"**50-5-301. When certificate of need is required — definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiato any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in detormining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is submittod to the department; and

(iii) the department determines tbe proposal will not significantly increase the cost of care provided or exceed tbe bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;

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(d) the acquisition by any person of major medical equipment, provided the acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency;

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(i) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, or inpatient rehabilitation.

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant te 50-5-305.

(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or residential treatment facility. The term does not include:

(i) a hospital, except te the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include ~~adult foster care, licensed under 52-3-303~~ *residential care facilities as defined in 50-5-101*; community homes for the developmentally disabled, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult

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correctional facilities operating under the authority of the department of corrections and human services.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000."

Section 8. Section 50-51-102, MCA, is amended to read:

"**50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences.~~

~~(2) "Commercial establishment" means an establishment operated primarily for profit.~~

~~(3)~~*(1)* "Department" means the department of health and environmental sciences.

~~(4)~~*(2)* "Establishment" means a hotel, motel, roominghouse, boardinghouse, ~~retirement home,~~ or tourist home.

~~(5)~~*(3)* "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out te the public te be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping accommodations are furnished for a fee te transient guests, with or without meals.

~~(6)~~*(4)* "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, boardinghouse, tourist home, ~~retirement home,~~ or roominghouse.

~~(7)~~*(5)* "Roominghouse"~~,~~ *or* "boardinghouse"~~, or "retirement home"~~ means buildings in which separate sleeping rooms are rented ~~providing~~ *that provide* sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

~~(6)~~*(6)* "Tourist home" means an establishment or premises where sleeping accommodations are furnished te transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling puhlic.

~~(9)~~*(7)* "Transient guest" means a guest for only a brief stay, such as the traveling public."

Section 9. Section 50-51-201, MCA, is amended to read:

"**50-51-201. License required.** (1) Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, boardinghouse, ~~retirement home,~~ or roominghouse shall procure a license issued by the department.

(2) A separate license is required for each establishment; however, ~~where~~ *when* more than one of each type of establishment is operated on the same premises and under the same management, only one license is required ~~which shall~~ *that must* enumerate on the certificate ~~thereof~~ the types of establishments licensed.

(3) Before a license may be issued by the department, it must be validated by the local health officer, or, if there is no local health officer, the sanitarian, in the county where the establishment is located."

Section 10. Requirements for home infusion therapy services. An agency providing home infusion therapy services shall directly provide either the home infusion therapy services or skilled nursing services and may either directly provide or may arrange for the provision of the other services.

Section 11. Requirements for retirement homes. A retirement home shall offer meals or central kitchens but may not offer nursing or personal care services to the residents, other than by a contract with a third party.

Section 12. Standards for adult foster care homes. The department may adopt rules establishing standards for the licensing of adult foster care homes. The standards must provide for the safety and comfort of the residents and may be adopted by the department only after receiving the advice and recommendations of the state fire prevention and investigation program of the department of justice in relation to fire and safety requirements for adult foster care homes.

Section 13. Limitation on care provided in adult foster care home. (1) Except as provided in this section, the types of care offered by adult foster care homes are limited to light personal care or custodial care and may not include skilled nursing care.

(2) An adult foster care home may be licensed to provide care for an adult who resided in the home for at least 1 year before reaching 18 years of age, even though the adult is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

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(3) An adult foster care home that applies for a license under subsection (2) must have a signed statement from a physician agreeing that the care needed by the adult may be provided in tbe home.

(4) A resident of an adult foster care home licensed under subsection (2) must have a signed statement, renewed on an annual basis, from a physician, a physician assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the home and who:

(a) actually visited the home within the year covered by the statement;

(b) has certified that the particular needs of the resident can be adequately met in the home; and

(c) has certified that there has been no significant change in health care status that would require another level of care.

(5) As used in this section, "skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under the orders of an attending physician.

Section 14. Section 27-6-103, MCA, is amended to read:

"**27-6-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as ~~his~~ *the individual's* principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as ~~his~~ *the* principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed te practice dentistry under the provisions of Title 37, chapter 4.

(2) *(a)* "Health care facility" means a facility (other than a governmental infirmary but including a university or college infirmary) licensed as a health care facility under Title 50, chapter 5.

(b) For the purposes of this chapter, a health care facility does not include a chemical dependency facility, an end-stage renal dialysis facility, a home infusion therapy agency, or a residential care facility.

(3) "Health care provider" means a physician, a dentist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means ~~any~~ *a* claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care ~~which~~ *that* proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as ~~his~~ *the individual's* principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as ~~his~~ *the* principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3."

Section 15. Repealer. Sections 52-3-301, 52-3-302, 52-3-303, 52-3-304, 52-3-305, 52-3-311, 52-3-312, 52-3-313, and 52-3-314, MCA, are repealed.

Section 16. Codification instruction. [Sections 10 through 13] are intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [sections 10 through 13].

Approved April 12, 1995

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CHAPTER NO. 367

[HB 315]

AN ACT PROVIDING THAT A VOLUNTEER FIRE COMPANY OR DEPARTMENT AND ITS EMPLOYEES ARE NOT LIABLE FOR CIVIL DAMAGES, EXCEPT DAMAGES FOR GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT, FOR THEIR ACTS OR OMISSIONS THAT ARE DIRECTLY RELATED TO A HAZARDOUS MATERIAL INCIDENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Immunity of volunteer fire company or department and employees for hazardous or deleterious substance cleanup. A volunteer fire company or department that is organized by a municipality, county, rural fire district, fire service area, or other entity and the employees of the company or department are not liable for civil damages, except damages for gross negligence or willful or wanton misconduct, for their acts or omissions that are directly related to the hazardous material incident.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [section 1].

Section 3. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana Constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Approved April 12, 1995

CHAPTER NO. 368

[HB 326]

AN ACT PROVIDING THE RIGHT OF AN EMPLOYEE OF A PRIVATE OR PUBLIC EMPLOYMENT AGENCY OR LABOR UNION, A BUILDING CODE COMPLIANCE INSPECTOR, AN EMPLOYEE OF THE DEPARTMENT OF COMMERCE, A PERSON WHO IS PROFESSIONALLY RESPONSIBLE FOR A JOB SITE, OR A LICENSED ELECTRICIAN OR LICENSED PLUMBER TO ASK A PERSON WORKING AT A JOB SITE FOR PROOF OF LICENSURE AS AN ELECTRICIAN OR PLUMBER AND ALLOWING THE LACK OF A LICENSE TO BE REPORTED TO THE DEPARTMENT OF COMMERCE OR TO THE STATE ELECTRICAL BOARD OR THE BOARD OF PLUMBERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Proof of license. An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or an electrician licensed under Title 37, chapter 68, has the right to ask a person working at a job site doing work that requires an electrician's license to provide proof of licensure. If the person performing the work is unable to furnish

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proof of licensure, the requesting person may report that fact to the board or the department.

Section 2. Proof of license. An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or a plumber licensed under Title 37, chapter 69, has the right to ask a person working at a job site doing work that requires a plumber's license to provide proof of licensure. If the person performing the work is unable to furnish proof of licensure, the requesting person may report that fact to the board or the department.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 68, part 3, and the provisions of Title 37, chapter 68, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 69, part 3, and the provisions of Title 37, chapter 69, part 3, apply to [section 2].

Approved April 12, 1995

CHAPTER NO. 369

[HB 340]

AN ACT ADDING SEXUAL ASSAULT ON A CHILD, SEXUAL INTERCOURSE WITHOUT CONSENT INVOLVING A CHILD, INCEST INVOLVING A CHILD, AND RITUAL ABUSE OF A MINOR TO THE LIST OF OFFENSES THAT DEPRIVE A PARENT OF THE RIGHT TO BAR THE CHILD'S ADOPTION BY NOT CONSENTING IN WRITING TO ADOPTION OF THE CHILD; REVISING THE LAW EXCUSING CONSENT FOR ADOPTION IN THE CASE OF A PARENT WHO HAS COMMITTED CERTAIN CRIMES AGAINST THE CHILD TO EXCUSE CONSENT FROM A PARENT WHO HAS COMMITTED CERTAIN CRIMES AGAINST ANY CHILD; PROVIDING FOR TERMINATION OF PARENTAL RIGHTS IN CERTAIN INSTANCES; AMENDING SECTION 40-8-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-8-111, MCA, is amended to read:

"**40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on ~~the~~ *a* child, as provided in 45-5-201; *sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child;* endangering the welfare of children, concerning ~~the~~ *a* child, as provided in 45-5-622; ~~or~~ sexual

abuse of children, toward ~~the~~ *a* child, as provided in 45-5-625*; or ritual abuse of a minor, as provided in 45-5-627*;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, *any* charitable agency, or any licensed adoption agency or the department of family services of the stato of Montana for a period of 1 year without contributing te the support of the child during ~~said~~ *that* period, if able;

(v) if it is ~~proven~~ *proved* to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially torminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and ~~sueh~~ *the* guardian has authority by order of the court appointing ~~him~~ *the guardian* to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to sueh *the* agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in ~~sueh~~ *the* agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in ~~sueh~~ *that* case, the court having jurisdiction of the custody of the child ~~must~~ *shall* consent to adoption and a certified copy of its order ~~shall~~ *must* be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) ~~shall~~ *must* be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department ~~of family services~~ or of an agency or witnessed by a representative of the court."

Section 2. Termination of parental rights — felony involving sexual intercourse. If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicatod a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication.

Section 3. Codification instruction. [Section 2] is intended te be codified as an integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 2].

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1995

CHAPTER NO. 370

[HB 351]

AN ACT AUTHORIZING THE BOARD OF REGENTS TO DISPOSE OF UNIVERSITY LAND; ESTABLISHING PROCEDURES FOR THE DISPOSITION OF UNIVERSITY LAND; REQUIRING THE CONCURRENCE OF THE BOARD OF LAND COMMISSIONERS FOR THE SALE OR EXCHANGE OF UNIVERSITY LAND; AMENDING SECTIONS 20-25-422 AND 77-1-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-422, MCA, is amended to read:

"**20-25-422. (Temporary) Support of university of Montana.** (1) For the support and endowment of the university, there is annually and perpetually appropriated:

(a) the university fund income and all other sums of money appropriated by law to the university fund after any deductions made under Title 77, chapter 1, part 6;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all the funds must be placed at the disposal of the *board of* regents by transfer to its treasurer and must be kept separate and distinct from all other funds. The income must be used solely for the support of the colleges and departments of the university or those connected with the university.

(3) All means derived from other public or private bounty must be exclusively devoted to the specific objects designated by the donor. (Terminates June 30, 1995—sec. 12, Ch. 533, L. 1993.)

20-25-422. (Effective July 1, 1995) Support of university of Montana. (1) For the support and endowment of the university, there is annually and perpetually appropriated:

(a) the university fund income, *the proceeds and revenue from the grant of any estate or interest disposed of pursuant to [section 2],* and all other sums of money appropriated by law ~~thereto~~ *to the university fund*;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all ~~such~~ funds ~~shall~~ *referred to in subsection (1) must* be placed at the disposal of the *board of* regents by transfer to its treasurer and

~~shall~~ *must* be kept separate and distinct from all other funds. The income ~~shall~~ *must* be used solely for the support of the colleges and departments of the university or those connected ~~therewith~~ *with the colleges and departments*.

(3) All means derived from other public or private bounty ~~shall~~ *must* be exclusively devoted to the specific objects for which they ~~shall~~ have been designated by the donor."

Section 2. Disposition of land. (1) The board of regents may sell, exchange, and lease land and grant easements and licenses on land that:

(a) is held or administered by the board of regents or the system and that is held by the state for the use and benefit of the board of regents or the system; and

(b) was not granted to the state, the board of regents, or the system in trust.

(2) The board of regents may not grant an estate or interest in land that was granted to the state in trust for the support and benefit of the system.

(3) In disposing of any estate or interest in land pursuant to subsection (1), the board of regents shall obtain consideration that equals or exceeds the full market value of the land. For sales and exchanges, full market value must be determined by the board of regents after an appraisal by a certified or licensed appraiser. If the appraiser determines that the valuation is not complicated and estimates, based on available data, that the full market value of the property is $10,000 or less, the board of regents may use a restricted or limited appraisal.

(4) Before approving an exchange of land, the board of regents shall give the public notice of the proposed exchange and an opportunity to comment. The board of regents shall, upon request of any person, hold a public hearing in the area where the state land to be conveyed is located. Subject to subsection (6), the board of regents may, after review of the comments, approve the exchange if it determines that the exchange is in the best interests of the system.

(5) Prior to the sale of land, the board of regents shall prepare a request for proposals to purchase the land and publish public notice of the sale once a week for 4 consecutive weeks in a newspaper of general circulation published in the county where the land is situated. If a newspaper is not published in that county, notice must be published in any newspaper of general circulation in that county. The notice must describe the land to be sold, the appraised value of the land, the procedure by which persons may obtain the request for proposals, the terms and conditions of sale, and the criteria upon which each proposal will be evaluated. The sale procedure must provide reasonable opportunity for members of the public to submit proposals to purchase the land. The board of regents may sell the land only if it determines that the sale is in the best interests of the system. If the board of regents sells the land, the sale must be to the offeror whose proposal the board determines to be the most advantageous to the system, taking into consideration the price and the other evaluation criteria listed in the request for proposals.

(6) The board of regents may sell or exchange the land only if it first requests and obtains the written concurrence of the board of land commissioners. The board of land commissioners may refuse to concur if it determines that the sale or exchange does not return to the state full market value, that the sale

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procedure did not provide the puhlic a reasonable opportunity to submit proposals to purchase the land, or that the sale or exchange is not in the best interests of the state or system.

(7) After obtaining written concurrence of the board of land commissioners required in subsection (6), the board of regents shall convey the land by deed, executed by the presiding officer of the board or other person designated by the board, without covenants of warranty.

Section 3. Section 77-1-101, MCA, is amended to read:

"77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the *Montana* constitution ~~of this state~~.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(4) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(5) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board te be compatible with the use of state lands. General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(6) "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement; ~~by~~

(b) public waters; ~~by~~

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or ~~by~~

(d) adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than tbose granted permission.

(7)*(a)* "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands *that* the state conveys through the issuance of patent;

(ii) lands used for huilding sites, campus grounds, or experimental purposes by any state institution that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to [section 2]; or

(iv) lands acquired through foreclosure of any investments purchased under the provisions of 17-6-211."

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 20, chapter 25, part 3, and the provisions of Title 20, chapter 25, part 3, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 1995.

Approved April 12, 1995

CHAPTER NO. 371

[HB 352]

AN ACT IMPLEMENTING THE CONSTITUTIONAL REQUIREMENT FOR STRICT ACCOUNTABILITY FOR REVENUE RECEIVED AND SPENT BY THE STATE BY PROHIBITING UNITS OF THE UNIVERSITY SYSTEM FROM TRANSFERRING CERTAIN FUNDS OR PROPERTY TO A NONPROFIT CORPORATION OR FOUNDATION ESTABLISHED FOR THE BENEFIT OF A UNIT OF THE UNIVERSITY SYSTEM UNLESS CERTAIN CONDITIONS ARE MET; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Prohibition on transfer to foundation. In order to implement the provisions of Article VIII, section 12, of the Montana constitution, ownership of the following may not be transferred to a nonprofit corporation or foundation established for the benefit of a unit of the university system unless full market value is received for the transfer and laws applicahle to the disposition of property are followed:

(1) money in the higher education funds provided for in 17-2-102;

(2) excess proceeds of money borrowed pursuant to 20-25-402; and

(3) real or personal property acquired with money listed in subsection (1) or proceeds listed in subsection (2).

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 25, part 3, and the provisions of Title 20, chapter 25, part 3, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 1995.

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Approved April 12, 1995

CHAPTER NO. 372

[HB 356]

AN ACT IMPLEMENTING TRUTH IN SENTENCING BY MAKING THE TIME A PRISONER WILL ACTUALLY SERVE MORE APPARENT; CHANGING GOOD TIME, PAROLE, AND CONSECUTIVE SENTENCE PROVISIONS; ABOLISHING GOOD TIME AS OF FEBRUARY 1, 1997; ABOLISHING THE DESIGNATION OF CRIMINALS AS DANGEROUS OR NONDANGEROUS FOR PURPOSES OF PAROLE; AMENDING SECTIONS 44-2-601, 46-18-401, 46-18-402, 46-23-201, 46-23-202, 46-23-216, 46-23-217, 46-23-426, 53-30-105, AND 53-30-132, MCA; REPEALING SECTIONS 46-18-404 AND 53-30-105, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-2-601, MCA, is amended to read:

"**44-2-601. Notification of escape or release from confinement.** (1) The notice required by subsection (2) must be given if:

(a) a person committed to a hospital or mental health facility under Title 46, chapter 14, escapes or is released from confinement;

(b) a person confined in an institution other than a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a prison or other state institution after conviction of a criminal offense involving the use or threat of physical force or violence ~~or after being designated as a dangerous offender under 46-18-404~~ escapes or is released from confinement; or

(c) a person confined in a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a jail after conviction of a criminal offense involving the use or threat of physical force or violence ~~or after being designated as a dangerous offender under 46-18-404~~ escapes from confinement.

(2) If a person referred to in subsection (1) escapes or is released from confinement, the institution in which the person was confined shall notify:

(a) the sheriff or other law enforcement officials in the county in which the offense occurred;

(b) the sheriff or other law enforcement officials in the county or counties, if known, in which a victim or the victims of the offense reside at the time of the escape or release;

(c) the sheriff or other law enforcement officials in the county, if known, in which the person intends to reside upon leaving confinement;

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(d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital, mental health facility, or other institution from which the person escaped or was released is located; and

(e) a court that has requested that it be notified in the event of a release or an escape of the person.

(3) The department shall adopt a methodology for notifying the individuals and entities listed in subsection (2). The methodology must take into account the public safety concerns related to escape. Notification concerning a pending release must be made prior to the release."

Section 2. Section 46-18-401, MCA, is amended to read:

"46-18-401. Consecutive sentences. (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term may not be merged in the other term; and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation may not be merged in any new sentence of commitment or probation.

(2) The court, whether or not it merges the sentences, shall immediately furnish each of the other courts and *the* penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite any sentence that is merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court ~~which~~ *that* imposed ~~such~~ *the* sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses must run consecutively unless the court otherwise orders.

~~(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the supervised release program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole.~~"

Section 3. Section 46-18-402, MCA, is amended to read:

"46-18-402. Credit for time served. ~~Where~~ *If a* defendant has served any portion of ~~his~~ *the defendant's* sentence under a commitment based upon a judgment ~~which~~ *that* is subsequently declared invalid or ~~which~~ *that* is modified during the term of imprisonment, ~~such~~ *the* time ~~shall~~ *served must* be credited ~~upon~~ *against* any subsequent sentence ~~he may receive~~ *received* upon a new commitment for the same criminal act or acts. ~~In calculating the time imprisoned, the person so convicted shall have the credit for all the time earned~~

~~in diminution of sentence as provided under 53-30-105, unless the sentencing authority, in its discretion, may choose to deny such credit.~~"

Section 4. Section 46-23-201, MCA, is amended to read:

"**46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through ~~(5)~~ *(4)*, the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's correctional center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least ~~one-half~~ *one-fourth* of the prisoner's full term~~, less the good time allowance provided for in 53-30-105. Except as provided in subsection (3), a prisoner designated as a nondangerous offender under 46-18-404 may be paroled after the prisoner has served one-quarter of the prisoner's full term, less the good time allowance provided for in 53-30-105. Any prisoner serving a time sentence may be paroled after the prisoner has served 17 1/2 years of the sentence.~~

~~(3) A prisoner serving a time sentence under 45-9-109 may not be paroled until the prisoner has served at least one-half of the full term, less the good time allowance provided for in 53-30-105~~.

~~(4)~~*(3)* A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years~~, less the good time allowance provided for in 53-30-105~~.

~~(5)~~*(4)* A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

~~(6) Whenever the department of corrections and human services certifies to the board that the population at either the male or female correctional facility has exceeded its designed capacity for 30 consecutive days, the board shall consider the respective male or female prisoners under the jurisdiction of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) through (4).~~

~~(7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration, the provisions of subsection (6) do not apply.~~"

Section 5. Section 46-23-202, MCA, is amended to read:

"**46-23-202. Investigation of prisoner by board.** (1) Within the 2 months prior to a prisoner's official parole eligibility date ~~or within the 2 months following the date a prisoner becomes eligible pursuant to 53-30-105(5)~~, the board shall consider all pertinent information regarding ~~each~~ *the* prisoner, including the circumstances of the offense, the prisoner's previous social history and criminal record, the prisoner's conduct, employment, and attitude in prison, and the reports of any physical and mental examinations that have been made.

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(2) Before ordering the parole of any prisoner, the board shall interview the prisoner."

Section 6. Section 46-23-216, MCA, is amended to read:

"**46-23-216. Duration of parole.** (1) A prisoner on parole ~~who has served one-half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one-quarter of his term or terms, less the good time allowance,~~ is considered released on parole until the expiration of the maximum term or terms for which ~~he~~ *the prisoner* was sentenced, less the good time allowance as provided for in 53-30-105.

(2) The period served on parole or conditional release ~~shall be deemed~~ *must be considered* service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of ~~his~~ *the* release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner."

Section 7. Section 46-23-216, MCA, is amended to read:

"**46-23-216. Duration of parole.** (1) A prisoner on parole ~~who has served one-half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one-quarter of his term or terms, less the good time allowance,~~ is considered released on parole until the expiration of the maximum term or terms for which ~~he~~ *the prisoner* was sentenced~~, less the good time allowance as provided for in 53-30-105~~.

(2) The period served on parole or conditional release ~~shall be deemed~~ *must be considered* service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of ~~his~~ *the* release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner."

Section 8. Section 46-23-217, MCA, is amended to read:

"**46-23-217. Service of term for additional crime.** A prisoner who commits a crime while imprisoned in the state prison or while released on parole or under the supervised release program and who is convicted and sentenced for the crime shall serve the sentence consecutively with the remainder of the original sentence ~~as provided in 46-18-401~~. However, the prisoner remains eligible for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence ~~as provided in 46-18-401~~."

Section 9. Section 46-23-426, MCA, is amended to read:

"**46-23-426. Escape.** A person convicted of escape from a supervised release program is punishable as provided in 45-7-306~~. A person convicted of such an escape and sentenced therefor shall~~ *and must* serve ~~such~~ *the* sentence *for escape* consecutively with the remainder of the original sentence ~~as provided in 46-18-401~~."

Section 10. Section 53-30-105, MCA, is amended to read:

"53-30-105. Good time allowance. (1) The department of corrections and human services ~~shall adopt rules providing for the granting of~~ *may grant a* good time allowance ~~for~~ *to* inmates ~~employed in any prison work or activity and to implement subsection (5)~~ *housed at an adult correctional facility or a supervised release program facility*. The good time allowance ~~shall~~ *may* operate as a credit on the inmate's sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules ~~made~~ *adopted* by the department ~~or the warden~~. The ~~rules adopted by the~~ department ~~under this subsection~~ may not grant good time allowance to exceed:

~~(a) 10 days per month for inmates assigned to maximum, close, and medium I security classifications;~~

~~(b) 13 days per month for those classified as medium II and minimum security classifications;~~

~~(c) 15 days per month for inmates after having been assigned as medium II or minimum security for an uninterrupted period of 1 year;~~

~~(d) 13 days per month for those inmates enrolled in school who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;~~

~~(e) 3 days per month for those inmates participating in self-improvement activities designated by the department~~ *1 day for each day served at an adult correctional facility or a supervised release program facility.*

(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department ~~or warden~~, the inmate may be punished by the forfeiture of part or all good time allowances. ~~The warden of the state prison shall advise the department of any attempted escape or violation of rules on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.~~

(3) A person may not earn good time under this section while the person is on probation. A person may earn good time while on parole at the rate of ~~30 days per month~~ *1 day per day served on parole*. If the department determines that a person has violated the conditions of parole, it may, in its discretion, deduct good time credit accumulated under this subsection in an amount up to and including all credit accumulated on the date of the violation.

(4) The ~~warden of the state prison~~ *department* may ~~request that~~ *restore* all or portions of any previously forfeited good time ~~be restored~~ as a result of subsequent good behavior. ~~Any restoration of good time allowance must be approved by the department.~~

(5) If the population at the Montana state prison or tbe Montana women's correctional center exceeds the design capacity of the institution, the department may grant an inmate additional good time credits in an amount necessary to permit the inmate to become eligible for parole or to discharge the inmate's sentence. Good time credits for the discharge of a sentence may not exceed 180 days. The award of good time under this subsection must generally be provided to inmates who are nearest to parole eligibility or discharge."

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Section 11. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status — prison industries training program — wages and benefits. (1) ~~An inmate participating in the prison industries training program may be granted a good time allowance, not to exceed 15 days per month, notwithstanding the limits contained in 53-30-105, for outstanding participation in the program as defined by rules adopted by the department of corrections and human services. The good time allowance has the same effect as a good time allowance granted under 53-30-105, and the provisions of subsections (2) and (3) of 53-30-105 apply to the good time allowance. However, an inmate may not receive good time for participation in this program under any other section or rule that would duplicate the good time authorized in this section.~~

~~(2)~~ While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage commensurate with their production function. Wages must be established at a rate that encourages efficient production and effective levels of inmate participation. Inmates employed in a federally certified prison industries program must be paid as provided in 53-1-301(2).

~~(3)~~*(2)* Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

~~(4)~~*(3)* Able-bodied persons committed to the Montana state prison as adult offenders ~~shall~~ *must* be required to perform work as provided for by the department of corrections and human services."

Section 12. Repealer. (1) Section 46-18-404, MCA, is repealed.

(2) Section 53-30-105, MCA, is repealed.

Section 13. Effective dates. (1) [Sections 1, 2, 4, 5, 6, 8 through 11, subsection (1) of section 12, and this section] are effective on passage and approval.

(2) [Sections 3 and 7 and subsection (2) of section 12] are effective January 31, 1997.

Approved April 12, 1995

CHAPTER NO. 373

[HB 360]

AN ACT PROVIDING AN EXCEPTION TO THE ORIGINAL COST RULE WHEN A PUBLIC UTILITY PURCHASES CERTAIN PROPERTY; AMENDING SECTION 69-3-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 69-3-109, MCA, is amended to read:

"**69-3-109. Ascertaining property values.** The commission may, in its discretion, investigate and ascertain the value of the property of ~~every~~ *each* public utility actually used and useful for the convenience of the public. The commission is not bound to accept or use any particular value in determining rates; ~~provided, that~~ *However,* if any value is used, ~~such~~ *the* value may not exceed the original cost of the property, *except that the commission may include all or some of an acquisition adjustment for certain property purchased by a public utility in the purchasing utility's rate base if the transfer of the property to the purchasing utility is in the public interest.* In making ~~such~~ *the* investigation, the commission may avail itself of all information contained in the assessment rolls of various counties, *or in* the public records of the various branches of the state government, or *of* any other information obtainable, and the commission may at any time ~~of~~ *on* its own initiative make a revaluation of ~~such~~ *the* property."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1995

CHAPTER NO. 374

[HB 404]

AN ACT CLARIFYING THE ALLOCATION OF PETITION SIGNATURES TO LEGISLATIVE DISTRICTS; AMENDING SECTION 13-27-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-303, MCA, is amended to read:

"**13-27-303. Verification of signatures by county official — allocating voters following reapportionment — duplicate signatures.** (1) Except as required by 13-27-104, within 4 weeks after receiving the sheets or sections of a petition, the county official shall check the names of all signers to verify they are registered electers of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to he genuine, the numher of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(2) For the purpose of allocating the signatures of votors among the several legislative representative districts of the stato as required to certify a petition for a ballot issue under the provisions of this chapter following the filing of a districting and apportionment plan under 5-1-111 and before ~~members of the house of representatives have been elected and qualified under~~ *the first gubernatorial election following the filing of* the plan, the ~~legislative representative~~ *new* districts ~~among which the signatures must be allocated must be those in existence when the plan was filed~~ *must be used with the number of*

signatures needed for each legislative representative district being the total votes cast for governor in the last gubernatorial election divided by the number of legislative representative districts.

(3) Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the petition circulator, or both, to the county attorney to he investigated under the provisions of 13-27-106 and 13-35-207."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1995

CHAPTER NO. 375

[HB 405]

AN ACT ALLOWING THE FORMATION OF VOLUNTARY PURCHASING POOLS FOR DISABILITY INSURANCE; ASSIGNING THE COMMISSIONER OF INSURANCE CERTAIN DUTIES REGARDING VOLUNTARY PURCHASING POOLS; PROVIDING GUIDELINES FOR COLLECTION OF CHARGES AND PREMIUMS; REVISING ASSOCIATIONS ELIGIBLE TO PURCHASE GROUP DISABILITY INSURANCE POLICIES; AND AMENDING SECTION 33-22-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-501, MCA, is amended to read:

"33-22-501. Group disability insurance defined — eligible groups. Group disability insurance is ~~hereby declared to be~~ that form of disability insurance covering groups of persons as defined ~~below~~ *in this section*, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of ~~such~~ *the* groups of persons and issued upon the following bases:

(1) under a policy issued to an employer or trustees of a fund established by an employer, who ~~shall~~ *must* be ~~deemed~~ *considered* the policyholder, insuring employees of ~~such~~ *the* employer for the benefit of persons other than the employer. The term "employees" as used ~~herein shall be deemed to include~~ *in this subsection includes* the officers, managers, and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners, and employees of individuals and firms, if the business of the employer and ~~such~~ *the* individual or firm is under common control through stock ownership, contract, or otherwise. The term "employees" as used ~~herein~~ *in this subsection* may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" ~~shall include~~ *includes* elected or appointed officials. The policy may provide that the term "employees" ~~shall include~~ *includes* the trustees or their employees, or both, if their duties are principally connected with ~~such~~ *the* trusteeship.

(2) under a policy issued to an association, including a labor union, ~~which shall have a constitution and bylaws and which~~ *that* has been organized and is maintained in good faith for purposes other than that of obtaining insurance~~,~~ *or of* insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used ~~herein~~ *in this subsection* may include retired employees.

(3) under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in subsection (2) ~~above~~, *in* which *the* trustees ~~shall be deemed~~ *are considered* the policyholder, to insure employees of the employers or members of the unions or of ~~such~~ *the* association or employees of members of ~~such~~ *the* association for the benefit of persons other than the employers or the unions or ~~such~~ *the* association. The term "employees" as used ~~herein~~ *in this subsection* may include the officers, managers, and employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used ~~herein~~ *in this subsection* may include retired employees. The policy may provide that the term "employees" ~~shall include~~ *includes* the trustees or their employees, or both, if their duties are principally connected with ~~such~~ *the* trusteeship.

(4) under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under ~~such~~ *a* group life policy;

(5) *under a policy issued to a voluntary purchasing pool or to the member employers of a voluntary purchasing pool that is formed solely for the purpose of obtaining insurance as provided in [section 2];*

(6) under a policy issued to cover any other substantially similar group ~~which~~ *that*, in the discretion of the commissioner, may be subject to the issuance of a group disability policy or contract."

Section 2. Qualifications for voluntary purchasing pool. A voluntary purchasing pool of disability insurance purchasers may be formed solely for the purpose of obtaining disability insurance upon compliance with the following provisions:

(1) It contains at least 1,000 eligible employees.

(2) It establishes requirements for membership. The voluntary purchasing pool shall accept for membership any small employers and may accept for membership any employers with more than 25 eligible employees that otherwise meet the requirements for membership. However, the voluntary purchasing pool may not exclude any small employers that otherwise meet the requirements for membership on the basis of claim experience, occupation, or health status.

(3) It holds an open enrollment period at least once a year during which new members can join the voluntary purchasing pool.

(4) It offers coverage to eligible employees of member employers and to the employees' dependents. Coverage may not be limited to certain employees of member small employers except as provided in 33-22-1811(3)(c).

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(5) It does not assume any risk or form self-insurance plans among its members.

(6) (a) It has the option of using the following types of rating arrangements with the disability insurance policies, certificates, or contracts:

(i) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool that rate each member employer separately are subject to the provisions of this part.

(ii) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool that rate the entire group as a whole must charge each insured person based on a community rate within the common group, adjusted for case characteristics as permitted by the laws governing group disability insurance.

(b) At its discretion, premiums may be paid to the disability insurance policies, certificates, or contracts by the voluntary purchasing pool, by member employers, or by eligible employees and their dependents.

(7) A person marketing disability insurance policies, certificates, or contracts for a voluntary purchasing pool must be licensed as an insurance producer.

Section 3. Commissioner powers and duties — application for registration — reporting insolvency. (1) The commissioner shall develop forms for registration of an organization as a voluntary purchasing pool.

(2) An organization seeking to be registered as a voluntary purchasing pool shall make application to the commissioner. The commissioner shall register an organization as a voluntary purchasing pool upon proof of fulfillment of the qualifications provided in [section 2].

(3) On March 1 of each year, the voluntary purchasing pool shall provide a report and financial statement for the previous calendar year to the commissioner in order that the commissioner may determine:

(a) whether the operation of the voluntary purchasing pool is fiscally sound;

(b) whether the voluntary purchasing pool is bearing any risk; and

(c) the number of individuals covered.

(4) The annual report of the voluntary purchasing pool must disclose its total administrative cost.

Section 4. Collection of charges and premiums. (1) All insurance or premiums collected by a voluntary purchasing pool on behalf of or for an insurer and all return premiums received from the insurer are held by the voluntary purchasing pool in a fiduciary capacity. These funds must be remitted immediately to the person entitled to them or must be deposited promptly in a fiduciary bank account established and maintained by the administrator of the voluntary purchasing pool. If deposited charges or premiums are collected on behalf of or for more than one insurer, the voluntary purchasing pool shall either keep or require the bank in which the fiduciary account is maintained to keep records clearly recording the deposits to and withdrawals from the account on

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behalf of each insurer. The voluntary purchasing pool shall promptly obtain and keep copies of all these records and shall, upon request of an insurer, furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for the insurer.

(2) The voluntary purchasing pool may not pay a claim by withdrawals from the fiduciary account. Withdrawals from the fiduciary account must be made, as provided in the written agreement between the voluntary purchasing pool and the insurer, for:

(a) remittance to an insurer entitled to the remittance;

(b) deposit in an account maintained in the name of the insurer;

(c) payment to a group policyholder for remittance to the insurer entitled to the payment; or

(d) remittance of return premiums to the person entitled to the premium.

Section 5. Codification instruction. [Sections 2 through 4] are intended to be codified as an integral part of Title 33, chapter 22, part 18, and the provisions of Title 33, chapter 22, part 18, apply to [sections 2 through 4].

Approved April 12, 1995

CHAPTER NO. 376

[HB 457]

AN ACT PROHIBITING THE POSSESSION OR CONSUMPTION OF TOBACCO PRODUCTS BY MINORS; PROVIDING FOR CRIMINAL MONETARY PENALTIES OR FOR ADJUDICATION BY A YOUTH COURT UPON CONVICTION; AND AMENDING SECTION 41-5-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tobacco possession or consumption by persons under 18 years of age probibited — penalties. (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product, as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product.

(2) A person convicted of possession or consumption of a tobacco product:

(a) shall be fined $35 for a first offense, no less than $75 or more than $100 for a second offense, and no less than $100 or more than $250 for a third or subsequent offense; or

(b) may be adjudicated on a petition alleging the person to be a youth in need of supervision under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

(3) A person convicted of possession or consumption of a tobacco product may also be required to perform community service or to attend a tobacco cessation program.

(4) The fines collected under subsection (2) must be deposited to the credit of the general fund of the local government that employs the arresting officer, or if the arresting officer is an officer of the highway patrol, the fines must be credited to the county general fund in the county in which the arrest was made.

Section 2. Section 41-5-203, MCA, is amended to read:

"**41-5-203. Jurisdiction of the court.** (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the stato or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, *tobacco products,* and gambling violations alleged to have been committed by a youth."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45, chapter 5, part 6, apply to [section 1].

Approved April 12, 1995

CHAPTER NO. 377

[HB 466]

AN ACT REVISING THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT; REVISING DEFINITIONS; CLARIFYING REIMBURSEMENT TREATMENT; REVISING RESTRICTIONS ON PREMIUM RATES; RESTRICTING THE AUTHORITY OF THE COMMISSIONER OF INSURANCE TO ADOPT RULES; PROHIBITING THE COMMISSIONER OF INSURANCE FROM REQUIRING PRIOR APPROVAL OF RATING METHODS AND PREMIUMS; DELETING EFFECTIVE DATES RELATED TO THE DEVELOPMENT OF BENEFIT PLANS AND THE COMMISSIONER'S APPROVAL OF THE PLANS; PROVIDING FOR WAIVERS OF COVERAGE BY EMPLOYEES; ELIMINATING THE HEALTH BENEFIT PLAN COMMITTEE; PROVIDING FOR THE CONTENT OF BASIC AND STANDARD HEALTH BENEFIT PLANS; REQUIRING AN ANNUAL ACTUARIAL REVIEW OF THE SMALL EMPLOYER CARRIER REINSURANCE PROGRAM; CHANGING THE COMPOSITION OF THE BOARD OF THE MONTANA SMALL EMPLOYER REINSURANCE PROGRAM; AMENDING SECTIONS 33-22-1803, 33-22-1804, 33-22-1809, 33-22-1811, 33-22-1818, 33-22-1819, 33-22-1820, AND 33-22-1821, MCA; AND REPEALING SECTION 33-22-1812, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1803, MCA, is amended to read:

"**33-22-1803. Definitions.** As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all ~~individual~~ carriers of disability insurance ~~and all carriers of group disability insurance, excluding the state group benefits plan provided for in Title 2, chapter 18, part 8, the Montana university system health plan, and any self-funded disability insurance plan provided by a political subdivision of the state~~, *including excess of loss and stop loss disability insurance.*

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

~~(5) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to 33-22-1812.~~

(5) "Basic health benefit plan" means a health benefit plan[, except a uniform health benefit plan,] developed by a small employer carrier that has a lower benefit value than the small employer carrier's standard benefit plan and that provides the benefits required by [section 5].

(6) "Benefit equivalency" means a method developed by the small employer carrier for comparing the types of health care services and articles covered under a health benefit plan with the types of health care services required to be covered under a [uniform,] basic, or standard health benefit plan.

(7) "Benefit value" means an actuarially based method developed by the small employer carrier for comparing the value of determinable contingencies covered under a health benefit plan with the value of determinable contingencies required under a [uniform,] basic, or standard health benefit plan.

~~(6)~~*(8)* "Board" means the board of directors of the program established pursuant to 33-22-1818.

~~(7)~~*(9)* "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, *and* a health maintenance organization~~, and, to the extent permitted by the Employee Retirement Income Security Act of 1974, a multiple employer welfare arrangement~~. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

~~(8)~~*(10)* "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

~~(9)~~*(11)* "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

~~(10) "Committee" means the health benefit plan committee created pursuant to 33-22-1812.~~

~~(11)~~*(12)* "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined to be a dependent in the health benefit plan covering the employee.

~~(12)~~*(13)* "Eligible employee" means an employee who works on a full-time basis ~~and who has~~ *with* a normal workweek of 30 hours or more*, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees*. The term includes a sole proprieter, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.

~~(13)~~*(14)* "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority te transact insurance in this state, within which the carrier is authorized to provide coverage.

~~(14)~~*(15)* "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include:

(a) accident-only, credit, dental, vision, specified disease, medicare supplement, long-term care, or disability income insurance;

(b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or similar insurance; or

(c) automobile medical payment insurance.

~~(15)~~*(16)* "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

~~(15)~~*(17)* "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual was entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent may not be considered a late enrollee if:

(a) the individual meets each of the following conditions:

(i) the individual was covered under qualifying previous coverage at the time of the initial enrollment;

(ii) the individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, the death of a spouse, or divorce; and

(iii) the individual requests enrollment within 30 days after termination of the qualifying previous coverage;

(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

(c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

~~(17)~~*(18)* "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

~~(18)~~*(19)* "Plan of operation" means the operation of the program established pursuant to 33-22-1818.

~~(19)~~*(20)* "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

~~(20)~~*(21)* "Program" means the Montana small employer health reinsurance program created by 33-22-1818.

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~~(21)~~*(22)* "Qualifying previous coverage" means benefits or coverage provided under:

(a) medicare or medicaid;

(h) an employer-hased health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the *minimum* basic health benefit plan; or

(c) an individual health insurance policy, including coverage issued hy an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided under the *minimum* basic health benefit plan, provided that the policy has been in effect for a period of at least 1 year.

~~(22)~~*(23)* "Rating period" means the calendar period for which premium rates estahlished by a small employer carrier are assumed to be in effect.

~~(22)~~*(24)* "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to 33-22-1819.

~~(24)~~*(25)* "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chaptor 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

~~(25)~~*(26)* "Small employer" means a person, firm, corporation, partnership, or association that is actively engaged in husiness and that, on at least 50% of its working days during the preceding calendar quarter, employed at least 3 hut not more than 25 eligihle employees, the majority of whom were employed within this state or were residents of this state. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(h) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of an association that:

(i) has been in existence for 1 year prior to January 1, 1994;

(ii) provides a health benefit plan to employees of its members as a group; and

(iii) does not deny coverage to any *small employer* member of its association or any employee of its *small employer* members who applies for coverage as part of a group.

~~(26)~~*(27)* "Small employer carrier" means a carrier that offers health benefit plans that cover eligihle employees of one or more small employers in this state.

~~(27) "Standard health benefit plan" means a health benefit plan developed pursuant to 33-22-1812.~~

(28) "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to [section 6]."

Section 2. Section 33-22-1804, MCA, is amended to read:

"**33-22-1804. Applicability and scope.** *(1)* This part applies to a health benefit plan marketed through a small employer that provides coverage to the employees of a small employer in this stato if any of the following conditions are met:

~~(1)~~*(a)* a portion of the premium or benefits is paid by or on behalf of the small employer;

~~(2)~~*(b)* an eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium; or

~~(2)~~*(c)* the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code, *except a plan or program that is funded entirely by contributions from the employees.*

(2) A payroll deduction or a list-billed premium is not a reimbursement for the purposes of subsection (1)(b)."

Section 3. Section 33-22-1809, MCA, is amended to read:

"**33-22-1809. Restrictions relating to premium rates.** (1) Premium rates for health benefit plans under this part are subject to the following provisions:

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more tban 20%.

(b) For each class of business:

(i) tbe premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate; or

(ii) if the Montana health care authority established by 50-4-201 certifies to the commissioner that the cost containment goal set forth in 50-4-303 is met on or before January 1, 1999, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage may not vary from the index by more tban 20% of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of tbe prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the

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percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for the class of business; and

(iii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate factors associated with all industry classifications by more than 15% of that coverage.

(f) In the case of health benefit plans delivered or issued for delivery prior to January 1, 1994, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (1)(b) until January 1, 1997. In that case, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period te the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and

(ii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(g) A small employer carrier shall:

(i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups. *Differences among base premium rates may not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.*

(ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(h) For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted network provision.

~~(i) The commissioner shall adopt rules to implement the provisions of this section and to ensure that rating practices used by small employer carriers are consistent with the purposes of this part, including rules that ensure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences because of the nature of the groups.~~

(2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.

(3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:

(a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;

(b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;

(c) the provisions relating to renewability of policies and contracts; and

(d) the provisions relating to any preexisting condition.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

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(b) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with this part and that tbe rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by the small employer carrier at its principal place of business.

(c) The filing required in subsection (5)(b) must contain the small employer carrier's benefit equivalency and benefit value.

~~(c)~~*(d)* A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of this part and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department.

(6) The commissioner may not require prior approval of the rating methods used by small employer carriers or the premium rates of the health benefit plans offered to small employers."

Section 4. Section 33-22-1811, MCA, is amended to read:

"**33-22-1811. Availability of coverage — required plans.** (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier shall offer to small employers at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard healtb benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard bealth benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part.

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in eacb established class of business. A small employer carrier may apply reasonable criteria in determining wbetber to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) tbe small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(h)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

~~(c) The provisions of this section are effective 180 days after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to 33-22-1812, provided that if the program created pursuant to 33-22-1818 is not yet operative on that date, the provisions of this section are effective on the date that the program begins operation.~~

(c) A small employer carrier that elects not to comply with the requirements of subsections (1)(a) and (1)(b) may continue to provide coverage under health benefit plans previously issued to small employers in this state for a period of no more than 7 years from [the effective date of this act] if the carrier:

(i) eomplies with all other applicable provisions of this part, except 33-22-1810, 33-22-1813, and subsections (2) through (4) of this section; and

(ii) does not amend or alter the benefits and coverages of the previously issued health benefit plans unless required to do so by law or rule.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not, because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit plan may not define a preexisting condition more restrictively than 33-22-110, except that the condition may be excluded for a maximum of 12 months.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services if the qualifying previous coverage was continuous to a date not less than 30 days prior to the submission of an application for new coverage. This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for lato enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date the individual enrolls for coverage under the health benefit plan.

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(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(iii) A small employer carrier shall secure a waiver of coverage from each eligible employee who declines, at the sole discretion of the eligible employee, an offer of coverage under a health benefit plan provided by the small employer. The waiver must be signed by the eligible employee and must certify that the employee was informed of the availability of coverage under the health benefit plan and of the penalties for late enrollment. The waiver may not require the eligible employee to disclose the reasons for declining coverage.

(iv) A small employer carrier may not issue coverage to a small employer if the carrier or a producer for the carrier has evidence that the small employer induced or pressured an eligible employee to decline coverage due to the health status or risk characteristics of the eligible employee or of the dependents of the eligible employee.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to a small employer when the small employer is not physically located in the carrier's established geographic service area;

(ii) to an employee when the employee does not work or reside within the carrier's established geographic service area; or

(iii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for any period of time for which the commissioner determines that requiring the acceptance of small employers in

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accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition."

Section 5. Benefits required in basic health benefit plan. (1) The basic health benefit plan must provide at least the following benefits:

(a) coverage for the services and articles required by 33-22-1521(2);

(b) coverage for mental health and chemical dependency required by Title 33, chapter 22, part 7; and

(c) coverage for conversion of benefits required by 33-22-508 and 33-22-510 or by 33-30-1007.

(2) The small employer carrier may determine varying levels of deductibles, copayments, maximum annual out-of-pocket expenses, maximum lifetime benefits, and other financial cost-sharing arrangements with the insured that give the basic health benefit plan a lower benefit value than the standard health benefit plan.

(3) A basic health benefit plan provided by a health maintenance organization or a basic health benefit plan with a restricted network provision must provide a comparable level of benefits to those required by subsections (1) and (2), as determined by the benefit equivalency and benefit value.

Section 6. Benefits required in standard benefit plan. (1) The minimum benefits must be equal to at least 75% of the covered expenses in excess of an annual deductible that does not exceed $500 per person or $1,000 per family. The coverage must include a limitation of $2,000 per person or $4,000 per family on the total annual out-of-pocket expenses for services covered. The coverage may be subject to a maximum lifetime benefit, but a maximum, if any, may not be less than $1 million.

(2) The commissioner may not require coverage in a stsndard health benefit plan for any benefit unless other provisions of Title 33, chapter 22, 30, or 31, specifically require coverage for the benefit. A small employer carrier may offer coverage for additional services and articles.

(3) A standard health benefit plan provided by a health maintenance organization or a basic health benefit plan with a restricted network provision must provide a comparable level of benefits to those required by subsection (1), as determined by the benefit equivalency and benefit value.

Section 7. Section 33-22-1818, MCA, is amended to read:

"**33-22-1818. Small employer carrier reinsurance program — board membership.** (1) There is a nonprofit entity to be known as the Montana small employer health reinsurance program.

(2) (a) The program must operate subject to the supervision and control of the board. The board consists of nine members appointed by the commissioner plus the commissioner or the commissioner's designated representative, who shall serve as an ex officio member of the board.

(b) (i) In selecting the members of the board, the commissioner shall include representatives of small employers, small employer carriers, and other qualified

individuals, as determined by the commissioner. At least six of the members of the board must be representatives of small employer carriers, one from each of the ~~five~~ *four* small employer carriers with the highest annual premium volume derived from health benefit plans issued to small employers in Montana in the previous calendar year, ~~and~~ one from the remaining small employer carriers, *and one from a disability reinsurance carrier*. One member of the board must be a ~~person licensed, certified, or otherwise authorized by the laws of Montana to provide health care in the ordinary course of business or in the practice of a profession~~ *a representative of a health benefit plan with a restricted network provision*. One member of the board must be a small employer who is not active in the health care or insurance fields. One member of the board must be a representative of the general public who is employed by a small employer and is not employed in the health care or insurance fields.

(ii) The initial board members' terms are as follows: one-third of the members shall serve a term of 1 year; one-third of the members shall serve a term of 2 years; and one-third of the members shall serve a term of 3 years. Subsequent board members shall serve for a term of 3 years. A board member's term continues until that member's successor is appointed.

(iii) A vacancy on the board must be filled by the commissioner. The commissioner may remove a board member for cause.

(3) ~~Within 60 days of July 1, 1993, and on~~ *On* or before March 1 of each year ~~after that date~~, each assessable carrier shall file with the commissioner the carrier's net health insurance premium derived from health benefit plans issued in this state in the previous calendar year."

Section 8. Section 33-22-1819, MCA, is amended to read:

"**33-22-1819. Program plan of operation — treatment of losses — exemption from taxation.** (1) Within 180 days after the appointment of the initial board, the board shall submit to the commissioner a plan of operation and may at any time submit amendments to the plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the program. The commissioner may, after notice and hearing, approve the plan of operation if the commissioner determines it to be suitable to ensure the fair, reasonable, and equitable administration of the program and if the plan of operation provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation is effective upon written approval by the commissioner.

(2) If the board fails to submit a suitable plan of operation within 180 days after its appointment, the commissioner shall, after notice and hearing, promulgate and adopt a temporary plan of operation. The commissioner shall amend or rescind any temporary plan adopted under this subsection at the time a plan of operation is submitted by the board and approved by the commissioner.

(3) The plan of operation must:

(a) establish procedures for the handling and accounting of program assets and money and for an annual fiscal reporting to the commissioner;

(b) establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

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(c) establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) establish procedures for collecting assessments from assessable carriers to fund claims incurred by the program;

(e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to fund administrative expenses incurred or te be incurred by the program; and

(f) provide for any additional matters necessary for the implementation and administration of the program.

(4) The · rogram has the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition, the program may:

(a) enter into contracts as are necessary or proper to carry out the provisions and purposes of this part, including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) take any legal action necessary to avoid the payment of improper claims against the program;

(d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance policies in accordance with the requirements of this part;

(e) establish conditions and procedures for reinsuring risks under the program;

(f) establish actuarial functions as appropriate for the operation of the program;

(g) appoint appropriate legal, actuarial, and other committees as necessary te provide technical assistance in operation of the program, policy and other contract design, and any other function within the authority of the program;

(h) to the extent permitted by federal law and in accordance with subsection (8)(c), make annual ~~fiscal yearend~~ assessments against assessable carriers and make interim assessments to fund claims incurred by the program; and

(i) borrow money te effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

(5) A reinsuring carrier may reinsure with the program as provided for in this subsection (5):

(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within 60 days of the commencement of the group's coverage under a health benefit plan.

(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days following the commencement of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.

(d) (i) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent of $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 20% of the next $100,000 of benefit payments during a calendar year and tbe program shall reinsure the remainder. A reinsuring carrier's liability under this subsection (d)(i) may not exceed a maximum limit of $25,000 in any calendar year with respect to any reinsured individual.

(ii) The board annually shall adjust the initial level of claims and maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual cbange in the medical component of the consumer price index for all urban consumers of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

(e) A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

(f) A small employer group health benefit plan in effect before January 1, 1994, may not be reinsured by the program until January 1, 1997, and then only if the board determines that sufficient funding sources are available.

(g) A reinsuring carrier shall apply all managed care and claims-handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(6) (a) As part of the plan of operation, the board shall establisb a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology must include a system for classification of small employers that reflects the types of case characteristics commonly used hy small employer carriers in the state. The methodology must provide for the development of base reinsurance premium rates that must be multiplied by the factors set forth in subsection (6)(b) to determine the premium rates for the program. The base reinsurance premium rates must be established by the board, subject to the approval of the commissioner, and must be set at levels that reasonably

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approximate ~~gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan~~ *the premiums necessary to recover one-half of the expenses for the calendar year. For purposes of this section, expenses include administrative expenses, one-half of the program net loss for the previous calendar year, and the actuarially anticipated claims to be incurred,* adjusted to reflect retention levels required under this part.

(b) Premiums for the program are as follows:

(i) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection (6).

(ii) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection (6).

(c) The board ~~periodically~~ shall *annually* review the methodology established under subsection (6)(a), including the system of classification and any rating factors, to ensure that it *is actuarially sound and that it* reasonably reflects the claims experience of the program. The board may propose changes to the methodology that are subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(7) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in 33-22-1809.

(8) (a) Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses, *and the actuarially anticipated losses for the calendar year. The sum of one-half of the program net loss for the previous calendar year plus the anticipated net loss for the calendar year must equal the total assessment amount. If the program net loss for the previous calendar year is zero or less, the total assessment amount must equal the actuarially anticipated losses for the calendar year.*

~~(b) To the extent permitted by federal law, each assessable carrier shall share in any net loss of the program for the year in an amount equal to the ratio of the total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery by each assessable carrier divided by the total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery by all assessable carriers in the state.~~

(b) (i) Each assessable carrier shall share in the program in an amount determined by multiplying the total assessment amount by a fraction, the numerator of which is the number of individuals in this state covered under disability insurance by the assessable carrier and the denominator of which is

the number of all individuals in this state covered under disability insurance by all assessable carriers.

(ii) The board shall make a reasonable effort to ensure that each insured individual is counted only once for the purpose of assessment. The board shall require each assessable carrier that provides excess of loss or stop loss insurance to include in its count of insured individuals all individuals whose coverage is reinsured in whole or in part, including coverage under excess of loss or stop loss insurance. The board shall allow an assessable carrier who is an excess of loss or stop loss insurer to exclude from its count of insured individuals those who have been counted by a primary disability insurer or by a primary reinsurer.

(iii) The board shall base each assessable carrier's assessment on reports filed with the commissioner as required by 33-22-1820. The board may use any reasonable method of estimating the number of individuals insured by an assessable carrier if the specific number is unknown.

(c) The board shall make an annual determination in accordance with this section of each assessable carrier's liability for its share of the ~~net loss of~~ *contribution to* the program and, except as otherwise provided by this section, make an annual ~~fiscal yearend~~ assessment against each assessable carrier to the extent of tbat liability. ~~If approved by the commissioner, the board may also make interim assessments against assessable carriers to fund claims incurred by the program. Any interim assessment must be credited against the amount of any fiscal yearend assessment due or to be due from an assessable carrier.~~ Payment of ~~a fiscal yearend or interim~~ *an* assessment is due within 30 days of receipt by the assessable carrier of written notice of the assessment. An assessable carrier that ceases doing business within the state is liable for assessments until the end of the calendar year in which the assessable carrier ceased doing business. The board may determine not to assess an assessable carrier if the assessable carrier's liability determined in accordance with this section does not exceed $10.

(d) The board may establish and maintain program reserves not to exceed five times the actuarially anticipated losses for the calendar year.

(e) If the sum of the reinsurance premiums and assessments in any calendar year exceeds the sum of the administrative expenses and incurred claims for that year, the board may proportionately credit the excess to assessable carriers or it may place the excess in program reserves, subject to the limits in subsection (8)(d).

(9) Tbe participation in the program as reinsuring carriers; the establishment of rates, forms, or procedures; or any other joint collective action required by this part may not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly or separately.

(10) The board, as part of the plan of operation, shall develop standards setting fortb the minimum levels of compensation te be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards, the board sball take into consideration the need to ensure the broad availability of coverages, the objectives of the program, tbe time and effort expended in placing tbe coverage, the need to provide ongoing service to small

employers, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.

(11) The program is exempt from taxation.

(12) On or before March 1 of each year, the commissioner shall evaluate the operation of the program and report to the governor and the legislature in writing the results of the evaluation. The report must include an estimato of future costs of the program, assessments necessary to pay those costs, the appropriateness of premiums charged by the program, the level of insurance retention under the program, the cost of coverage of small employers, and any recommendations for change to the plan of operation."

Section 9. Section 33-22-1820, MCA, is amended to read:

"33-22-1820. **Periodic market evaluation — report.** The board~~, in consultation with members of the committee,~~ shall study and report at least every 3 years to the commissioner on the effectiveness of this part. The report must analyze the effectiveness of this part in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small employer health insurance markets. The report must address whether carriers and producers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of this part. The report may contain recommendations for market conduct or other regulatory standards or action."

Section 10. Section 33-22-1821, MCA, is amended to read:

"33-22-1821. **Waiver of certain laws.** ~~A law that requires the inclusion of a specific category of licensed health care practitioners and a law that requires the coverage of a health care service or benefit do not apply to a basic health benefit plan delivered or issued for delivery to small employers in this state pursuant to this part but do apply to a standard health benefit plan delivered or issued for delivery to small employers in this state pursuant to this part.~~ *Except as provided in [section 5], a small employer carrier may exclude any category of licensed health care practitioner and any benefit or coverage for health care services otherwise required by law or rule from a basic health benefit plan delivered or issued for delivery in this state.*"

Section 11. Insured lives reporting requirement. On or before February 15 of each year, each insurer providing disability insurance shall, on a form prescribed by the commissioner, report the number of Montana residents insured on February 1 under any policy of individual or group disability insurance, including excess of loss or stop loss insurance policies covering disability insurance.

Section 12. Reentry by a carrier. A carrier that elected to not renew all of its healtb benefit plans pursuant to 33-22-1810(1)(f) may notify the commissioner within 180 days of [the effective date of this act] of its intent to comply with Title 33, chapter 22, part 18.

Section 13. Repealer. Section 33-22-1812, MCA, is repealed.

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Section 14. Codification instruction. [Section 11] is intended te be codified as an integral part of Title 33, chapter 2, part 7, and the provisions of Title 33, chapter 2, part 7, apply to [section 11].

Section 15. Coordination instruction. If House Bill No. 533 is passed and approved and contains a section implementing a uniform health benefit plan, then the hracketed phrases in 33-22-1803 must be included.

Section 16. Saving ciause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 12, 1995

CHAPTER NO. 378

[HB 511]

AN ACT CREATING THE HEALTH CARE ADVISORY COUNCIL; PROVIDING FOR MEMBERSHIP, MEETINGS, COORDINATION, AND STAFF SUPPORT; PROVIDING FOR A TRANSITIONAL MEETING BETWEEN THE HEALTH CARE ADVISORY COUNCIL AND THE MONTANA HEALTH CARE AUTHORITY; MAINTAINING THE RESPONSIBILITY OF THE STATE HEALTH PLAN WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; ELIMINATING THE MONTANA HEALTH CARE AUTHORITY; TRANSFERRING THE RESPONSIBILITY FOR THE HEALTH CARE DATA BASE TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; TRANSFERRING THE RESPONSIBILITY FOR CERTIFICATES OF PUBLIC ADVANTAGE TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 33-22-1809, 50-4-502, 50-4-601, 50-4-603, 50-4-604, 50-4-609, 50-4-610, 50-4-611, AND 50-4-612, MCA; REPEALING SECTIONS 50-1-201, 50-4-101, 50-4-102, 50-4-201, 50-4-202, 50-4-301, 50-4-302, 50-4-303, 50-4-304, 50-4-305, 50-4-306, 50-4-307, 50-4-308, 50-4-309, 50-4-310, 50-4-311, 50-4-401, 50-4-402, 50-4-501, AND 50-4-503, MCA, AND SECTION 21, CHAPTER 606, LAWS OF 1993; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. (1) The legislature and the public have recognized the continued need for evaluation and analysis of Montana's health care system. The legislature and the public support an incremental private-sector approach to health care reform with an emphasis on affordability and on access to health care. The health care advisory council is created to continue the public-private partnership in order to develop initiatives regarding health care reform to be presented to the 1997 legislature.

(2) The health care advisory council shall monitor and evaluate implementation of recent health care reform initiatives, including small group insurance reform, tbe development of medicaid managed care, tort reform, changes to the antitrust statutes, voluntary purchasing pools, and the efficiency of the certificate of need process. The health care advisory council shall provide

reports on the progress of these reforms to the general public and to the legislature.

Section 2. State health care policy. (1) It is the policy of the state of Montana to continue to investigate and develop strategies that result in all residents having access to quality health services at costs that are affordable.

(2) It is further the policy of the state of Montana that:

(a) Montana's health care system should ensure that care is delivered in the most effective and efficient manner possible;

(b) health promotion, preventative health services, and public health services should play a central role in the system;

(c) the patient-provider relationship should be a fundamental component of Montana's health care system;

(d) individuals should be encouraged to play a significant role in determining their health and appropriate use of the health care system;

(e) accurate and timely health care information should play a significant role in determining the individual's health and appropriate use of the health care system;

(f) whenever possible, market-based approaches should be relied on to contain the growth in health care spending while attempting to achieve expanded access, cost containment, and improved quality; and

(g) the process of health care reform in Montana should be carried out gradually and sequentially to ensure that any undesirable impacts of the state's reform policies on other aspects of the state's economy, particularly on small businesses, are minimized.

(3) The legislature recognizes the need to increase the emphasis on the education of consumers of health care services. Consumers should be educated concerning the health care system, payment for services, ultimate costs of health care services, and the benefit to consumers generally of providing only those services to the consumer that are reasonable and necessary.

(4) [Sections 1 through 7] may not be interpreted to prevent Montana residents from seeking health care services not otherwise recommended or provided for as a result of the provisions of [sections 1 through 7].

Section 3. Health care advisory council. (1) There is a health care advisory council.

(2) The health care advisory council is composed of 10 members. The members must be selected by May 1, 1995.

(a) There are four legislative members. Two members must be selected by the president of the senate from a pool of applicants from the senate, one representing each party. Two members must be selected by the speaker of the house from a pool of applicants from the house of representatives, one representing each party.

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(b) Tbere are five members, each representing a health care planning region as provided in [section 6], selected by the governor from a pool of applicants.

(c) There is one member representing the executive branch of government, appointed by the governor.

(3) Legislaters and members who represent health care planning regions and who want to serve on the health care advisory council shall apply to the president of the senate, speaker of the house, or governor, respectively, for a position on the council. The application must include:

(a) a statement of the reason that the person wishes to serve on the council;

(b) the experience that qualifies the person to serve; and

(c) a statement of the person's willingness to commit the substantial time required to serve on the council.

(4) The members of the health care advisory council shall elect a presiding officer from among the members.

(5) A vacancy on the health care advisory council must be filled in the same manner as the original appointment.

Section 4. Meetings. (1) The health care advisory council may meet up to 10 times over tbe biennium.

(2) The council shall adopt rules of procedure for the conduct of the meetings.

Section 5. Reimbursement of expenses — compensation. (1) A member of the health care advisory council who is appointed by the governor is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

(2) A legislative member is entitled to compensation and expenses as provided in 5-2-302.

Section 6. Powers and duties — report — staff support. (1) The health care advisory council shall study the considerations outlined in [section 1] and shall continue the study of solutions te the health care crisis and study methods of cost reduction in health care services and health care delivery systems.

(2) The health care advisory council shall report its findings to the governor and the legislature by October 1, 1996.

(3) The health care advisory council is the repository of all documents and materials of the Montana health care authority.

(4) The department of social and rehabilitation services shall provide staff support to the health care advisory council.

(5) The health care advisory council is attached to the department of social and rehabilitation services for administrative purposes only as provided in 2-15-121.

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(6) The department of social and rehabilitation services, the department of health and environmental sciences, the commissioner of insurance, and the attorney general shall provide information to the health care advisory council as necessary.

Section 7. Health care planning regions. For the purpose of determining members of the health care advisory council, there are five health care planning regions that consist of the following counties:

(1) region I: Sheridan, Daniels, Valley, Roosevelt, Richland, McCone, Garfield, Dawson, Prairie, Wibaux, Fallon, Custer, Rosebud, Treasure, Powder River, and Carter;

(2) region II: Blaine, Hill, Liberty, Toole, Glacier, Phillips, Pondera, Teton, Chouteau, and Cascade;

(3) region III: Judith Basin, Fergus, Petroleum, Musselshell, Golden Valley, Wheatland, Sweet Grass, Stillwater, Yellowstone, Carbon, and Big Horn;

(4) region IV: Lewis and Clark, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Park, Gallatin, Madison, and Beaverhead;

(5) region V: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli.

Section 8. Transition from Montana health care authority study. (1) The members of the health care advisory council and the members of the Montana health care authority shall hold one meeting before June 30, 1995. The meeting must be staffed by the Montana health care authority and the department of social and rehabilitation services.

(2) On or before June 30, 1995, the documents and materials compiled by the Montana health care authority must be transferred to the health care advisory council.

Section 9. Section 33-22-1809, MCA, is amended to read:

"**33-22-1809. Restrictions relating to premium rates.** (1) Premium rates for health benefit plans under this part are subject to the following provisions:

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For each class of business:,

~~(i)~~ the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate; ~~or~~

~~(ii) if the Montana health care authority established by 50-4-201 certifies to the commissioner that the cost containment goal set forth in 50-4-303 is met on or before January 1, 1999, the premium rates charged during a rating period to~~

~~small employers with similar case characteristics for the same or similar coverage may not vary from the index by more than 20% of the index rate.~~

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rato measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rato for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for tbe class of business; and

(iii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to tlie rates charged for all employees and dependents of the small employer.

(e) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate facters associated with all industry classifications by more than 15% of that coverage.

(f) In the case of health benefit plans delivered or issued for delivery prior te January 1, 1994, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (1)(b) until January 1, 1997. In that case, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and

(ii) any adjustment because of a change in coverage or a cbange in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(g) A small employer carrier shall:

(i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating facters must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups.

(ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(h) For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted network provision.

(i) The commissioner shall adopt rules to implement the provisions of this section and to ensure that rating practices used by small employer carriers are consistent with the purposes of this part, including rules that ensure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences because of the nature of the groups.

(2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.

(3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:

(a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;

(b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;

(c) the provisions relating to renewability of policies and contracts; and

(d) the provisions relating to any preexisting condition.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal

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underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(h) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with this part and that the rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by the small employer carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of this part and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department."

Section 10. Section 50-4-502, MCA, is amended to read:

"**50-4-502. Health care data base — information submitted — ~~enforcement~~.** (1) The ~~authority~~ *department, with advice from the health care advisory council,* shall *design and* develop ~~and maintain~~ a ~~unified~~ health care data base ~~that enables the authority, on a statewide basis, to:~~

~~(a) determine the distribution and capacity of health care resources, including health care facilities, providers, and health care services;~~

~~(b) identify health care needs and direct statewide and regional health care policy to ensure high-quality and cost-effective health care;~~

~~(c) conduct evaluations of health care procedures and health care protocols;~~

~~(d) compare costs of commonly performed health care procedures between providers and health care facilities within a region and make the data readily available to the public; and~~

~~(e) compare costs of various health care procedures in one location of providers and health care facilities with the costs of the same procedures in other locations of providers and health care facilities~~ *that includes data on health care resources and the cost and quality of health care services. The purpose of the data base is to assist in developing and monitoring the progress of incremental health care reform measures that increase access to health care services, promote cost containment, and maintain quality of care.*

(2) The ~~authority~~ *department* shall ~~by rule require~~ *work in conjunction with* health care providers, health insurers, health care facilities, private entities, and entities of state and local governments to ~~file with the authority the reports, data, schedules, statistics, and other information determined by the authority to be~~ *determine the information* necessary to fulfill the purposes of the data base provided in subsection (1). ~~Material to be filed with the authority may include health insurance claims and enrollment information used by health insurers.~~

~~(3) The authority may issue subpoenas for the production of information required under this section and may issue subpoenas for and administer oaths to any person. Noncompliance with a subpoena issued by the authority is, upon application by the authority, punishable by a district court as contempt pursuant to Title 3, chapter 1, part 5.~~

~~(4) The data base must:~~

~~(a) use unique patient and provider identifiers and a uniform coding system identifying health care services; and~~

~~(b) reflect all health care utilization, costs, and resources in the state and the health care utilization and costs of services provided to Montana residents in another state.~~

~~(5) Information in the data base required by law to be kept confidential must be maintained in a manner that does not disclose the identity of the person to whom the information applies. Information in the data base not required by law to be kept confidential must be made available by the authority upon request of any person.~~

~~(6)~~*(3)* The ~~authority~~ *department* shall adopt by rule a confidentiality code to ensure that information in the data base is maintained and used according to state law governing confidential health care information.

(4) The department shall make recommendations to the legislature by October 1, 1996, on the actions needed to establish the data base, including an estimate of the fiscal impact on state and local government, health care providers, health insurers, health care facilities, and private entities."

Section 11. Definitions. As used in this part, the following definitions apply:

(1) "Data base" means the health care data base created pursuant to 50-4-502.

(2) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(3) "Health care" includes both physical health care and mental health care.

(4) "Health care advisory council" means the council provided for in [sections 1 through 7].

(5) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in 50-5-101(19). The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(6) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized hy the laws of this state to provide health care in the ordinary course of business or practice of a profession.

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(7) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to tbe extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

Section 12. Section 50-4-601, MCA, is amended to read:

"**50-4-601. Finding and purpose.** The legislature finds that the goals of controlling health care costs and improving the quality of and access to health care will be significantly enhanced in some cases by cooperative agreements among health care facilities. The purpose of tbis part is to provide the state, through the ~~authority~~ *department*, with direct supervision and control over the implementation of cooperative agreements among health care facilities for which certificates of public advantage are granted. It is the intent of the legislature that supervision and control over the implementation of these agreements substitute state regulation of facilities for competition between facilities and that this regulation have the effect of granting the parties to the agreements state action immunity for actions that might otherwise be considered to be in violation of state or federal, or both, antitrust laws."

Section 13. Section 50-4-603, MCA, is amended to read:

"**50-4-603. Certificate of public advantage — standards for certification — time for action by ~~authority~~ *department*.** (1) Parties to a cooperative agreement may apply to the ~~authority~~ *department* for a certificate of public advantage. The application for a certificate must include a copy of the proposed or executed agreement, a description of the scope of the cooperation contemplated by the agreement, and tbe amount, nature, source, and recipient of any consideration passing to any person under the terms of the agreement.

(2) The ~~authority~~ *department* shall hold a public hearing on the application for a certificate before acting upon the application. The ~~authority~~ *department* may not issue a certificate unless the ~~authority~~ *department* finds that the agreement is likely to result in lower health care costs or in greater access to or quality of health care than would occur without the agreement. If the ~~authority~~ *department* denies an application for a certificate for an executed agreement, the agreement is void upon the decision of the ~~authority~~ *department* not to issue the certificate. Parties to a void agreement may not implement or carry out the agreement.

(3) The ~~authority~~ *department* shall deny the application for a certificate or issue a certificate within 90 days of receipt of a completed application."

Section 14. Section 50-4-604, MCA, is amended to read:

"**50-4-604. Reconsideration by ~~authority~~ *department*.** (1) If the ~~authority~~ *department* denies an application and refuses to issue a certificate, a party to the agreement may request that the ~~authority~~ *department* reconsider its decision. The ~~authority~~ *department* shall reconsider its decision if the party applying for reconsideration submits the request to the ~~authority~~ *department* in writing within 30 calendar days of the ~~authority's~~ *department's* decision to deny the initial application.

(2) The ~~authority~~ *department* shall hold a public hearing on the application for reconsideration. The hearing must be held within 30 days of receipt of the request for reconsideration unless the party applying for reconsideration agrees to a hearing at a later time. The hearing must be held pursuant to 2-4-604.

(3) The ~~authority~~ *department* shall make a decision to deny the application or to issue the certificate within 30 days of the conclusion of the hearing required by subsection (2). The decision of the ~~authority~~ *department* must be part of written findings of fact and conclusions of law supporting the decision. The findings, conclusions, and decision must be served upon the applicant for reconsideration."

Section 15. Section 50-4-609, MCA, is amended to read:

"**50-4-609. Revocation of certificate by ~~authority~~ *department*.** (1) The ~~authority~~ *department* shall revoke a certificate previously granted by it if the ~~authority~~ *department* determines that the cooperative agreement is not resulting in lower health care costs or greater access to or quality of health care than would occur in absence of the agreement.

(2) A certificate may not be revoked by the ~~authority~~ *department* without giving notice and an opportunity for a hearing before the ~~authority~~ *department* as follows:

(a) Written notice of the proposed revocation must be given to the parties to the agreement for which the certificate was issued at least 120 days before the effective date of the proposed revocation.

(b) A hearing must be provided prior to revocation if a party to the agreement submits a written request for a hearing to the ~~authority~~ *department* within 30 calendar days after notice is mailed to the party under subsection (2)(a).

(c) Within 30 calendar days of receipt of the request for a hearing, the ~~authority~~ *department* shall hold a public hearing to determine whether or not to revoke the certificate. The hearing must be held in accordance with 2-4-604.

(3) The ~~authority~~ *department* shall make its final decision and serve the parties with written findings of fact and conclusions of law in support of its decision within 30 days after the conclusion of the hearing or, if no hearing is requested, within 30 days of the date of expiration of the time to request a hearing.

(4) If a certificate of public advantage is revoked by the ~~authority~~ *department*, the agreement for which the certificate was issued is terminated."

Section 16. Section 50-4-610, MCA, is amended to read:

"**50-4-610. Appeal.** A party to a cooperative agreement may appeal, in the manner provided in Title 2, chapter 4, part 7, a final decision by the ~~authority~~ *department* to deny an application for a certificate or a decision by the ~~authority~~ *department* to revoke a certificate. A revocation of a certificate pursuant to 50-4-609 does not become final until the time for appeal has expired. If a decision to revoke a certificate is appealed, the decision is stayed pending resolution of the appeal by the courts."

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Section 17. Section 50-4-611, MCA, is amended to read:

"**50-4-611. Record of agreements to be kept.** The ~~authority~~ *department* shall keep a copy of cooperative agreements for which a certificato is in effect pursuant to this part. A party te a cooperative agreement who terminates the agreement shall notify the ~~authority~~ *department* in writing of the termination within 30 days after the termination."

Section 18. Section 50-4-612, MCA, is amended to read:

"**50-4-612. Rulemaking.** The ~~authority~~ *department* shall adopt rules to implement this part. The rules shall include rules:

(1) specifying the form and content of applications for a certificate;

(2) specifying necessary details for reconsideration of denial of certificatos, revocations of certificates, hearings required or authorized by this part, and appeals; and

(3) to effect the active supervision by the ~~authority~~ *department* of agreements between health care facilities. These rules may include reporting requirements for parties to an agreement for which a certificate is in effect."

Section 19. Definitions. For the purposes of this part, the following definitions apply:

(1) "Certificate of public advantage" or "certificate" means a written certificate issued by the department as evidence of the department's intention that the implementation of a cooperative agreement, when actively supervised by the department, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(2) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered hy health care facilities.

(3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.

(4) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in 50-5-101(19). The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

Section 20. Repealer. Sections 50-1-201, 50-4-101, 50-4-102, 50-4-201, 50-4-202, 50-4-301, 50-4-302, 50-4-303, 50-4-304, 50-4-305, 50-4-306, 50-4-307, 50-4-308, 50-4-309, 50-4-310, 50-4-311, 50-4-401, 50-4-402, 50-4-501, and 50-4-503, MCA, and section 21, Chapter 606, Laws of 1993, are repealed.

Section 21. Name change — directions to code commissioner. Wherever the name of or a reference to the Montana health care authority appears in legislation enacted by the 1995 legislature to be codified in Title 50,

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chapter 4, part 6, the code commissioner is directed to change the reference to the department of justice.

Section 22. Codification instructions. (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 through 7].

(2) [Section 11] is intended to be codified as an integral part of Title 50, chapter 4, part 5, and the provisions of Title 50, chapter 4, part 5, apply to [section 11].

(3) [Section 19] is intended to be codified as an integral part of Title 50, chapter 4, part 6, and the provisions of Title 50, chapter 4, part 6, apply to [section 19].

Section 23. Coordination instruction. If Senate Bill No. 345 is passed and approved, then the department of public health and human services shall provide staff support to the health care advisory council and the council must be administratively attached to the department of public health and human services as provided in 2-15-121.

Section 24. Effective dates. (1) [Sections 1 through 8, 21 through 23, and 25 and this section] are effective on passage and approval.

(2) [Sections 9 through 20] are effective July 1, 1995.

Section 25. Termination. [Sections 1, 2(4), and 3 through 8] terminate June 30, 1997.

Approved April 12, 1995

CHAPTER NO. 379

[HB 556]

AN ACT GENERALLY REVISING STATE INSURANCE LAWS; PROVIDING FOR THE DISCLOSURE OF MATERIAL TRANSACTIONS; CREATING A RISK-BASED CAPITAL FOR INSURERS ACT; AMENDING SECTIONS 2-6-109, 33-1-207, 33-1-208, 33-1-209, 33-1-311, 33-1-413, 33-1-501, 33-2-117, 33-2-301, 33-2-302, 33-2-305, 33-2-307, 33-2-501, 33-2-521, 33-2-523, 33-2-525, 33-2-526, 33-2-528, 33-2-529, 33-2-531, 33-2-701, 33-2-705, 33-2-708, 33-2-803, 33-2-806, 33-2-820, 33-2-1111, 33-2-1201, 33-2-1216, 33-2-1217, 33-2-1218, 33-2-1394, 33-2-1510, 33-2-1605, 33-3-431, 33-4-202, 33-4-203, 33-5-401, 33-7-117, 33-10-201, 33-10-202, 33-11-102, 33-11-104, 33-11-108, 33-14-304, 33-15-301, 33-15-303, 33-16-202, 33-16-235, 33-17-102, 33-17-211, 33-17-405, 33-17-503, 33-17-603, 33-18-212, 33-18-301, 33-22-131, 33-22-132, 33-22-201, 33-22-202, 33-22-301, 33-22-303, 33-22-504, 33-22-508, 33-22-1120, 33-22-1803, 33-22-1811, 33-22-1819, 33-30-102, 33-30-107, 33-30-108, 33-30-202, 33-30-204, 33-30-311, 33-30-1001, AND 33-31-111, MCA; REPEALING SECTIONS 33-30-312 AND 33-30-313, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-109, MCA, is amended to read:

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"2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty. (1) Except as provided in subsections (3) through (7), in order to protect the privacy of those who deal with state and local government:

(a) ~~no~~ *an* agency may *not* distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) ~~no~~ *a* list of persons prepared by the agency may *not* be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a mailing list by examination of original documents or applications which are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or to lists of persons holding driver's licenses provided for under 61-5-126.

(5) This section ~~shall~~ *does* not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted ~~therefrom~~ as provided in 20-30-102, *or subject to Title 33, chapter 17.*

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) This section does not apply to a corporate information list developed hy the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) A person violating the provisions of suhsection (1)(b) is guilty of a misdemeanor."

Section 2. Section 33-1-207, MCA, is amended to read:

"33-1-207. Disability insurance. *(1)* Disability insurance, *including credit disability insurance,* is insurance of human beings:

(a) against bodily injury, disablement, or death by accident or accidental means or the *medical* expense ~~thereof~~ or *indemnity involved; or*

(b) against disablement or *medical* expense *or indemnity* resulting from sickness ~~and every insurance appertaining thereto~~.

(2) Transaction of disability insurance does not include workers' compensation insurance."

Section 3. Section 33-1-208, MCA, is amended to read:

"**33-1-208. Life insurance.** Life insurance, *including credit life insurance,* is insurance on human lives. The transaction of life insurance includes ~~also~~ the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, benefits that provide reimbursement or payment for long-term home health care or long-term care in a nursing home or other related institution, and optional modes of settlement of proceeds of life insurance. Transaction of life insurance does not include workers' compensation insurance."

Section 4. Section 33-1-209, MCA, is amended to read:

"**33-1-209. Marine protection and indemnity and wet marine insurance.** (1) ~~Marine insurance includes marine protection and indemnity insurance, meaning insurance against, or against legal liability of the insured for, loss, damage, or expense arising out of or incident to the ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss of or damage to the property of another person.~~ *Marine and transportation insurance means insurance against loss of or damage to:*

(a) vessels, craft, aircraft, vehicles, goods, freights, cargoes, merchandise, effects, disbursements, profits, money, securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia, and any interest therein, with respect to risks and perils, including war risks, marine builder's risks, and personal property floater risks, of navigation and transportation or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment, while awaiting shipment, or during any delays, storage, transshipment, or reshipment;

(b) person or property in connection with marine, transit, or transportation insurance, including liability for loss or damage to either person or property incident to the construction, repair, operation, maintenance, or use of the subject matter of the insurance, but not including life insurance, surety bonds, or insurance against bodily injury arising out of the ownership, maintenance, or use of an automobile;

(c) jewels, jewelry, or precious metals, whether in the course of transportation or otherwise; and

(d) bridges; tunnels; and other instrumentalities of transportation and communication, excluding buildings and their furnishings, fixed contents, and supplies held in storage (unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot, or civil commotion are the only hazards to be covered); piers; wharves; docks; slips; and other aids to navigation and transportation, including drydocks, marina railways, and dams and appurtenant facilities for the control of waterways.

(2) Marine protection and indemnity insurance means insurance against liability of the insured for loss, damage, or expense incident to ownership, operation, charter, maintenance, use, repair, or construction of any vessel, craft, or instrumentality for use in ocean or inland waterways. The term includes

insurance against the liability of the insured for personal injury, illness, death, or loss or damage of the property of another person.

~~(2)~~*(3)* For the purposes of this code, wet marine and transportation insurance is that part of marine insurance ~~which~~ *that* includes only:

(a) insurance upon vessels, crafts, and hulls and of interests ~~therein or with relation thereto~~ *in or relating to the vessels, crafts, and hulls*;

(b) insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;

(c) insurance of freights and disbursements pertaining to a subject of insurance ~~coming within~~ *subject to* this subsection; and

(d) insurance of personal property and interests ~~therein~~ *in the personal property*, in *the* course of exportation from or importation into any country and in *the* course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, ~~in~~ *with* respect ~~to, appertaining to, or in connection with any and all~~ risks or perils of navigation, transit, or transportation *or* while being prepared for ~~and~~ *or* ~~while~~ awaiting shipment ~~and~~ *or* during any delays, storage, transshipment, or reshipment incident ~~thereto~~ *to preparation or shipment.*"

Section 5. Section 33-1-311, MCA, is amended to read:

"**33-1-311. General powers and duties.** (1) The commissioner shall enforce the *applicable* provisions of ~~this code~~ *the laws of this state* and shall execute the duties imposed *on the commissioner* by ~~this code~~ *the laws of this state.*

(2) The commissioner ~~shall have~~ *has* the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of ~~this code~~ *the laws of this state.*

(3) The commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of ~~this code~~ *the laws of this state* or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

~~(5) The commissioner has additional powers and duties as provided by other laws of this state.~~

~~(6)~~*(5)* The department is a criminal justice agency as defined in 44-5-103."

Section 6. Section 33-1-501, MCA, is amended to read:

"**33-1-501. Filing and approval of forms.** (1) *(a)* An insurance policy or annuity contract form, certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form has been filed with and

approved by the commissioner and, *if required,* the regulatory official of the state of domicile of the insurer~~, if required~~. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Forms for use in property, marine, (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages may be filed by a rating organization on behalf of its members and subscribers or by a member or subscriber on its own behalf.

(b) The approval of an insurance policy or annuity contract form, certificate, enrollment form, application form, or other related insurance form by the state of domicile may be waived by the commissioner if the commissioner considers the requirements of subsection (1)(a) unnecessary for the protection of Montana insurance consumers. If the requirement is waived, an insurer shall notify the commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form by the state of domicile.

(2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than an additional 60 days the period within which the commissioner may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any approval.

(3) ~~An order of~~ *Notice by* the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer.

(4) The commissioner may exempt from the requirements of this section, fo so long as the commissioner considers proper, an insurance document, form, or type of document or form ~~specified~~ to which, in the commissioner's opinion, this section may not practicably be applied or the filing and approval of which are~~, in the commissioner's opinion,~~ not desirable or necessary for the protection of the public.

(5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

(6) This section and 33-1-502 do not apply to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon request. *The certificates must meet the minimum provisions mandated by Montana if Montana law prevails over conflicting provisions of other state law.*"

Section 7. Section 33-2-117, MCA, is amended to read:

"**33-2-117. Continuance, expiration, reinstatement, and amendment of certificate of authority.** (1) Certificates of authority issued or renewed under this code ~~shall~~ *must* continue in force as long as the insurer is entitled thereto under this code and until suspended or revoked or otherwise terminated~~;~~. ~~subject, however,~~ *A certificate is subject* to continuance ~~of the certificate~~ by the insurer each year by payment *on or* prior to ~~May 15~~ *March 1* of the continuation fee provided in 33-2-708.

(2) If not ~~so~~ continued by the insurer, ~~its~~ *the* certificate of authority ~~shall expire~~ *expires* at midnight on May 31 ~~next~~ following ~~such~~ failure of the insurer ~~so~~ to continue it in force. The commissioner shall promptly notify the insurer of ~~the occurrence of any such failure resulting in impending~~ *its failure to pay the continuation fee that can result in the* expiration of its certificate of authority.

(3) The commissioner may~~, in his discretion,~~ reinstate a certificate of authority ~~which~~ *that* the insurer has inadvertently permitted to expire~~,~~ after the insurer ~~has fully cured all its~~ *cures any* failures ~~which resulted~~ *resulting* in ~~such~~ expiration and upon payment ~~by the insurer~~ of the fee for reinstatement in addition to the current continuation fee, as provided in 33-2-708. Otherwise, the insurer ~~shall~~ *may* be granted another certificate of authority only after filing *an* application ~~therefor~~ and meeting all other requirements ~~as~~ for an original certificate of authority in this state.

(4) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter of insuring powers."

Section 8. Section 33-2-301, MCA, is amended to read:

"**33-2-301. Short title — purpose — definitions.** (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) This part must be applied to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and te be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

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(a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(b) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines insurance producer may place surplus lines insurance under 33-2-307.

(c) "Export" means to place surplus lines insurance with an unauthorized insurer.

~~(d) "Kind of insurance" means one of the types of insurance required to be reported in the annual statement filed with the commissioner by an authorized insurer.~~

~~(e)~~*(d)* "Producing insurance producer" means the individual insurance producer dealing directly with the person seeking insurance.

~~(f)~~*(e)* "Surplus lines insurance" means any insurance ~~(on risks resident, located, or to be performed in this state)~~ permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible te accept the insurance. The term does not include the kinds of insurance exempted under 33-2-317.

~~(g)~~*(f)* "Surplus lines insurance producer" means an individual, partnership, or corporation licensed under 33-2-305 te place surplus lines insurance ~~(on risks resident, located, or to be performed in this state)~~ with unauthorized insurers eligible to accept ~~such~~ *the* insurance.

~~(h)~~*(g)* "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states."

Section 9. Section 33-2-302, MCA, is amended to read:

"33-2-302. **Conditions precedent to sale of surplus lines insurance.** ~~Insurance may be procured through a licensed surplus lines insurance producer from~~ *A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with* an unauthorized insurer if:

(1) the insurer is an eligible surplus lines insurer;

(2) the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers *or, in the case of a renewal, the line of insurance has not become available from an authorized insurer*;

(3) the producing insurance producer makes a diligent effort te place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

(4) the insurance is not procured for the purpose of securing:

(a) a lower premium rate than would be accepted by an authorized insurer; or

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(b) an advantage in terms of the insurance contract; and

(5) all other requirements of this part are met."

Section 10. Section 33-2-305, MCA, is amended to read:

"**33-2-305. Licensing of surplus lines insurance producer — fee and bond.** (1) A person may not ~~procure~~ *place* a contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a property and casualty insurance producer and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property and casualty insurance producer continuously for 5 years or more; and

(d) filed with the commissioner and, for as long as the license remains in effect, kept in force a bond in favor of the state of Montana in the amount of $10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminatod unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice of termination.

(3) The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

Section 11. Section 33-2-307, MCA, is amended to read:

"33-2-307. **Requirements for eligible surplus lines insurers.** (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) tbe insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) ~~$3~~ *$7* million. An insurer possessing less than ~~$4~~ *$6* million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by tbe commissioner. Tbe commissioner's finding must be based upon such factors as quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than ~~$3~~ *$6* million.

(ii) in the case of Lloyd's or another similar ~~unincorporated~~ group ~~of~~ *including incorporated and unincorporated* alien ~~individual~~ insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. *The incorporated members of the group may not engage in any business other than underwriting as a member of the group and must be subject to the same level of solvency regulation and control by the groups of domiciliary regulators as are the unincorporated members.* The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, tbe insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policybolder, each individual syndicate shall maintain minimum capital and surplus, or tbeir substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance excbange policyholder, eacb individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for tbe protection of all its policybolders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration dato that may not at any time

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be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer no more than 6 months after the close of the period reported upon, (or quarterly if considered necessary by the commissioner), and which is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(i) is in unsound financial condition;

(ii) is no longer eligible under subsections (1) through (3);

(iii) has willfully violated the laws of this state; or

(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

Section 12. Section 33-2-501, MCA, is amended to read:

"33-2-501. Assets allowed. In any determination of the financial condition of an insurer, there must be allowed as assets only assets that are owned by the insurer and that consist of:

(1) cash in the possession of the insurer or in transit under its control and including the true balance of any deposit in a solvent hank or trust company;

(2) investments, securities, properties, and loans acquired or held in accordance with this code and in connection therewith the following items:

(a) interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest;

(b) declared and unpaid dividends on steck and shares unless the amount has otherwise been allowed as an asset;

(c) interest due or accrued upon a collateral loan in an amount not to exceed 1 year's interest on the loan;

(d) interest due or accrued on deposits in solvent banks and trust companies and interest due or accrued on other assets, if the interest is in the judgment of the commissioner a collectible asset;

(e) interest due or accrued on a mortgage loan in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes on the property over the unpaid principal. Interest accrued for a period in excess of 18 months may not be allowed as an asset.

(f) rent due or accrued on real property if the rent is not in arrears for more than 3 months and rent more than 3 months in arrears if the payment of the rent is adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral;

(g) the unaccrued portion of taxes paid prior to the due date on real property;

(3) premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) the net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer;

(5) premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable on the premiums. The limitation in this suhsection does not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy te which premiums apply;

(7) notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on that basis, to the extent of the unearned premium reserves carried on the policies;

(8) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under chapter 2, part 12;

(9) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

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(10) deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds or from any suspended banking institution, to the extent considered hy the commissioner available for the payment of losses and claims and at values to be determined by the commissioner;

(11) electronic data processing equipment if the cost of the equipment is ~~at least $100,000, which cost must be~~ amortized in full over a period of not to exceed ~~10~~ *8* calendar years. However, ~~with regard to life insurers, the equipment must be allowed as an asset if the cost of the equipment is at least $25,000, which cost must be amortized in full over a period of not to exceed 5 calendar years, and~~ the amount of the asset allowed may not exceed 1% of the total of the other allowahle assets of the insurer.

(12) all assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon in the annual statement;

(13) other assets, not inconsistent with the provisions of this section, considered by the commissioner to be available for the payment of losses and claims, at values to be determined by the commissioner."

Section 13. Section 33-2-521, MCA, is amended to read:

"33-2-521. **Standard valuation of reserve liabilities law — life insurance.** (1) The commissioner shall annually value or cause to he valued the reserve liabilities (~~hereinafter called~~ reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state and may certify the amount of any ~~such~~ reserves, specifying the mortality table or tables, rato or rates of interest, and methods (net level premium method or other) used in tbe calculation of ~~such~~ reserves. In calculating ~~such~~ *the* reserves, ~~he~~ *the commissioner* may use group methods and approximate averages for fractions of a year or otherwise. ~~In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States.~~

(2) ~~For the purpose of making such valuation, the commissioner may employ a competent actuary who shall be paid by the insurer for which the service is rendered; but a domestic insurer may make such valuation and it may be received by the commissioner upon satisfactory proof of its correctness.~~ In lieu of the valuation of the reserves ~~herein~~ required *in this section* of any foreign or alien insurer, the commissioner may accept any valuation made or caused to be made hy the insurance supervisory official of any state or other jurisdiction when ~~such~~ *the* valuation complies with the minimum standard ~~herein~~ provided *in this section* and if tbe official of ~~such~~ *the other* state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when ~~such~~ *the* certificato states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(3) Any insurer ~~which at any time shall have~~ *that has* adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard ~~herein~~ provided *in this section* may, with

the approval of the commissioner, adopt any lower standard of valuation but not lower than the minimum ~~herein provided~~ *in this section. For the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required in subsection (4) may not be considered to be the adoption of a higher standard of valuation.*

(4) (a) Each life insurer doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items considered necessary to its scope.

(b) Each life insurer, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subsection (4)(a) an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(c) The commissioner may provide by rule for a transition period for establishing any higher reserves that the qualified actuary may consider necessary in order to render the opinion required by this subsection (4).

(d) Each opinion required by this subsection (4) must be governed by the following provisions:

(i) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.

(ii) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or if the commissioner determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and to prepare any supporting memorandum as is required by the commissioner.

(iii) The opinion must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1996.

(iv) The opinion must apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(v) The opinion must be based on standards adopted from time to time by the actuarial standards board and on additional standards as the commissioner may prescribe by rule.

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(vi) In the case of an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(vii) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(viii) Disciplinary action by the commissioner against the insurer or the qualified actuary must be defined in rules by the commissioner.

(ix) Any memorandum in support of the opinion and any other material provided by the insurer to the commissioner in connection with those items must be kept confidential by the commissioner, may not be made public, and is subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this subsection (4) or by rules promulgated under this subsection (4). However, the memorandum or other material may otherwise be released by the commissioner:

(A) with the written consent of the insurer; or

(B) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the insurer in its marketing, is cited before any governmental agency other than a state insurance department, or is released by the insurer to the news media, all portions of the confidential memorandum are no longer confidential.

(5) For purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in the academy's rules."

Section 14. Section 33-2-523, MCA, is amended to read:

"33-2-523. Contracts on or after the operative date of 33-20-213 — valuation. (1) This section ~~shall apply~~ *applies* to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524, ~~and~~ 33-2-525, *and [section 76(2)]*, the minimum standard for the valuation of all ~~such~~ *the* policies and contracts *issued prior to October 1, 1995,* ~~shall~~ *must* be *the standard provided by the laws in effect prior to October 1, 1995. Except as otherwise provided in 33-2-524, 33-2-525, and [section 76(2)], the minimum standard for the valuation of all policies and contracts must be* the commissioner's reserve valuation methods defined in 33-2-525, ~~and~~ 32-2-526(3)~~,~~ *and (4), and [section 76],* 5% interest for group annuity and pure endowment contracts, and 3 1/2% interest for all other ~~such~~ policies and contracts or, in the case of *life insurance* policies and contracts other than annuity and pure endowment contracts issued on or

after March 17, 1973, 4% interest for ~~such~~ *all other* policies issued prior to July 1, 1979, *5 1/2% interest for single-premium life insurance policies,* and 4 1/2% interest for ~~such~~ *all other* policies issued on or after July 1, 1979, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in ~~such~~ *the* policies~~,~~*:*

(i) the commissioner's 1941 standard ordinary mortality table~~:~~

~~(i)~~ for ~~such~~ policies issued prior to the operative date of 33-20-206, as amended, and the commissioner's 1958 standard ordinary mortality table for ~~such~~ policies issued on or after that operative date but prior to January 1, 1989, except that for any category of ~~such~~ *the* policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at the option of the insurer, with the approval of the commissioner, according to an age younger than the actual age of the insured; or

(ii) for ~~such~~ policies issued on or after January 1, 1989:

(A) the commissioner's 1980 standard ordinary mortality table;

(B) at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors; or

(C) any ordinary mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for ~~such~~ policies;

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in ~~such~~ *the* policies, the 1941 standard industrial mortality table for ~~such~~ policies issued prior to the operative date of 33-20-207~~, as amended,~~ and, for ~~such~~ policies issued on or after that operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for ~~such~~ *the* policies;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in ~~such~~ *the* policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in ~~such~~ *the* policies, the group annuity mortality table for 1951, any modification of ~~such~~ *the* table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner hy rule for use in determining the minimum standard of valuation for ~~such~~ *the* policies;

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either ~~such~~ *the* tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any ~~such~~ table ~~shall~~ *must*, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for ~~such~~ *the* policies;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table ~~shall~~ *must* be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis, and other special benefits, ~~such~~ *the* tables as may be approved by the commissioner."

Section 15. Section 33-2-525, MCA, is amended to read:

"**33-2-525. Commissioner's reserve valuation method.** (1) Except as otherwise provided in subsection (4) *of this section,* ~~and~~ 33-2-526(3) *and (4), and [section 76(2)],* reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, ~~shall~~ *must* be the excess, if any, of the present value, at the date of valuation, of ~~such~~ future guaranteed benefits provided for hy ~~such~~ *the* policies, over the then present value of any future modified net premiums ~~therefor~~. The modified net premiums for any ~~such~~ policy ~~shall~~ *must* be ~~such~~ *the* uniform percentage of the respective contract premiums for ~~such~~ *the* benefits that the present value, at the date of issue of the policy, of all ~~such~~ modified net premiums ~~shall~~ *must* be equal to the sum of the then present value of ~~such~~ *the* benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) a net level annual premium equal to the present value, at the date of issue, of ~~such~~ benefits provided for after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of ~~such~~ *the* policy on which a premium falls due;. ~~provided, however~~ *However*, ~~that such~~ *the* net level annual premium ~~shall~~ *may* not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of ~~such~~ *the* policy;

(b) a net 1-year term premium for ~~such~~ benefits provided for in the first policy year.

(2) (a) For ~~every~~ *each* life insurance policy issued on or after January 1, 1987, for which the contract premium in the first policy year exceeds that of the second year, for which ~~no~~ *a* comparable additional benefit is *not* provided in the first year for ~~such~~ *the* excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than ~~such~~ *the* excess premium, the reserve according to the commissioner's reserve valuation method, as of any policy anniversary occurring on or before the assumed ending date as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than ~~such~~ *the* excess premium, is, except as otherwise provided in 33-2-526, the greater of the reserve as of ~~such~~ *the* policy anniversary calculated as described in subsection (1) or the reserve as of ~~such~~ *the* policy anniversary calculated as described in subsection (1) with the following exceptions:

(i) the value defined in subsection (1)(a) is reduced by 15% of the amount of ~~such~~ *the* excess first-year premium;

(ii) all present values of benefits and premiums are determined without reference to premiums or benefits provided for in the policy after the assumed ending date;

(iii) the policy is assumed to mature on ~~such~~ *the* assumed ending date as an endowment; and

(iv) the cash surrender value provided on ~~such~~ *the* assumed ending date is considered an endowment benefit.

(b) In making the comparisons in subsection (2)(a), the mortality and interest bases stated in 33-2-523 and 33-2-527 must be used.

(3) Reserves according to the commissioner's reserve valuation method for the following ~~shall~~ *must* be calculated by a method consistent with the principles of this section, except that any extra premiums charged because of impairments or special hazards ~~shall~~ *must* be disregarded in the determination of modified net premiums:

(a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, ~~(~~including a partnership or sole proprietorship~~)~~, or by an employee organization, or by both, other than a plan providing individual retirement

accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as ~~now or hereafter~~ amended;

(c) disability and accidental death benefits in all policies and contracts; and

(d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

(4) (a) Subsection (4)(b) applies to any annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, ~~(~~including a partnership or sole proprietorship~~)~~, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as ~~now or hereafter~~ amended.

(b) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in ~~such~~ *the* contracts, ~~shall~~ *must* be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by ~~such~~ *the* contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations required by the terms of ~~such~~ *the* contract that become payable prior to the end of ~~such~~ *the* respective contract year. The future guaranteed benefits ~~shall~~ *must* be determined by using the mortality table, if any, and the interest rate or rates specified in ~~such~~ *the* contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of ~~such~~ *the* contracts to determine nonforfeiture values."

Section 16. Section 33-2-526, MCA, is amended to read:

"33-2-526. Limits — options — minimum reserves. (1) ~~In no event shall an~~ *An* insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits *issued on or after October 1, 1995, may not* be less than the aggregate reserves calculated in accordance with the methods set forth in 33-2-525, ~~and~~ subsection (3) of this section, *[section 76(2)]* and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for ~~such~~ *the* policies.

(2) *Reserves for all policies and contracts issued prior to October 1, 1995, may be calculated, at the option of the insurer, according to standards that produce greater aggregate reserves for those policies and contracts than the minimum reserves required by the laws in effect immediately prior to October 1, 1995.* Reserves for any category of policies, contracts, or benefits as established by the commissioner, *issued on or after October 1, 1995,* may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for ~~such~~ *a* category than those calculated according to the minimum standard ~~herein~~ provided *in this section*, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, ~~shall~~ *may* not be higher than the corresponding rate or rates of

interest used in calculating any nonforfeiture benefits provided for ~~therein~~ *a category*.

(3) If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve ~~thereon~~ *on the policy or contract* but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for ~~such~~ *the* policy or contract ~~shall~~ *must* be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for ~~such~~ *the* policy or contract or the reserve calculated by the method actually used for ~~such~~ *the* policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in 33-2-524 and 33-2-527.

(4) For every life insurance policy issued after December 30, 1986, for which the gross premium in the first policy year exceeds that of the second year, for which no *a* comparable additional benefit is *not* provided in the first year for ~~such~~ *an* excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than ~~such~~ *the* excess premium, subsections (1) through (3) of this section must be applied as if the method actually used in calculating the reserve for ~~such~~ *the* policy were the method described in 33-2-525(1). The minimum reserve at each policy anniversary of ~~such a~~ *the* policy must be the greater of the minimum reserve calculated in accordance with 33-2-525 and the minimum reserve calculated in accordance with this section."

Section 17. Section 33-2-528, MCA, is amended to read:

"**33-2-528. Interest rate weighting factor.** (1) The weighting factors referred to in the formulas stated in 33-2-527 are as follows:

(a) (i) for life insurance:

Guarantee Duration in Years	Weighting Factors
10 or less	.50
More than 10 but not more than 20	.45
More than 20	.35

(ii) for life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, that are guaranteed in the original policy;

(b) .80 for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options;

(c) for other annuities and for guaranteed interest contracts, except as stated in subsection (1)(b), according to the guarantee duration established in ~~subsection (2)~~ *subsections (1)(c)(i) through (1)(c)(iii)* and the ~~type of plan~~ *rules*

and definitions established in established in ~~subsection~~ *subsections (2), (3), and (4)*:

(i) for annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration in Years	Weighting Factor for Plan Type		
	A	B	C
5 or less	.80	.60	.50
More than 5 but not more than 10	.75	.60	.50
More than 10 but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

(ii)	Plan Type A	Plan Type B	Plan Type C
for annuities and guaranteed interest contracts valued on a change-in-fund basis, the factors shown in subsection (1)(c)(i) increased by:	.15	.25	.05

(iii)	Plan Type A	Plan Type B	Plan Type C
for annuities and guaranteed interest contracts valued on an issue year basis, ~~(~~other than those ~~with no~~ *without* cash settlement options~~)~~, that do not guarantee interest on considerations received more than 1 year after issue or purchase and for annuities and guaranteed interest contracts valued on a change-in-fund basis that do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors set forth in subsection (1)(c)(i) or derived in subsection (1)(c)(ii) increased by:	.05	.05	.05

(2) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities ~~with no~~ *without* cash settlement options and for guaranteed interest contracts ~~with no~~ *without* cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(3) Plan types used in subsection (1)(c) are:

(a) Plan Type A—No withdrawal is permitted or at any time policyholder may withdraw funds only:

(i) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(ii) without ~~such~~ *an* adjustment but in installments over 5 years or more; or

(iii) as an immediate life annuity.

(b) Plan Type B—(i) Before expiration of the interest rate guarantee, no withdrawal is permitted or a policyholder may withdraw funds only:

(A) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(B) without ~~such~~ *an* adjustment but in installments over 5 years or more.

(ii) At the end of the interest rate guarantee, funds may be withdrawn without ~~such~~ *an* adjustment in a single sum or installments over less than 5 years.

(c) Plan Type C—A policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than 5 years either:

(i) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or

(ii) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(4) (a) An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change-in-fund basis. Guaranteed interest contracts ~~with no~~ *without* cash settlement options and other annuities ~~with no~~ *without* cash settlement options must be valued on an issue year basis.

(b) As used in subsection (4):

(i) issue year basis of valuation is a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract; and

(ii) change-in-fund basis of valuation is a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund."

Section 18. Section 33-2-529, MCA, is amended to read:

"**33-2-529. Reference interest rate.** (1) The reference interest rate referred to in the formulas in 33-2-527 is:

(a) for all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's ~~corporate bond yield average~~—monthly average ~~corporates~~ *composite yield on seasoned corporate bonds*;

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(b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's ~~corporate bond yield average~~ monthly average ~~corporates~~ *composite yield on seasoned corporate bonds*;

(c) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's ~~corporate bond yield average~~ monthly average ~~corporates~~ *composite yield on seasoned corporate bonds*;

(d) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of tbe calendar year of issue or purchase, of Moody's ~~corporate bond yield average~~ monthly average ~~corporates~~ *composite yield on seasoned corporate bonds*;

(e) for other annuities ~~with no~~ *without* cash settlement options and for guaranteed interest contracts ~~with no~~ *without* cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's ~~corporate bond yield average~~ monthly average ~~corporates~~ *composite yield on seasoned corporate bonds*; or

(f) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a change-in-fund basis, except as stated in subsection (1)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's ~~corporate bond yield average~~ monthly average ~~corporates~~ *composite yield on seasoned corporate bonds*.

(2) If Moody's ~~corporate bond yield average~~ monthly average ~~corporates~~ *composite yield on seasoned corporate bonds* is no longer published by Moody's investors service, inc., or if the national association of insurance commissioners determines that Moody's ~~corporate bond yield average~~ monthly average ~~corporates~~ *composite yield on seasoned corporate bonds*, as published by Moody's investors service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate adopted by the national association of insurance commissioners and approved by *rule promulgated by* the commissioner may be substituted."

Section 19. Section 33-2-531, MCA, is amended to read:

"33-2-531. Deposit of reserves — domestic life insurers. (1) Domestic life insurers shall deposit and maintain on deposit, in securities and assets, with depositaries and subject to conditions as provided for in part 6 of this chapter, an amount not less than the reserves on its outstanding life insurance policies and annuity contracts, as valued under 33-2-521 through 33-2-526, *minus policy loans*.

(2) Annually on or before April 1, the insurer shall ~~so~~ deposit any additional ~~such~~ securities *or assets* required under subsection (1) and related to the increase of ~~such~~ *the* reserves, *minus policy loans,* during the calendar year next preceding, as determined from the insurer's annual statement as at December 31 of ~~such~~ *the* preceding year.

(3) A domestic stock life insurer may credit toward ~~such~~ *the* deposit the amount of any other deposit of the insurer held under part 6 of this chapter for the protection of its policyholders or of its policyholders and crediters.

(4) Deposits of the reserves of a domestic life insurer under this section ~~shall~~ *must* consist of securities and assets acquired and valued in accordance with parts 5 and 8 of this chapter.

(5) Real estate mortgage loans~~,~~ *and* chattel mortgage loans~~, and policy loans~~ may be made a part of the deposit by filing a verified statement of the loans with the commissioner~~, which statement shall be~~. *The statement is* subject te audit at all times by the commissioner. Nonnegotiable securities ~~where~~ deposited with the commissioner ~~shall~~ *must* be accompanied by transfer powers in due form. If the insurer uses real estate acquired under 33-2-832 as a deposit, then a deed of trust, mortgage, or other instrument sufficient to convey a security interest in ~~such~~ *the* real estate, in a form acceptable to the commissioner, ~~shall~~ *must* be completed in due form and recorded prior to being deposited with tbe commissioner.

(6) If default occurs in the payment of interest or principal of any deposited security and ~~such~~ *the* default continues for a period of 120 days, the commissioner may declare ~~such~~ *the* security no longer eligible for deposit under this section."

Section 20. Section 33-2-701, MCA, is amended to read:

"33-2-701. Annual statement — revocation or fine for failure to file — penalty for perjury. (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the *preceding* December 31 ~~preceding~~. The statement must be in the general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves. The statement must be verified by the oath of the insurer's president or vice-president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may waive the verification under oath.

(2) (a) Each domestic insurer shall file electronic diskette versions of its annual and quarterly financial statements with the national association of insurance commissioners. The filing date for submission of the annual statement diskette is March 1. The filing dates for the quarterly statement diskettes are as follows:

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(i) the first calendar quarter filing is due May 15;

(ii) the second calendar quarter filing is due August 15; and

(iii) the third calendar quarter filing is due November 15.

(b) The commissioner may exempt insurers that operate only in Montana from these filing requirements.

~~(2)~~*(3)* The statement of an alien insurer must relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible. The statement must be verified by the insurer's United States manager or other authorized officer.

~~(3)~~*(4)* The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or within an extension of time that the commissioner may grant.

~~(4)~~*(5)* Any director, officer or insurance producer, or employee of any company who subscribes to, makes, or concurs in making or publishing any annual statement or any other statement required by law knowing *that* the ~~same to contain~~ *statement contains* any material statement which is false shall be punished by a fine of not more than $1,000.

~~(5)~~*(6)* At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708.

~~(6)~~*(7)* The commissioner may impose a fine not to exceed $100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed a maximum of $1,000."

Section 21. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or

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refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report as required by the commissioner, for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer ~~which~~ *that* fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 plus interest on the delinquent amount at the *annual* interest rate ~~established in 31-1-107~~ *of 12%*.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued."

Section 22. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall collect ~~in advance~~ and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation, (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)), and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers . . . . . $ 600.00

(B) foreign insurers 600.00

(ii) annual continuation of certificate of authority 600.00

(iii) reinstatement of certificate of authority 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 25.00

(c) filing bylaws or amendment to bylaws when required 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) insurance producer's license:

(i) application for original license, including issuance of license, if issued 15.00

(ii) appointment of insurance producer, each insurer, electronically filed 10.00

(iii) appointment of insurance producer, each insurer, nonelectronically filed 15.00

(iv) temporary license 15.00

(v) amendment of license, (excluding additions to license), or reissuance of master license 15.00

(vi) termination of insurance producer, each insurer, electronically filed 10.00

(vii) termination of insurance producer, each insurer, nonelectronically filed 15.00

(f) nonresident insurance producer's license:

(i) application for original license, including issuance of license, if issued 100.00

(ii) appointment of insurance producer, each insurer, electronically filed 10.00

(iii) appointment of insurance producer, each insurer, nonelectronically filed 15.00

(iv) annual renewal of license 10.00

(v) amendment of license, (excluding additions to license), or reissuance of master license 15.00

(vi) termination of insurance producer, each insurer, electronically filed 10.00

(vii) termination of insurance producer, each insurer, nonelectronically filed 15.00

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(g) examination, if administered by the commissioner, for license as insurance producer, each examination 15.00

(h) surplus lines insurance producer license:

(i) application for original license and for issuance of license, if issued 50.00

(ii) annual renewal of license 50.00

(i) adjuster's license:

(i) application for original license and for issuance of license, if issued 15.00

(ii) annual renewal of license 15.00

(j) insurance vending machine license, each machine, each year 10.00

(k) motor club representative's license:

(i) application for original license and issuance of license, if issued 15.00

(ii) annual renewal of license 15.00

~~(k)~~*(l)* commissioner's certificate under seal, ~~(~~except when on certificates of authority or licenses~~)~~ 10.00

~~(l)~~*(m)* copies of documents on file in the commissioner's office, per page 50

~~(m)~~*(n)* policy forms:

(i) filing each policy form 25.00

(ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms suhmitted at one time or resubmitted for approval within 180 days, *provided that all additional forms relate to the same policy* 100.00

~~(n)~~*(o)* applications for approval of prelicensing education courses:

(i) reviewing initial application 150.00

(ii) periodic review 50.00

(2) The commissioner shall establish by rule fees commensurate with costs for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205.

(3) The commissioner shall establish by rule an annual accreditation fee to be paid by each domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority.

(4)(a) Except as provided in subsection (4)(b), the commissioner shall promptly deposit with the state treasurer te the credit of the general fund ~~of this state~~ all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected by the commissioner pursuant te Title 33 and the rules adopted under Title 33, except that all fees for filing documents and

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conducting the course reviews required by 33-17-1204 and 33-17-1205 must be deposited in the state special revenue fund pursuant to 33-17-1207.

(b) The accreditation fee required by subsection (3) must be turned over promptly to the state treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in discharging the administrative and regulatory duties that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money. The commissioner is responsible for the proper expenditure of the accreditation money.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 23. Section 33-2-803, MCA, is amended to read:

"33-2-803. **General qualifications of investments.** (1) ~~No~~ *A* security or investment, other than real and personal property acquired under 33-2-832, ~~shall be~~ *is not* eligible for acquisition unless it is interest bearing or interest accruing or dividend or income paying, if not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing ~~thereon~~ *on the security or investment. However, up to 3% of a company's total assets may be invested in nondividend-paying common stock as described in 33-2-820.*

(2) ~~No~~ *A* security or investment ~~shall be~~ *is not* eligible for purchase at a price above its market value.

(3) ~~No~~ *A* provision of this part ~~shall~~ *may not* prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment ~~so~~ acquired ~~which~~ *that* is not otherwise eligible under this part ~~shall~~ *must* be disposed of pursuant to 33-2-842 if personal property or securities or pursuant to 33-2-841 if real property."

Section 24. Section 33-2-806, MCA, is amended to read:

"33-2-806. **Diversification of investments.** An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

(1) An insurer ~~shall~~ *may* not, except with the consent of the commissioner, have at any one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person or insurer aggregating an amount exceeding 5% of the insurer's assets. This restriction ~~shall~~ *does* not apply as to general obligations of the United States of America or of any state or include policy loans made under 33-2-825.

(2) An insurer ~~shall~~ *may* not invest in or hold at any one time more than 10% of the outstanding voting stock of any corporation, except with the consent of the commissioner given with respect to voting rights of preference stock

during default of dividends. This provision does not apply as to stock of a wholly-owned subsidiary of the insurer or to controlling stock of an insurer acquired under 33-2-821.

(3) An insurer, other than title insurer, shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds of insurance, only in cash and the securities provided for under the following sections: 33-2-811(1), 33-2-812, and 33-2-830.

(4) A life insurer shall also invest and keep invested its funds in *an* amount not less than the reserves under its life insurance policies and annuity contracts, other than variable annuities, in force in cash, ~~and/or the~~ *in* securities, *in both cash and securities,* or *in* investments provided for under 33-2-531.

(5) Except with the commissioner's consent, an insurer ~~shall~~ *may* not have invested at any one time more than 20% of its assets in the class of securities described in 33-2-818, exclusive of obligations of public utilities.

(6) An insurer may *not* invest and have invested at any one time in aggregate amount ~~not~~ more than ~~10%~~ *15%* of its assets in all stocks under 33-2-820 and 33-2-821. Determination of the amount ~~which~~ *that* an insurer has invested in common stocks for the purposes of this provision ~~shall~~ *must* be based on the cost of ~~such~~ *the* stocks to the insurer. This provision ~~shall~~ *does* not apply as to stock of a controlled or subsidiary insurance corporation or other corporations under 33-2-821 and 33-2-822.

(7) Except with the commissioner's consent, an insurer may not have invested at any one time more than 5% of its assets in securities allowed under 33-2-824.

(8) Except with the commissioner's consent, an insurer ~~shall~~ *may* not have invested at any one time more than 10% of its assets in the class of securities described in any one of the following sections: 33-2-814, 33-2-819, and 33-2-823.

(9) Limits as to investments in the category of real estate shall be as provided in 33-2-832. Other specific limits ~~shall~~ apply as stated in the sections dealing with other respective kinds of investments."

Section 25. Section 33-2-820, MCA, is amended to read:

"33-2-820. **Common stocks.** An insurer may invest in nonassessable common stocks, other than insurance stocks, of any solvent corporation existing under the laws of the United States of America or of Canada or any state or province ~~thereof if cash or stock dividends have been earned and paid on its common stock in each of the 5 fiscal years preceding such acquisition and if, further, all prior obligations or preference stock of such corporation, if any, are eligible for investment under this part. If the issuing corporation has not been in legal existence for the whole of the 5 preceding fiscal years but was formed as a consolidation or merger of two or more businesses, the test of eligibility for investment of its common stock under this section shall be based upon consolidation pro forma statements of the predecessor or constituent institutions.~~"

Section 26. Section 33-2-1111, MCA, is amended to read:

"**33-2-1111. Registration of insurers — requisites — termination.** (1) ~~Every~~ *An* insurer ~~which is~~ authorized to do business in this state ~~and which~~ *that* is a member of an insurance holding company system shall register with the commissioner, except *that* a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile ~~which~~ *that* are substantially similar to those contained in this section *is not required to register*. Any insurer ~~which is~~ subject to registration under this section shall registor within 15 days after ~~it becomes~~ *becoming* subject to registration, unless the commissioner for good cause ~~shown~~ extends the time for registration~~, and then within the extended time~~. The commissioner may require any authorized insurer ~~which~~ *that* is a member of a holding company system ~~which~~ *that* is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority ~~of domiciliary~~ *in the* jurisdiction *where the company is domiciled*.

(2) ~~Every~~ *An* insurer subject to registration shall file with the commissioner, on or before April 30 each year, a registration statement on a form provided by the commissioner~~, which~~ *that* must contain current information about:

(a) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) the identity of every member of the insurance holding company system;

(c) ~~the following agreements in force,~~ *existing* relationships ~~subsisting~~, ~~and~~ transactions currently outstanding between the insurer and its affiliates, *and the following agreements that are in force*:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guaranties or undertakings for the benefit of an affiliate ~~which~~ *that* result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) ~~all~~ management and service contracts and ~~all~~ cost-sharing arrangements~~, other than cost allocation arrangements based upon generally accepted accounting principles~~;

(vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(vii) dividends and other distributions to shareholders; and

(viii) consolidated tax allocation agreements;

(d) ~~any~~ *a* pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan made to a member of the insurance bolding company system;

(e) all matters concerning transactions between registered insurers and any affiliates as may be included from time to time in ~~any~~ registration forms adopted or approved by the commissioner.

(3) A registration statement must contain a summary outlining each item in the current registration statement that represents a change from the prior registration statement.

(4) Information need not be disclosed on the registration statement filed pursuant to subsection (2) if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving 1/2 of 1% or less of an insurer's admitted assets as of *the prior* December 31 ~~next preceding~~ are not material for purposes of this section.

(5) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with Title 33, chapter 2, part 11.

(6) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each change or addition.

(7) The commissioner shall terminate the registration of any insurer ~~which~~ *that* demonstrates that it no longer is a member of an insurance holding company system.

(8) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(9) The commissioner may allow an insurer ~~which~~ *that* is authorized to do business in this state and ~~which~~ *that* is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section."

Section 27. Section 33-2-1201, MCA, is amended to read:

"**33-2-1201. Limit of risk.** (1) An insurer may not retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding 10% of its surplus to policyholders.

(2) A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophe hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of the other hazard insured against.

(3) Reinsurance ceded as authorized by this part must be deducted in determining risk retained. As to surety risks, deduction must also be made of the amount assumed by any established incorporated cosurety and the value of

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any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, this section only relates to risks and surplus to policyholders of the insurer's United States branch.

(5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, is considered to include any voluntary reserves which are not required pursuant te law and are determined from the last sworn statement of the insurer on file with the commissioner or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

(6) This section does not apply to life or disability insurance, title insurance, insurance of wet marine and transportation risks, workers' compensation insurance, employer's liability coverages, ~~sprinklered risks,~~ or any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy."

Section 28. Section 33-2-1216, MCA, is amended to read:

"**33-2-1216. Credit allowed domestic ceding insurer.** (1) Credit for reinsurance is allowed te a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). If the requirements of subsection (4) or (5) are met, the requirements of subsection (7) must also he met.

(2) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(3) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing. An accreditod reinsurer is one that:

(a) files with the commissioner evidence of its submission to this state's jurisdiction;

(b) submits to this state's authority to examine its books and records;

(c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and either:

(i) maintains a surplus with regard te policyholders in an amount that is not less than $20 million and whose accreditation has not been denied by the commissioner within 90 days of its submission; or

(ii) maintains a surplus with regard to policyholders in an amount less than $20 million and whose accreditation has been approved by the commissioner.

(4) (a) Subject to subsection (4)(h), credit must be allowed when:

(i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute; and

(ii) the assuming insurer or the United States branch of an alien assuming insurer:

(A) maintains a surplus with regard to policyholders in an amount not less than $20 million; and

(B) submits to the authority of this state to examine its books and records.

(b) The requirement of subsection (4)(a)(i) does not apply te reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.

(b) (i) In the case of a single assuming insurer, the trust must consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a surplus with the trustee of not less than $20 million.

(ii) In the case of a group, ~~of~~ *including incorporated and* individual unincorporated underwriters, the trust must consist of a trusteed account representing the group's liabilities attributable to business written in the United States, and in addition, the group shall maintain a surplus with the trustee of which $100 million must be held jointly for the benefit of United States ceding insurers of any member of the group.

(iii) The incorporated members of the group, as group members, may not be engaged in a business other than underwriting as members of the group and are subject to the same level of solvency regulation and control by the insurance regulator as the unincorporated members. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the ~~group's domiciliary~~ *insurance* regulator *and the independent public accountants in the jurisdiction where the underwriter is domiciled* ~~and its independent public accountants~~.

~~(iii)~~*(iv)* In the case of a group of incorporated insurers under common administration:

(A) the provisions of subsection ~~(5)(b)(iii)(B)~~ *(5)(b)(iv)(B)* apply, to the group that:

(I) complies with the reporting requirements contained in subsection (5)(a);

(II) bas continuously transacted an insurance business outside the United States for at least 3 years immediately prior to making application for accreditation;

(III) submits to this state's autbority to examine its books and records and bears the expense of the examination; and

(IV) bas aggregate policyholders' surplus of $10 billion;

(B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(II) the group shall maintain a joint surplus with a trustee of which $100 million is held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any liabilities; and

(III) each member of the group shall make available to the commissioner an annual certification of the member's solvency by the ~~member's domiciliary regulator and its independent public accountant~~ *insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled.*

(c) The trust must be established in a form approved by the commissioner. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. Tbe trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this subsection (c) must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year. The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior to the following December 31.

(6) Credit must be allowed when the reinsurance is ceded to an assuming insurer tbat does not meet the requirements of subsection (2), (3), (4), or (5) but only with respect to the insurance of risks located in a jurisdiction in which the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) (a) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) may not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(i) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at tbe request of tbe ceding insurer, will:

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(A) submit to tho jurisdiction of any court of competent jurisdiction in any state of tbe United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) to designate the commissioner or a designated attorney as its attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(h) Suhsection (7)(a)(i) is not intended to conflict witb or override the obligation of the parties to a reinsurance agreement to arbitrato their disputes if an obligation is created in the agreement."

Section 29. Section 33-2-1217, MCA, is amended to read:

"**33-2-1217. Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer — *definition*.** A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of 33-2-1216 must he allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

(1) under a reinsurance contract with tlie assuming insurer as security for the payment of obligations under the contract if the security is held in the United States subject to withdrawal solely by and under tbe exclusive control of the ceding insurer; or

(2) in the case of a trust, in a qualified United States financial institution. This security may be in the form of:

(a) cash;

(b) securities listed by the securities valuation office of the NAIC and qualifying as admitted assets;

(c) clean, irrevocable, unconditional letters of credit that are issued or confirmed by a qualified United States financial institution no later than December 31 of the year for which filing is heing made and that are in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptahle as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first.

(d) any other form of security acceptable to the commissioner.

(3) For the purposes of subsection (2)(c), a "qualified United States financial institution" means an institution that:

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(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any of its states;

(b) is regulated, supervised, and examined by United States federal or state authorities with regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the securities valuation office of the national association of insurance commissioners to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(4) For the purposes of this part, except for subsection (2)(c), "qualified United States financial institution" means, with respect to institutions eligible to act as a fiduciary of a trust, an institution that:

(a) is organized or, in the case of a United States branch or agency office of a foreign banking corporation, licensed under the laws of the United States or any of its states and that has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(5) The commissioner may adopt rules implementing the provisions of 33-2-307, 33-2-708, and 33-2-806."

Section 30. Section 33-2-1218, MCA, is amended to read:

"**33-2-1218. Reinsurance agreements affected.** Sections 33-2-1216 and 33-2-1217 apply to all cessions after Octoher 1, 1993, under reinsurance agreements that have had an inception, anniversary, or renewal date on or ~~before~~ *after* April 1, 1993."

Section 31. Section 33-2-1394, MCA, is amended to read:

"**33-2-1394. Settlement of actions against rehabilitator, liquidator, and employees — court approval — applicability.** (1) If any legal action against an employee for which indemnity may he available under this section is settled prior to final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee or indemnify the employee for the settlement amount unless the commissioner determines:

(a) that the claim did not arise out of or by reason of the employee's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the employee.

(2) In a legal action in which the rehabilitator or liquidator is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the rehabilitator or liquidator is subject to the approval of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

(a) that the claim did not arise out of or by reason of the rehabilitator's or liquidator's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the rehabilitator or liquidator.

(3) This section may not be construed to deprive the rehabilitator, liquidator, or employee of immunity, indemnity, benefit of law, right, or defense available under any provision of law, including, without limitation, the provisions of Title 2, chapter 9.

(4) (a) A *Except as otherwise provided, a* legal action *by a third party* does not lie against the rehabilitator, liquidator, or employee based in whole or in part on any alleged act, error, or omission that took place prior to October 1, 1993, unless suit is filed and valid service of process is obtained by October 1, 1994. *A legal action that is pending on or filed after September 30, 1993, by a liquidator or a liquidation estate will lie against a former special deputy liquidator or any employee, agent, or independent contractor retained by a special deputy liquidator without regard to when the alleged act, error, or omission occurred.*

(b) Subsections (1) through (3) apply to any suit that is pending on or filed after October 1, 1993, without regard to when the alleged act, error, or omission took place."

Section 32. Section 33-2-1510, MCA, is amended to read:

"**33-2-1510. Minimum standards.** Unless there is a written contract between a controlling producer and a controlled insurer specifying the responsibilities of each party, the controlled insurer may not accept business from the controlling producer and the controlling producer may not place business with the controlled insurer. The contract must be approved by the board of directors of the controlled insurer and must contain the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(2) The controlling producer shall render to the controlled insurer accounts detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the controlling producer.

(3) On at least a monthly basis, the controlling producer shall remit to the controlled insurer all funds due under the terms of the contract. The due date must be fixed so that premiums or installments of premiums collected must be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract.

(4) In accordance with the provisions of this title, all funds collected for the controlled insurer's account must be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system. However, funds of a

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controlling producer not required to be licensed in this stato must be maintained in compliance with the requirements of the *jurisdiction in which the* controlling ~~producer's domiciliary jurisdiction~~ *producer is domiciled.*

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(6) The contract may not be assigned in whole or in part by tbe controlling producer.

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules, procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(8) *The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes of those commissions, charges, or fees must be contained in the contract.* The rates of the *controlling producer's* commissions, charges, and other fees may not be greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of subsection (7) and this subsection, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(9) If the contract provides that on insurance business placed with the controlled insurer, the controlling producer is to be compensated contingent upon tbe controlled insurer's profits on that business, then the compensation may not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. The commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to 33-2-1512.

(10) *A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings must be contained in the contract.* The controlled insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and may not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it bas been notified by the controlled insurer that the limit has been reached.

(11) The controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business that the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines. For reinsurance assumed and ceded, the guidelines must include a list of reinsurers with which tbe automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules."

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Section 33. Section 33-2-1605, MCA, is amended to read:

"33-2-1605. Penalties and liabilities. (1) If, after a hearing conducted in accordance with Title 33, chapter 1, part 7, the commissioner finds that a person has violated any provision of this part, the commissioner may order:

(a) a penalty in an amount of $5,000 for each separate violation;

(b) revocation or suspension of the producer's license; and

(c) the managing general agent to reimburse the insurer, the rehabilitator, or a liquidator of the insurer for any losses incurred by the insurer caused by a violation of this part committed by the managing general agent.

(2) An order of the commissioner pursuant to subsection (1) is subject to judicial review pursuant to 33-1-711.

(3) This section does not limit the power of the commissioner to impose any other penalty provided in this title.

(4) This part does not limit the rights of policyholders, claimants, or ~~auditors~~ *creditors*."

Section 34. Section 33-3-431, MCA, is amended to read:

"33-3-431. Borrowed surplus. (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, *to* provide it with surplus funds, or for any purpose of its business~~,~~ upon a written agreement that ~~such~~ *the* money is required to be repaid only out of the insurer's surplus in excess of that stipulated in ~~such~~ *the* agreement. The agreement may provide for interest at a rate ~~no~~ *not* greater than the rate established in 25-9-205, ~~which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as~~ *and whether the interest constitutes a liability of the insurer must be* stipulated in the agreement. ~~No~~ *A* commission or promotion expense ~~shall~~ *may not* be paid in connection with ~~any such~~ *a* loan *of the type described in this section*.

(2) Money ~~so~~ borrowed, together with the interest ~~thereon~~ if ~~so~~ stipulated in the agreement, ~~shall~~ *does* not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount ~~thereof~~ stipulated in the agreement or ~~be~~ the basis of any setoff~~;~~. ~~but~~ *However,* until *the money or interest, or both, are* repaid, financial statements filed or published by the insurer ~~shall~~ *must* show as a footnote ~~thereto~~ the amount ~~thereof~~ then unpaid together with any interest ~~thereon~~ accrued but unpaid.

(3) ~~Any such~~ *A* loan *of this type* to a mutual *or stock* insurer ~~shall be~~ *is* subject to the commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement ~~shall be deemed~~ *are* approved unless within 15 days after ~~date of such~~ filing the insurer is notified of the commissioner's disapproval and ~~the reasons therefor~~ *reasons for the disapproval*. The commissioner shall disapprove any proposed loan or agreement if ~~he~~ *the commissioner* finds the loan is unnecessary or excessive for the purpose intended or that the terms of the loan agreement are not fair and

equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information ~~so~~ filed by the insurer is inadequate.

(4) ~~Any such~~ *A* loan to a mutual *or stock* insurer or *a* substantial portion ~~thereof~~ *of the loan* ~~shall~~ *must* be repaid by the insurer when *it is* no longer reasonably necessary for the purpose originally intended. ~~No repayment of such loan shall~~ *Repayment of either principal or interest on the loan may not* be made by a mutual *or stock* insurer unless ~~in advance~~ approved *in advance* by the commissioner.

(5) This section ~~shall~~ *does* not apply to loans obtained by the insurer in *the* ordinary course of business from banks and other financial institutions or to loans secured by pledge or mortgage of assets."

Section 35. Section 33-4-202, MCA, is amended to read:

"**33-4-202. Declaration of intention to incorporate — articles of incorporation — fee.** (1) The individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the commissioner:

(a) a declaration of their intention to form ~~such a~~ *the* corporation~~, which declaration shall be~~ signed by at least 100 incorporators if a proposed state mutual insurer or by at least 25 incorporators if a proposed county mutual insurer; and

(b) proposed articles of incorporation executed in ~~quadruplicate~~ *triplicate* by three or more of the incorporators and acknowledged by each before a person authorized to take and verify acknowledgments of conveyance of real property.

(2) The articles of incorporation ~~shall~~ *must* state:

(a) the name of the corporation. If a state mutual insurer, the words "farm mutual" must be a part of the name; if a county mutual insurer, the name ~~shall~~ *must* contain the words "farm mutual" or "rural mutual" together with the name of the county ~~wherein is to be located~~ *in which* its principal place of business *is to be located*. The name ~~shall~~ *may* not be so similar to one already used by a corporation in this state as to be misleading.

(b) if a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located;

(c) if a state mutual insurer, the location of its principal business office, which ~~office~~ must be located in this state;

(d) the objects and purposes for which the corporation is formed;

(e) whether it intends to transact business on the cash premium plan or the assessment plan;

(f) the duration of its existence, which may be perpetual;

(g) the number of its directors, which ~~shall~~ *may* not be less than 5 or more than 11~~; also~~, *and* the names and addresses of the members of the initial board of directors appointed to manage the affairs of the corporation until the first

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annual meeting of the members and ~~until their~~ successors are elected and qualified;

(h) ~~such~~ other provisions, not inconsistent with law, ~~deemed~~ *considered* appropriate by the incorporators;

(i) the names, residences, and addresses of the incorporators and the value of ~~the~~ *their* property ~~desired~~ *to be* insured ~~owned by each~~ in the county or counties where the operations of the corporation are to be carried on.

(3) At the time of filing of the articles of incorporation as provided in subsection (1) ~~above~~, the incorporators shall pay to the commissioner a filing fee of $10. The commissioner shall deposit ~~all such~~ *the* fees with the state treasurer to the credit of the general fund ~~of this state~~."

Section 36. Section 33-4-203, MCA, is amended to read:

"33-4-203. **Approval of articles — commencement of corporate existence.** (1) ~~Upon receipt of proposed articles of incorporation, the commissioner shall forward the proposed articles of incorporation to the attorney general for examination.~~ If the ~~attorney general~~ *commissioner* finds the *proposed* articles *of incorporation* to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States of America or of this state, the ~~attorney general~~ *commissioner* shall make a certificate of the facts ~~and return it with the proposed articles to the commissioner~~.

(2) If the commissioner considers the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, the commissioner shall reject the name applied for and shall notify the incorporators of the rejection.

(3) When the proposed articles of incorporation have been approved hy the ~~attorney general~~ *commissioner*, the commissioner shall ~~likewise~~ endorse the commissioner's approval upon each set of the articles and forward ~~four~~ *three* sets of articles to the incorporators. The incorporators shall file one of the sets of articles with the secretary of state, one set with the commissioner hearing the certification of the secretary of state, and one set with the county clerk of the county in which the principal place of business of the corporation is located and shall pay to the secretary of state and the county clerk the custemary filing fees. The remaining set of articles must be made a part of the corporation's records.

(4) The corporation has legal existence upon the approval of the articles hy the ~~attorney general and the~~ commissioner and completion of the filings referred to in subsection (3), but it may not transact husiness as an insurer until it has fulfilled the requirements for and has ohtained a certificate of authority as provided in 33-4-505."

Section 37. Section 33-5-401, MCA, is amended to read:

"33-5-401. **Surplus funds required.** (1) A domestic reciprocal insurer ~~hereunder formed~~ *subject to this part*, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and ~~thereafter~~ maintains surplus funds as follows:

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(a) to transact property insurance, surplus funds of not less than $400,000;

(b) to transact casualty insurance:~~, other than workers' compensation, surplus funds of not less than $400,000.~~

(i) including authority for workers' compensation insurance, surplus funds of not less than $600,000; or

(ii) excluding authority for workers' compensation insurance, surplus funds of not less than $400,000.

(2) In addition to surplus *funds* required to be maintained under subsection (1) ~~above~~, the insurer ~~shall~~ *must* have, when first ~~so~~ authorized, expendable surplus in *the same* amount as required of a like foreign reciprocal insurer under 33-2-110.

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code ~~therefor~~ *for the additional kinds of insurance* and ~~possesses and so~~ maintains surplus funds in *an* amount equal to the minimum capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance."

Section 38. Section 33-7-117, MCA, is amended to read:

"33-7-117. Scope — provisions applicable. (1) Except as provided in subsection (2), societies are governed by this chapter and are exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state but for every other purpose. The provisions of a law enacted after January 1, 1992, do not apply to fraternal benefit societies unless expressly made applicable by the provisions of the law.

(2) In addition to the provisions of this chapter, the provisions of chapter 1, parts 1 through 4 and 7; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-15-502; ~~and~~ chapters 17, 18, 20, and 22*; and [sections 78 through 81]* apply to fraternal benefit societies to the extent applicable and to the extent not in conflict with the provisions of this chapter and the reasonable implications of this chapter."

Section 39. Section 33-10-201, MCA, is amended to read:

"33-10-201. Short title, purpose, scope, and construction. (1) This part ~~shall be known and~~ may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing the policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

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(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

(4) This part applies to direct, nongroup life, health, annuity, and supplemental policies or contracts, to certificates under direct group policies and contracts, and to unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

(5) This part provides coverage for ~~covered~~ policies *and contracts specified in subsection (6)*:

(a) to persons who are owners of or certificate holders under covered policies *or, in the case of unallocated annuity contracts, to the persons who are contract holders* ~~and who~~ *if the persons*:

(i) are residents; or

(ii) are not residents, but only under all of the following conditions:

(A) the insurers that issued the policies are domiciled in this state;

(B) the insurers have not held a license or certificate of authority in the state in which the persons reside;

(C) the state has an association similar to the association created under this part; and

(D) the persons are not eligible for coverage by that association; and

(b) to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subsection (5)(a).

(6) *This part covers persons specified in subsection (5)(a) for direct, nongroup life, health, annuity, and supplemental policies and contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, allocated and unallocated funding agreements, structured settlement agreements, lottery contracts, and immediate or deferred annuity contracts.* This part does not apply to:

(a) ~~any~~ policies or contracts or any part of the policies or contracts under which the risk is borne by the policyholder;

(b) ~~any~~ *a* policy or contract or part of the policy or contract assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(c) any portion of a policy or contract to the extent that the rate of interest on which it is based:

(i) averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for the lesser period if the policy or contract was issued less than 4 years before the association became obligated; and

(ii) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as is most recently available;

(d) any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:

(i) a multiple employer welfare arrangement, as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(e) any portion of a policy or contract to the extent that it provides dividends or experience rating credits or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(f) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(g) any unallocated annuity contract issued to an employee benefit plan that is protected under the federal pension benefit guaranty corporation; and

(h) any portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

(7) This part must be liberally construed to effect the purpose under subsections (2) and (3), which constitute an aid and guide to interpretation.

(8) This part may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability."

Section 40. Section 33-10-202, MCA, is amended to read:

"**33-10-202. Definitions.** As used in this part, the following definitions apply:

(1) "Account" means any of the three accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scope of this part under subsections (4) through (6) of 33-10-201.

(5) "Impaired insurer" means:

(a) an insurer which after July 1, 1974, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer considered by the commissioner after July 1, 1974, to be unable or potentially unable to fulfill its contractual obligations.

(6) *(a)* "Member insurer" means any ~~person authorized to transact in this state any kind of insurance to which this part applies under subsections (4) and (6) of 33-10-201~~ *insurer that is licensed or that holds a certificate of authority to transact any kind of insurance in this state for which coverage is provided under 33-2-201 and includes any insurer whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn.*

(b) The term does not include:

(i) a health service corporation;

(ii) a health maintenance organization;

(iii) a fraternal benefit society;

(iv) a mandatory state pooling plan;

(v) a mutual assessment company or any entity that operates on an assessment basis;

(vi) an insurance exchange; or

(vii) an entity similar to any of the entities listed in subsections (6)(b)(i) through (6)(b)(vi).

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations on premiums and dividends paid or credited to policyholders on the direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in 33-10-227, "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

(10) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

Section 41. Section 33-11-102, MCA, is amended to read:

"**33-11-102. Definitions.** As used in this part, the following definitions apply:

(1) *"Completed operations liability" means:*

(a) liability arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:

(i) a person who performs that work; or

(ii) a person who hires an independent contractor to perform that work; and

(b) liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability.

(2) "Domicile", for purposes of determining the state where a purchasing group is domiciled, means:

(a) for a corporation, the state where the purchasing group is incorporated; and

(b) for an unincorporated entity, the state of its principal place of business.

~~(2)~~*(3)* "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to:

(a) meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(b) pay other obligations in the normal course of business.

~~(3)~~*(4)* "Insurance" means primary insurance, excess insurance, reinsurance, surplus line insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this state.

~~(4)~~*(5)* (a) "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to other persons resulting from or arising out of:

(i) a business, whether profit or nonprofit, trade, product, service (including professional service), premises, or operation; or

(ii) an activity of any state or local government or an agency or political subdivision ~~thereof~~ *of state or local government.*

(b) The term does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the federal Employers' Liability Act, (45 U.S.C. 51 through 60). As used in this subsection,

"personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from personal, familial, or household responsibilities or activities rather than from responsibilities or activities referred to in subsection ~~(4)(a)~~ *(5)(a)*.

~~(5)~~*(6)* "Plan of operation or a feasibility study" means an analysis that presents the expected activities and results of a risk retention group, including at a minimum:

(a) the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends te offer;

(b) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent this experience is reasonably available;

(c) pro forma financial statements and projections;

(d) appropriate opinions by a qualified independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(e) identification of management, underwriting procedures, managerial oversight methods, and investment policies; and

(f) otber matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state where the risk retention group is chartered.

~~(6)~~*(7)* "Purchasing group" means a group that:

(a) has as one of its purposes the purchase of liability insurance on a group basis;

(b) purchases liability insurance only for its group members and only to cover their similar or related liability exposure, as described in subsection ~~(6)(c)~~ *(7)(c)*;

(c) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, service, premises, or operation; and

(d) is domiciled in any state.

~~(7)~~*(8)* "Risk retention group" means a corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

(a) whose primary activity consists of assuming and spreading all or any portion of tbe liability exposure of its group members;

(b) that is organized for the primary purpose of conducting the activity described under subsection ~~(7)(a)~~ *(8)(a)*;

(c) (i) that is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) that, before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance regulatory official of at least one state that it satisfied the capitalization requirements of that state. However, ~~such~~ *the* group is considered to be a risk retention group only if it has been engaged in business continuously since January 1, 1985, and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability.

~~(A) For purposes of this subsection (7), "completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by a person who performs that work or hires an independent contractor to perform that work and includes liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.~~

~~(B)~~ For purposes of this subsection ~~(7)~~ *(8)*, "product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, (including damages resulting from the loss of use of property), arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product but does not include the liability of any person for those damages if the product involved was in the possession of that person when the incident giving rise to the claim occurred.

(d) that does not exclude any person from membership in the group solely to provide to members of the group a competitive advantage over ~~such~~ *the* person;

(e) (i) that has as its members only persons who have an ownership interest in the group and that has as its owners only persons who are members and who are provided insurance by the risk retention group; or

(ii) that has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;

(f) whose members are engaged in businesses or activities that are similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, service, premises, or operation;

(g) whose activities do not include the provision of insurance other than:

(i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) reinsurance with respect to the liability of any other risk retention group or member of ~~such~~ *the* other group that is engaged in businesses or activities so that ~~such~~ *the* group or member meets the requirement described in subsection ~~(7)(f)~~ *(8)(f)* for membership in the risk retention group that provides the reinsurance; and

(h) whose name includes the phrase "risk retention group".

~~(8)~~*(9)* "State" means any state of the United States or the District of Columbia."

Section 42. Section 33-11-104, MCA, is amended to read:

"33-11-104. Risk retention groups not chartered in this state. A risk retention group chartered in a state other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) a statement identifying the state or states where the risk retention group is chartered and authorized as a casualty insurer, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner requires te verify that the risk retention group is qualified under 33-11-102~~(7)~~*(8)*;

(b) a copy of its plan of operation or a feasibility study and revisions of the plan or study submitted to its state of domicile. However, this provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance tbat was defined in the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986, and that was offered before that date by a risk retention group that had been chartered and operated for not less than 3 years before tbat date; and

(c) a statement of registration that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to its state of domicile, whicb must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or by a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) a copy of each examination of the risk retention group as certified by tbe insurance regulatory official of the state in wbich the examination was conducted or public official conducting the examination;

(c) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) any information as may be required to verify the group's continuing qualification as a risk retention group under 33-11-102~~(7)~~*(8)*.

(3) (a) Each risk retention group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state and shall report to the commissioner the net premiums written for

risks resident or located within this state. The risk retention group is subject to taxation and any applicable interest, fines, and penalties for nonpayment that apply to foreign admitted insurers.

(b) To the extent that an insurance producer is used, the insurance producer shall report to the commissioner the premiums of direct business for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that an insurance producer is used, the insurance producer shall keep a complete and separate record of all policies procured from each risk retention group. The record is open to examination by the commissioner, as provided in 33-1-408. The records must, for each policy and each kind of insurance provided under the policy, include the limit of liability, the time period covered, the effective date, the name of the risk retention group that issued the policy, the gross premium charged, and the amount of return premiums, if any.

(4) Each risk retention group, its insurance producers, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding the risk retention group's conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner. The examination must be coordinated to avoid unjustified repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under subsection (6).

(12) Upon completion of registration requirements, the commissioner shall issue to the risk retention group a proper certificate of registration.

(13) A risk retention group that violates any provision of this chapter is subject to fines and penalties, including revocation of the right to do business in this state, applicable to licensed insurers generally."

Section 43. Section 33-11-108, MCA, is amended to read:

"33-11-108. Notice and registration requirements of purchasing groups. (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

(a) identifies the state where the group is domiciled and all other states in which the group intends to do business;

(b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) identifies the insurer from which the purchasing group intends to purchase its insurance and the domicile of ~~the~~ *that* insurer;

(d) identifies the Montana-licensed insurance producer or Montana-licensed surplus lines insurance producer through which the purchasing group intends to place its business;

(e) identifies the principal place of business of the purchasing group; ~~and~~

(f) provides information required by the commissioner to verify that the purchasing group is qualified under 33-11-102~~(6)~~*(7)*~~.~~*; and*

(g) identifies the person or persons controlling the activities of the group and includes biographical information on the person or persons.

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process. However, the requirements do not apply in the case of a purchasing group:

(a) (i) that was domiciled before April 2, 1986, in any state of the United States; and

(ii) that was domiciled on and after October 27, 1986, in any state of the United States;

(b) (i) that, before October 27, 1986, purchased insurance from an insurer licensed in any state; and

(ii) that, since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) that was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986; and

(d) that does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986.

(3) Upon completion of registration requirements, the commissioner shall issue a proper certificate of registration to the purchasing group."

Section 44. Section 33-14-304, MCA, is amended to read:

"33-14-304. **Cancellation of insurance upon default.** (1) When a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract listed in the agreement, the insurance contract or contracts may not be canceled by the premium finance company unless ~~such~~ *the* cancellation is effectuated in accordance with this section.

(2) ~~Not less than 10 days' written~~ *Written* notice must be mailed to the insured setting forth the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured prior to the date stated in the notice. *The written notice must be mailed at least 10 days prior to the date stated in the notice.* The insurance producer ~~or broker~~ indicated on the premium finance agreement ~~shall~~ *must* also be mailed 10 days' notice of this action.

(3) Pursuant to the power of attorney or other authority referred to above, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when ~~thereafter~~ the cancellation ~~shall be~~ *will become* effective, and the insurance contract ~~shall~~ *must* be canceled as if ~~such~~ *the* notice of cancellation had been submitted by the insured ~~himself~~ but without requiring the return of the insurance contract. If the insurer or its insurance producer does not provide the insurance premium finance company with a specific mailing address for the purpose of receipt of the ~~above~~ notice, mailing by the insurance premium finance company to the insurer at the address that is on file ~~and of record~~ with the commissioner is considered sufficient notice under this section. The insurance premium finance company shall also mail a notice of cancellation to the insured at ~~his~~ *the insured's* last-known address and to the insurance producer ~~or broker~~ indicated on the premium finance agreement.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party apply whenever cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation."

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Section 45. Section 33-15-301, MCA, is amended to read:

"**33-15-301. Requiring standard provisions — waiver.** (1) Insurance contracts ~~shall~~ *must* contain ~~such~~ *the* standard or uniform provisions ~~as are~~ *and benefits* required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive ~~the required use~~ of a particular provision in a particular insurance policy form if:

(a) ~~he~~ *the commissioner* finds ~~such~~ *the* provision *or benefit* unnecessary for the protection of the insured and inconsistent with the purposes of the policy; and

(b) the policy is otherwise approved by ~~him~~ *the commissioner*.

(2) ~~No~~ *A* policy *or certificate* ~~shall~~ *may not* contain any provision *or benefit* inconsistent with or contradictory to any standard or uniform provision *or benefit* used or required to be used, but the commissioner may approve any substitute provision *or benefit* ~~which~~ *that* is, in ~~his~~ *the commissioner's* opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

(3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the commissioner.

(4) ~~No such~~ *A* provision, if required to be contained in the policy, ~~can~~ *may not* be waived by agreement between the insurer and any other person."

Section 46. Section 33-15-303, MCA, is amended to read:

"**33-15-303. Contents of policies in general — identification.** (1) ~~Every~~ *Each* policy ~~shall~~ *must* specify:

(a) the names of the parties to the contract;

(b) the subject of the insurance;

(c) the risks insured against;

(d) the time when the insurance under the policy takes effect and the period during which the insurance is to continue;

(e) the premium;

(f) the conditions pertaining to the insurance.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid must be included.

(3) All policies and annuity contracts issued by insurers and the forms of policies and annuity contracts filed with the commissioner must have printed on the policy or annuity contract an appropriate designating letter or figure, combination of letters or figures, or terms identifying the respective forms of policies or contracts~~, together with the year of adoption of the form~~. *Each form, including riders and endorsements, must be identified by a designating letter or*

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figure placed in a lower, preferably left-hand, corner of the first page of the form. Whenever any change is made in any form, the designating letters, figures, or terms ~~and year of adoption~~ on the form must be correspondingly changed *and the revision date must be noted next to the designating letters.*"

Section 47. Section 33-16-202, MCA, is amended to read:

"**33-16-202. Recording and reporting of loss and expense experience.** (1) The commissioner ~~shall~~ *may* promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, ~~and~~ which ~~shall~~ *must* ~~thereafter~~ be used by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in ~~such~~ form and detail as ~~may be~~ necessary to aid ~~him~~ *the commissioner* in determining whether rates comply with the applicable standards of this chapter. ~~Such~~ *The* rules and plans may also provide for the recording and reporting of expense experience items ~~which~~ *that* are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating ~~such~~ rules and plans, the commissioner shall give ~~due~~ consideration to the rating systems in use in this stato and, in order that ~~such~~ *the* rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for ~~such~~ rating systems in other states. ~~No~~ *An* insurer ~~shall~~ *may not* be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(3) The commissioner may designate one or more rating organizations or other agencies to assist ~~him~~ in gathering ~~such~~ *and making compilations of loss and expense* experience ~~and making compilations thereof~~, and ~~such~~ *the* compilations ~~shall~~ *must* be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations."

Section 48. Section 33-16-235, MCA, is amended to read:

"**33-16-235. Data reporting — rules.** (1) An insurer that has transacted a line of insurance designated as noncompetitive or volatile ~~shall~~ *may* report once a year to the commissioner, on forms prescribed by the commissioner, information including:

(a) reported and estimated ultimate exposure, by year of exposure to loss;

(b) reported and estimated ultimate premiums, by year of exposure to loss;

(c) losses paid, by year incurred;

(d) loss adjustment expense paid, by year incurred;

(e) reported and ultimately incurred losses and loss adjustment expenses, by year incurred; and

(f) any other information required by the commissioner.

(2) An insurer transacting a line of insurance designated as noncompetitive or volatile shall provide to the commissioner information concerning at least 5 years of experience, with information evaluated as of the end of each calendar

year. In addition to the latest reported information for each year, the insurer shall document any adjustments, including but not limited to development factors and trend adjustments, made to the reported data in projecting losses.

(3) The commissioner ~~shall~~ *may* adopt by rule reasonable development factors and trend adjustments to be applied to the reported data."

Section 49. Section 33-17-102, MCA, is amended to read:

"**33-17-102. Definitions.** As used in this title, the following definitions apply:

(1) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term does not include a:

(a) licensed attorney who is qualified to practice law in this state;

(b) salaried employee of an insurer or of a managing general agent; ~~or~~

(c) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer.~~;~~ *; or*

(d) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on ~~such coverage~~ *these coverages*.

(b) The term does not mean:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

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(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims; or

(xi) a person who adjusts or settles claims in the normal course of ~~his~~ *the person's* practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(6) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of ~~himself~~ *the person*, his *or the person's* spouse, ~~his~~ employer, or ~~his~~ business.

(8) "Individual" means a private or natural person, as distinguished from a partnership, corporation, or association.

(9) "Insurance producer", except as provided in 33-17-103:

(a) means:

(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

(A) policies of insurance for risks residing, located, or to be performed in this state; or

(B) membership contracts as defined in 33-30-101;

(ii) a managing general agent. For purposes of this ~~definition, a~~ *chapter, the term* "managing general agent" ~~is a person who, on behalf of an insurer, exercises general supervision over the business of the insurer in this state or in any other state, including the authority to contract with an insurance producer for the insurer and terminate those contracts~~ *has the same meaning as set forth in 33-2-1501.*

(b) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried employee of an insurance producer who assists and is responsible to the insurance producer.

(10) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not creato actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(11) "Person" means an individual, partnership, corporation, association, or other legal entity.

(12) "Public adjuster" means an adjuster employed by and representing the interests of the insured."

Section 50. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation *as* set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) bas successfully passed the examinations for each kind of insurance for which the individual has applied *within 12 months of application*;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. *Licenses issucd based upon Montana state residency terminate if the licensee relocates to another state*;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which ~~he~~ *the applicant* applies to be licensed and is reasonably familiar with the provisions of this code which govern ~~his~~ *the applicant's* operations as an insurance producer; and

(h) if applying for a license as to life or disability insuranco:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

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(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence *or authorization* under 35-1-1312 or filed articles of incorporation under ~~35-2-214~~ *35-1-220*.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708 for the license of an insurance producer. The commissioner may, after a hearing with notice to the association, revoke the license if ~~he~~ *the commissioner* finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(4) An insurance producer using an assumed business name shall register the name with the commissioner before using it."

Section 51. Section 33-17-405, MCA, is amended to read:

"**33-17-405. Service of process — commissioner as agent.** A ~~nonresident person shall file with the commissioner the required forms appointing the~~ *The* commissioner ~~and his successors in office~~ *shall act* as ~~the~~ *a* nonresident person's agent upon whom process in a legal proceeding against the nonresident person may be served. ~~and shall agree that such~~ *Service of process on the commissioner* ~~process has~~ *has* the same legal force and validity as personal service of process upon the nonresident person. The commissioner shall, within 3 working days after receiving process, forward *by certified mail,*

~~at~~ *to* the nonresident person's address of record, a copy of the process ~~by certified mail to the person for whom he has received the process~~."

Section 52. Section 33-17-503, MCA, is amended to read:

"**33-17-503. Application — fee — expiration.** (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file in the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee of $50, *which the commissioner shall deposit with the state treasurer to be credited to the state's general fund.*

(2) Each consultant license ~~expires on May 31 next following the date of issue~~ *must be renewed each year by the consultant paying a continuation fee on or before May 31, and the license continues in force unless suspended, revoked, or otherwise terminated.*"

Section 53. Section 33-17-603, MCA, is amended to read:

"**33-17-603. Certificate of registration.** (1) Except as provided in 33-17-604, a person may not act as or ~~hold himself out to be~~ *represent to the public that the person is* an administrator in this state unless ~~he~~ *the person* holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a ~~fee~~ of $100. The commissioner shall issue the certificate unless ~~he~~ *the commissioner* finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for a license denied for cause within 5 years.

(3) ~~The~~ *A* certificate of registration ~~is renewable annually on July 1. A request for renewal must be accompanied by a renewal fee of $100~~ *must be renewed each year by the administrator paying a continuation fee of $100 on or before July 1. Upon payment, the license continues in force unless suspended, revoked, or otherwise terminated. The commissioner shall deposit the fee with the state treasurer to be credited to the general fund.*

(4) ~~The~~ *A* certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless ~~the~~ *a* certification requirement is waived, a person who acts as an administrator without a certificate of registration is subject to a fine of not less than $500 or more than $1,500."

Section 54. Section 33-18-212, MCA, is amended to read:

"**33-18-212. Illegal dealing in premiums — improper charges for insurance.** (1) A person may not willfully collect any sum as *a* premium or charge for insurance~~, which insurance~~ *that* is not then provided or is not in due course to be provided, ~~(~~subject to acceptance of the risk by the insurer~~)~~, by an insurance policy issued by an insurer as authorized by this code.

(2) A person may not willfully collect as *a* premium or charge for insurance any sum in excess of or less than the premium or charge applicable to ~~such~~ *the* insurance and, as specified in the policy, in accordance with the applicable classifications and rates ~~as~~ filed with ~~and~~ *or* approved by the commissioner; or in cases ~~where~~ *in which* classifications, premiums, or rates are not required by this code to be ~~so~~ filed ~~and~~ *or* approved, ~~such~~ *the* premiums and charges may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision may not ~~be deemed to~~ prohibit the charging and collection, by surplus lines insurance producers licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. ~~It~~ *This provision* may not ~~be considered to~~ prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

(3) Each violation of this section is punishable under 33-1-104."

Section 55. Section 33-18-301, MCA, is amended to read:

"33-18-301. **Prohibited relations with mortuaries.** (1) ~~No~~ *A* life insurer *and its officers, employees, or representatives* may *not* own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment ~~or permit its officers, employees, or representatives to own, operate, maintain, or be employed in any such business~~ in Montana.

(2) ~~No~~ *A* life insurer may *not* contract or agree with any funeral director, mortuary, or undertaker ~~to the effect~~ that ~~such~~ *the* funeral director, undertaker, or mortuary shall conduct the funeral or be named beneficiary of any person insured by ~~such~~ *the* insurer. This subsection does not prohibit a life insurer from making insurance, designated as funeral insurance, available.

(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

(a) the policy is a life insurance product;

(b) the applicant may designate the beneficiary, provided that there is an appropriate and insurable interest;

(c) the beneficiary may use the proceeds for any purpose; and

(d) any attempt by the insurer or its representative to have the insured designate a specific beneficiary, including but not limited to a funeral director, mortuary, or undertaker, constitutes a violation of this section punishable as a misdemeanor pursuant to subsection (4).

~~(3)~~*(4)* Each violation of this section constitutes a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment for not more than 6 months or ~~by~~ both ~~such fine and imprisonment~~."

Section 56. Section 33-22-131, MCA, is amended to read:

"33-22-131. **Coverage for phenylketonuria treatment.** (1) Each group or individual *medical expense* disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended,

or modified in this state must provide coverage for the treatment of phenylketonuria.

(2) For purposes of this section, "treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

(3) These services are subject to the terms of the applicable group or individual disability policy, certificate, or membership contract that establishes durational limits, dollar limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

(4) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, or specified disease policies."

Section 57. Section 33-22-132, MCA, is amended to read:

"33-22-132. Coverage for mammography examinations. (1) Each group or individual *medical expense, cancer, and blanket* disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide minimum mammography examination coverage.

(2) For the purpose of this section, "minimum mammography examination" means:

(a) one baseline mammogram for a woman who is 35 years of age or older and under 40 years of age;

(b) a mammogram every 2 years for any woman who is 40 years of age or older and under 50 years of age or more frequently if recommended by the woman's physician; and

(c) a mammogram each year for a woman who is 50 years of age or older.

(3) A minimum $70 payment or the actual charge if the charge is less than $70 must be made for each mammography examination performed before the application of the terms of the applicable group or individual disability policy, certificate of insurance, or membership contract that establish durational limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

(4) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, or specified disease policies."

Section 58. Section 33-22-201, MCA, is amended to read:

"33-22-201. Format and content. A *An individual* policy of disability insurance may not be delivered or issued for delivery to any person in this state unless it otherwise complies with this code and complies with the following:

(1) The entire money and other considerations for the policy must be expressed in the policy.

(2) The time when the insurance takes effect and terminates must be expressed in the policy.

(3) The policy may insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who is the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age that may not exceed ~~19~~ *25* years, and any other person dependent upon the policyholder.

(4) The style, arrangement, and overall appearance of the policy may not give undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers must be plainly printed in lightfaced type of a style in general use, the size of which must be uniform and not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

(5) The "text" must include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity must be set forth in the policy and, other than those contained in 33-22-204 through 33-22-215 and ~~33-22-217~~ *33-22-221* through 33-22-231, must be printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction must be included with the benefit provision to which it applies.

~~(7) Each form, including riders and endorsements, must be identified by a form number in the lower left-hand corner of the first page of the form.~~

~~(8)~~*(7)* The policy may not contain a provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of or reference to a statement of rates or classification of risks or short-rate table filed with the commissioner.

~~(9) Each individual disability policy, except for a single premium nonrenewable policy, issued for delivery in this state on or after January 1, 1980, must contain a notice stating in substance that if the person to whom the policy is issued is not satisfied for any reason, the person is permitted to return the policy within 10 days of its delivery, or a longer period as the policy may provide, and to have refunded the amount of the premium paid. A policy returned pursuant to this subsection is void from the beginning.~~"

Section 59. Section 33-22-202, MCA, is amended to read:

"**33-22-202. Required provisions — captions — omissions — substitutions — order.** (1) Except as provided in subsection (2), each policy delivered or issued for delivery to any person in this state must contain the provisions specified in 33-22-204 through 33-22-215, ~~in the words in which the~~ *as those* provisions appear, except that the insurer may, at its option, substitute for one or more of the provisions corresponding provisions of different wording

approved by the commissioner ~~which are in each instance~~ *and* not less favorable in any respect to the insured or the beneficiary. Each provision must be preceded ~~individually~~ by the applicable caption shown or, at the option of the insurer, by the appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from the policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in a manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(3) The provisions that are the subject of 33-22-204 through 33-22-215 and ~~33-22-217~~ *33-22-221* through 33-22-232 or any corresponding provisions which are used in accordance with the cited sections must be printed in the consecutive order of the provisions in the sections or, at the option of the insurer, any provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, provided that the resulting policy is not in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued."

Section 60. Section 33-22-301, MCA, is amended to read:

"**33-22-301. Coverage of newborn under disability policy.** (1) Each policy of disability insurance or certificate issued ~~thereunder shall~~ *must* contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(2) The coverage for newborn infants must be the same as provided by the policy for the other covered persons~~;~~. ~~provided, however~~ *However*, that for newborn infants there ~~shall be no~~ *may not be* waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(3) ~~No~~ *A* policy or certificate of insurance may *not* be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth.

(4) ~~If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31 day period.~~ *The policy or contract may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days.*"

Section 61. Section 33-22-303, MCA, is amended to read:

"**33-22-303. Coverage for well-child care.** (1) Each *medical expense* policy of disability insurance or certificate issued under the policy that is

delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratery tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised hy a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a policy of disability insurance or a certificate issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificato is located inside or outside of this state."

Section 62. Section 33-22-504, MCA, is amended to read:

"**33-22-504. Newborn infant coverage.** (1) ~~No~~ *A* group disability policy or certificate of insurance ~~which, in addition to covering persons in the insured group, also covers members of such person's family~~ *delivered or issued for delivery in this state* may *not* be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons covered under the policy from and after the moment of birth.

(2) ~~If the~~ *A* policy or certificate ~~issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family, it shall~~ *subject to this section, must* contain ~~an additional~~ *a* provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person covered under the policy.

(3) The coverage for newborn infants ~~shall~~ *must* be the same as provided by the policy for other covered persons~~;~~. ~~provided, however~~ *However*, ~~that~~ for newborn infants there ~~shall~~ *may not* be ~~no~~ waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductihle or reduction in benefits applicable to all other covered persons.

(4) This section does not apply to medicare supplement policies issued by reason of age.

(5) When a group disability policy or certificate issued under the policy provides for coverage or benefits for a resident of this state, the policy or certificate is considered delivered in this state within the meaning of this section regardless of whether the insurer issuing the policy or certificate is located in this state.

(6) The policy or certificate may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days."

Section 63. Section 33-22-508, MCA, is amended to read:

"33-22-508. Conversion on termination of eligibility. (1) A group disability insurance policy *or certificate of insurance delivered or* issued *for delivery* or renewed after October 1, 1981, must contain a provision tbat if the insurance or any portion of it on a person~~, his~~ *or the person's* dependents~~,~~ or family members covered under the policy ceases because of termination of ~~his~~ *the person's* employment or ~~of his~~ membership in the class or classes eligible for coverage under the policy or as a result of ~~his~~ *the person's* employer discontinuing ~~his~~ business or as a result of ~~his~~ *the* employer discontinuing the group disability insurance policy and not providing for any otber group disability insurance or plan and if the person had been insured for a period of 3 months and ~~he~~ is not insured under another major medical disability insurance policy or plan, ~~he~~ *the person* is entitled to have issued ~~to him~~ by the insurer, without evidence of insurability, group coverage or an individual policy ~~issued by the insurer~~ or, in the absence of an individual policy issued by the insurer, a group policy issued by the insurer, of hospital or medical service insurance on ~~himself~~ *the person*~~, his~~ *and the person's* dependents~~,~~ or family members if application for the individual policy is made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity.

(3) The premium on the individual policy or group policy must be at tbe insurer's then customary rate applicable to the coverage of the individual or group policy."

Section 64. Section 33-22-1120, MCA, is amended to read:

"33-22-1120. Extraterritorial jurisdiction. A group long-term care insurance policy or certificate may not be delivered or issued for delivery to a

resident of Montana under a group policy issued in another state ~~to a group described in 33-22-1107(3)(d)~~ unless it is approved by:

(1) the commissioner; ~~or~~ *and*

(2) the insurance regulatory official of a stato that has statutory and regulatory long-term care insurance requirements suhstantially similar to those adopted in Montana."

Section 65. Section 33-22-1803, MCA, is amended to read:

"**33-22-1803. Definitions.** As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all individual carriers of disability insurance and all carriers of group disability insurance, excluding the state group benefits plan provided for in Title 2, chapter 18, part 8, the Montana university system health plan, and any self-funded disability insurance plan provided by a political subdivision of the state.

(4) "Base premium rate" means, for each class of business as te a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to 33-22-1812.

(6) "Board" means the board of directors of the program established pursuant to 33-22-1818.

(7) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, a health maintenance organization, and, to the extent permitted by the Employee Retirement Income Security Act of 1974, a multiple-employer welfare arrangement. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(8) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that *gender,* claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(9) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(10) "Committee" means the health benefit plan committee created pursuant to 33-22-1812.

(11) "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined ~~to be~~ *as* a dependent in the health benefit plan covering the employee.

(12) "Eligible employee" means an employee who works on a full-time basis and who has a normal workweek of 30 hours or more. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.

(13) "Established geographic service area" means a geographic area, as approved by tbe commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(14) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include:

(a) accident-only, credit, dental, vision, specified disease, medicare supplement, long-term care, or disability income insurance;

(b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or similar insurance; or

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(c) automobile medical payment insurance.

(15) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(16) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual was entitled te enroll under the terms of the health benefit plan, provided that the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent may not be considered a late enrollee if:

(a) the individual *requests enrollment within 30 days after termination of the qualifying previous coverage and* ~~meets each of the following conditions~~:

(i) the individual was covered under qualifying previous coverage at the time of the initial enrollment; *or*

(ii) the individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, the death of a spouse, or divorce; ~~and~~

~~(iii) the individual requests enrollment within 30 days after termination of the qualifying previous coverage;~~

(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

(c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(17) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(18) "Plan of operation" means the operation of the program established pursuant to 33-22-1818.

(19) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(20) "Program" means the Montana small employer health reinsurance program created by 33-22-1818.

(21) "Qualifying previous coverage" means benefits or coverage provided under:

(a) medicare or medicaid;

(b) an employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan; or

(c) an individual health insurance policy, including coverage issued by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided that the policy has been in effect for a period of at least 1 year.

(22) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(23) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to 33-22-1819.

(24) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(25) "Small employer" means a person, firm, corporation, partnership, or association that is actively engaged in business and that, on at least 50% of its working days during the preceding calendar quarter, employed at least 3 but not more than 25 eligible employees, the majority of whom were employed within this state or were residents of this state. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of an association that:

(i) has been in existence for 1 year prior to January 1, 1994;

(ii) provides a health benefit plan to employees of its members as a group; and

(iii) does not deny coverage to any member of its association or any employee of its members who applies for coverage as part of a group.

(26) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(27) "Standard health benefit plan" means a health benefit plan developed pursuant to 33-22-1812."

Section 66. Section 33-22-1819, MCA, is amended to read:

"33-22-1819. **Program plan of operation — treatment of losses — exemption from taxation.** (1) Within 180 days after the appointment of the initial board, the board shall submit to the commissioner a plan of operation and may at any time submit amendments to the plan necessary or suitable to

ensure the fair, reasonable, and equitable administration of the program. The commissioner may, after notice and hearing, approve the plan of operation if the commissioner determines it to be suitable to ensure the fair, reasonable, and equitable administration of the program and if the plan of operation provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation is effective upon written approval by the commissioner.

(2) If the board fails to submit a suitable plan of operation within 180 days after its appointment, the commissioner shall, after notice and hearing, promulgate and adopt a temporary plan of operation. The commissioner shall amend or rescind any temporary plan adopted under this subsection at the time a plan of operation is submitted by the board and approved by the commissioner.

(3) The plan of operation must:

(a) establish procedures for the handling and accounting of program assets and money and for an annual fiscal reporting to the commissioner;

(b) establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

(c) establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) establish procedures for collecting assessments from assessable carriers to fund claims incurred by the program;

(e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to fund administrative expenses incurred or to be incurred by the program; and

(f) provide for any additional matters necessary for the implementation and administration of the program.

(4) The program has the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition, the program may:

(a) enter into contracts as are necessary or proper to carry out the provisions and purposes of this part, including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) take any legal action necessary to avoid the payment of improper claims against the program;

(d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance policies in accordance with the requirements of this part;

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(e) establish conditions and procedures for reinsuring risks under the program;

(f) establish actuarial functions as appropriate for the operation of the program;

(g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in operation of the program, policy and other contract design, and any other function within the authority of the program;

(h) to the extent permitted by federal law and in accordance with subsection (8)(c), make annual fiscal yearend assessments against assessable carriers and make interim assessments to fund claims incurred by the program; and

(i) borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

(5) A reinsuring carrier may reinsure with the program as provided for in this subsection (5):

(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program sball reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within 60 days of the commencement of the group's coverage under a health benefit plan.

(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days following the commencement of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.

(d) (i) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent of $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 20% of the next $100,000 of benefit payments during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subsection (d)(i) may not exceed a maximum limit of $25,000 in any calendar year with respect to any reinsured individual.

(ii) The board annually shall adjust the initial level of claims and maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

(e) A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

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(f) A small employer group health benefit plan in effect before January 1, 1994, may not be reinsured hy the program until January 1, 1997, and then only if the board determines that sufficient funding sources are availahle.

(g) A reinsuring carrier shall apply all managed care and claims-handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(6) (a) As part of the plan of operation, the board shall establish a methodology for determining premium rates to be charged hy the program for reinsuring small employers and individuals pursuant to this section. The methodology must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology must provide for the development of base reinsurance premium rates that must he multiplied by the factors set forth in subsection (6)(b) to determine the premium rates for the program. The base reinsurance premium rates must be established by the board, subject to the approval of the commissioner, and must be set at levels that reasonably approximate gross premiums charged to small employers by small employer carriers for health henefit plans with benefits similar to the standard health benefit plan, adjusted to reflect retention levels required under this part.

(b) Premiums for the program are as follows:

(i) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection (6).

(ii) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection (6).

(c) The board periodically shall review the methodology established under subsection (6)(a), including the system of classification and any rating factors, to ensure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology that are subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(7) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in 33-22-1809.

(8) (a) Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(b) To the extent permitted by federal law, each assessable carrier shall share in any net loss of the program for the year in an amount equal to the ratio

of the total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery by each assessable carrier divided hy the total premiums earned in tbe previous calendar year from health benefit plans delivered or issued for delivery by all assessable carriers in the state.

(c) The board shall make an annual determination in accordance with this section of each assessable carrier's liability for its share of the net loss of the program and, except as otherwise provided by this section, make an annual fiscal yearend assessment against each assessable carrier to the extent of that liability. If approved by tbe commissioner, the board may also make interim assessments against assessable carriers to fund claims incurred by the program. Any interim assessment must be credited against the amount of any fiscal yearend assessment due or to be due from an assessable carrier. Payment of a fiscal yearend or interim assessment is due within 30 days of receipt hy the assessable carrier of written notice of the assessment. An assessable carrier that ceases doing business within the state is liable for assessments until the end of the calendar year in which the assessable carrier ceased doing husiness. Tbe board may determine not to assess an assessable carrier if the assessable carrier's liability determined in accordance with this section does not exceed $10.

(9) Tbe participation in the program as reinsuring carriers; the establishment of rates, forms, or procedures; or any other joint collective action required by this part may not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly or separately.

(10) The board, as part of the plan of operation, shall develop standards setting forth the minimum levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards, the board shall take into consideration the need to ensure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to small employers, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.

(11) The program is exempt from taxation.

(12) On or before March 1 of each year, the commissioner shall evaluato the operation of the program and report to the governor and the legislature in writing the results of the evaluation. The report must include an estimate of future costs of the program, assessments necessary to pay those costs, the appropriateness of premiums charged by the program, the level of insurance retention under the program, the cost of coverage of small employers, and any recommendations for change te the plan of operation.

(13) All premiums and other money paid to the small employer carrier reinsurance program and all property and securities acquired through the use of money and interest and dividends earned on money belonging to the small employer carrier reinsurance program are solely the property of the program and must be used exclusively for the operations and obligations of the program. Money collected by the program is not subject to legislative appropriation."

Section 67. Section 33-30-102, MCA, is amended to read:

"**33-30-102. Application of this chapter — construction of other related laws.** (1) All health service corporations ~~heretofore or hereafter organized~~ are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: ~~33-17-212~~ *33-17-101;* ~~through 33-17-214~~ *Title 33, chapter 17, parts 2 and 10 through 12;* ~~and~~ *Title 33,* chapters 1, 15, 18, 19, and 22, except 33-22-111*; and [sections 78 through 81].*

(2) A law of this state other than the provisions of this chapter applicable to health service corporations ~~shall~~ *must* be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict ~~between that law and~~ the provisions of this chapter~~, the latter shall~~ prevail."

Section 68. Section 33-30-107, MCA, is amended to read:

"**33-30-107. Annual statement.** *(1) On or before March 1 of each year,* ~~Every~~ *each* health service corporation shall file an annual statement *for the preceding year* on ~~a form containing substantially the same information as that contained in~~ form No. 13 N.A.I.C. with the commissioner of insurance. *This annual statement must be completed in accordance with the national association of insurance commissioners' annual statement instructions.*

(2) The health service corporation shall file a statement containing any other information concerning its financial affairs that may be reasonably requested by the commissioner.

(3) (a) Each health service corporation shall file electronic diskette versions of its annual and quarterly financial statements with the national association of insurance commissioners. The filing date for submission of the annual statement diskette is March 1. The filing dates for the other three quarterly statements are as follows:

(i) the first quarter statement is due May 15;

(ii) the second quarter statement is due August 15; and

(iii) the third quarter statement is due November 15.

(b) The commissioner may exempt health service corporations operating only in Montana from these filing requirements."

Section 69. Section 33-30-108, MCA, is amended to read:

"**33-30-108. License required.** (1) ~~No~~ *A* person may *not* act as a health service corporation and ~~no~~ *a* health service corporation may *not* conduct business in this state except as authorized by a license issued by the commissioner.

(2) ~~Such~~ *A* license may be issued by the commissioner only after the person has complied with the applicable provisions of this title.

(3) A health service corporation is entitled to a continuation of its license upon payment of the annual continuation fee specified in 33-30-204~~(1)(i)~~ *on or before March 1 of each year* and upon continued compliance with the provisions of this title.

(4) A license issued or continued under this section may be revoked or suspended by the commissioner for violation of this title."

Section 70. Section 33-30-202, MCA, is amended to read:

"**33-30-202. Annual report** ***by certified public accountant.*** *(1)* All corporations subject to the provisions of this chapter shall ~~make and~~ file annually with the commissioner, on or before March *June* 1 of ~~each year~~, a ~~report under oath setting forth:~~ *financial statement audited by a certified public accountant pursuant to rules promulgated by the commissioner.*

~~(1) the name of the corporation;~~

~~(2) the address of its registered office in this state and the name of its registered agent at that address;~~

~~(3) the names and addresses of its directors and officers;~~

~~(4) a brief statement of the character of the affairs which the corporation is actually conducting;~~

~~(5) the amount of all dues or fees collected from members in the last fiscal year, the amounts actually paid during that year for health services for the members or beneficiaries, and the amounts placed in reserves;~~

~~(6) a balance sheet and statement of income and expenditures for the most recent fiscal year of the corporation, prepared and verified by two officers of the corporation and certified by a certified public accountant;~~

~~(7) a statement of any other facts or information concerning the financial affairs of the health service corporation which may be reasonably required by the commissioner.~~

(2) (a) The commissioner may establish rules governing the content and preparation of the report required by subsection (1).

(b) The report must include:

(i) the corporation's financial statements for the most recent calendar year;

(ii) an opinion by the certified public accountant concerning the accuracy and fairness of the corporation's representation of its financial statements; and

(iii) other information that the commissioner specifies by rule."

Section 71. Section 33-30-204, MCA, is amended to read:

"**33-30-204. Fees.** (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

~~(a) insurance producer's license:~~

~~(i) application for original license and issuance of license . . . . . $15~~

~~(ii) annual renewal . . . . . $15~~

~~(iii) examination for license, for each examination . . . . . $15~~

~~(b)~~*(a)* filing any ~~other~~ statement or report $1

~~(c)~~*(b)* for a certified copy of any document or other paper filed in the office of the commissioner, per page . . . . . $.50

~~(d)~~*(c)* for ~~the~~ *a* certificate ~~and for affixing the~~ *with affixed* seal ~~thereto~~ $10

~~(e)~~*(d)* filing of a membership contract $25

~~(f)~~*(e)* filing of a membership contract package $100

~~(g)~~*(f)* filing annual ~~report, other than as part of application for original license~~ *statement* $25

~~(h)~~*(g)* issuance of health service corporation license $300

~~(i)~~*(h)* annual continuation of health service corporation license $300

(2) The commissioner shall promptly deposit with the state treasurer, to the credit of the general fund, all fees and license fees received ~~by him~~ under this section."

Section 72. Section 33-30-311, MCA, is amended to read:

"33-30-311. **Insurance producer.** ~~(1)~~ A person who, for compensation, solicits membership in a prepayment health service plan offered by a corporation subject to the provisions of this chapter is an insurance producer of that corporation *and is subject to the provisions of 33-2-708 and Title 33, chapter 17.*

~~(2) The definitions of insurance producer as defined in this chapter do not include an individual:~~

~~(a) employed and used by insurance producers for the performance of clerical, stenographic, and similar office duties;~~

~~(b) employed and used for incidental taking of an application for coverage from time to time in the office of the employing insurance producer;~~

~~(c) who secures and forwards information for the purpose of an existing group contractor for enrolling individuals under an existing group contract.~~"

Section 73. Section 33-30-1001, MCA, is amended to read:

"33-30-1001. **Newborn infants covered by insurance by health service corporation.** ~~No~~ *A* disability insurance plan or group disability insurance plan issued by a health service corporation may *not* be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each such policy ~~shall~~ *must* contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person. ~~If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage~~

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~~continue beyond such 31-day period.~~ *The policy or contract may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days."*

Section 74. Section 33-31-111, MCA, is amended to read:

"**33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this cbapter do not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) The provisions of this section do not exempt a health maintenance organization from material transaction disclosure requirements under [sections 78 through 81]. A health maintenance organization must be considered an insurer for the purposes of [sections 78 through 81]."

Section 75. Notice of right to return policy. Each individual life or disability insurance policy, except a single-premium nonrenewable disability policy, issued for delivery in this state or issued after January 1, 1996, must contain a notice stating in substance that if the person te whom the policy is issued is not satisfied for any reason, the person may return the policy within 10 days of its delivery or a longer period if provided by the policy and have refunded directly to the person the premium paid. A policy returned pursuant to this section is void from the beginning.

Section 76. Reserve calculation — indeterminate premium plans — minimum standards for disability plans. (1) In the case of a plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of a plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in 33-2-525 and 33-2-526(3), the reserves that are held under the plan must:

(a) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(b) be computed by a method that is consistent with the principles of 33-2-521 through 33-2-529, as determined by rules promulgated by the commissioner.

(2) The commissioner shall promulgate a rule containing the minimum standards applicable to the valuation of disability plans.

Section 77. Dating of insurance applications — antedating prohibited. An application for issuance of an insurance policy may not be antedated by any person in order to obtain or provide coverage for losses or injuries incurred prior to the date of application.

Section 78. Short title. [Sections 78 through 81] may be cited as the "Disclosure of Material Transactions Act".

Section 79. Report. (1) An insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions have been submitted to the commissioner for review or approval or for information purposes pursuant to other provisions of the insurance code, laws, or regulations or other requirements.

(2) The report required in subsection (1) is due within 15 days after the end of the calendar month in which any of the transactions in subsection (1) occur.

(3) One complete copy of the report, including any exhibits or other attachments, must be filed with:

(a) the insurance department of the state in which the insurer is domiciled; and

(b) the national association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner pursuant to [sections 78 through 81] must be treated confidentially, may not be subject to subpoena, and may not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior consent of the insurer to which it pertains unless the commissioner, after giving the insurer notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by publication, in which event the commissioner may publish all or any part of the report in the manner the commissioner chooses.

Section 80. Acquisitions and dispositions of assets. (1) Acquisitions or dispositions of assets that are not material are not required to be reported pursuant to [section 79] if the acquisitions or dispositions are not matorial. For purposes of [sections 78 through 81], a material acquisition or the aggregate of any series of related acquisitions during any 30-day period or a disposition or the aggregate of any series of related dispositions during any 30-day period is one that is nonrecurring and not in the ordinary course of business and involves more than 5% of the reporting insurer's total admitted assets as reported in its

most recent statutory statement filed with the insurance department of the insurer's state of domicile.

(2) Asset acquisitions subject to [sections 78 through 81] include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition, other than the construction or development of real property, by or for the reporting insurer or the acquisition of materials for this purpose.

(3) Asset dispositions subject to [sections 78 through 81] include each sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

(4) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

(a) the date of the transaction;

(b) the manner of acquisition or disposition;

(c) the description of the assets involved;

(d) the nature and amount of the consideration given or received;

(e) the purpose or reason for the transaction;

(f) the manner by which the amount of consideration was detormined;

(g) the gain or loss recognized or realized as a result of the transaction; and

(h) the names of the persons from whom the assets were acquired or to whom they were disposed.

(5) An insurer is required to report matorial acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidatod group of insurers that uses a pooling arrangement or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer cedes substantially all of its direct and assumed business to a pool if the insurer has less than $1 million tetal direct plus assumed writton premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus.

Section 81. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) A nonrenewal, cancellation, or revision of a ceded reinsurance agreement need not be reported pursuant to [section 79] if the nonrenewal, cancellation, or revision is not material. For purposes of [sections 78 through 81], a material nonrenewal, cancellation, or revision is one that affects:

(a) property and casualty business, including disability business written by a property and casualty insurer, so that:

(i) more than 50% of the insurer's total ceded written premium is affected; or

(ii) more than 50% of the insurer's total ceded indemnity and loss adjustment reserves are affected;

(b) life, annuity, and disability business, so that more than 50% of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement is affected;

(c) either property and casualty or life, annuity, and disability business and causes either of the following events that constitutes a material revision that must be reported:

(i) an authorized reinsurer representing more than 10% of a total cession is replaced by one or more unauthorized reinsurers; or

(ii) previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more tban 10% of a total cession.

(2) However, a filing is not required if:

(a) with respect to property and casualty business, including disability business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than 10% of its total written premium for direct and assumed business; or

(b) with respect to life, annuity, and disability business, the total reserve credit taken for business ceded represents, on an annualized basis, less than 10% of the statutory reserve requirement prior to any cession.

(3) The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(a) the effective date of the nonrenewal, cancellation, or revision;

(b) the description of the transaction with an identification of the initiator of the transaction;

(c) tbe purpose or reason for the transaction; and

(d) if applicable, the identity of the replacement reinsurers.

(4) Insurers are required te report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidatod group of insurers that uses a pooling arrangement or 100% reinsurance agreement that affects the solvency and integrity of tbe insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is considered to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than $1 million total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus.

Section 82. Short title. [Sections 82 through 94] constituto and may be referred to as "The Risk-Based Capital For Insurers Act".

Section 83. Definitions. As used in [sections 82 through 94], the following definitions apply:

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with [section 84(5)].

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(3) "Domestic insurer" means any insurance company domiciled in this state.

(4) "Foreign insurer" means any insurance company licensed to do business in this state under 33-2-116 but not domiciled in this state.

(5) "Life or disability insurer" means:

(a) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of disability insurance as described in 33-1-207 or life insurance as described in 33-1-208; or

(b) a licensed property and casualty insurer writing only disability insurance.

(6) "NAIC" means the national association of insurance commissioners.

(7) "Negative trend" means, with respect to a life or health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

(8) (a) "Property and casualty insurer" means any insurance company licensed under 33-2-116 and engaged in the business of entering inte contracts of property insurance as described in 33-1-210 or casualty insurance as described in 33-1-206.

(b) The term does not include monoline mortgage guaranty insurers, financial gnaranty insurers, and title insurers.

(9) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(10) "RBC level" means an insurer's authorized control level RBC, company action level RBC, mandatory control level RBC, or regulatory action level RBC, where:

(a) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with tbe RBC instructions;

(b) "company action level RBC" means, with respect to any insurer, the product of 2 and its authorized control level RBC;

(c) "mandatory control level RBC" means the product of 0.70 and the authorized control level RBC; and

(d) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC.

(11) "RBC plan" means a comprehensive financial plan containing the elements specified in [section 85(2)]. If the commissioner rejects the RBC plan and it is revised by the insurer, with or without the commissioner's recommendation, the plan must he called a revised RBC plan.

(12) "RBC report" means the report required in [section 84].

(13) "Total adjusted capital" means the sum of:

(a) an insurer's statutory capital and surplus; and

(b) other items, if any, as the RBC instructions may provide.

Section 84. RBC reports. (1) Each domestic insurer shall, on or before each March 1 filing date, prepare and submit to the commissioner a report of its RBC levels as of the end of the previous calendar year in a form and containing information as required by the RBC instructions. In addition, each domestic insurer shall file its RBC report:

(a) with the NAIC in accordance with the RBC instructions; and

(b) with the insurance commissioner in any state in which the insurer is authorized to do business if that insurance commissioner has notified the insurer of the request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) 15 days from the receipt of notice to file its RBC report with that stato; or

(ii) the March 1 filing date.

(2) A life and disability insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must take into account and may adjust for the covariance between:

(a) the risk with respect to the insurer's assets;

(b) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) the interest rate risk with respect to the insurer's business; and

(d) all other business risks and other relevant risks as are set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) A property and casualty insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) asset risk;

(b) credit risk;

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(c) underwriting risk; and

(d) all other business risks and other relevant risks that are set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the risk-based capital requirements contained in [sections 82 through 94] and the formulas, schedules, and instructions referenced in [sections 87 through 94] is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by [sections 82 through 94]. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in [sections 82 through 94].

(5) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and sball notify the insurer of tbe adjustment. The notice must contain a statement of the reason for the adjustment. An RBC report so adjusted is referred to as an adjusted RBC report.

Section 85. Company action level event. (1) "Company action level event" means any of the following events:

(a) tbe filing of an RBC report by an insurer which indicates that:

(i) the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(ii) for a life or disability insurer, the insurer has tetal adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and that has a negative trend;

(b) tbe notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in subsection (1)(a) if the insurer does not challenge tbe adjusted RBC report under [section 89] or if the commissioner has rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that must:

(a) identify the conditions that contribute to the company action level event;

(b) contain proposals of corrective actions that the insurer intends to take and that would be expected to result in the elimination of the company action level event;

(c) provide projections of tbe insurer's financial results in the current year and at least the next 4 years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

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(d) identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) identify the quality of and problems associated with the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan must be submitted:

(a) within 45 days of the company action level event; or

(b) if the insurer challenges an adjusted RBC report pursuant to [section 89], within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within 60 days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer as to whether the RBC plan may be implemented or is unsatisfactory in the judgment of the commissioner. If the commissioner determines that the RBC plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may set forth proposed revisions that will render the RBC plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate hy reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) within 45 days after the notification from the commissioner; or

(b) if the insurer challenges the notification from the commissioner under [section 89], within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the commissioner to an insurer that tbe insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, at the commissioner's discretion, suhject to the insurer's right to a hearing under [section 89], specify in the notification that the notification constitutes a regulatory action level event.

(6) Each domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) the state has an RBC provision substantially similar to [section 90(1)]; and

(b) the insurance commissioner of that state has notified the insurer in writing of its request for the filing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state by the later of:

(i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with that state; or

(ii) the date on which the RBC plan or revised RBC plan is filed under [section 85(3) and (4)].

Section 86. Regulatory action level event. (1) "Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) the filing of an RBC report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) the notification by the commissioner to an insurer of an adjusted RBC report that indicates the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section 89] or the commissioner rejects the insurer's challenge;

(c) the failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within 10 days after the filing date;

(d) the failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in [section 85(3)];

(e) notification by the commissioner to the insurer that:

(i) the RBC plan or revised RBC plan submitted by the insurer is unsatisfactory in the judgment of the commissioner; and

(ii) the notification constitutes a regulatory action level event with respect to the insurer if the insurer has not challenged the determination under [section 89];

(f) if, pursuant to [section 89], the insurer challenges a determination by the commissioner, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge;

(g) notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification and if the insurer has not challenged the determination under [section 89] or the commissioner has not rejected the insurer's challenge.

(2) In the event of a regulatory action level event, the commissioner shall:

(a) require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) perform an examination or analysis as the commissioner considers necessary of the assets, liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) subsequent to the examination or analysis, issue a corrective order specifying corrective actions that the commissioner determines are required.

(3) In determining corrective actions, the commissioner may take into account factors considered relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including but not limited to the results of any sensitivity tests

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undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan must he submitted:

(a) within 45 days after the occurrence of the regulatory action level event;

(b) if the insurer cballenges an adjusted RBC report pursuant to [section 89] and the challenge is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer that the commissioner bas, after a hearing, rejected the insurer's challenge; or

(c) if the insurer cballenges a revised RBC plan pursuant to [section 89] and the challenge is not frivolous in the judgment of tbe commissioner, within 45 days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants that may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC plan, to examine or analyze the assets, liabilities, and operations of the insurer, and to formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants must be borne by the affected insurer or such other party as directed by the commissioner.

Section 87. Authorized control level event. (1) "Authorized control level event" means any of the following events:

(a) the filing of an RBC report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section 89] or the commissioner rejects the insurer's challenge;

(c) the failure of tbe insurer to respond, in a manner satisfactory to the commissioner, to a corrective order if the insurer has not challenged tbe corrective order under [section 89]; or

(d) if the insurer has cballenged a corrective order under [section 89] and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(a) take the actions required under [section 86] regarding an insurer with respect to which a regulatory action level event has occurred; or

(b) if the commissioner considers it to be in the best interests of the policyholders and creditors of the insurer and of the public, take the actions necessary to cause the insurer to be placed under regulatory control under Title 33, chapter 2, part 13. In the event that the commissioner places the insurer under regulatory control, the autborized control level event must be considered

sufficient grounds for the commissioner to take action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. In the event that the commissioner takes an action under this subsection pursuant to an adjusted RBC report, the insurer is entitled to the protections afforded to insurers under the provisions of 33-2-1321 through 33-2-1323 pertaining to summary proceedings.

Section 88. Mandatory control level event. (1) "Mandatory control level event" means any of the following events:

(a) the filing of an RBC report that indicates that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section 89] or the commissioner rejects the insurer's challenge.

(2) In the event of a mandatory control level event:

(a) with respect to a life insurer, the commissioner shall take the actions that are necessary to place the insurer under regulatory control under Title 33, chapter 2, part 13. In that event, the mandatory control level event must be considered sufficient grounds for the commissioner to take action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. If the commissioner takes an action pursuant to an adjusted RBC report, the insurer is entitled to the protections of 33-2-1321 through 33-2-1323 pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds that there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

(b) with respect to a property and casualty insurer, the commissioner shall take the actions necessary to place the insurer under regulatary control under Title 33, chapter 2, part 13, or, in the case of an insurer that is not writing business and that is running-off its existing business, may allow the insurer to continue its runoff under the supervision of the commissioner. In either event, the mandatory control level event must be considered sufficient grounds for the commissioner to take action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. If the commissioner takes an action pursuant to an adjusted RBC report, the insurer is entitled te the protections of 33-2-1321 through 33-2-1323 pertaining to summary proceedings. Notwithstanding any of tbe foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

Section 89. Notification and hearing. (1) An insurer has the right to a hearing before the department upon notification by the commissioner:

(a) of an adjusted RBC report or unsatisfactory RBC plan or revised RBC plan that constitutes a regulatory action level event with respect to the insurer;

(b) that the insurer has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(c) of a corrective order with respect to the insurer.

(2) The insurer shall notify the commissioner of its request for a hearing within 5 days after the notification hy the commissioner under subsection (1). Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which may not be less than 10 or more than 30 days after the date of the insurer's request.

Section 90. Confidentiality — prohibition on announcements — prohibition on use in ratemaking. (1) With respect to a domestic insurer or a foreign insurer, all RBC reports, to the extent the information in the reports is not required to be set forth in a publicly available annual statement schedule, and all RBC plans, including the results or report of any examination or analysis of an insurer performed pursuant to [sections 82 through 94] and any corrective order issued by the commissioner pursuant to the examination or analysis, that are filed with the commissioner constitute information that might he damaging to the insurer if made available to its competitors and must he kept confidential by the commissioner. This information may not be made public and is not subject to suhpoena other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to [sections 82 through 94] or any other provision of the insurance laws of this stato.

(2) It is the intent of the legislature that the comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer and that it is not intended as a means to rank insurers generally. Except as otherwise required under the provisions of [sections 92 through 94], the making, publishing, disseminating, circulating, or placing before the puhlic or causing, directly or indirectly to he made, published, disseminatod, circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any insurer or of any component derived in the calculation that is by any insurer, producer, or other person engaged in any manner in the insurance business would be misleading and is prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels or an inappropriato comparison of any other amount to the insurer's RBC levels is published in any written publication and the insurer is able to demonstrate to the commissioner, with substantial proof, the falsity of the statement or the inappropriateness, as the case may be, the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) It is the further intent of the legislature that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended

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solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and may not be used by the commissioner for ratemaking or considered or introduced as evidence in any rate proceeding or used by the commissioner to calculate or derive any elements of an appropriato premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized te write.

Section 91. Supplemental provisions — rules — exemption. (1) The provisions of [sections 82 through 94] are supplemental to any other provisions of the laws of this state and do not preclude or limit any other powers or duties of the commissioner under the law, including but not limited to Title 33, chapter 2, part 13.

(2) The commissioner may adopt reasonable rules necessary for the implementation of [sections 82 through 94].

(3) The commissioner may exempt from the application of [sections 82 through 94] any domestic property and casualty insurer that:

(a) writes direct business only in this state;

(b) writes direct annual premiums of $2 million or less; and

(c) does not assume reinsurance in excess of 5% of direct premium written.

Section 92. Foreign insurers. (1) A foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report for the previous calendar year on the later of:

(a) the date that an RBC report would be required to be filed by a domestic insurer under [section 84]; or

(b) 15 days after the request is received by the foreign insurer.

(2) A foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(3) In the event of a company action level event, regulatory action level event, or authorized control level event, with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if an RBC statute is not in force in that state, under the provisions of [sections 82 through 94], if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC plan in the manner specified under that state's RBC statute or, if an RBC statute is not in force in that state, under [section 85], the commissioner may require the foreign insurer to file an RBC plan with the commissioner. In that event, the failure of the foreign insurer to file an RBC plan with the commissioner is grounds to order the insurer to cease and desist from writing new insurance business in this state.

(4) In the event of a mandatory control level event with respect to any foreign insurer, if a domiciliary receiver has not been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to a district court of this state permitted under 33-2-1380 with

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respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory control level event must be considered adequate grounds for the application.

Section 93. Applicability for 1995. (1) For RBC reports required to be filed by property and casualty insurers with respect to 1995, the following requirements apply in lieu of the provisions of [sections 85 through 88]:

(a) In the event of a company action level event with respect to a domestic insurer, the commissioner will not take regulatory action under [sections 82 through 94].

(b) In the event of a regulatory action level event under [section 86(1)(a), (1)(b), or (1)(c)], the commissioner shall take the actions required under [section 86(2)].

(c) In the event of a regulatory action level event under [section 86(1)(d), (1)(e), (1)(f), or (1)(g)] or an authorized control level event, the commissioner shall take the actions required under [section 86(2) and (3)] with respect to the insurer.

(2) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under [section 88].

Section 94. Notices. All notices by the commissioner to an insurer that may result in regulatory action are effective on dispatch if transmitted by certified mail or, in the case of any other transmission, are effective on the insurer's receipt of the notice.

Section 95. Section 33-22-1811, MCA, is amended to read:

"**33-22-1811. Availability of coverage — required plans.** (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier shall offer to small employers at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part.

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligihle small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) The provisions of this section are effective 180 days after the commissioner's approval of the basic health benefit plan and the standard health henefit plan developed pursuant to 33-22-1812, provided that if the program created pursuant to 33-22-1818 is not yet operative on that date, the provisions of this section are effective on the date that the program begins operation.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health henefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not, because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit plan may not define a preexisting condition more restrictively than 33-22-110, except that the condition may be excluded for a maximum of 12 months.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services if the qualifying previous coverage was continuous to a date not less *more* than 30 days prior to the submission of an application for new coverage. This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under tbe bealth benefit plan.

(c) A bealth benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date tbe individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whetber to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers tbat have

the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligihle employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to a small employer when the small employer is not physically located in the carrier's established geographic service area;

(ii) to an employee when the employee does not work or reside within the carrier's established geographic service area; or

(iii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition."

Section 96. Section 33-1-413, MCA, is amended to read:

"**33-1-413. Examination expense — lien.** (1) Upon presentation of a detailed account of ~~such~~ charges and expenses by the commissioner or pursuant to ~~his~~ *the commissioner's* written authorization, each person ~~so~~ examined, other than ~~as to~~ examinations pursuant to 33-1-402, shall pay the actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners as necessarily incurred on account of the examination, all at reasonable rates ~~customary therefor and~~ as established or adopted by the commissioner. ~~Such an~~ *An* account may he ~~so~~ presented periodically during the course of the examination or at the termination of the examination as the commissioner ~~deems~~ *considers* proper. ~~No~~ *A* person ~~shall~~ *may not* pay and ~~no~~ *an* examiner ~~shall~~ *may not* accept any additional emolument on account of ~~any such~~ *an* examination.

(2) The commissioner shall pay to the state treasurer to the credit of the ~~general~~ *state special revenue* fund all ~~moneys~~ *money* received pursuant to subsection (1) ~~above~~.

(3) If ~~any such~~ *a* person fails to pay the charges and expenses, as referred to in subsection (1) ~~above~~, ~~they shall~~ *the charges and expenses must* be paid out of the funds of the commissioner in the same manner as other disbursements of ~~such~~ *the* funds. The amount ~~so~~ paid ~~shall be~~ *is* a first lien upon all of the assets and property in this state of ~~such~~ *the* person and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund."

Section 97. Repealer. Sections 33-30-312 and 33-30-313, MCA, are repealed.

Section 98. Codification instruction. (1) [Section 75] is intended to be codified as an integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply to [section 75].

(2) [Section 76] is intended to be codified as an integral part of Title 33, chapter 2, part 5, and the provisions of Title 33, chapter 2, part 5, apply to [section 76].

(3) [Section 77] is intended to be codified as an integral part of Title 33, chapter 15, part 4, and the provisions of Title 33, chapter 15, part 4, apply to [section 77].

(4) [Sections 78 through 81] are intended to be codified as an integral part of Title 33, chapter 3, and the provisions of Title 33, chapter 3, apply to [sections 78 through 81].

(5) [Sections 82 through 94] are intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 82 through 94].

Section 99. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 100. Effective dates. (1) [Section 31 and this section] are effective on passage and approval.

(2) Except as provided in subsection (1), [this act] is effective October 1, 1995.

Approved April 12, 1995

CHAPTER NO. 380

[HB 564]

AN ACT REVISING THE TIME PERIODS RELATING TO LIVESTOCK GRAZING TRANSPORTATION PERMITS; PROVIDING THAT TRANSPORTATION PERMITS FOR GRAZING PURPOSES ARE VALID FOR

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A PERIOD OF 8 MONTHS FROM THE DATE OF ISSUANCE; AMENDING SECTION 81-3-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-211, MCA, is amended to read:

"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) For the purposes of this section:

(a) "Members of the same family" means a group whose membership is determined by including an individual, ~~his~~ *the individual's* spouse, and ~~his~~ *the individual's* parents, children, grandchildren, and the spouses of each.

(b) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members all are members of the same family; or

(iv) any other entity owned solely by members of the same family.

(c) "Rodeo producer" means a person who produces or furnishes livestock that is used for rodeo purposes.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or ~~his~~ *a purchaser's* agent to take possession of any ~~such animal~~ *livestock* subject to title passing upon meeting or satisfaction of any conditions, unless the livestock ~~has~~ *have* been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of ~~such~~ *the* change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when the change of ownership transaction is accomplished without the livestock changing premises, involves part of a herd to which ~~no~~ livestock have *not* been added other than by natural increase or after brand inspection, and is between:

(a) members of the same family;

(b) a member of one family and the same family's business entity; or

(c) the same family's business entities.

(3)(a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock has been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, where inspection ~~thereof~~ is required by this section or where change of ownership has occurred or when moved under a market consignment permit or a market release certificate, ~~shall~~ *must* have in ~~his~~ *the person's* possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate ~~issued in connection therewith~~ and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspecter upon request. Section 81-3-204 ~~shall~~ *must* be extended to livestock transported or sold under the ~~above-mentioned~~ permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for ~~his~~ *the owner's* personal use or business or where a purebred cow is being transported from county to county in this state by its owner for show purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow is to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared or a lip tatteo or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector, together with a permit fee established by the department, for each horse. The application ~~shall~~ *must* contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit ~~shall~~ *must* be issued by the department to the owner for each horse, and ~~such~~ *the* permit ~~shall be~~ *is* valid for the life of the horse. If there is a change of ownership in a horse, the permit ~~shall~~ automatically ~~become~~ *is* void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit ~~shall be~~ *is* in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent

transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. ~~Such a~~ *A* permit ~~shall be~~ *is* automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer is being transported from county to county in this state by the owner for rodeo purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described ~~thereon~~ *in the certificate*. The certificate is effective for the calendar year for which it is issued. The certificate ~~shall~~ *must* be issued by a state stock inspector.

(d) An owner of livestock or ~~his~~ *the owner's* agent may be issued ~~a~~ *one* transportation permit *in a 12-month period* allowing the movement of ~~his~~ *the* livestock into an adjoining county and return when the livestock is being moved for grazing purposes and when it is being moved to and from land owned or controlled by the owner of the livestock or ~~his~~ *the owner's* agent. The permit is valid for ~~the~~ *a* period *of 8 months* from ~~March 31 through November 30 of the calendar year in which it is issued~~ *the date of issuance* and must be issued by a state stock inspector. The permit may be issued only if the livestock is branded with the permittee's brand, which must be registered in Montana. The department shall establish a fee for the permit, to be paid to the state stock inspector at the time the permit is issued and remitted by ~~him~~ *the inspector* to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line.

(7) Before any removal or change of ownership may take place, the seller of livestock shall request all required inspections and shall pay the required fees."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1995

CHAPTER NO. 381

[SB 76]

AN ACT EXTENDING THE JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET; AMENDING SECTION 11, CHAPTER 387, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11, Chapter 387, Laws of 1993, is amended to read:

"Section 11. **Termination.** [This act] terminates July 1, ~~1995~~ *1997*."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1995

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CHAPTER NO. 382

[SB 80]

AN ACT EXEMPTING FROM OVERTIME REQUIREMENTS AN EMPLOYEE EMPLOYED AS A RADIO ANNOUNCER, NEWS EDITOR, OR CHIEF ENGINEER IN A SECOND- OR THIRD-CLASS CITY OR A TOWN; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, *and* cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rato established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) any individual employed by the United States of America;

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(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States ~~Secretary~~ *secretary* of ~~Transportation~~ *transportation* has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing autemobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in

which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours ~~per~~ *a* day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establisbment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1995

CHAPTER NO. 383

[SB 124]

AN ACT MODIFYING THE MANDATORY REQUIREMENT FOR SANITARY INSPECTIONS OF SCHOOLHOUSES, CHURCHES, THEATERS, JAILS, AND OTHER BUILDINGS TO A DISCRETIONARY REQUIREMENT FOR PUBLIC HEALTH INSPECTIONS; MODIFYING THE ENFORCEMENT PROVISIONS; AND AMENDING SECTION 50-1-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1-203, MCA, is amended to read:

"50-1-203. ~~Sanitary~~ *Public health* inspections. (1) The department ~~shall~~ *may* make ~~sanitary~~ *public health* inspections of schoolhouses, churches, theaters, jails, and other buildings or facilities where persons assemhle. If ~~the facility is found unsanitary~~ *public health deficiencies are found in the facility*, the department ~~shall~~ *may* direct that conditions be corrected witbin a reasonable time. ~~If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.~~

(2) Either the department or a local board of health ~~shall~~ *may* bring an action, *including an action for injunctive relief,* to correct the ~~unsanitary conditions in the way provided by law for abating a public nuisance~~ *public health deficiencies."*

Approved April 12, 1995

CHAPTER NO. 384

[SB 158]

AN ACT IMPLEMENTING LONG-TERM CARE REFORM; STATING THE PURPOSE AND POLICY OF THE STATE IN REGARD TO PROVIDING STATE PROGRAMS OF ASSISTANCE FOR THE ELDERLY AND FOR PERSONS WITH DISABILITIES; DIRECTING STATE AGENCY COOPERATION IN THE DEVELOPMENT, IMPLEMENTATION, AND COORDINATION OF STATE PROGRAMS OF ASSISTANCE FOR THE ELDERLY AND FOR PERSONS WITH DISABILITIES; AND REQUIRING A REPORT TO THE 55TH LEGISLATURE ON THE PROGRESS OF LONG-TERM CARE REFORM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3] may be cited as the "Montana Long-Term Care Reform Act".

Section 2. Purpose — policy. (1) The legislature finds that in keeping witb the traditional concept of the inherent dignity of the individual in a democratic society, the elderly or persons with disabilities should be able to live as independently as possible.

(2) The legislature further finds that:

(a) the ability to continue to live in a person's own residence or in the least restrictive setting best serves the health and dignity of the elderly or persons with disabilities;

(b) state programs of assistance for the elderly or persons with disabilities should be coordinated in a manner that best serves the interests of the recipients;

(c) stato programs of assistance for the elderly or persons with disabilities should encourage the development of services that support the maintenance of lives as independently as possible;

(d) state programs of assistance for the elderly or persons with disabilities should encourage the development of affordable services for persons seeking services, whetber financed through private means or public means;

(e) the elderly or persons with disabilities should be able to obtain insurance and other means of private financing for services that are affordable and readily available; and

(f) state agencies are required to carry out their various responsibilities for the provision of assistance, the protection of the elderly and persons with disabilities, and the licensing of facilities and professions in accordance with [sections 1 through 3].

(3) The legislature declares that the policy of this state is to:

(a) respect the dignity of persons in the provision of state-sponsored and state-funded services for tbe elderly and persons with disabilities by seeking to

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maintain the maximum level of independence possible for those persons receiving services;

(b) foster the development of community services that allow a person to choose to remain in a person's own residence or in the least restrictive setting;

(c) foster coordination of services for the elderly or persons with disabilities among the various public and private programs; and

(d) foster the development of private means of financing services for the elderly or persons with disabilities.

Section 3. Long-term care service development — coordination — delivery. (1) The departments of social and rehabilitation services, family services, health and environmental sciences, and corrections and human services shall cooperate in the development, implementation, and coordination of state programs of assistance for the elderly or persons with disabilities.

(2) The planning and delivery systems that provide state programs of assistance for the elderly and persons with disabilities must he jointly coordinated to foster:

(a) efficient and cost-effective financing, service delivery, intake, eligibility, assessment, and other measures, as appropriate; and

(b) general development of service systems that may serve persons with either private means or public means of financing services at a reasonable cost.

(3) State programs of assistance for the elderly or for persons with disabilities should be made available in the most appropriate, most cost-effective, and least restrictive residential setting integrated into a community.

(4) State programs of assistance that provide services or oversight in order to maintain or to protect a person's health and social life should recognize the person's dignity and independence.

Section 4. Report on implementation of long-term care reform. The department of social and rehabilitation services in cooperation with the departments of family services, health and environmental sciences, corrections and human services, labor and industry, and commerce shall present a report to the 55th legislature on the implementation of long-term care reform. The report should include suggested legislation, if any, to make necessary changes for the implementation of long-term care reform, including but not limited to the reform of licensing for facilities and professions.

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [sections 1 through 3].

Approved April 12, 1995

CHAPTER NO. 385

[SB 167]

AN ACT PROVIDING FOR THE REVIEW OF FEDERAL MANDATES TO STATE AND LOCAL GOVERNMENTS; REQUIRING AGENCIES TO IMPLEMENT FEDERAL MANDATES IN THE MOST COST-EFFECTIVE MANNER; PROVIDING FOR LEGISLATIVE REVIEW AND OVERSIGHT; REQUIRING A STUDY AND REPORT ON FEDERAL MANDATES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 8] may be cited as the "Federal Mandates Act".

Section 2. Legislative declaration. (1)(a) In enacting [sections 1 through 8], the legislature employs its legislative authority to establish that the people of tbe state of Montana, acting through their elected officials in state government, have the responsihility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political authority to implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In tbis regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these mandates by the stato wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rigbts of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) tbe 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has

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constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges te state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts the insufficiency.

(f) the provisions of [sections 1 through 8] will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of [sections 1 through 8] ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of [sections 1 through 8] is to ensure that federal mandates existing on or adopted after [the effective date of this act] that are implemented in Montana comply with state policy as established by the legislature;

(h) nothing in [sections 1 through 8] may he construed to create a private cause of action.

Section 3. Definitions. As used in [sections 1 through 8], unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments.

(2) "Legislative council" means the statutory committee established in 5-11-101.

Section 4. State programs to implement federal statutes. (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required hy the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal

statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

Section 5. Requirement for budget recommendation — reporting on federal mandates — savings. Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the governor shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of applicable federal statutes but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the governor regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The governor shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in the governor's budget based upon the information.

Section 6. Information regarding federal mandates. (1) The information prepared pursuant to [section 5] must be received by the governor prior to the governor's preparation of the state budget for the ensuing biennium. The governor may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

(2) In considering the legality or cost-effectiveness of a federal mandate, federal statute, or state program, the governor may request assistance from the legislative council or its staff, but assistance is at the discretion of the legislative council.

Section 7. Report — recommendations. (1) The governor shall examine the information received pursuant to [section 5] and, based upon the information, shall present a report to the legislature meeting in its next regular session that includes the following:

(a) recommendations regarding contracts that the state may enter into with specified persons or entities to conduct research, te analyze certain subjects, or to provide other services regarding federal mandates; and

(b) estimates of the cost of the federal mandate efforts submitted to the governor under the provisions of [section 5].

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate and may direct the attorney general to vigorously represent the state of Montana in any action that results from or that is necessary to effect the executive order.

Section 8. Legislative review and oversight. (1) In exercising its authority as an equal branch of state government, the legislature may conduct any legal review or fiscal analysis that it considers necessary te effect the purpose and intent of [sections 1 through 8]. The governor, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with [sections 1 through 8].

(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council.

(4) The legislature may request the assistance of any staff employed by the legislature.

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1995

CHAPTER NO. 386

[SB 174]

AN ACT REVISING CERTAIN PROVISIONS OF THE LOCAL CITIZEN REVIEW BOARD PILOT PROGRAM; PROVIDING THAT PROGRAM ADMINISTRATIVE PROCEDURES BE ADOPTED BY THE SUPREME COURT RATHER THAN THE YOUTH COURT; DESIGNATING THE DISTRICT COURT JUDGE RATHER THAN THE YOUTH COURT JUDGE AS THE ENTITY TO ADMINISTER THE LOCAL CITIZEN REVIEW BOARD PILOT PROGRAM; INCREASING THE TIME ALLOWED FOR THE DEPARTMENT OF FAMILY SERVICES TO RESPOND TO RECOMMENDATIONS OF THE LOCAL CITIZEN REVIEW BOARD; GRANTING JUDICIAL IMMUNITY TO VOLUNTEER MEMBERS OF THE

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LOCAL CITIZEN REVIEW BOARD PILOT PROGRAM; AMENDING SECTIONS 41-3-1002, 41-3-1003, 41-3-1004, 41-3-1008, 41-3-1009, 41-3-1010, 41-3-1011, 41-3-1013, AND 41-3-1014, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-1002, MCA, is amended to read:

"**41-3-1002. Establisbment of pilot program.** (1) The office of the supreme court administrator shall solicit written indication of interest from each ~~youth~~ *district* court judge interested in having a local citizen review board established pursuant to this part within the jurisdiction of the ~~youth~~ *district* court.

(2) (a) There is a local citizen review board screening committee. The committee is composed of the following members:

(i) a member of the house of representatives, designated by the speaker of the house;

(ii) a member of the senate, designated by the president of the senate;

(iii) a representative of the Montana judges' association, designated by the association; and

(iv) a representative of the office of the supreme court administrator, designated by the chief justice of the supreme court.

(b) The members designated pursuant to subsections (2)(a)(i) and (2)(a)(ii) must be from different political parties.

(3) The committee shall meet at a time agreeable to its members, and the members shall serve without additional compensation.

(4) The committee shall review the responses of ~~youth~~ *district* court judges received pursuant to subsection (1) and shall designate judicial districts to operate a local citizen review board pilot program from among those courts expressing an interest in the program."

Section 2. Section 41-3-1003, MCA, is amended to read:

"**41-3-1003. Establishment of local citizen review board — membership.** (1) Subject to the availability of funds, the ~~youth~~ *district* court judge of a district designated pursuant to 41-3-1002 to operato a pilot program shall establish a local citizen review board in the judicial district to review the case of each child assigned to foster care by the ~~youth~~ *district* court ~~of the judicial district, as provided in Title 41, chapter 5~~.

(2) A local citizen review board is composed of at least three and not more than five members appointed by the ~~youth~~ *district* court judge of a judicial district designated pursuant to 41-3-1002. Each member appointed must be sworn in by a judge of the judicial district to which the member is appointed to serve.

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(3) The ~~youth~~ *district* court judge of a judicial district designated pursuant to 41-3-1002 shall appoint the local citizen review board according to the following guidelines:

(a) Members of a local citizen review board must be recruited from groups with special knowledge of or interest in foster care and child welfare, which may include but is not limited to adoptive parents and members of the professions of law, medicine, psychology, social work, and education.

(b) As far as practicable, members of a local citizen review board shall represent the various socioeconomic and ethnic groups of the area served.

(c) A person employed by the department of family services, by a private agency regulated, certified, directed, or licensed by or contracting with the department of family services, or by a ~~youth~~ *district* court may not serve on a local citizen review board.

(d) A member of a local citizen review board must be a resident of one of the counties of the judicial district that the member is appointed to serve.

(4) The members of a local citizen review board must be willing to serve without compensation."

Section 3. Section 41-3-1004, MCA, is amended to read:

"41-3-1004. Administration — training — oversight — procedures. (1) Subject to the availability of funds, the ~~youth court of a judicial district designated pursuant to 41-3-1002~~ *court administrator* shall:

(a) establish ~~and approve~~ policies and procedures ~~that have the force of law~~ *for adoption by the Montana supreme court pursuant to subsection (3)* for the operation of the local citizen review board;

(b) ~~approve and~~ provide training programs for local citizen review board members;

(c) provide consultation services on request to the local citizen review board; and

(d) employ staff and provide for support services for the local citizen review board.

(2) The office of the supreme court administrator shall, in accordance with the direction of the supreme court, oversee the program established in this part and, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department of family services and other agencies; and

(b) the effectiveness of the local citizen review board in bringing about permanence and appropriate care for children in the custody of the department of family services and other agencies.

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(3) The ~~youth court of a judicial district designated pursuant to 41-3-1002~~ *Montana supreme court* shall adopt procedures that have the force of law for the administration of the local citizen review board pilot program regarding:

(a) the removal of members of the local citizen review board;

(b) the time, content, and manner in which case plans for and case progress reports on a child assigned to fostor care must be provided to the local citizen review board by the department of family services, other agencies, or individuals directly responsible for the care of the child;

(c) the provision of written notice of the review to the department of family services, any other agency directly responsible for the care or placement of a child, the parents or their attorneys, foster parents, surrogato parents, mature children or their attorneys, a court-appointed attorney or special advocate of any child, any county attorney or attorney general actively involved in the case, and other interested persons. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(d) securing or excusing the presence at the review of caseworkers and other employees of the department of family services or other agencies directly responsible for the care of the child; and

(e) the manner in which the local citizen review board may remove cases from review when review is not required under federal law."

Section 4. Section 41-3-1008, MCA, is amended to read:

"**41-3-1008. Access to records.** (1) Notwithstanding the provisions of 41-3-205, a local citizen review board has access to:

(a) any records of the ~~youth~~ *district* court that are pertinent to the case; and

(b) any records of the department of family services or other agencies that would be admissible in a dispositional review hearing conducted pursuant to 41-3-406, including school records and reports of private service providers contained in the records of the department of family services or other agencies.

(2) All requested records not already before the local citizen review board must be submitted by the department of family services within 5 working days after receipt of a request. A local citizen review board and any staff provided for the board shall return all records and copies received from the department of family services to the department within 7 working days after completion of the review.

(3) A local citizen review board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the local citizen review board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department of family services. Material retained by the local citizen review boards is not subject to disclosure under the public records law.

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(4) If a local citizen review board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section."

Section 5. Section 41-3-1009, MCA, is amended to read:

"**41-3-1009. Assignment of cases for review.** Within 10 days of entry of the order of disposition or within 30 days of placement, whichever comes first, the ~~youth~~ *district* court shall assign the case of each child in foster care to a local citizen review board and forward to the board a copy of the petition and the order of disposition for each child who is within the jurisdiction of the ~~youth~~ *district* court and who has been placed in foster care."

Section 6. Section 41-3-1010, MCA, is amended to read:

"**41-3-1010. Review — scope — procedures — immunity.** (1) Except for cases removed from review under procedures established under 41-3-1004, the local citizen review board shall review the case of each child in foster care that is assigned by the ~~youth~~ *district* court.

(2) The review must take place at times set by the local citizen review board. The first review may not be more than 6 months after the child is placed in foster care. Subsequent reviews must take place at least once every 6 months until the child is no longer within the jurisdiction of the ~~youth~~ *district* court or no longer in foster care.

(3) The ~~youth~~ *district* court, by rule of the court or on an individual case basis, may relieve the local citizen review board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) The local citizen review board shall review any case in which a petition to terminate parental rights has been denied as soon as practical but no later than 45 days after the denial.

(5) After reviewing each case, the local citizen review board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for and appropriateness of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or placed for adoption;

(f) other problems, solutions, or alternatives that the local citizen review board determines should be explored; and

(g) whether the ~~youth~~ *district* court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-303.

(6) Whenever a member of a local citizen review board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must he recorded in the official records of the local citizen review board.

(b) If, in the judgment of the majority of the local citizen review board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The local citizen review board shall keep accurate records and retain the records on file. The local citizen review board shall send copies of its written findings and recommendations to the ~~youth~~ *district* court, the department of family services, and other participants in the review.

(8) The local citizen review board may hold joint or separate reviews for groups of siblings.

(9) The local citizen review board may disclose to parents and their attorneys, foster parents, mature children and their atterneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a local citizen review board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

(10) A person who serves on a local citizen review board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112."

Section 7. Section 41-3-1011, MCA, is amended to read:

"41-3-1011. Recommendations by board. In addition to reviewing individual cases of children in foster care, a local citizen review board may make recommendations to the ~~youth~~ *district* court and to the department of family services concerning foster care services, policies, procedures, and laws."

Section 8. Section 41-3-1013, MCA, is amended to read:

"41-3-1013. Court review of findings and recommendations of board. (1) Upon receipt of findings and recommendations from the local citizen review board, the ~~youth~~ *district* court shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. If the ~~youth~~ *district* court finds it appropriate, the ~~youth~~ *district* court may on its own motion schedule a review hearing.

(b) cause the findings and recommendations of the local citizen review board to become part of the ~~youth~~ *district* court file; and

(c) give the local citizen review board written notice if the ~~youth~~ *district* court modifies, alters, or takes action on a case as a result of the board's recommendations or refuses to take action on the board's recommendations in any case.

(2) Upon receipt of findings and recommendations from the local citizen review board, the department of family services shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. The recommendations must be implemented and the case plan modified as the department of family services considers appropriate and as resources permit.

(b) give the local citizen review board written notice as soon as practicable, but in no case later than ~~7~~ *17* days after ~~the review is completed~~ *receipt of the findings and recommendations*, ~~if~~ *of the action* the department of family services ~~does not intend~~ *intends to take* to implement the recommendations; and

(c) include the findings and recommendations of the local citizen review board as part of the case file of the department of family services.

(3) Upon its own motion or upon the request of the department of family services, the local citizen review board, or any interested party, the ~~youth~~ *district* court may appoint an attorney or other person as special advocate to represent or appear on behalf of the child. Subject to the direction of the ~~youth~~ *district* court, the court-appointed special advocate shall:

(a) investigate all relevant information about the case;

(b) advocate for the child, ensuring that all relevant facts are brought before the court;

(c) facilitate and negotiate to ensure that the ~~youth~~ *district* court, the department of family services, and the child's attorney fulfill their obligations to the child in a timely fashion; and

(d) monitor all ~~youth~~ *district* court orders to ensure compliance and to bring to the ~~youth~~ *district* court's attention any change in circumstance that may require modification of the ~~youth~~ *district* court's order."

Section 9. Section 41-3-1014, MCA, is amended to read:

"41-3-1014. Dispositional review hearing by ~~youth~~ *district* court. (1) The ~~youth~~ *district* court shall conduct a dispositional review hearing within 18 months after the original placement and conduct a review hearing periodically during the continuation of foster care. Unless good cause otherwise is shown, the ~~youth~~ *district* court shall conduct a dispositional review hearing at any time upon the request of the department of family services, an agency directly responsible for care or placement of the child, a parent whose parental rights have not been terminated, an attorney for the child, a court-appointed special advocate, or a local citizen review board. The ~~youth~~ *district* court shall schedule the hearing as soon as possible after receiving a request.

(2) The court may order that the child or any other person he present during the hearing.

(3) The court shall notify the parties listed in subsection (1) and any other interested parties of the hearing. The notice must state the time and place of the hearing. Upon request of the ~~youth~~ *district* court, the department of family services or other legal custodian of the child shall provide the ~~youth~~ *district* court with information concerning the whereabouts and identity of the parties.

(4) The ~~youth~~ *district* court shall enter an order within 20 days after the review hearing. If the child is in foster care, the order must include a determination of:

(a) whether the child should be returned to the parent;

(b) whether the child should be placed for adoption;

(c) whether the child should continue in foster care for a specified period; or

(d) whether, because of special needs or circumstances, the child should be placed in the permanent custody or guardianship of a responsible relative or other individual or should continue in foster care on a permanent or long-term basis.

(5) If the court determines that the child must be placed or must continue in foster care or must be placed in the custody or guardianship of a responsible relative or other individual, the ~~youth~~ *district* court shall enter written findings specifying why placement with parents or adoption is not appropriate. If the current placement is not expected to be permanent, the ~~youth~~ *district* court shall specify a projected timetable for return of the child to the child's home or for permanent placement. If the timetable set forth by the ~~youth~~ *district* court is not met, the department of family services shall promptly notify the ~~youth~~ *district* court and the parties.

(6) In the course of the dispositional review hearing, the ~~youth~~ *district* court may determine the adequacy of and compliance with the case plan and case progress report. In addition to other orders, the ~~youth~~ *district* court may:

(a) order the department of family services to develop or to expand a case plan or case progress report that must be submitted within 10 days after the hearing;

(b) set a court hearing at a specific later time;

(c) direct the local citizen review board to review the status of the child prior to its next review, as provided in 41-3-1010;

(d) order the department of family services or other agency directly responsible for the child to modify the care, placement, or supervision of the child; and

(e) determine whether the department of family services or other agency directly responsible for the child has made reasonable efforts to reunify the family.

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(7) The dispositional review hearing must be conducted in the manner provided in 41-3-406.

(8) Any decision of the ~~youth~~ *district* court made pursuant to the dispositional review hearing is a final order for the purposes of 41-3-406."

Section 10. Effective date. [This act] is effective July 1, 1995.

Approved April 12, 1995

CHAPTER NO. 387

[SB 193]

AN ACT GENERALLY REVISING THE LAWS GOVERNING ELECTIONS; ENCOURAGING ELECTOR PARTICIPATION BY CONSOLIDATING THE TIMES AT WHICH ISSUES ARE SUBMITTED TO ELECTORS; ESTABLISHING UNIFORM TIMES FOR THE OPENING AND CLOSING OF POLLS; AND AMENDING SECTIONS 7-2-2215, 7-2-2605, 7-2-2709, 7-2-4104, 7-2-4106, 7-2-4902, 7-3-103, 7-3-149, 7-3-176, 7-3-186, 7-3-187, 7-3-192, 7-3-1205, 7-3-1208, 7-3-1229, 7-3-1231, 7-3-4208, 7-3-4213, 7-3-4222, 7-3-4223, 7-3-4305, 7-3-4310, 7-3-4311, 7-5-133, 7-5-136, 7-5-4321, 7-6-2344, 7-6-4255, 7-7-2223, 7-7-2227, 7-7-2229, 7-7-2237, 7-7-4226, 7-7-4227, 7-7-4235, 7-7-4426, 7-7-4427, 7-8-4201, 7-11-305, 7-11-307, 7-12-4243, 7-13-2208, 7-13-2231, 7-13-2323, 7-13-2341, 7-13-4204, 7-14-210, 7-14-1134, 7-14-2205, 7-14-2504, 7-14-4404, 7-14-4512, 7-14-4642, 7-15-2111, 7-15-4408, 7-16-2411, 7-16-2442, 7-31-106, 7-31-107, 7-31-109, 7-32-235, 7-34-2110, 7-34-2414, 7-35-2106, 22-1-303, 22-1-402, 67-11-303, 76-1-604, 85-9-206, AND 85-9-623, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-2215, MCA, is amended to read:

"7-2-2215. Election on question of creating new county — proclamation and notice. (1) Within 2 weeks after its determination of the truth of the allegations of the petition, the board of county commissioners shall order and give ~~proclamation and~~ notice of an election to be held ~~on a specified day, not less than 60 days thereafter,~~ for the purpose of determining whether the territory proposed to be taken from the county ~~shall~~ *is to* be established and organized into a new or enlarged county, ~~and~~ for the election of officers, and *for the* location of a county seat ~~therefor in case~~ *if* the vote at the election is in favor of the establishment and organization of a new county formed from a portion of one existing county or from portions of two or more existing counties.

(2) The question of determining whether the proposed territory ~~shall be~~ *is* taken from the county and added to the proposed new county must be included on the ballot for the next ~~countywide~~ *regular or* primary~~, general, or school~~ election scheduled not less than 60 days after the date of the ~~proclamation~~ *order* and notice.

(3) All registered electors of the county ~~shall be~~ *are* entitled to vote at the election. Registration and transfers of registration ~~shall~~ *must* be made and ~~shall~~ *must* close in the manner and at a time provided by law for registration and transfers of registration for a general election in Montana.

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(4) If the proposed new county is an existing county to be enlarged by territory taken from the county in wbich the petition was filed, the board of county commissioners of tbe proposed new county shall bold an election in the manner described in subsections (1) tbrough (3)."

Section 2. Section 7-2-2605, MCA, is amended to read:

"**7-2-2605. Notice and conduct of election.** (1) Notice of ~~such~~ *an* election *for removal of a county seat*, clearly stating the object, must be given and the election must be held and conducted and the returns made in all respects in tbe manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law *at a regular or primary election.*

(2) In voting on the question, each electer must vote for the place in the county which ~~he~~ *the elector* prefers by placing the mark X opposite the name of the place."

Section 3. Section 7-2-2709, MCA, is amended to read:

"**7-2-2709. ~~Special election~~ *Election* on question of abandonment and consolidation.** (1) (a) Within 14 days after transmittal of the resolution provided for in 7-2-2707, the boards of county commissioners of the county in which the petition referred to in the resolution was filed and of each county designated in the resolution as a county to which any of the territory of the county, if abandoned and abolished, would be attached and made a part, shall, in a joint meeting and by joint resolution of ~~such~~ *the* boards, call a special election in all affected counties *to be held in conjunction with the next regular or primary election.*

(b) The joint resolution shall fix a day for holding the election in ~~such~~ *the* counties~~, which shall be not less than 90 days or more than 120 days after the date of the joint resolution calling the same~~. If a general election will be held in the counties not less than 90 days or more than 120 days after the date of the resolution provided for in 7-2-2707, the joint resolution ~~shall~~ *must* direct that the question be submitted to the registered electors of the counties at the general election. The joint resolution ~~shall~~ *must* be filed in the office of the secretary of state, and copies ~~thereof shall~~ *of the resolution must* be transmitted to the election administrator of each of the counties in which the election is to be held.

(2) At the election there ~~shall~~ *must* be submitted:

(a) to the registered electors of the county in which the petition was filed, the question of whether or not the county ~~shall~~ *is to* be abandoned and abolished and its territory attached to and made a part of the county designated and named for the purpose in the petition; and

(b) to the registered electers of each county named and designated in the resolution as a county to which a part of the territory of the county proposed to be abandoned and abolished ~~shall~~ *is to* be attached and made a part if the county ~~shall be so~~ *is* abandoned and abolished, the question of whether or not the part of the territory of the county, if abandoned and abolished, described in the resolution ~~shall~~ *must* be attached to and become a part of the county."

Section 4. Section 7-2-4104, MCA, is amended to read:

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"7-2-4104. **Election on question of organization.** (1) After filing the petition and census, if there is the requisite number of inhabitants for the formation of a municipal corporation as required in 7-2-4103, the county commissioners ~~must~~ *shall* call an election of all the registered electors residing in the territory described in the petition.

(2) The election must be held at a convenient place within the territory described in the petition, to be designated by the board. *If possible, the election must be held in conjunction with a regular or primary election.*

(3) The ballots used at the election must contain the words "For incorporation" or "Against incorporation", and all elections must be conductod as provided in Title 13."

Section 5. Section 7-2-4106, MCA, is amended to read:

"7-2-4106. **First election for officers.** (1) When the incorporation of a city or town is completed, the board of county commissioners ~~must~~ *shall* give notice for 30 days in a newspaper published within the limits of the city or town or, if none is published ~~therein~~ *within the limits*, by posting notices in six public places within the limits of the ~~corporation~~ *city or town* of the time and place or places of holding the first election for offices of the ~~corporation~~ *city or town. The election must be held in conjunction with a regular or primary election.*

(2) At ~~such~~ *the* election, all the electers qualified by the general election laws of the state who have resided within the limits of the city or town for 6 months and within the limits of the ward for 30 days preceding the election are qualified electors and may choose officers for the city or town, to hold office as prescribed in 7-2-4107.

(3) The board ~~must~~ *shall* appoint election judges and canvass and declare the result ~~thereof~~ *of the election*. The election must be conducted in the manner required by law for the election of county officers."

Section 6. Section 7-2-4902, MCA, is amended to read:

"7-2-4902. **Disincorporation by election.** (1) Any city or town may be disincorporated in the manner provided in this section.

(2) If the registered electors of a city or town equal in number to at least 15% of the number of electors registered at the last municipal general election petition the board of county commissioners of the county where the city or tewn is situated to disincorporate the city or town, or if the city governing body by a two-thirds vote of all its members resolves to disincorporate, then the board shall order~~, within 60 days, that~~ a special election *to* be held within the city or town on the question of disincorporating the city or tewn. The d~~ay for holding the~~ election ~~may not be less than 75 days or more than 120 days after the board orders the~~ *must be held in conjunction with a regular or primary* election."

Section 7. Section 7-3-103, MCA, is amended to read:

"7-3-103. **Amendment of self-government charter or adopted alternative form of government.** (1) An amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government.

To be effective, a proposed amendment must receive an affirmative vote of a majority of the electors voting on the question. An amendment approved by the electors becomes effective on the first day of the local government fiscal year following the fiscal year of approval unless the question submitted to the electors provides otherwise.

(2) An amendment to a self-government charter or an adopted alternative form of government may he proposed by initiative hy petition of 15% of the electors registered at the last general election of the local government or by ordinance enacted by the governing body. The question on amendment of a charter or an adopted alternative form of government ~~shall~~ *must* be submitted to the electors ~~as soon as possible after the submission of a petition or enactment of a resolution, either~~ at ~~a regularly scheduled~~ *the next regular or primary* election ~~or at a special election~~.

(3) The local government, by ordinance, may provide procedures for the submission and verification of initiative petitions."

Section 8. Section 7-3-149, MCA, is amended to read:

"**7-3-149. Election on alternative form.** (1) The governing body shall call a special election on the question of an alternative form of government to be held at *the next regular or primary election that is at* least 75 days after the call and ~~within 120 days of~~ the date of filing with the records administrator under 7-3-146. ~~The special election may be held in conjunction with any other election.~~ The records administrator shall prepare and print notices of the ~~special~~ election.

(2) The cost of the election ~~shall~~ *must* be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question ~~shall~~ *must* be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions ~~shall~~ *must* be submitted to the electors in the counties affected and ~~requires~~ *require* a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form."

Section 9. Section 7-3-176, MCA, is amended to read:

"**7-3-176. Election of commission members.** (1) If the question of reviewing the local government and establisbing a study commission is approved, an election to fill the positions on the local government study commission ~~shall~~ *must* be held in conjunction with the ~~1984 general election date or at the~~ first regularly scheduled election of the local government

conducted after 90 days following the election establishing the study commission. A primary election may not be held.

(2) The names of study commission candidates who have filed declarations of nomination not later than 75 days before the date of the election ~~shall~~ *must* be placed on the ballot. There is no filing fee. The election is nonpartisan, and candidates ~~shall~~ *must* be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study commissioners.

(3) Candidates for study commission positions ~~shall~~ *must* be electors of the local government for which the study commission has been established. The candidates may not be elected officials of the local government.

(4) The number of candidates, equal to the number of study commission positions to be elected, receiving the highest number of votes, which includes votes cast for candidates who have officially filed nominations and votes for write-in candidates, ~~shall~~ *must* be declared elected. If there is a tie vote among candidates, the governing body shall decide by lot which candidate will fill the position.

(5) If the number of study commissioners elected is not equal to the number required to be selected, the ~~chairman~~ *presiding officer* of the governing body, with the confirmation of the governing body, shall appoint the additional study commissioners within 20 days of the election. No *An* elected official of the local government may *not* be appointed."

Section 10. Section 7-3-186, MCA, is amended to read:

"**7-3-186. Study commission timetable.** (1) Each local government study commission shall, within 90 days of its organizational meeting, establish a timetable for its deliberations and actions. The timetable must be published in a local newspaper of general circulation. The timetable may be revised, but each revision must be republished.

(2) The timetable must provide, at a minimum, the following provisions, to be accomplished chronologically in the order presented:

(a) conduct one or more public hearings for the purpose of gathering information regarding the current form, functions, and problems of local government;

(b) formulate, reproduce, and distribute a tentative report, containing the same categories of information required to be included in the final report;

(c) conduct one or more public hearings on the tentative report;

(d) adopt the final report of the commission and set the date for a special election on the question of adopting a new plan of government or, if the study commission is not recommending any changes, publish and distribute the final report as provided in 7-3-187 within 60 days after the final report is adopted. *The special election must be held in conjunction with a regular or primary election.*"

Section 11. Section 7-3-187, MCA, is amended to read:

"7-3-187. **Final report.** (1) ~~Every~~ *A* study commission shall adopt a final report. If the study commission recommends an alternative form of government, the final report ~~shall~~ *must* contain the following materials and documents, each signed hy a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of an existing form of government in 7-3-142;

(b) a certificate establishing the date of the special election, which ~~may~~ *must* be held in conjunction with a ~~regularly scheduled~~ *regular or primary* election, at which the alternative form of government ~~shall be~~ *is* presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report ~~shall~~ *must* contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report ~~shall so~~ *must* indicate *that changes are not recommended.*

(4) The study commission shall file two copies of the final report with the department of commerce, one of which the department shall forward to the state library. A copy of the final report ~~shall~~ *must* be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of tbe final report ~~are to~~ *must* be prepared for public distribution. The final report must he available to tbe electors not later than 30 days prior to the election on the issue of adopting the alternative plan. Copies of the final report may be distributed te electors or residente of the local government or governments affected.

(6) After submission of the final report, the commission shall deposit copies of its minutes and other records with the county clerk and recorder."

Section 12. Section 7-3-192, MCA, is amended to read:

"7-3-192. **Election on recommendation.** (1) An alternative plan of government recommended by a study commission ~~shall~~ *must* be submitted to the voters as provided in 7-3-149~~, except that the study commission shall authorize the submission of the alternative plan of government to the voters at a special election to be held no less than 75 or more than 120 days from the date of the adoption of the final report~~. The ~~special~~ election ~~may~~ *must* be held in conjunction with any regularly scheduled election. ~~Study commissions elected on the general election date in 1984 shall submit a final report allowing for a vote on any recommendation no later than the general election date in 1986.~~

(2) General ballot requirements and treatment of suhoptions on an alternative plan of government recommended by a study commission ~~shall~~ *must* be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151."

Section 13. Section 7-3-1205, MCA, is amended to read:

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"**7-3-1205. Certification of petition — board action.** (1) If the county election administrator ~~shall find~~ *finds* that ~~such~~ *the* petition or amended petition ~~so filed~~ is signed by the required number of registered electors, ~~he~~ *the election administrator* shall ~~so~~ certify *the finding* to the board of county commissioners ~~of such county~~ at their next regular meeting.

(2) ~~Such~~ *The* board shall, within 10 days after receiving the election administrator's certificate, order a special election to be held~~, at which election such~~ *on the* question ~~shall be submitted to the registered electors of the county. Such~~ *The* order ~~shall~~ *must* specify ~~the time when such~~ *that the* election ~~shall~~ *will* be held~~, which shall be not less than 90 or more than 120 days from and after the day when such order is made, and the~~ *in conjunction with the next regular or primary election. The* board of county commissioners shall ~~immediately upon making such order~~ issue a proclamation setting forth the purpose for which ~~such~~ *the* special election is held and the dato of holding the ~~same, which~~ *election. The* proclamation must be published in the manner prescribed hy 13-1-108."

Section 14. Section 7-3-1208, MCA, is amended to read:

"**7-3-1208. Election of commission upon favorable vote.** (1) If the majority of the votes cast at ~~such~~ *the* election ~~shall be~~ *are* in favor of ~~such~~ *the* consolidation and merging, the board of county commissioners of ~~such~~ *the* county ~~must~~ *shall*, within 2 weeks after ~~such~~ *the* election returns have been canvassed, order a special election to be held *in conjunction with the next regular or primary election* for the purpose of electing the number of members of the commission to which ~~such~~ *the* consolidated municipality ~~shall be~~ *is* entitled. This order ~~shall~~ *must* specify the time when ~~such~~ *the* election ~~shall~~ *will* be held~~, which shall be not less than 90 or more than 120 days after the day when such order is made; provided, however, that if any general election is to be held in such county after 3 months but within 6 months from the date of the making of such order, then such order shall require such special election to be held at the same time as such general election~~. The board of county commissioners, immediately upon making ~~such~~ *the* order, shall issue a proclamation setting forth the purpose for which ~~such~~ *the* special election is held and the date of holding the ~~same, which~~ *the election. The* proclamation must be published in the manner prescribed by 13-1-108.

(2) ~~No~~ *A* primary election ~~shall~~ *may not* be held for the purpose of nominating candidates for members of the commission ~~hereinafter provided for,~~ to be voted for at ~~such~~ *the* special election~~, but such~~. *The* candidates ~~shall~~ *must* be nominated directly by *a* petition ~~which shall be~~ *that is* in substantially the same form and be signed by the same number of signers as ~~hereinafter~~ required for primary nominating petitions. ~~Such~~ *The* election ~~shall~~ *must* be conducted, *the* vote *must be* returned and canvassed, and *the* result *must be* declared in the same manner as provided by law in respect to general elections."

Section 15. Section 7-3-1229, MCA, is amended to read:

"**7-3-1229. Submission of initiative measure to electors.** (1) If the commission fails to pass an ordinance proposed by initiative petition or passes it in a form different from that set forth in the petition ~~therefor~~, the committee of the petitioners ~~hereinafter provided for~~ may require that it he submitted to a vote of the electors either in its original form or with any change or amendment presented in writing, either at a public hearing before the committee to which

the proposed ordinance was referred or during ~~the~~ consideration ~~thereof~~ by the commission. If the committee of petitioners requires the submission of a proposed ordinance to a vote of the electors, the committee shall certify that fact to the clerk and file in ~~his~~ *the clerk's* office a certified copy of the ordinance, in the form in which it is to be submitted, within 10 days after final action on ~~such~~ *the* ordinance by the commission.

(2) Upon receipt of the certified copy of a proposed ordinance from the committee of the petitioners, the clerk shall certify the fact to the commission at its next regular meeting. ~~If a municipal election is to be held within 6 months but more than 90 days after the receipt of the clerk's certificate by the commission, such~~ *The* proposed ordinance ~~shall~~ *must* be submitted to a vote of the electors at ~~such~~ *the next regular or primary* election. ~~If no such election is to be held within the time aforesaid, the commission may provide for submitting the proposed ordinance to the electors at a special election to be held not sooner than 90 days after receipt of the clerk's certificate. If no municipal election be held within 6 months as aforesaid and the commission does not provide for a special election, the proposed ordinance shall be submitted to the electors at the first election held after the expiration of such 6 months.~~ If ~~when submitted to the electors~~ a majority of those voting on a proposed ordinance ~~shall~~ voto in favor ~~thereof~~ *of the proposed ordinance*, it ~~shall thereupon be~~ *is* an ordinance of the municipality."

Section 16. Section 7-3-1231, MCA, is amended to read:

"**7-3-1231. Action on referendum petition.** (1) If a referendum petition or amended petition is found sufficient, ~~by~~ the clerk~~, he~~ shall certify that fact to the commission at its next regular meeting, and the ordinance or part ~~thereof~~ *of the ordinance* set forth in the petition ~~shall~~ *may* not go into effect, or further action ~~thereunder shall be~~ *under the ordinance is* suspended if it ~~shall have~~ *has* gone into effect, until approved by the electors ~~as hereinafter provided~~.

(2) Upon receipt of the clerk's certificate, the commission shall ~~proceed to~~ reconsider the ordinance or part ~~thereof~~ *of the ordinance*, and its final vote upon ~~such~~ reconsideration ~~shall~~ *must* be upon the question "Shall the ordinance (or part of the ordinance) set forth in the referendum petition be repealed?" If upon ~~such~~ reconsideration the ordinance or part ~~thereof~~ *of the ordinance* is not repealed, it ~~shall~~ *must* be submitted to the electors at the next ~~municipal~~ *regular or primary* election ~~held not less than 90 days after such final vote by the commission. The commission, by vote of not less than two-thirds of its members, may submit the ordinance or part thereof to the electors at a special election to be held not sooner than the time aforesaid.~~ If when submitted to the electers any ordinance or part ~~thereof~~ *of an ordinance* is not approved by a majority of those voting ~~thereon~~ *on the issue*, it ~~shall be deemed~~ *is* repealed."

Section 17. Section 7-3-4208, MCA, is amended to read:

"**7-3-4208. Petition to organize under commission form — election required.** (1) ~~Upon~~ *When* a petition ~~being~~ *on the question or reorganization under this part is* filed with tho city council, *and is* signed by not less than 25% of the qualified electors of ~~such~~ *the* city registered for the last preceding general city election, ~~praying that the question of reorganization under this part be submitted to the qualified electors of such city, said~~ *the* city council shall ~~thereupon and within 30 days thereafter~~ order a special election to be held *in*

conjunction with the next regular or primary election. At this election, the question of reorganization of ~~such~~ *the* city under the provisions of this part ~~shall~~ *must* be submitted to the qualified electors of ~~such~~ *the* city.

(2) ~~Such~~ *The* order of the city council ~~shall~~ *must* specify ~~therein~~ the time when ~~such~~ *the* election shall *will* be held~~, which must be no less than 75 or more than 90 days from the date of the city council order~~."

Section 18. Section 7-3-4213, MCA, is amended to read:

"**7-3-4213. Election for first city officers.** (1) If a majority of the votes cast at ~~such~~ *the* election ~~shall be~~ *is* in favor of ~~such proposition~~ *reorganization*, the city council ~~must~~ *shall*, at its first regular meeting held ~~thereafter~~ *after the election*, order a special election to be held for the purpose of electing a mayor and the number of councilmen to which ~~such~~ *the* city ~~shall be~~ *is* entitled. The order ~~shall~~ *must* specify the time of holding ~~such~~ *the* election, which must be ~~no less than 75 and no more than 90 days after the making of said order, and the~~ *held in conjunction with a regular or primary election. The* mayor shall ~~thereupon~~ issue a proclamation setting forth the purposes for which ~~such~~ *the* special election is called and the day of holding the ~~same~~ *election*. The proclamation ~~shall~~ *must* be published for 10 successive days in each daily newspaper published in ~~such~~ *the* city if there ~~be such~~ *is a daily newspaper*; ~~otherwise,~~ *or* once a week for 2 consecutive weeks in each weekly newspaper published ~~therein~~ *in the city*; ~~and a~~ *A* copy ~~thereof shall also~~ *of the proclamation must* be posted at each voting place within ~~said~~ *the* city and ~~also~~ in at least 10 of the most public places in ~~said~~ *the* city.

(2) ~~Such~~ *The* election ~~shall~~ *must* be conducted, the vote *must be* canvassed, and *the* result *must be* declared in the same manner as provided by law in respect to other city elections."

Section 19. Section 7-3-4222, MCA, is amended to read:

"**7-3-4222. Adoption of ordinances.** (1) ~~Every~~ *Each* ordinance or resolution appropriating money, ordering any street *or sewer* improvement ~~or sewer~~, making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose ~~shall~~ *must* be complete in the form in which it is finally passed and remain on file with the city clerk for public inspection at least 1 week before the final passage or adoption ~~thereof~~ *of the ordinance or resolution.*

(2) ~~No~~ *An* ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this part and except an ordinance for the immediate preservation of the public peace, health, or safety ~~which~~ *that* contains a statement of its urgency and is passed hy a two-thirds vote of the council, ~~shall~~ *may not* go into effect before 10 days from the time of its final passage. If during the 10-day period a petition signed by electors of the city equal in number to at least 25% of the entire number of persons registered to vote at the last preceding general municipal election, protosting against the passage of ~~such~~ *the* ordinance, is presented to the council, the ordinance ~~shall thereupon be~~ *is* suspended from going into operation and the council shall reconsider the ordinance. If the ordinance is not entirely repealed, the council shall submit tbe ordinance to the vote of the electors of the city, either at a general election or at a special municipal election ~~to be called for that purpose~~

held in conjunction with a regular or primary election. The ordinance ~~shall~~ *may* not go into effect or become operative unless a majority of the electors voting on the ordinance vote in favor of its adoption."

Section 20. Section 7-3-4223, MCA, is amended to read:

"**7-3-4223. Granting of franchises.** ~~No~~ *A* franchise or right to occupy or use the streets, highways, bridges, or public places in ~~any such~~ *a* city ~~shall~~ *may not* be granted, renewed, or extended except by ordinance~~, and every~~ *A* franchise or grant for interurban or street railways, gasworks or waterworks, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities or renewal or extonsion of ~~any such~~ *the* franchise or grant within ~~such~~ *the* city must be authorized or approved by a majority of the electors voting ~~thereon~~ *on the issue* at a general *election* or *a* special election *held in conjunction with a regular or primary election* as provided in 7-5-4321 and 7-5-4322."

Section 21. Section 7-3-4305, MCA, is amended to read:

"**7-3-4305. Petition to organize under commission-manager form — election required.** (1) Upon a *the filing of a* petition ~~being filed~~ with the city or town council, signed by not less than 15% of tbe qualified electors of the municipality registered for the last general municipal election, proposing that the question of reorganization under this part and part 44 be submittod to the qualified electors of the municipality, the city or town council shall ~~within 30 days~~ order a special election to be held~~, at which~~ *in conjunction with a regular or primary election. At the* election, the question of reorganization of the municipality under the provisions of this part and part 44 must be submitted to the qualified electors of the municipality.

(2) The order of the city or town council must specify the time when the election ~~must~~ *will* be held~~, which may not be less than 75 or more than 90 days from the date of the order of the council~~."

Section 22. Section 7-3-4310, MCA, is amended to read:

"**7-3-4310. Special election for municipal officers.** (1) If the majority of the votes cast at ~~such~~ *the* election ~~shall be~~ *are* in favor of ~~such proposition~~ *reorganization*, the city or town council ~~must~~ *shall* hold a meeting within 1 week ~~thereafter~~ *after the election* and ~~at such meeting~~ order a special election to be held *in conjunction with a regular or primary election* for the purpose of electing the number of commissioners to which ~~such~~ *the* municipality ~~shall be~~ *is* entitled. This order ~~shall~~ *must* specify the time of holding ~~such~~ *the* election~~, which must be no less than 75 or more than 90 days after the making of such order, and the~~. *The* mayor shall ~~thereupon~~ issue a proclamation setting forth the purpose for which ~~such~~ *the* special election is held and the day of holding the ~~same~~ *election*. The proclamation ~~shall~~ *must* be published for 10 successive days in each daily newspaper published in ~~such~~ *the* municipality if there ~~be such; otherwise,~~ *is a daily newspaper or* for 2 successive weeks in each weekly newspaper published ~~therein; and a~~ *in the municipality. A* copy ~~thereof shall~~ *of the proclamation must* also be posted at each voting place within ~~said~~ *the* municipality and ~~also~~ in five of the most public places in ~~said~~ *the* municipality.

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(2) ~~Such~~ *The* election ~~shall~~ *must* be conducted, the vote *must be* canvassed, and the result *must be* declared in the same manner as provided by law ~~in respect to~~ *for* other municipal elections.

(3) The provisions of 7-3-4341 are to be followed in the special election, except that the date of the ~~primary~~ election ~~shall~~ *must* be ~~at least 85 days~~ *in conjunction with a regular or primary election held* before the special election."

Section 23. Section 7-3-4311, MCA, is amended to read:

"**7-3-4311. Procedure for multimunicipality organization.** (1) Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part or unincorporated, ~~which are situated in such proximity or location with reference to each other as to make single municipal control necessary or desirable, shall~~ desire to be organized into or annexed to an incorporated city or town under the provisions of this part and part 44, the board of county commissioners of ~~such~~ *the* county may or upon the presentation of a petition signed by not less than 25% of the qualified electors in ~~such~~ *the* community or group of communities ~~must~~ *shall* issue a proclamation ordering a special election to be held *in conjunction with a regular or primary election*.

(2) At this election, the question of the organization of ~~such~~ *the* community or group of communities as a municipality under the provisions of this part and part 44 ~~shall~~ *must* be submitted to the qualified electors within the proposed municipal district. ~~Said~~ *The* proclamation ~~shall~~ *must* specify the time when and the places where ~~such~~ *the* election ~~shall~~ *will* be held, ~~which must be no less than 75 or more than 90 days from the date of filing such petition,~~ and ~~shall~~ *must* define the boundaries of ~~said~~ *the* proposed municipal district, which ~~shall~~ *must* include all ~~such~~ communities, ~~and~~ cities, and ~~such~~ *any* additional adjacent territory ~~as shall~~ *that*, in the judgment of the board of county commissioners, ~~provide~~ *provides* for future urban growth.

(3) If a majority of the legal voters at ~~said~~ *the* election vote in favor of the organization of ~~such~~ *the* municipal district or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of ~~said~~ *the* election and ~~immediately thereafter~~ shall give notice for 30 days in a newspaper published within the proposed municipal district or, if ~~none be~~ *a newspaper is not* published ~~therein~~ *in the proposed district*, by posting notices in six public places within the limits of ~~said~~ *the* district of the time and place or places of holding the first election for commissioners of ~~such~~ *the* municipal district under this law. At ~~such~~ *the* election, all electors qualified by the general election laws of the state who have resided within the limits of the municipal district for 6 months are qualified electors. The board of county commissioners ~~must~~ *shall* appoint judges and clerks of election and canvass and declare the result ~~thereof~~ *of the election*. The election *must be held in conjunction with a regular or primary election and* must be conducted in the manner prescribed by law for the election of county officers, ~~and the~~. *The* commissioners ~~so~~ elected must qualify in the manner prescribed by law for county officers."

Section 24. Section 7-5-133, MCA, is amended to read:

"**7-5-133. Processing of petition.** (1) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(2) If the governing body does not within 60 days take the proposed action, then the question ~~shall~~ *must* be submitted to the electors at the next ~~school,~~ *regular or* primary~~, or general~~ election ~~or a special election called for that purpose~~."

Section 25. Section 7-5-136, MCA, is amended to read:

"**7-5-136. Submission of question to electors.** (1) Any ordinance proposed by petition, ~~or~~ any amended ordinance proposed by petition, or any referendum on an ordinance ~~which is~~ entitled to be submitted to the electors ~~shall~~ *must* be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election *to be held in conjunction with a regular or primary election*; or

(b) the governing body calls for a special election on the question *to be held in conjunction with a regular or primary election.*

(2) A special election may not be held sooner than 75 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the election administrator less than 75 days prior to the next regular election, the election ~~shall~~ *must* be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance ~~which~~ *that* is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed ~~shall~~ *must* be published.

(5) The question ~~shall~~ *must* be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal."

Section 26. Section 7-5-4321, MCA, is amended to read:

"**7-5-4321. Grant of exclusive franchise — election required.** (1) The council may not grant an exclusive franchise or special privilege to any person except in the manner specified in subsection (2). The powers of the council are only those expressly prescribed by law and those necessarily incident ~~thereto~~ *the law.*

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(2) ~~No~~ *An* exclusive franchise for any purpose, except contracts for solid waste management systems as defined in 75-10-103, which may not exceed 10 years, may *not* be granted by any city or town or by the mayor or city council ~~thereof~~ to any person, association, or corporation without first submitting the application ~~therefor~~ *for an exclusive franchise* to the electors of the city *at a regular or primary election.*"

Section 27. Section 7-6-2344, MCA, is amended to read:

"**7-6-2344. Limitation on amount of emergency expenditures and liabilities — election.** (1) Unless the excess above the sums listed in subsections (1)(a), (1)(b), and (1)(c) is first authorized by a majority of the electors of the county, voting at a general *election* or *a* special election *held in conjunction with a regular or primary election*, the aggregate tetal of all expenditures made or liabilities incurred in any fiscal year to meet emergencies, other than those caused by fire, flood, explosion, earthquake, epidemic, riot, or insurrection, may not exceed:

(a) $25,000 in counties of class 1, 2, 3, or 4;

(b) $15,000 in counties of class 5 or 6; and

(c) $7,500 in counties of class 7.

(2) The question of authorizing the excess expenditures ~~shall~~ *must* be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of.... County, Montana, be authorized to make additional expenditures and incur additional liabilities in the amount of $.... over and above the sum of $.... to meet an emergency caused by.....

☐ YES

☐ NO

(3) The total of all emergency budgets and appropriations made ~~therein~~ in any ~~one~~ year to be paid from the county poor fund may not exceed the amount ~~which~~ *that* would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized by law te be made for ~~such~~ *the poor* fund, computed against the taxable value of the property subject to ~~such~~ *the* levy as shown by the last completed assessment roll of the county."

Section 28. Section 7-6-4255, MCA, is amended to read:

"**7-6-4255. Use of emergency warrants.** (1) All emergency expenditures ~~shall~~ *must* be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with ~~such~~ *the* expenditures. The city treasurer is authorized and directed to pay ~~such~~ *the* emergency warrants with any money in ~~such~~ *the* fund or funds available for ~~such~~ *that* purpose. If at any time there ~~shall not be sufficient~~ *is insufficient* money available in ~~such~~ *the* fund or funds to pay ~~such~~ *the* warrants, then ~~such~~ *the* warrants ~~shall~~ *must* be registered, *must*

bear interest, and *must* be called ~~in~~ for payment in the manner provided by law for other city warrants.

(2) The clerk shall include in ~~his~~ *the* annual tabulation to be submitted to the council the total amount of emergency warrants issued during the preceding fiscal year. Subject to the provisions of subsection (3), the council shall, in ~~their~~ *the* tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of ~~such~~ *any emergency* warrants~~, if there be any,~~ remaining unpaid at the close of ~~such~~ *the* preceding fiscal year because of insufficient money in ~~such~~ *the* fund to pay the ~~same~~ *warrants*.

(3) (a) ~~No~~ *A* levy ~~shall~~ *may not* be made for any fund in excess of the levy authorized by law to be made ~~therefor~~ *for the fund*.

(b) The council may submit tbe question of funding ~~such~~ *the* emergency warrants at an election as provided by law. *If possible, the election must be held in conjunction with a regular or primary election.* If at ~~any such~~ *the* election the issuing of ~~such~~ funding bonds ~~be~~ *is* authorized, it ~~shall~~ *is* not ~~then be~~ necessary for any levy to be made for the purpose of paying ~~such~~ *the* emergency warrants."

Section 29. Section 7-7-2223, MCA, is amended to read:

"**7-7-2223. Election required for issuance of certain bonds.** (1) County bonds for any purpose other than those enumerated in 7-7-2221 and 7-7-2311 may not be issued unless authorized at a ~~duly called~~ special *election held in conjunction with a regular or primary elcction* or *a* general election at which the question of issuing ~~such~~ *the* bonds is submitted to the registered electors of the county and approved as provided in 7-7-2237.

(2) ~~No~~ *A* bond election may *not* be called unless the board of county commissioners:

(a) initiates and unanimously adopts a resolution in accordance with the provisions of 7-7-2227(2); or

(b) receives a petition, delivered and certified by the election administrator, asking that ~~such~~ *the* election be held and the question be submitted. The petition must be signed by at least 20% of the registered electors of the county."

Section 30. Section 7-7-2227, MCA, is amended to read:

"**7-7-2227. Examination of petition — resolution calling for election.** (1) Upon delivery of the certified petition, the board shall carefully examine the petition and make ~~such~~ *any* other investigation ~~as~~ *that* it may consider necessary. If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution that contains the provisions of subsection (2) plus the essential facts in regard to the petition and its filing and presentation.

(2) The resolution ~~shall~~ *must*:

(a) recite the purpose or purposes for which the bonds are proposed to be issued;

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(b) fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition;

(c) determine the number of years through which ~~such~~ *the* bonds are to be paid, not exceeding the limitations fixed in 7-7-2206; and

(d) make provision for having the question submitted to the registered electors of the county at the next general election or at a special election *that is held in conjunction with a regular or primary election and that* ~~which~~ the board may call for that purpose.

(3) Whenever a board of county commissioners initiates a resolution in accordance with the provisions of 7-7-2223, the resolution must contain the provisions of subsection (2)."

Section 31. Section 7-7-2229, MCA, is amended to read:

"**7-7-2229. Notice of election.** (1) Whether ~~such~~ *the* election is held at the general election or at a special election *held in conjunction with a regular or primary election*, separate notice ~~shall~~ *of the election must* be given ~~thereof~~.

(2) (a) The notice ~~shall~~ *must* state:

(i) the date when the election will be held;

~~(ii) the hours between which the polls will be open;~~

~~(iii)~~*(ii)* the amount of bonds proposed to be issued;

~~(iv)~~*(iii)* the purpose of the issue;

~~(v)~~*(iv)* the term of years through which the bonds are to be paid; and

~~(vi)~~*(v)* ~~such~~ other information regarding the holding of the election and the bonds proposed to be issued ~~as~~ *that* the board may consider proper.

(b) If bonds are to be issued for two or more purposes, each purpose and the amount ~~therefor~~ *for each purpose* must be separatoly stated.

(3) The notice ~~shall~~ *must* be published as provided in 13-1-108."

Section 32. Section 7-7-2237, MCA, is amended to read:

"**7-7-2237. Percentage of electors required to authorize bond issue.** Whenever the question of issuing county bonds for any purpose is submitted to the registered electors of a county at either a general *election* or *a* special election *held in conjunction with a regular or primary election*, the determination of the approval or rejection of the bond proposition is made in the following manner:

(1) determine the total number of electors who were qualified to vote in the bond election;

(2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;

(3) calculate the percentage of qualified electors voting at the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and

(4) when the calculated percentage in subsection (3) is 40% or more, the bond proposition is considered approved and adopted if a majority of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(6) when the calculated percentage in subsection (3) is 30% or less, the bond proposition is considered rejected."

Section 33. Section 7-7-4226, MCA, is amended to read:

"**7-7-4226. Resolution to submit question of issuing bonds to voters.** (1) When the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality pursuant to ~~any~~ *a* statute of this state, the governing body shall pass and adopt a resolution.

(2) The resolution ~~shall~~ *must*:

(a) recite the purpose or purposes for which it is proposed to issue the bonds;

(b) fix the amount of bonds to be issued for each purpose;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limits fixed in 7-7-4205; and

(d) unless the bonds are revenue bonds not pledging the general credit of the municipality, make ~~such~~ provisions ~~as~~ *that* are necessary for submitting the question to the registered electors of the city or town at the next general city or town election or at a special election *that is held in conjunction with a regular or primary election and that* ~~which~~ the governing body may call for the purpose.

(3) Whenever the bond issuance is proposed by petition, the governing body shall, before submitting the measure to the electors, pass a resolution containing the information ~~herein~~ required *in this section* and~~, in addition thereto,~~ setting forth the essential facts in regard to the filing and presentation of the petition."

Section 34. Section 7-7-4227, MCA, is amended to read:

"**7-7-4227. Notice of election.** (1) Whether ~~such~~ *the* election is held at the general city or town election or at a special election *held in conjunction with a regular or primary election*, separate notice ~~shall~~ *of the election must* be given ~~thereof~~.

(2) (a) The notice ~~shall~~ *must* state:

(i) the date when the election will be held;

~~(ii) the hours between which the polls will be open;~~

~~(iii)~~*(ii)* the amount of bonds proposed to be issued;

~~(iv)~~*(iii)* the purpose ~~thereof~~ *of the bonds*;

~~(v)~~*(iv)* the term of years through which the bonds will be paid; and

~~(vi)~~*(v)* ~~such~~ other information regarding the election and the proposed bonds ~~as~~ *that* the board may consider proper.

(b) If the bonds proposed to be issued are for two or more purposes, each purpose and the amount ~~thereof~~ *for each purpose* must be separately stated.

(3) The notice ~~shall~~ *must* be published as provided in 13-1-108 and may be posted in each voting precinct in the city or town at least 10 days prior to the date for bolding the election."

Section 35. Section 7-7-4235, MCA, is amended to read:

"**7-7-4235. Percentage of electors required to authorize the issuing of bonds.** ~~Wherever~~ *Whenever* the question of issuing bonds for any purpose is submitted to the registered electors of a city or town at either a general *election* or *a* special election *held in conjunction with a regular or primary election*, the determination of the approval or rejection of the bond proposition is made in the following manner:

(1) determine the total number of electors who were qualified to vote in the bond election;

(2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;

(3) calculate the percentage of qualified electors voting at the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and

(4) when the calculated percentage in subsection (3) is 40% or more, the bond proposition is considered approved and adopted if a majority of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votos cast were in favor of the proposition, otherwise it is considered rejected; or

(6) wben the calculated percentage in subsection (3) is 30% or less, the bond proposition is considered rejected."

Section 36. Section 7-7-4426, MCA, is amended to read:

"**7-7-4426. Authorization for undertaking and issuance of bonds.** (1) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking may be authorized under this part.

(2) Bonds may be authorized to be issued under this part by resolution or resolutions of the governing body of the municipality:

(a) without an election; or

(b) when authorized by a majority of the qualified electors voting upon ~~such~~ *the* question at a special election *held in conjunction with a regular or primary election*, ~~should~~ *if* the governing body in its sole discretion ~~choose~~ *chooses* to submit the question to the electorate."

Section 37. Section 7-7-4427, MCA, is amended to read:

"**7-7-4427. Special election on question of issuing bonds.** (1) When the governing body has chosen to submit the question of issuing bonds to the electorate, the special election ~~shall~~ *must be held in conjunction with a regular or primary election and must* be noticed and conducted as provided for municipal general obligation bonds in chapter 7, part 42.

(2) The special election ~~shall~~ *must* be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking as provided in this part and ordered ~~said~~ *the* special election."

Section 38. Section 7-8-4201, MCA, is amended to read:

"**7-8-4201. Disposal or lease of municipal property.** (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, or lease any property belonging to the city or town.

(2) (a) The lease or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) Except for property acquired by tax deed, if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. *The election must be held in conjunction with a regular or primary election.*

(3) This section may not be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city that were acquired for parks within the limitations prescribed by 7-16-4223."

Section 39. Section 7-11-305, MCA, is amended to read:

"**7-11-305. Availability of petition or recommendation and service plan.** (1) Sufficient copies of the petition or recommendation of the interlocal cooperation commission proposing a service consolidation or transfer and the service plan must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the proposal if ~~such~~ an election is to be held. *If the election is held, it must be held in conjunction with a regular or primary election.*

(2) Each local government affected by the proposal may distribute copies of the service plan to its residents."

Section 40. Section 7-11-307, MCA, is amended to read:

"**7-11-307. Election on service consolidation or transfer.** (1) The governing bodies of each local government affected by a proposed service

consolidation or transfer shall jointly call a special election on the question of service consolidation or transfer, to be held ~~no less than 75 or more than 120 days of the date of the filing of the petition under 7-11-303 or no less than 75 or more than 120 days of the receipt by the local government of the interlocal cooperation commission recommendation~~ *in conjunction with a regular or primary election.* ~~The special election may be held in conjunction with any other election.~~ The county election administrator shall prepare and print notices of the special election.

(2) The cost of the election ~~shall~~ *must* be shared by the affectod local governments in proportionato shares as agreed to by the governing bodies of the local governments."

Section 41. Section 7-12-4243, MCA, is amended to read:

"7-12-4243. Procedure to create and maintain supplemental revolving fund. (1) (a) A supplemental revolving fund may be created by ordinance, subject to the approval of a majority of the qualified electors voting upon the question at a general *election* or *a* special election *held in conjunction with a regular or primary election.*

(b) As used in 7-12-4241 through 7-12-4258, "qualified electors" ~~shall mean~~ *means* registered electors of the municipality.

(2) The supplemental revolving fund ~~shall~~ *must* be created and maintained solely from the net ~~revenues~~ *revenue* of parking meters. The ordinance may pledge to ~~said~~ *the revolving* fund all or any part of the net ~~revenues~~ *revenue* of parking meters ~~which may be then~~ owned, ~~or~~ leased, ~~or~~ rented, or ~~thereafter~~ acquired by the city or town. ~~Said~~ *The* ordinance ~~shall~~ *must* contain ~~such~~ *any* provisions ~~in respect to~~ *concerning* the purchase, control, operation, repair, and maintenance of parking meters, including rates to be charged, and the application of the net ~~revenues therefrom~~ *revenue from the meters* and the management and use of the supplemental revolving fund ~~as~~ *that* the council ~~shall deem~~ *considers* necessary."

Section 42. Section 7-13-2208, MCA, is amended to read:

"7-13-2208. Decision on petition — election required. (1) On the final hearing, ~~said~~ *the* board of county commissioners shall make ~~such~~ *any* changes in the proposed boundaries ~~which be~~ within the county ~~as may be deemed~~ *that are considered* advisable and shall define and establish ~~such~~ *the* boundaries~~,~~. ~~but said~~ *The* board of county commissioners ~~shall~~ *may* not modify ~~said~~ *the* boundaries ~~as to~~ *in a manner that would* exclude from ~~such~~ *the* proposed district any territory ~~which~~ *that* would be benefited by the formation of ~~such~~ *the* district. ~~nor shall any lands which~~ *Land that* will not, in the judgment of ~~said~~ *the* board of county commissioners, be benefitod by ~~such~~ *the* district *may not* be included within sueh *the* proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which ~~said~~ *the* district lies shall give notice of an election to be held in ~~said~~ *the* proposed district for the purpose of determining whether or not the ~~same shall be~~ *district is to be* incorporated. The ~~date of the~~ election ~~shall be no less than 75 or more than 90 days from the date~~

~~of the final hearing of such petition~~ *must be held in conjunction with a regular or primary election.*"

Section 43. Section 7-13-2231, MCA, is amended to read:

"**7-13-2231. District to be governed by board of directors.** (1) At an election to be held within a district under the provisions of this part and part 23 and the laws governing general elections not inconsistent ~~therewith~~ *this part and part 23*, the district ~~thus organized~~ shall ~~proceed, within 120 days after its formation, to the election of~~ *elect* a board of directors. *The election must be held in conjunction with the next regular or primary election.*

(2) The board of directors is the governing body of ~~such~~ *the* district."

Section 44. Section 7-13-2323, MCA, is amended to read:

"**7-13-2323. Election on question of incurring bonded indebtedness.** The board of directors shall fix a date upon which an election ~~shall be~~ *is* held for the purpose of authorizing the bonded indebtedness to be incurred. *The election must be held in conjunction with a regular or primary election.*"

Section 45. Section 7-13-2341, MCA, is amended to read:

"**7-13-2341. Addition of land to district.** (1) Except as provided in subsection (5), any portion of any county, any municipality, or both, may be added to any district organized under the provisions of this part and part 22 at any time upon petition presented in the manner provided in this part and part 22 for the organization of ~~such~~ *the* district.

(2) The petition may be granted by ordinance of the board of directors of ~~such~~ *the* district. ~~Such~~ *The* ordinance ~~shall~~ *must* be submitted for adoption or rejection to the vote of the electers in ~~such~~ *the* district and in the proposed addition at a general *election* or a special election held~~, as provided in this part and part 22, no less than 75 or more than 90 days after the adoption of such ordinance~~ *in conjunction with a regular or primary election.*

(3) If ~~such~~ *the* ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county *clerk and* recorder of the county in which ~~such~~ *the* district is located. Upon the receipt of ~~such last-mentioned certificate~~ *the certification*, the secretary of state shall within 10 days issue ~~his~~ *a* certificate~~, reciting~~ *that states* the passage of ~~said~~ *the* ordinance and the addition of ~~said~~ *the* territory to ~~said~~ *the* district. A copy of ~~such~~ *the* certificate ~~shall~~ *must* be transmitted to and filed with the county clerk *and recorder* of the county in which ~~such~~ *the* district is situated.

(4) ~~From and after the date~~ *After the filing* of ~~such~~ *the* certificate, the territory ~~named therein shall be deemed~~ *is* added to and ~~form~~ *is* a part of ~~said~~ *the* district with all the rights, privileges, and powers set forth in this part and necessarily incident ~~thereto~~ *to this part.*

(5) If the board of directors determines that a district has a water facility or a sewer facility with a capacity greater than required to meet the needs of the current district, it may by ordinance, upon petition of contiguous property owners and with the written consent of all property owners to whom the service is to be extended, expand the district to include land, to the extent of excess

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capacity, without complying with subsections (1) and (2). However, if the hoard determines that an election should be held or if 40% or more of the members of the district petition for an election, compliance with subsections (1) and (2) is required."

Section 46. Section 7-13-4204, MCA, is amended to read:

"**7-13-4204. Rental charges for use of sewer system — election required.** (1) Upon being petitioned by 5% of the qualified electors, the city council shall submit to a vote to the qualified electors, at the annual municipal election or at ~~any~~ *a* special election ~~called for that purpose~~ *held in conjunction with a regular or special election*, the question *of* whether or not the city council may establisb and collect rentals for the use of ~~such~~ *the* sewer systom, ~~and~~ may fix the scale of ~~such~~ *the* rentals, and *may* prescribe the manner and time at wbich ~~such~~ *the* rentals ~~shall~~ *must* be paid:

(a) to provide ~~such~~ *the* sewer fund; ~~and/or~~

(b) to provide for the retirement of ~~such~~ *the* bonds ~~and/or~~ *and* the payment of the interest on ~~such~~ *the* bonds; ~~and/or~~ *or*

(c) for any purpose ~~herein~~ mentioned *in this section*.

(2) If a majority of votes is cast in favor of ~~such~~ *the* proposition, then the city or town council may ~~establish~~ and collect rentals for the use of ~~any such~~ *the* sewer system, ~~and~~ may fix the scale of ~~such~~ rentals, ~~and~~ *may* prescribe the manner and time at which ~~such~~ *the* rentals should be paid, and ~~to~~ *may* change ~~such~~ *the* scale of rentals from time to time as ~~may be deemed~~ *considered* advisable.

(3) The ~~revenues~~ *revenue* provided in this section ~~shall be~~ *are* in addition to and not exclusive of otber ~~revenues which~~ *revenue that* may be ~~now~~ legally collected for sewer payment."

Section 47. Section 7-14-210, MCA, is amended to read:

"**7-14-210. Election on question of creating urban transportation district.** (1) The commissioners, upon completion of the public hearing, shall proceed by resolution to refer the creation of ~~such~~ *the* district to the persons qualified to vote on ~~such~~ *the* proposition.

(2) The commissioners may designate in their resolution whether a special election ~~shall~~ *is to* be held *in conjunction with a regular or primary election* or whether the matter ~~shall be~~ *is to be* determined at the next general election. If a special election is ordered, the ~~commissioners shall specify in their~~ order *must specify* the date for the election and the voting places and *the commissioners* shall appoint and designate *election* judges and clerks ~~therefor~~."

Section 48. Section 7-14-1134, MCA, is amended to read:

"**7-14-1134. Metbod of funding deficiency.** (1) Subject to the conditions stated in this section, the governing body of ~~any~~ *a* county or ~~any~~ *of a* municipality having a population in excess of 10,000~~, with respect to bonds issued pursuant to this part by the local government or by an authority in which the local government is included~~, may by resolution covenant that if at any time all ~~revenues~~ *revenue*, including taxes, appropriated and collected for ~~such~~ bonds

issued pursuant to this part are insufficient te pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county or municipality for the payment of ~~such~~ *the* deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on ~~such~~ *the* bonds, it will levy a general tax upon all the taxable property in the county or municipality for the payment of ~~such~~ *the* deficiency~~, and such~~ *. The* taxes are not subject to any limitation of rate or amount applicable to other county or municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. If more than one local government is included in an authority issuing bonds pursuant to this part, the local governments may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the ~~revenues~~ *revenue* appropriated for ~~such~~ *the* bonds in ~~such~~ *a* manner ~~as~~ *that* the local governments may determine.

(2) The resolution ~~shall~~ *must* state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(3) *(a)* ~~No such~~ *A* resolution ~~becomes~~ *is not* effective until the question of its approval has been submitted to the qualified electors of the local government at a special election:

(i) called for that purpose by the governing body of the local government;

(ii) held in conjunction with a regular or primary election; and

(iii) approved by a majority of the electors voting on the question ~~have voted in favor thereof~~.

(b) The notice and conduct of the election is governed, to tbe extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting ~~thereon~~ *on the issue* vote against approval of the resolution, the local government ~~has no authority to~~ *may not* make the covenant or ~~to~~ levy a tax for the payment of deficiencies pursuant to this section~~, but such~~ *. The* local government or authority may ~~nevertheless~~ issue bonds under this part payable solely from the sources referred to in 7-14-1133(1)."

Section 49. Section 7-14-2205, MCA, is amended to read:

"7-14-2205. Construction of bridge in municipality — election. (1) Before undertaking the construction in any city or tewn of any bridge, the cost of which ~~shall exceed~~ *exceeds* $10,000, the board of county commissioners shall submit to the qualified electors of the county at a general *election* or *a* special election *held in conjunction with a regular or primary election* the question of whether the bridge ~~shall be~~ *is to be* constructed and ~~its cost~~ paid *for* by the county.

(2) (a) If the electors vote in favor of construction, the board may issue and sell bonds of the county ~~to~~ *in* the amount authorized for the construction of the bridge. Bonds ~~shall~~ *must* be issued under ~~such~~ *the* regulations ~~as~~ *that* apply to other bonds of the county.

(b) The bridge ~~shall~~ *must* be constructed using the proceeds of ~~such~~ *the bond* sale.

(3) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in 7-14-2503."

Section 50. Section 7-14-2504, MCA, is amended to read:

"**7-14-2504. Additional road and bridge construction tax — election required.** (1) Each board may make an additional levy upon the taxable property in the county of *up to* 10 mills ~~or less~~ for constructing public highways and bridges.

(2) Before the additional levy may be made, the question ~~shall~~ *must* be submitted to a vote of the people at ~~some~~ *a* general *election* or *a* special election *held in conjunction with a regular or primary election. The question must be* in the following form, inserting the number of mills to be levied and the name of the county:

"Shall there be an additional levy of.... mills upon the taxable property in the county of...., state of Montana, for the purpose of constructing public highways and bridges?

☐ YES

☐ NO"

(3) A majority of the votes cast ~~shall be~~ *is* necessary to permit the additional levy, which ~~shall~~ *must* be collected in the same manner as other road taxes."

Section 51. Section 7-14-4404, MCA, is amended to read:

"**7-14-4404. Tax levy for contracts to operate bus service.** For the purpose of raising the necessary money to defray the cost of the transportation service authorized by 7-14-4401(2) pursuant to ~~such~~ *a* contract, lease, or lease and operating agreement with ~~such~~ *an* independent carrier or carriers, the city or town council may annually levy a tax on the taxable value of all taxable property within the limits of the city or town. Whenever the council of the city or town considers it necessary to raise money by taxation for ~~such purpose~~ *transportation services* in excess of the levy ~~now~~ allowed by law, the council of the city or town shall in the manner prescribed by law submit the question of ~~such~~ *the* additional levy to the qualified electors of the city or town, either at the regular annual election held in the city or town or at a special election *that is held in conjunction with a regular or primary election and that is* called for that purpose by the council of the city or town. The additional levy ~~in excess of the levy now allowed by law~~ may not exceed 1 1/2 mills."

Section 52. Section 7-14-4512, MCA, is amended to read:

"**7-14-4512. Referendum on parking meters prior to enacting ordinance.** ~~No~~ *An* ordinance ~~or ordinances~~ providing for the purchasing, renting, leasing, or otherwise acquiring or installing, maintaining, operating, or using such parking meters, devices, or instruments ~~shall~~ *may not* be enacted ~~until and~~ unless the question of whether or not ~~such~~ *the* ordinance ~~or ordinances~~ ~~shall~~ *may* be enacted has been submitted to the qualified electors of ~~such~~ *the*

city or town at a general election or *a* special election *that is held in conjunction with a regular or primary election and that is* called for that purpose. ~~and unless at such election~~ *An ordinance may not be enacted unless authorized by* a majority of the votes cast ~~for and against the question shall have been~~ *are* in favor of ~~the~~ enacting ~~of said~~ *the* ordinance ~~or ordinances~~."

Section 53. Section 7-14-4642, MCA, is amended to read:

"**7-14-4642. Election required to issue revenue bonds.** (1) The power to issue revenue bonds as provided in this part ~~shall~~ *is* not ~~be~~ operative in any city until the legislative body, either at a general *election* or a special election *held in conjunction with a regular or primary election*, ~~shall submit~~ *submits* to the electors the question as to whether the legislative body, the commission, or both, ~~shall be~~ *are* authorized to adopt the revenue bond method of financing projects provided for ~~herein~~ *in this part*.

(2) ~~Such~~ *The* question ~~may~~ *must* be placed before the electors and notice ~~thereof~~ *must be* given in the same manner as provided by law for referring ordinances of the city to the electors. The qualifications of electors ~~shall be~~ *are* the same as those required for voting at municipal elections in the city for elective officers ~~thereof~~. The provisions relating to the qualifications of electors and manner of submission of the question to the electors for the purposes of this part ~~shall govern and be~~ *are* controlling, *notwithstanding* any provision of law to the contrary ~~notwithstanding~~."

Section 54. Section 7-15-2111, MCA, is amended to read:

"**7-15-2111. Area of operation of county housing authority — inclusion of municipalities.** (1) The area of operation of ~~such~~ *a county housing* authority ~~shall include said~~ *includes the* county~~,~~ but ~~in no event shall it~~ *does not* include any city unless a resolution ~~shall have~~ *has* been adopted by the governing body of the city ~~(~~and by any authority ~~which shall have been theretofore~~ established and authorized to exercise its powers in the city~~)~~ declaring that there is need for the county authority to exercise its powers within that city. ~~Such~~ *The* resolution ~~shall~~ *is* not ~~be~~ effective until it has been approved by a majority vote of the electors within the corporate limits of ~~such~~ *the* city or town voting ~~at~~ either *at* a special *election held in conjunction with a regular or primary election* or *at a* general election.

(2) If, after the adoption of ~~such~~ *a* resolution or resolutions, an authority is established for any city within the county, the county authority ~~shall have no power to~~ *may not* initiate any further housing projects within ~~such~~ *the* city without the consent by resolution of the governing body ~~thereof~~ *of the city* and of the authority established for ~~such~~ *the* city."

Section 55. Section 7-15-4408, MCA, is amended to read:

"**7-15-4408. Voter approval required to create housing authority.** The ordinance authorized by 7-15-4406(2) ~~shall~~ *is* not ~~be~~ effective until it has been approved by a majority vote of the registered electors within the city limits voting ~~at~~ either *at* a special *election held in conjunction with a regular or primary election* or *at a* general election."

Section 56. Section 7-16-2411, MCA, is amended to read:

"**7-16-2411. Creation of county park district.** (1) Proceedings for the creation of a county park district may be initiated by:

(a) a petition signed by not less than 10% of the qualified electors of the proposed park district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a county park district.

(2) The petition or resolution must contain:

(a) the boundaries of the proposed district;

(b) the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and

(c) the proposed number of members of the county park district commission. The number of members must be an odd number and may not be less than three.

(3) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by not less than 10% of the qualified electors of the territory within the county proposed to be included in the district.

(4) Upon receipt of a petition for the creation of a county park district, the county clerk shall examine it and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition or resolution must be published as provided in 7-1-2121 in each county in which the territory of the proposed district lies.

(6) At the hearing, the county governing body shall hear:

(a) testimony of all interested persons on whether a county park district should be created;

(b) testimony regarding the proposed boundary, property tax mill levy, and number of members of the district commission; and

(c) any other matter relating to the proposed district.

(7) After the hearing, if the county governing body determines that the proposed park district should be created, it shall by resolution set the boundaries of the proposed park district, the maximum mill levy for the proposed park district, and the number of members to be on the district commission. The resolution must also call for an election on the question of whether to create the county park district. The election ~~may~~ *must* be held in conjunction with a ~~regularly scheduled~~ *regular or primary* election, provided that at least 75 days have elapsed between the adoption of the resolution and the election."

Section 57. Section 7-16-2442, MCA, is amended to read:

"**7-16-2442. Dissolution of county park district.** (1) A county park district may be dissolved after an election on the question of dissolving the

district. The process of dissolving the district may be initiated hy a petition of 25% of the electorate of the district or by a resolution of intent to dissolve the district adopted by either the county park district commission or the county governing body.

(2) Upon receipt of ~~such~~ a petition ~~which~~ *that* has been certified by the county clerk as sufficient under this section or upon the adoption of ~~such~~ a resolution of intent, the county governing body shall call a public hearing on the question of dissolving the district and cause *notice of the hearing* to be published ~~a notice of the hearing~~ in the official county newspaper.

(3) At the public hearing, the county governing body shall hear testimony of interested persons regarding the dissolution of the district. After the public hearing, the county governing body may either submit the question of dissolving the district to the electorate of the district or it may call for a public hearing on the question of altering the boundaries of the district. If the county governing body calls for a public hearing on the question of altering the boundaries of the district by witbdrawal of territory, it shall ~~cause to be published~~ *publish* notice of ~~such a~~ *the* bearing in the official county newspaper. The notice must state the boundaries of the area proposed to be withdrawn from the district. After hearing testimony at ~~such~~ *the* hearing, the county governing body may submit the question of either dissolving the district or altering the district by withdrawal of specified territory from the district to the electerate of the district.

(4) ~~Such a~~ *The* question must be submitted by a resolution calling for an election on either dissolving the district or altering the boundaries of the district by withdrawal of land from the district. The county governing body ~~may call a special election for such purposes, or it may~~ *shall* schedule the election in conjunction with any other regularly scheduled election. The election on the question must be conducted as provided in Title 13.

(5) Tbe question of withdrawal of territory under this section must be votod on separately by the electorate of the territory te be withdrawn and the electorate of the balance of the territory of the district. The question fails unless a simple majority of those voting on the question in each of the two territories authorize altering the district boundary. If the question passes, the boundary alteration is effective the following January 1. If the question fails, the county governing body shall by resolution call for an election on the question of dissolving the district."

Section 58. Section 7-31-106, MCA, is amended to read:

"7-31-106. **Authorization for county to issue bonds — eleetion required.** (1) If the petition is presented to the board of county commissioners, ~~it shall be the duty of~~ the board *shall*, for the purpose of raising money to meet the payments under the terms and conditions of ~~said~~ *the* contract and other necessary and proper expenses ~~in and about the same~~ *for the contract* and for the approval or disapproval ~~thereof~~ *of the petition*:

(a) ~~to~~ ascertain, within 30 days after submission of the petition, the existing indebtedness of the county in the aggregate; and

(b) ~~to~~ submit, ~~within 60 days~~ after ascertaining the ~~same~~ *aggregate indebtedness*, to the electors of ~~such~~ *the* county the proposition to approve or

disapprove the contract and the issuance of bonds necessary to carry out the ~~same~~ *contract. The election must be held in conjunction with a regular or primary election.*

(2) The amount of the bonds authorized by this section may not exceed 22.5% of the taxable value of the taxable property ~~therein~~ *in the county*, inclusive of the existing indebtedness ~~thereof~~ *of the county*, to be ascertained by the last assessment for state and county taxes previous to the issuance of ~~said~~ *the* bonds and incurring of ~~said~~ *the* indebtedness."

Section 59. Section 7-31-107, MCA, is amended to read:

"7-31-107. Authorization for municipality to issue bonds — election required. (1) If ~~said~~ *the* petition is presented te the council of any incorporated city or town, the council, for the purpose of raising money to meet the payments under the terms and conditions of ~~said~~ *the* contract and other necessary and proper expenses ~~in and about the same~~ *for the contract* and for the approval or disapproval ~~thereof~~ *of the petition, shall*:

(a) ~~shall~~ ascertain, within 30 days after submission of the petition, the aggregate indebtedness of ~~such~~ *the* city or town; and

(b) ~~shall~~ submit, ~~within 60 days~~ after ascertaining the ~~same~~ *aggregate indebtedness*, to the electors of ~~such~~ *the* city or town the proposition to approve or disapprove ~~said~~ *the* contract and the issuance of bonds necessary to carry out the ~~same~~ *contract. The election must be held in conjunction with a regular or primary election.*

(2) The amount of the bonds authorized by this section may not exceed 16.5% of the taxable value of the taxable property ~~therein~~ *in the city or town*, inclusive of the existing indebtedness ~~thereof~~ *of the city or town*, to be ascertained in the manner provided in this part."

Section 60. Section 7-31-109, MCA, is amended to read:

"7-31-109. Conduct of election. (1) The vote upon ~~such~~ *a* proposition ~~shall~~ *under this part must* be ~~had~~ at an election for that purpose to be held, conducted, and counted and with results ascertained and detormined in the manner and by the same officers provided by law for general elections, except as otherwise provided ~~herein~~ *in this section. The election must be held in conjunction with a regular or primary election.*

(2) The proposition ~~to~~ *must* be submitted ~~shall be~~ upon printed tickets or ballots, upon each of which ~~shall be~~ *is* printed the following: "For the contract and bonds" and "Against the contract and bonds"~~, the former above the latter~~. The elector shall ~~indicate his~~ voto by a cross opposite ~~the~~ one ~~or the other for which he votes~~ *statement.*

(3) No registration under the election laws of this state ~~shall be~~ *is* required for the purposes of the election ~~herein provided for~~, and the registration ~~had at~~ *from* the last election ~~preceding the same shall govern and control as if especially had and done~~ *governs and controls* for the purpose of the election to be held under this part."

Section 61. Section 7-32-235, MCA, is amended to read:

"**7-32-235. Search and rescue units authorized — under control of county sheriff — optional funding.** (1) A county may establish or recognize one or more search and rescue units within the county.

(2) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff, or ~~his~~ *the sheriff's* designee, having jurisdiction and whose span of control would be considered within reasonable limits.

(3) A county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax of not more than 1 mill on each dollar of taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1). *The election must be held in conjunction with a regular or primary election.*"

Section 62. Section 7-34-2110, MCA, is amended to read:

"**7-34-2110. Resolution calling for election.** (1) The board of county commissioners in its resolution ~~of reference~~ may make ~~such~~ changes in the boundaries of the proposed district ~~as~~ *that* it considers advisable, without including any additional lands not described in the petition, and it shall call an election upon the question of the creation of the district.

(2) The board ~~must~~ *shall* designate in its resolution whether a special election ~~shall be~~ *is to be* held or whether the matter ~~shall be~~ *is to be* determined at the next general election. If a special election is ordered, the board ~~must~~ *shall* specify in its order the date for ~~such~~ *the* election. *The special election must be held in conjunction with a regular or primary election.*"

Section 63. Section 7-34-2414, MCA, is amended to read:

"**7-34-2414. Election required on question of issuance of honds.** (1) ~~No bonds~~ *Bonds* may *not* be issued by ~~any~~ *a* county until the question of approval of the issuance of ~~such~~ *the* bonds has been submitted to the registered electors of the county at a general election or a special election called for that purpose by the governing body of the county and the majority of the electors voting on the question have voted in favor ~~thereof~~ *of issuing the bonds. A special election must be conducted in conjunction with a regular or primary election.* The notice and conduct of the election ~~shall~~ *must* be governed, to the extent applicable, by the laws governing the election on county general obligation bonds in chapter 7, part 22.

(2) If a majority of the electors voting ~~thereon~~ *on the issue* vote against the issuance of the bonds, the county ~~shall have no authority to~~ *may not* issue the bonds under 7-34-2411 through 7-34-2418."

Section 64. Section 7-35-2106, MCA, is amended to read:

"**7-35-2106. Election details.** (1) In its order, the board ~~must~~ *shall* designate whether a special election ~~shall~~ *must* be held or whether the matter ~~shall~~ *must* be determined at the next general election. If a special election is ordered, the board ~~must~~ *shall* in its order specify the time. *A special election must be held in conjunction with a regular or primary election.*

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(2) The election ~~shall~~ *must* be held in all respects, as nearly as practicable, in conformity with the general election laws.

(3) At ~~such~~ *the* election, the ballots must contain the words "Cemetery district — Yes" and "Cemetery district — No"."

Section 65. Section 22-1-303, MCA, is amended to read:

"**22-1-303. Creation of public library.** A public library may he established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) ~~By~~ *A public library may be established by a* petition *that is* signed by not less than 10% of the resident taxpayers~~,~~ whose names appear upon the last completed assessment roll of the city or county~~, being~~ *and that is* filed witb the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which ~~they~~ *it* may by resolution establish a public library. The governing body shall give notice of the contemplated action in a newspaper of general circulation for 2 consecutive weeks giving ~~therein~~ the date and place of tbe meeting at which the contemplated action is proposed to be taken.

(3) (a) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election, the governing body shall submit to a vote of the qualified electors ~~thereof~~ at the next general election the question of whether a free public library ~~shall~~ *is to* he established.

(b) If ~~such~~ a petition is submitted for a city, the petition must be signed by resident taxpayers of ~~said~~ *the* city.

(c) If ~~such~~ a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city *that is* located in ~~said~~ *the* county ~~which~~ *and that* may already have established a free public library for ~~such~~ *the* city.

(d) If ~~such~~ *the* petition specifically asks that a special election be called and ~~such~~ *the* petition is signed by 35% of the resident freeholders affected by ~~such~~ *the* petition, tben the governing body shall, upon receipt of ~~such~~ *the* petition, immediately set a date for a special election~~;~~. ~~which date shall be as soon as the procedures for establishing a~~ *The* special election ~~will allow~~ *must be held in conjunction with a regular or primary election.*

(e) If at ~~such~~ *the* election a majority of the electers voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain ~~said~~ *the* library or to contract with any city or county for library service to be rendered to the inhabitants of ~~such~~ *the* city or county."

Section 66. Section 22-1-402, MCA, is amended to read:

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"**22-1-402. Library systems — definition.** *(1)* Library systems ~~shall~~ *must* include library federations or library networks~~, as defined hereafter~~.

~~(1)~~*(2)* (a) A library federation is a combination of libraries serving a multicounty, multicity, or city-county area within a federation area designated by the state library commission. Any other public library or town, city, or county within the federation area may participate in ~~such~~ a federation.

(b) Two or more cities, towns, counties, or a city and one or more counties may agree by contract to form ~~such~~ a federation by action of their respective governing bodies or duly created boards of library trustees, provided that one of the parties is or maintains a library ~~which~~ *that* has been designated hy the state library commission as a headquarters lihrary for that federation area. The participating entities may retain ~~such~~ *the* autonomy over their respective libraries ~~as may be~~ *that* specified in the contract.

(c) The expense of providing library services for the library federation ~~shall~~ *must* be based on funds received from the state or participating libraries as ~~shall be~~ agreed upon in the contract. The funds of the federation ~~shall~~ *must* be maintained as a separate account as ~~shall be~~ provided in the contract. Participating libraries shall transfer semiannually to the account all money collected for the federation in their respective jurisdiction.

(d) A participating entity may withdraw from a federation according to the terms for withdrawal provided in the contract by the action of its governing body or by a majority of its qualified voters voting at a general or special election. *A special election must be held in conjunction with a regular or primary election.*

~~(2)~~*(3)* A library network is an agreement between individual libraries or library systems, which may be intercity, intrastate, or interstate, for the exchange of information or to provide specific library services not provided in existing library federations."

Section 67. Section 67-11-303, MCA, is amended to read:

"**67-11-303. Bonds and obligations.** (1) An authority may borrow money for any of its corporate purposes and issue its bonds ~~therefor~~ *for those purposes*, including refunding bonds, in ~~such~~ *the* form and upon ~~such~~ *the* terms ~~as~~ *that* it may determine, payable out of any ~~revenues~~ *revenue* of the authority, including ~~revenues~~ *revenue* derived from:

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that ~~no such~~ bonds may *not* be issued at any time if the total amount of principal and interest to become due in any year on ~~such~~ *the* bonds and on any then outstanding bonds for which ~~revenues~~ *revenue* from the same source or sources are pledged exceeds the amount of ~~such revenues~~ *revenue* to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all

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action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the ~~revenues~~ *revenue* from the pledged source in ~~such~~ *the* year at least equal to the amount of ~~such~~ principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided ~~herein~~ *in this section*, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from ~~revenues~~ *revenue* of the authority and ~~shall~~ *must* state on their face the applicable limitations or restrictions regarding the source from which ~~such~~ *the* principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of ~~any such~~ bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection ~~(6)~~, the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all ~~revenues~~ *revenue*, including taxes, appropriated and collected for ~~such~~ *the* bonds ~~are~~ *is* insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of ~~such~~ *the* deficiency~~;~~. ~~and~~ *The governing body* may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of ~~such~~ *the* deficiency, and ~~such~~ *the* taxes are not subject to any limitation of rate or amount applicable to other municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event *that* more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the ~~revenues~~ *revenue* appropriated for ~~such~~ *the* bonds in ~~such~~ *a* manner ~~as~~ *that* the municipalities may determine. The resolution ~~shall~~ *must* state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. ~~No such~~ *A* resolution ~~becomes~~ *may not be* effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor ~~thereof~~ *of the resolution. The special election must be held in conjunction with a regular or primary election.* The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns~~;~~ and as provided for county general obligation bonds in Title 7,

chapter 7, part 22, for an election called by counties. If a majority of the electors voting ~~thereon~~ *on the issue* vote against approval of the resolution, the municipality ~~has no authority to~~ *may not* make the covenant or ~~to~~ levy a tax for the payment of deficiencies pursuant to this section, but ~~such~~ *the* municipality or authority may ~~nevertheless~~ issue bonds under this chapter payable solely from the sources referred to in subsection (1) ~~above~~."

Section 68. Section 76-1-604, MCA, is amended to read:

"**76-1-604. Adoption, revision, or rejection of master plan.** (1) The governing bodies shall adopt a resolution of intention to adopt, revise, or reject ~~such~~ *the* proposed plan or any of its parts.

(2) If the governing bodies adopt a resolution of intontion to adopt the proposed plan or any of its parts, tbey may, in their discretion, submit to the qualified electors of the jurisdictional area included within the proposed plan at the next primary or general election or at a special election the referendum question of whetber or not the plan should be adopted. *A special election must be held in conjunction with a regular or primary election.* ~~The~~ *Except as provided in this section, the* provisions of Title 7, cbapter 5, part 1, ~~except as in this section otherwise provided, shall~~ apply to ~~such~~ *the* referendum election.

(3) The governing bodies may adopt, revise, or repeal a master plan under this section.

(4) Tbe qualified electers of the jurisdictional area included within the master plan may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a master plan under this section."

Section 69. Section 85-9-206, MCA, is amended to read:

"**85-9-206. Court hearing on petition — election — limits on court jurisdiction.** (1) Upon receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the court ~~shall find~~ *finds* that the ~~prayer of the~~ petition sbould be granted, it sball:

(a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district and exclude those lands ~~which~~ *that* will not be ~~so~~ benefited;

(b) make an order fixing the time and place of an organizing election;

(c) order the election administrator to conduct the election in accordance with the provisions of Title 13;

(d) order and decree the district organized if the requisite number of eligible electors vote in favor of organization.

(2) In order for the district to be organized, 51% or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization. *The election must be held in conjunction with a regular or primary election.*

(3) This cbaptor ~~shall~~ *does* not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and detormine

priority of appropriation and questions of right growing out of or in any way connected with a priority of appropriation is expressly excluded from this chapter and ~~shall~~ *must* be determined as otherwise provided hy the laws of Montana."

Section 70. Section 85-9-623, MCA, is amended to read:

"**85-9-623. Issuance of bonds — resolution and election.** When the directors find it necessary to issue bonds, the directors shall:

(1) pass a resolution ~~which~~ *that* includes:

(a) the purpose or purposes for which the bonds will be issued;

(b) the maximum amount and term of the bonds;

(c) the maximum interest rate the bonds will bear;

(d) whether the bonds will be repaid from ~~revenues~~ *revenue*, assessments, or both;

(2) give notice, as provided in 85-9-103(9), ~~which shall~~ *that must* include the resolution adopted by the directors~~;~~ *and the* location of polling places~~, and hours when the polls will be open~~; *and*

(3) hold an election as provided by 85-9-422."

Approved April 12, 1995

CHAPTER NO. 388

[SB 208]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CONFINEMENT COSTS FOR INMATES, INCLUDING COSTS OF MEDICAL CARE; PROVIDING THAT THE BOARD OF COUNTY COMMISSIONERS MAY ESTABLISH THE RATE OF DAILY CREDIT FOR CONFINEMENT COSTS; AMENDING SECTIONS 7-32-2222, 7-32-2242, 7-32-2245, 46-18-403, AND 46-19-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2222, MCA, is amended to read:

"**7-32-2222. Health and safety of prisoners.** (1) Each detention center ~~must~~ *shall* comply with state and local fire codes for correctional occupancy and with sanitation, safety, and health codes.

(2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.

(3) When there is good reason to believe that the inmates may be injured or endangered, the detention center administrator ~~must~~ *shall* remove them to a safe and convenient place and confine them there as long as necessary to avoid the danger.

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(4) (a) If in the opinion of the detention center administrater an inmate under ~~his~~ *the administrator's* jurisdiction requires medication, medical services, or hospitalization, the expense must be borne by the arresting agency when the arresting agency is not the county in which the inmate is confined, except as provided in *7-32-2245 or* subsection (4)(b) *of this section*.

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the expense must be paid by the county, *except as provided in 7-32-2245*. If the department of corrections and human services is the arresting agency and the inmate is a probation violator, the expense must be paid by the county in which the district court that retains jurisdiction over the inmate is located, *except as provided in 7-32-2245*.

(c) The county attorney shall initiate proceedings to collect from the inmate any charges arising from the medical services or hospitalization for the inmate involved ~~if he determines the inmate is financially able to pay~~ *in accordance with 7-32-2245*."

Section 2. Section 7-32-2242, MCA, is amended to read:

"**7-32-2242. Use of detention center — payment of costs.** (1) Local government, state, and federal law enforcement and correctional agencies may use any detention center for the confinement of arrested persons and the punishment of offenders, under conditions imposed by law and with the consent of the governing body responsible for tbe detention center.

(2) (a) If a person is confined in a detention center by an arresting agency not responsible for the operation of the detention center, the costs of holding the person in confinement must be paid by the arresting agency at a rate that is agreed upon by the arresting agency and the detention center and that covers the reasonable costs of confinement, excluding capital construction costs, except as provided in *7-32-2245 or* subsection (2)(b) *of this section*.

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the costs must be paid by tlie county, *except as provided in 7-32-2245*. If the department of corrections and human services is the arresting agency and the inmate is a probation violator, the costs must be paid by the county in which the district court that retains jurisdiction over the inmate is located, *except as provided in 7-32-2245*.

(c) Payments must be made to the government unit responsible for the detention center or to the administrator operating a private detention center under an agreement provided for in 7-32-2201, upon presentation of a claim to the arresting agency.

(3) If a person is a fugitive from justice from an out-of-state jurisdiction, the costs, including medical expenses, of holding the person in a detention center pending extradition must be paid by the out-of-state jurisdiction."

Section 3. Section 7-32-2245, MCA, is amended to read:

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"**7-32-2245. Payment of ~~confinement~~ costs by inmate.** *(1)* An inmate found by the sentoncing court to have the ability to pay is liable for the costs, *including actual medical costs,* of ~~his~~ *the inmate's* confinement in a detention center. The *rate for confinement costs* ~~rate at which the inmate must pay the costs must be established at the sentencing hearing~~ *must be determined in accordance with 46-18-403. Confinement costs, other than actual medical costs, must be ordered by the court and must be paid in advance of confinement and prior to payment of any fine.*

(2) An inmate is responsible for the actual costs of medication, medical services, or hospitalization while the inmate is detained in a detention center. Inability to pay may not be a factor in providing necessary medical care for an inmate. This section does not restrict an inmate's right to use a third-party payor."

Section 4. Section 46-18-403, MCA, is amended to read:

"**46-18-403. Credit for incarceration prior to conviction.** (1) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered ~~shall~~ *must* be allowed credit for each day of incarceration prior to or after conviction, except that ~~in no case shall~~ the time allowed as a credit *may not* exceed the term of the prison sentence rendered.

(2) Any person incarceratod on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense ~~shall~~ *must* he allowed a credit ~~of $25~~ for each day ~~incarcerated~~ *of incarceration* prior to conviction, except that ~~in no case shall~~ the amount allowed or credited *may not* exceed the amount of the fine. *The daily rate of credit for incarceration must be established annually by the board of county commissioners by resolution. The daily rate must be equal to the actual cost incurred by the detention facility for which the rate is established.*"

Section 5. Section 46-19-102, MCA, is amended to read:

"**46-19-102. Execution of a fine.** (1) If the judgment is for a fine alone, execution may issue ~~thereon~~ *on the judgment* as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until the fine is paid, the defendant must be committod to the custody of the proper officer and detained ~~until the judgment is complied with. The imprisonment must not exceed 1 day for every $25 of the fine~~ *and allowed a credit for each day of incarceration as provided in 46-18-403.*"

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1995

CHAPTER NO. 389

[SB 218]

AN ACT GENERALLY REVISING LANDLORD AND TENANT LAWS; ALLOWING ALL LANDLORDS TO ADOPT WRITTEN RULES AND REQUIRING DISTRIBUTION TO TENANTS; PROVIDING REMEDIES FOR CERTAIN BREACHES OF A RENTAL AGREEMENT BY A TENANT;

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REVISING NOTICE REQUIREMENTS FOR TERMINATION OF A MOBILE HOME RENTAL AGREEMENT; REVISING SECURITY DEPOSIT DEDUCTIONS; AND AMENDING SECTIONS 70-24-311, 70-24-422, 70-24-436, AND 70-25-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-311, MCA, is amended to read:

"70-24-311. **Landlord authorized to adopt rules.** (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time *that* the tenant enters into the rental agreement or when it is adopted.

~~(2) As provided in subsection (1) and in conformance with the provisions of this chapter, the landlord of a mobile home park may adopt written rules concerning the tenant's use and occupancy of the premises.~~

~~(3)~~*(2)* A rule adopted by a landlord ~~of a mobile home park~~ must be in writing and must be given to each ~~mobile home owner or~~ tenant ~~of a mobile home owner~~ residing ~~in the mobile home park~~ *on the premises* and to each new ~~resident~~ *tenant* upon arrival.

~~(4)~~*(3)* If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of the tenant's bargain, it is not valid until 7 days after *written* notice to the tenant in the case of a week to week tenancy or 30 days' *written* notice in the case of tenancies from month to month."

Section 2. Section 70-24-422, MCA, is amended to read:

"70-24-422. **Noncompliance of tenant generally — landlord's right of termination — damages — injunction.** (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321 affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice, subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If the breach involves an unauthorized pet, the landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than 3 days after receipt of the notice if the breach is not remedied within that time. This subsection does not apply to a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home.

(c) If the breach involves unauthorized persons residing in the rental unit, the landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than 3 days after receipt of the notice if the breach is not remedied within that time. This subsection does not apply to a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home.

~~(b)~~*(d)* If substantially the same act or omission ~~which~~ *that* constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) (a) Except as provided in subsection (2)(b), if rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention te terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(b) For a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home, the notice period referred to in subsection (2)(a) is 15 days.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the breach under the provisions of 70-24-321(2).

(4) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (5), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(5) Treble damages may not be recovered for the tenant's early termination of the tenancy.

(6) The landlord is not bound by this section in the event *that* the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."

Section 3. Section 70-24-436, MCA, is amended to read:

"70-24-436. Mobile home parks — grounds for termination of rental agreement. (1) A landlord of a mobile home park may terminate a rental agreement only by following the procedure set forth in 70-24-422, *except as*

specifically provided in this section, and only for one or more of the following reasons:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement;

(b) late payment of rent, late charges, or common area maintenance fees as established in the rental agreement three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by 70-24-422~~;~~. *For this subsection (1)(b), the notice period referred to in 70-24-422(1) is 30 days.*

(c) violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park if the violation has not been remedied 24 hours after the violator is given written notice of the violation;

(d) two or more violations within a 12-month period of any combination of one or more mobile home park rules, the violation of which would have a significant adverse impact on the mobile home park or its residents and which are so designated;

(e) two or more violations within a 12-month period of the same rule~~;~~. *For this subsection (1)(e), the notice period referred to in 70-24-422(1) is 60 days.*

(f) two or more violations of 70-24-321(1) within a 12-month period or any violation of 70-24-321(2);

(g) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises~~;~~. *For this subsection (1)(g), the notice period referred to in 70-24-422(1) is 30 days.*

(h) endangers other residents or mobile home park personnel, or causes substantial damage to the mobile home park premises;

~~(h)~~*(i)* conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park, or the landlord's documentation of a violation of the provisions of Title 45, chapter 9;

~~(i)~~*(j)* changes in the use of the land if the requirements of subsection (2) are met~~; or~~. *For this subsection (1)(j), the notice period referred to in 70-24-422(1) is 180 days.*

~~(j)~~*(k)* a legitimate business reason, ~~of~~*providcd that* the landlord ~~if~~ *meets* the *following* requirements ~~of subsection (3) are met~~*:*

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the land composing the mobile home park from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the mobile home park.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice, the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner and tenant of the mobile home owner written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

~~(3) (a) A landlord may terminate the rental agreement of a mobile home owner or a tenant of a mobile home owner if the landlord, by the termination:~~

~~(i) does not violate a provision of this section or any other state statute; and~~

~~(ii) has a legitimate business reason.~~

~~(b) A landlord shall give the mobile home owner or the tenant of a mobile home owner a minimum of 90 days' written notice of termination.~~

~~(4)~~*(3)* For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(b), only one notice per violation per month may be included in the calculation."

Section 4. Section 70-25-201, MCA, is amended to read:

"70-25-201. Security deposit — deductions authorized therefrom. (1) A landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent, *late charges, utilities, penalties due under lease provisions, and other money* owing to the landlord at the time of deduction, including rent owed under 70-24-441(3), and a sum for actual cleaning expenses.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) Cleaning charges may not be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time *that* the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, cleaning charges may not be deducted until written notice has been given to the tenant. The notice must include the cleaning not accomplished by the tenant and the

additional and type or types of cleaning ~~which~~ *that* need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 24 hours to complete the required cleaning. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing. A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit.

(4) A person may not deduct or withhold from the security deposit any amount for purposes other than those set forth in this section."

Approved April 12, 1995

CHAPTER NO. 390

[SB 222]

AN ACT REQUIRING THE COUNTY TREASURER TO DEPOSIT CERTAIN FEES COLLECTED BY THE SHERIFF IN THE COUNTY GENERAL FUND UNLESS THE COUNTY HAS INSTITUTED A PUBLIC SAFETY LEVY IN WHICH CASE THE FEES MUST BE DEPOSITED IN THE ACCOUNT ESTABLISHED TO FUND PUBLIC SAFETY SERVICES; AMENDING SECTIONS 7-6-2513 AND 7-32-2141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2513, MCA, is amended to read:

"**7-6-2513. County public safety levy — purpose.** The board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax on all property within the county for the purpose of providing for the public safety of citizens. The tax must be used to support county law enforcement services and to maintain county detention centers. *Money received from the tax must be placed in a special account to be used for the purposes of this section.*"

Section 2. Section 7-32-2141, MCA, is amended to read:

"**7-32-2141. Fees of the sheriff.** (1) For the services provided in subsections (1)(a) through (1)(n), the sheriff shall receive the fees, if any, set by the county governing body. If ~~no~~ fees have *not* been set by the county governing body, the sheriff shall receive the following:

(a) for the service of summons and complaint on each defendant, $5;

(b) for making a return of a summons for a person not found in the county, in addition to actual mileage traveled, $5;

(c) for levying and serving each writ of attachment of execution on real or personal property, $5;

(d) for service of attachment on the body or order of arrest on each defendant, $5;

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(e) for the service of affidavit, order, and undertaking in claim and delivery, $5;

(f) for serving a subpoena, $2.50 for each witness summoned;

(g) for serving *a* writ of possession or restitution, $5;

(h) for trial of the right of property or damages, including all services except mileage, $7;

(i) for taking bond or undertaking in any case authorized by law, $5;

(j) for serving every notice, rule, or order, $5 for each person served;

(k) for *a* copy of any writ, process, or other paper when demanded or required by law, 25 cents for each page;

(l) for posting notices and advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, $5;

(m) for holding any sheriff's sale for personal or real property on execution or under any judgment or order of sale, $7.50;

(n) for cancellation or postponement of sheriff's sale, $5.

(2) All fees collected by the sheriff for the services provided in subsection (1) must be paid to the county treasurer as provided in ~~subsection (1) of~~ 7-4-2511*(1)*, and the fees must be ~~credited~~ *deposited* by the county treasurer ~~to the sheriff's budget~~ *in the general fund of the county unless the county has instituted a public safety levy in which case the fees must be deposited in the account established pursuant to 7-6-2513.*"

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1995

CHAPTER NO. 391

[SB 272]

AN ACT ELIMINATING, UNDER CERTAIN CONDITIONS, THE REQUIREMENT THAT THE SURVIVING SPOUSE OF A JOINT TENANCY THAT DOES NOT REQUIRE A PERSONAL REPRESENTATIVE FILE AN APPLICATION WITH THE DEPARTMENT OF REVENUE FOR INHERITANCE TAX PURPOSES; REVISING THE INFORMATION REQUIREMENTS THAT MUST BE FILED BY THE SURVIVING SPOUSE FOR THE RELEASE OF THE LIEN FOR INHERITANCE TAXES; AMENDING SECTIONS 7-4-2613, 72-16-502, AND 72-16-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-16-502, MCA, is amended to read:

"72-16-502. Determination and payment of tax when no personal representative — procedure — *exception.* (1) For the purposes of this section, a decedent is one who dies leaving no property ~~which~~ *that* requires the appointment of a personal representative and *who*:

(a) was the owner of a life estate ~~which~~ *that* terminated at ~~his~~ death;

(b) was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common; or

(c) was the owner of any other interest in property requiring the determination of inheritance tax because of ~~his~~ death.

(2) ~~Upon the death of a decedent~~ *Except as provided in subsection (6),* a remainderman, surviving joint tenant, or other interested party shall, *upon the death of a decedent,* file with the department of revenue:

(a) a copy of the death certificate;

(b) a verified application, in a form prescribed by the department, containing ~~such~~ information as *that* the department considers necessary; and

(c) evidence of the instruments ~~which~~ *that* created the life estate, joint tenancy, or other interest requiring determination of inheritance tax, if required by the department.

(3) Upon receipt of the application, the department shall:

(a) stamp the filing date upon the application;

(b) issue a certificate showing the inheritance tax due, if any;

(c) affix the certificate to a certified copy of the application and return the ~~same~~ *certificate and copy* to the applicant or ~~his~~ *the applicant's* attorney; and

(d) affix a copy of the certificate to the original application and keep it on file with the department.

(4) The applicant sball pay the inheritance tax determined to tbe county treasurer for transmittal to the state treasurer. The county treasurer shall issue a receipt for the payment of the tax.

(5) If disputes arise as to tax computation, they ~~shall~~ *must* be resolved as provided under the laws applicahle to the determination of inheritance taxes in estates.

(6) A surviving joint tenant who is the surviving spouse of a decedent whose aggregate value of the interest in the joint property is less than the federal estate tax filing requirement is not required to file under subsection (2)."

Section 2. Section 72-16-503, MCA, is amended to read:

"72-16-503. Additional filings required when real property involved and no representative — release of lien. (1) If an interest in real property is involved under 72-16-502, the applicant shall record with the clerk and recorder of each county in which the real property or any part ~~thereof~~ *of the property* is located a document containing those matters required hy 7-4-2613(3).

A surviving joint tenant who is the surviving spouse is not subject to the recording requirements under 7-4-2613(3).

(2) The surviving joint tenant who is the surviving spouse with an interest in real property under 72-16-502 shall record with the clerk and recorder of each county in which the real property is located an acknowledged statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated. The acknowledged statement must include a legal description of the real property.

~~(2)~~*(3)* The recording of the documents under subsection (1) *or (2)* constitutes release of any lien for inheritance taxes."

Section 3. Section 7-4-2613, MCA, is amended to read:

"7-4-2613. Documents subject to recording. The county clerk shall, upon the payment of the appropriate fees, record by printing, typewriting, or photographic, micrographic, or electronic process or by the use of prepared blank forms:

(1) (a) subject to subsection (1)(b), deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases that have been acknowledged or proved, and abstracts of the instruments that have been acknowledged or proved;

(b) an instrument or deed evidencing either a division of real property or a merger of real property only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest; ~~however~~. *However*, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

(3) *except as provided in 72-16-503,* a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is deceased and that the deceased's interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest not requiring probate. The document may be on the form used by the department of revenue for responding to the application for determination of inheritance or estate tax. It must contain:

(a) a statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated;

(b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due, has been paid or that inheritance or estate tax was not due;

(c) a description of the property;

(4) certificates of births and deaths;

(5) wills devising real estate admitted to probate;

(6) official bonds;

(7) transcripts of judgments that by law are made liens upon real estate;

(8) instruments describing or relating to the individual property of married persons;

(9) all orders and decrees made by the district court in probate matters affecting real estate and that are required to be recorded;

(10) notice of preemption claims;

(11) notice and declaration of water rights;

(12) assignments for the benefit of creditors;

(13) affidavits of annual work done on mining claims;

(14) notices of mining locations and declaratory statements;

(15) estrays and lost property;

(16) a book containing appraisement of state lands; and

(17) other writings that are required or permitted by law to be recorded."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to deaths of holders of nonprobate interests occurring after July 1, 1979.

Approved April 12, 1995

CHAPTER NO. 392

[SB 295]

AN ACT ESTABLISHING CRITERIA FOR THE ISSUANCE OF SPECIAL PARKING PERMITS; LIMITING THE USE OF SPECIAL PARKING PLACES; LIMITING THE TERM OF A HANDICAP PARKING PERMIT TO A MAXIMUM PERIOD OF 3 YEARS; AND AMENDING SECTIONS 49-4-301, 49-4-302, AND 49-4-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-301, MCA, is amended to read:

"**49-4-301. ~~Who eligible~~ *Eligibility* for special parking permit.** (1) The department of justice shall issue a special parking permit to a person who:

~~(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical disability that impairs mobility when not in a motor vehicle;~~

~~(b) regardless of whether the person holds a driver's license or owns a motor vehicle, has a permanent physical disability that impairs driving ability and impairs mobility when not in a motor vehicle to such an extent that the person needs to be driven by another person to a destination; or~~

~~(c) has a temporary physical disability that impairs driving ability or mobility when not in a motor vehicle to such an extent that the person needs to be driven by another person to a destination.~~ *has a disability that limits or impairs the person's mobility and who, as determined by a licensed physician, meets one of the following criteria:*

(a) cannot walk 200 feet without stopping to rest;

(b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;

(c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) uses portable oxygen;

(e) is restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the artcrial oxygen tension is less than 60 mm/hg on room air at rest;

(f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association; or

(g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician as being comparable in severity to the other conditions listed in this subsection (1).

(2) *A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under 61-3-332(10)(g). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician, not to exceed 24 months, upon receipt of a new certification from the disabled person's physician that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.*

(3) An applicant may not receive more than one permit."

Section 2. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on privato

property available for public use, *when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.*

(2) A vehicle ~~other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a person with a disability or one displaying a specially inscribed license plate issued under 61-3-332(10)(c)(i)(A) and conveying a 100% disabled veteran~~ may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability *unless the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate issued under 61-3-332(10)(c)(i)(A) or 61-3-332(10)(g) and the reserved parking space is being used by the person for whom the permit, plate, or placard was issued, to enter or exit the vehicle.*

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c)(i)(A) *or 61-3-332(10)(g)* and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1,

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1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space."

Section 3. Section 49-4-305, MCA, is amended to read:

"**49-4-305. Expiration of permit.** (1) Except as provided in subsection (2), a permit expires on the occurrence of either of the following:

(a) 4 *3* years from the date of issuance, *unless the permit was issued to a person who has a condition expected to improve within 6 months.* A ~~permittee~~ *person* may renew a permit if a *licensed* physician certifies that ~~the permittee's disability impairing mobility~~ *the person's mobility disability* still exists *and that one of the criteria specified in 49-4-301 continues to be met.*

(b) certification by a *licensed* physician that the ~~permittee's disability impairing mobility~~ *person's mobility disability* no longer exists *or that the criteria specified in 49-4-301 can no longer be met.*

(2) A permit issued before October 1, 1993, expires on:

(a) the death of the permittee; or

(b) certification by a *licensed* physician that the ~~permittee's disability impairing mobility~~ *person's mobility disability* no longer exists *or that the criteria specified in 49-4-301 can no longer be met.*"

Approved April 12, 1995

CHAPTER NO. 393

[SB 297]

AN ACT CLARIFYING THE OFFENSES OF FAILING TO CARRY AN APPROVED INSURANCE CARD IN A MOTOR VEHICLE AND FAILING TO EXHIBIT THE INSURANCE CARD UPON DEMAND; PROVIDING THAT A PERSON CONVICTED OF ONE OF THOSE OFFENSES MUST BE ASSESSED 5 POINTS UNDER THE HABITUAL TRAFFIC OFFENDER LAW; AND AMENDING SECTIONS 61-6-301, 61-6-302, 61-6-304, AND 61-11-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-6-301, MCA, is amended to read:

"**61-6-301. Required motor vehicle insurance — family member exclusion.** (1) (a) Except as provided in subsection (1)(b), an owner of a motor vehicle ~~which~~ *that* is registered and operated in Montana by the owner or with ~~his~~ *the owner's* permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle, as defined in 61-1-102, in an amount not less than that required by 61-6-103, or a certificate of self-insurance issued in accordance with 61-6-143.

(b) Notwithstanding the mandatory motor vehicle liability insurance protection provided for in subsection (1)(a), nothing in this part may be construed to prohibit the exclusion from insurance coverage of a named family member in a motor vehicle liability insurance policy.

(2) A motor vehicle owner who prefers to post an indemnity bond with the department in lieu of obtaining a policy of liability insurance may do so. The bond must guarantee that any loss resulting from liability imposed by law for bodily injury, death, or damage to property suffered by any person caused by accident and arising out of the operation, maintenance, and use of the motor vehicle sought to be registered must be paid within 30 days after final judgment is entered establishing the liability. The indemnity bond must guarantee payment in the amount provided for insurance under subsection (1).

(3) Any bond given in connection with this section is a continuing instrument and must cover the period for which the motor vehicle is to be registered and operated. The bond must be on a form approved by the commissioner of insurance and must be with a surety company authorized to do business in the state.

(4) It is unlawful for a person to operate a motor vehicle upon ways of this state open to the public without a valid policy of liability insurance in effect in an amount not less than that required by 61-6-103 unless the person has been issued a certificate of self-insurance under 61-6-143, has posted an indemnity bond with the department as provided in this section, or is operating a vehicle exempt under 61-6-303."

Section 2. Section 61-6-302, MCA, is amended to read:

"**61-6-302. Proof of compliance.** (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.

(2) ~~An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the department and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed.~~

~~(3) Every~~ *Each* person shall carry in a motor vehicle being operated by the person an insurance card approved by the department but issued hy the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, ~~a~~ peace officer, a highway patrol officer, or a field deputy or inspector of the department. *A person commits an offense under this subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person specified in this subsection.* However, a person charged with violating this subsection may not be convicted if the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest."

Section 3. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. ~~(1) It is unlawful for any person to operate a motor vehicle upon ways of this state open to the public without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless the person has been issued a certificate of self-insurance pursuant to 61-6-143 or has previously posted an indemnity bond with the department as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303.~~

~~(2)~~*(1)* Conviction of a first offense under 61-6-301 ~~through 61-6-304~~ *or 61-6-302* is punishable by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of $350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of $500 or by imprisonment in the county jail for not more than 10 days, or both.

~~(3)~~*(2)* Upon a second or subsequent conviction *under 61-6-301 or 61-6-302*, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall send the receipt and plates, along with a copy of the complaint and dispositional order, to the department, which shall immediately suspend the receipt and plates for a period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction. The receipt and plates may not be reinstated until the expiration of that period, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle.

~~(4)~~*(3)* The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

~~(5)~~*(4)* A court may not defer imposition of penalties provided by this section."

Section 4. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle hy a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while ~~his~~ *the* license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or *failure* to otherwise ~~fail to~~ report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) a *any of the* mandatory motor vehicle liability protection ~~offense~~ *offenses* under ~~61-6-304~~ *61-6-301 and 61-6-302*, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, 3 points;

(m) all other moving violations, 2 points.

(3) There ~~shall~~ *may not* be ~~no~~ multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the bighest points ~~shall be~~ *is* chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle."

Approved April 12, 1995

CHAPTER NO. 394

[SB 353]

AN ACT GENERALLY REVISING JUDICIAL PROCEDURES; PROVIDING FOR APPOINTMENT OF A NONATTORNEY AS GUARDIAN AD LITEM IN A CASE INVOLVING SUPPORT, CUSTODY, AND VISITATION; ALLOWING DISTRICT COURT JUDGES TO APPOINT JUDGES PRO TEMPORE OR SPECIAL MASTERS TO CONDUCT PRELIMINARY, NONDISPOSITIVE

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PROCEEDINGS IN CRIMINAL CASES; PROVIDING FOR THE COSTS OF A JUDGE PRO TEMPORE OR SPECIAL MASTER TO BE PAID BY A CONVICTED DEFENDANT; AMENDING SECTIONS 3-5-113, 3-5-116, 40-4-205, AND 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-113, MCA, is amended to read:

"3-5-113. Judges pro tempore — *special masters — scope of authority in criminal and civil cases.* (1) *(a)* A civil action in the district court may he tried by a judge pro tempore *or special master*, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, appointed by the court as provided in 3-5-115, and sworn to try the cause before entering upon ~~his~~ *the* duties *in trying the cause.*

~~(2)~~*(b)* The judge pro tempore *or special master* has the authority and power of an elected district court judge in the particular civil action tried in the manner provided for in *this* subsection (1). All proceedings before a judge pro tempore *or special master* must be conducted in accordance with the rules of evidence and procedure governing district courts.

~~(3)~~*(c)* Any order, judgment, or decree made or rendered *in a civil case* by the judge pro tempore *or special master* ~~shall have~~ *has* the same force and effect as if made or rendered by the district court with the regular judge presiding.

(2)(a) Preliminary, nondispositive proceedings in criminal actions in a district court may be conducted by a judge pro tempore or special master. The judge pro tempore or special master in a criminal case must be appointed by a district court judge or judges as provided in [section 2].

(b) All proceedings before a judge pro tempore or special master in a criminal case must be conducted in accordance with the rules of evidence and procedure governing district courts.

(c) The judge pro tempore or special master in a criminal case has the authority and power of a district court judge to issue orders pursuant to Title 46, chapter 9, concerning bail and conditions of release or detention of persons pending trial, and to conduct arraignments, initial appearances on warrants, and initial appearances on probation revocations. An order made by the judge pro tempore or special master in a criminal case has the same force and effect as if made by a district court judge.

(d) Within 10 days after issuance of an order by a judge pro tempore or special master in a criminal case, a party may object to the order as provided by rules of court and a district court judge shall make a de novo determination of that portion of the order to which objection is made. The district court judge may accept, reject, or modify the order in whole or in part. The district court judge may also receive further evidence or recommit the matter to the judge pro tempore or special master with instructions.

(e) All proceedings before a judge pro tempore or special master in a criminal case must be conducted in a suitable room in the courthouse, subject to the provisions of Title 46 relating to the use of two-way electronic audio-video

communication. All records must be filed and kept in accordance with the rules governing the district court."

Section 2. Judge pro tempore or special master in criminal cases — appointment. (1) One or more judges of a judicial district may designate a judge pro tempore or a special master in a criminal case to hear and determine any preliminary, nondispositive matter pending in a criminal case before the court if the district court judge or judges find that the appointment serves justice.

(2) Any of the following individuals may act as a special master in a criminal case:

(a) a justice of the peace or a city judge;

(b) a retired district court judge;

(c) a retired supreme court justice; or

(d) a member of the state bar.

Section 3. Section 3-5-116, MCA, is amended to read:

"**3-5-116. Compensation — expenses.** (1) The salary of the judge pro tempore *or special master* and *the* court reporter and all other expenses associated with the trial are the responsibility of the parties to the action. The amount of salaries and other expenses and the manner of payment must be established by written agreement.

(2) The judge pro tempore *or special master* may not withhold ~~his~~ judgment as security for compensation."

Section 4. Section 40-4-205, MCA, is amended to read:

"**40-4-205. Representation of child.** *(1)* The court may appoint ~~an attorney~~ *a guardian ad litem* to represent the interests of a minor dependent child with respect to the child's support, custody, and visitation. *The guardian ad litem may be an attorney.* The county attorney, a deputy county attorney, if any, or the department of family services or any of its staff may not be appointed for this purpose.

(2) The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related to the child's support, custody, and visitation;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to make written reports to the court concerning the child's support, custody, and visitation;

(d) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's support, custody, and visitation; and

(e) to perform other duties as directed by the court.

(3) The guardian ad litem has access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians.

(4) The court shall enter an order for costs and fees in favor of the child's ~~attorney~~ *guardian ad litem*. The order must he made against either or hoth parents, except that if the responsihle party is indigent, the costs must he waived."

Section 5. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; ~~or~~

(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

~~(xiii)~~ *(xiv)* any combination of the ~~above~~ *restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).*

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable

restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant te the department of corrections and human services for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender te be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

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(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentonced to the stato prison or the women's correctional center, the court shall stato its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 6. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 3, chapter 5, part 1, and the provisions of Title 3, chapter 5, part 1, apply to [section 2].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1995

CHAPTER NO. 395

[SB 373]

AN ACT ESTABLISHING CRITERIA FOR THE ISSUANCE OF BONDS FOR METAL MINE RECLAMATION ACTIVITIES; AND AMENDING SECTION 82-4-338, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-338, MCA, is amended to read:

"82-4-338. **Performance bond.** (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 or more than $2,500 for each acre or fraction of an acre of the disturhed area, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the limits in this subsection, the bond may not be less than the estimated cost to the state te ensure compliance with this part, the rules, and the permit. A public or governmental agency may not be required te post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(2) The department shall review the amount of each bond at least every 5 years and shall consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a

contested case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.

(3) A bond filed in accordance with tbe provisions of this part may not be released by the department until the provisions of tbis part, tbe rules adopted pursuant to this part, and the permit bave been fulfilled.

(4) A bond filed for an operating permit obtained under 82-4-335 may not be released until tbe public has been provided an opportunity for a hearing.

(5) All bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with othcr activities have a reasonable possibility of occurring may be bonded.

(6) At thc applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section."

Approved April 12, 1995

CHAPTER NO. 396

[SB 401]

AN ACT REQUIRING THAT CORONERS, HEALTH CARE FACILITIES, AND HEALTH CARE PROVIDERS INFORM MORTUARY PERSONNEL IF A DECEASED INDIVIDUAL HAD AN INFECTIOUS DISEASE AT THE TIME OF DEATH; AND AMENDING SECTION 50-16-530, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Notification to mortuary personnel — exposure to infectious disease. (1) A coroner, a bealth care facility, or a health care provider, as defined in 50-16-1003, sball disclose information regarding the status of a deceased individual with regard to an infectious disease to personnel from a mortuary licensed under Title 37, chapter 19, at the time of transfer of tbe dead body or as soon after transfer as possible. The information must include whetber the individual bad an infectious disease at the time of death and tbe nature of the infectious disease.

(2) The mortuary personnel wbo receive tbe information provided in subsection (1) may not disclose the information except for purposes related directly to the preparation and disposition of tbe dead body.

Section 2. Section 50-16-530, MCA, is amended to read:

"50-16-530. Disclosure without patient's authorization — other bases. A health care provider may disclose health care information about a patient without the patient's autborization if tbe disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extont required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;

(5) in response to a request of the division of crime control for information under 53-9-104(2)(b); ~~or~~

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536; *or*

(7) pursuant to [section 1]."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 16, part 7, and the provisions of Title 50, chapter 16, part 7, apply to [section 1].

Approved April 12, 1995

CHAPTER NO. 397

[SB 407]

AN ACT ESTABLISHING THE VALUE OF INDUSTRIAL GARNETS AND ASSOCIATED BYPRODUCTS FOR NET PROCEEDS PROPERTY TAX PURPOSES AND FOR RESOURCE INDEMNITY TRUST TAX PURPOSES; EXEMPTING 1,000 TONS OF ROUGHER GARNET CONCENTRATE, UNDER CERTAIN CONDITIONS, FROM THE NET PROCEEDS TAX; ESTABLISHING A SPECIFIC RESOURCE INDEMNITY TRUST TAX RATE FOR INDUSTRIAL GARNETS AND ASSOCIATED BYPRODUCTS; AMENDING SECTIONS 15-6-131, 15-8-111, 15-23-103, 15-23-106, 15-23-115, 15-23-502, 15-23-503, 15-23-521, 15-38-103, AND 15-38-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Net proceeds for industrial garnets and byproducts — statement — value — exemption. (1) A statoment of gross yield and value, required in 15-23-502, that is filed by a producer of industrial garnets and associated byproducts must contain the following:

(a) the name and address of the owner, lessee, or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale

of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) (i) the number of tons of rougher garnet concentrate produced by initial concentration and sold from the mine during the period covered by the statement; and

(ii) the gross revenue received from any byproduct produced and sold as a result of the garnet mining operation.

(d) the amount and character of the industrial garnet and byproducts from the mine and the amount of the industrial garnets measured in tons and associated byproducts measured in dollars yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For the purposes of this section, the gross yield or value of industrial garnets is determined by multiplying the number of tons of rougher garnet concentrate reported under subsection (1)(c)(i) by:

(i) for the tax year beginning January 1, 1996, $20; and

(ii) for the tax years beginning January 1, 1997, and thereafter, the product obtained by multiplying $20 by the quotient of the PCE for the first quarter of the year previous to the tax year for which the net proceed value is being calculated, divided by the PCE for the first quarter of the 1995 tax year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) The gross yield or value of the byproducts produced and sold as a result of industrial garnet production is determined by multiplying the gross revenue reported under subsection (1)(c)(ii) by 30%.

(3) For the purposes of this section, "associated byproducts" means gold, silver, copper, lead, or any other mineral or precious or semiprecious gems or stones that are produced, processed, and sold in conjunction with the mining and processing of industrial garnets.

(4) A person who produces and sells associated byproducts subject to taxation under this section is not required to file a statement or pay the tax on the associated byproducts under Title 15, chapter 23, part 8, or under Title 15, chapter 37, part 1.

(5) (a) Except as provided in subsection (5)(b), a person is not liable for the net proceeds tax on 1,000 tons or less of rougher garnet concentrato, including the value of associated byproducts, produced and sold in a calendar year.

(b) A person who produces and sells more than 1,000 tons of rougher garnet concentrate in a calendar year is liable for the net proceeds tax on all rougher

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garnet concentrate, including the value of associated hyproducts, produced and sold in the calendar year.

Section 2. Gross value of product for industrial garnets and byproducts. As used in this part, when referring to industrial garnets and associated byproducts, "gross value of product" is the gross yield or value as determined in [section 1(2)].

Section 3. Section 15-6-131, MCA, is amended to read:

"15-6-131. Class one property — description — taxable percentage. (1) Class one property includes the annual net proceeds of all mines and mining claims except coal and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, for talc, as provided in 15-23-515 or, for vermiculite, as provided in 15-23-516 or, for limestone, as provided in 15-23-517 *or, for industrial garnets and associated byproducts, as provided in [section 1].*"

Section 4. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused hy depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of all moter trucks; agricultural tools, implements, and machinery; and vehicles of all kinds is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

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(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, ~~or~~ 15-23-517, *or [section 1].*

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements on tbe land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town."

Section 5. Section 15-23-103, MCA, is amended to read:

"**15-23-103. Due date of reports and returns — extensions.** (1) Except as provided in subsection (2) and 15-23-602, each report or return described in 15-23-301, 15-23-402, 15-23-502, 15-23-701, or 15-23-517 must be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Eacb report described in 15-23-201, 15-23-212, 15-23-515, ~~or~~ 15-23-516, *or [section 1]* must be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days."

Section 6. Section 15-23-106, MCA, is amended to read:

"**15-23-106. Report to the counties.** (1) On or before July 1, the department shall prepare for each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of the property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to the county, including the length or other description of the property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county must be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 15-23-503, 15-23-505, 15-23-515~~, 15-23-516,~~ *through* 15-23-517, *[section 1],* 15-23-603, and 15-23-605; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The department shall enter the reported assessed values in tho property tax record for the county."

Section 7. Section 15-23-115, MCA, is amended to read:

"**15-23-115. Interest.** If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, 15-23-515, 15-23-516, 15-23-517, *[section 1],* 15-23-602, 15-23-701, or 15-23-802 and if an additional tax is due, there must be added to the tax until paid in full interest at the rate of 1% a month or fraction of a month from the date the original tax was due and payable. A taxpayer subject to imposition of interest pursuant to this section is not subject to the penalty and interest provisions contained in 15-16-102."

Section 8. Section 15-23-502, MCA, is amended to read:

"**15-23-502. Net proceeds tax — statement of yield.** Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by tbe person during the year preceding January 1 of the year in which the statement is made. The statement must be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Except as provided in 15-23-515~~, 15-23-516, and~~ *through* 15-23-517~~,~~ *and [section 1],* the statement must show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of the mine or the proceeds derived from the sale of products, and the amount or amounts paid or yielded as royalty to each of the persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the ores, mineral products, or deposits and the yield of the ores, mineral products, or deposits from the mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of the product into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which the return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts;

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any services beyond the stage of reduction and beneficiation of the minerals; and

(15) cost of mine reclamation."

Section 9. Section 15-23-503, MCA, is amended to read:

"**15-23-503. Net proceeds — how computed.** (1) The department of revenue shall calculate from the returns the gross product yielded from a mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of the mine yielded to the person engaged in mining. Except as provided in 15-23-515~~, 15-23-516, and~~ *through* 15-23-517*, and [section 1]*, net proceeds must be determined by subtracting from the value of the gross product of the mine the following:

(a) all royalty paid or apportioned in cash or in kind by the person engaged in mining;

(b) all money expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) all money expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as provided in this section;

(d) all money expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) depreciation in the sum of 6% of the assessed valuation of the milling and reduction works for the calendar year for which the return is made;

(f) all money actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals and for marketing the product and the conversion of the product into money;

(g) all money expended for insurance and welfare and retirement costs reported in the statement required in 15-23-502;

(h) all money expended for necessary labor, equipment, and supplies for testing minerals extracted to satisfy federal or state health and safety laws or regulations, for plant security in Montana, for assaying and sampling the extracted minerals, for the cost of reclamation at the site of the mine, and for engineering and geological services conducted in Montana for existing mining operations but not including services beyond the stage of reduction and beneficiation of the minerals.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow 10% of the cost each year for a period of 10 years.

(3) Money invested in mines or improvements may not be allowed as a deduction unless all machinery, equipment, and buildings represented by the money are returned to the county in which the mine is located for assessment purposes at the level of assessment of all other property in the county.

(4) Money invested in the mines and improvements during any year except the year for which the statement is made and except as provided in this section may not be included in the expenditures, and the expenditures may not include the salary or any portion of the salary of any person or officer not actually engaged in the working of the mine or superintending the management of the mine."

Section 10. Section 15-23-521, MCA, is amended to read:

"**15-23-521. Examination of records by department.** The department of revenue may at any time examine the records of any person specified in this part as the records may pertain to the yield of ore or mineral products or deposit in order to verify the statements made by the person. If from the examination or from other information, the department finds any statement or any material part of a statement willfully false or fraudulent, the department must assess in the same manner as provided for in 15-23-503, 15-23-515, 15-23-516, ~~or~~ 15-23-517, *or [section 1]*."

Section 11. Section 15-38-103, MCA, is amended to read:

"**15-38-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Department" means department of revenue.

(2) "Gross value of product" means, except as provided in 15-38-125 through 15-38-128 *and [section 2]*, the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens."

Section 12. Section 15-38-104, MCA, is amended to read:

"**15-38-104. Tax on mineral production.** (1) Except as provided in subsections (2) through (4), the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing a mineral is $25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing:

(a) talc is $25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 4%; and

(b) coal is $25 plus an additional amount computed on the gross value of product for coal produced in Montana during the calendar year immediately preceding at the rate of 0.4%.

(3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing vermiculite is $25 plus an additional amount computed on the gross value of product for vermiculite derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 2%.

(4) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing limestone for the production of quicklime is $25 plus an additional amount computed on the gross value of product for limestone derived from the business work or operation within this state during the calendar year immediatoly preceding at the rato of 10%.

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(5) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing industrial garnets and associated byproducts is $25 plus an additional amount computed on the gross value of product for industrial garnets and associated byproducts derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1% on the gross value of product in excess of $2,500."

Section 13. Codification instructions. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 23, part 5, and the provisions of Title 15, chapter 23, part 5, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 38, part 1, and the provisions of Title 15, chapter 38, part 1, apply to [section 2].

Section 14. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1994.

Approved April 12, 1995

CHAPTER NO. 398

[SB 416]

AN ACT GENERALLY REVISING THE LAWS GOVERNING CERTIFICATE OF NEED FOR HEALTH CARE FACILITIES; REMOVING BATCHING AND CHALLENGE PERIODS; REMOVING CERTAIN FUNCTIONS FROM CERTIFICATE OF NEED; REVISING APPLICATION, REVIEW, AND APPEAL PROCEDURES; CONTINGENTLY REPEALING THE CERTIFICATE OF NEED PROGRAM; AMENDING SECTIONS 20-7-436, 33-31-111, 33-31-203, 33-31-221, 50-4-102, 50-5-101, 50-5-207, 50-5-301, 50-5-302, 50-5-304, 50-5-306, AND 50-5-310, MCA; REPEALING SECTIONS 50-4-311, 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, AND 50-5-316, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-4-102, MCA, is amended to read:

"50-4-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Authority" means the Montana health care authority created by 50-4-201.

(2) "Board" means one of the regional health care planning boards created pursuant to 50-4-401.

(3) "Certificate of puhlic advantage" or "certificate" means a written certificate issued by the authority as evidence of the authority's intention that the implementation of a cooperative agreement, when actively supervised by

the authority, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(4) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(5) "Data base" means the unified health care data base created pursuant to 50-4-502.

(6) "Health care" includes both physical health care and mental health care.

(7) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in *the definition of health care facility in* 50-5-101~~(19)~~. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(8) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

(9) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(10) "Management plan" means the health care resource management plan required by 50-4-304.

(11) "Region" means one of the health care planning regions created pursuant to 50-4-401.

(12) "Statewide plan" means one of the statewide universal health care access plans for access to health care required by 50-4-301."

Section 2. Section 50-5-101, MCA, is amended to read:

"**50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for *a* certificate of need, ~~a member of the public who will be served by the proposal,~~ a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, *or* a third-party payer who reimburses health care

facilities in the area affected by the proposal~~, or an agency that plans or assists in planning for health care facilities~~.

(4) "Ambulatory surgical facility" means a facility~~, not part of a hospital,~~ that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

~~(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.~~

~~(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.~~

~~(7)~~*(5)* "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

~~(8)~~*(6)* "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

~~(9)~~*(7)* "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which a person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.~~

~~(11)~~*(8)* "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcobol, that creates behavioral or health prohlems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

~~(12)~~*(9)* "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from tbe human body for tbe purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

~~(12)~~*(10)* "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(14)~~*(11)* "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive

in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

~~(15)~~*(12)* "Construction" means the physical erection of a health care facility and any stage of the physical erection, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(16)~~*(13)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(17)~~*(14)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(15)~~*(15)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(19)~~*(16)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

~~(20)~~*(17)* "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

~~(21)~~*(18)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(22)~~*(19)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care te meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

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~~(23)~~*(20)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~(24)~~*(21)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

~~(25)~~*(22)* "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(26)~~*(23)* "Kidney treatment center" means a facility that specializes in treatment of kidney diseases, including freestanding hemodialysis units.

~~(27)~~*(24)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include adult foster care licensed under 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or individuals with related problems.

(e) "Personal care" means the provision of services and care for residents needing some assistance in performing the activities of daily living.

~~(28)~~*(25)* "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.

~~(29)~~*(26)* "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

~~(30)~~*(27)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill individuals, or any combination of these services.

~~(31)~~*(28)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(32)~~*(29)* "Observation bed" means a hed occupied ~~for not more than 6 hours~~ by a patient recovering from surgery or other treatment.

~~(32)~~*(30)* "Offer" means the holding out by a health care facility that it can provide specific health services.

~~(34)~~*(31)* "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

~~(30)~~*(32)* "Patient" means an individual ohtaining services, including skilled nursing care, from a health care facility.

~~(30)~~*(33)* "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(37)~~*(34)* "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

~~(32)~~*(35)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(39)~~*(36)* "Resident" means an individual who is in a long-term care facility for intermediate or personal care.

~~(40)~~*(37)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately

treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(41)~~*(38)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(42)~~*(39)* "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 3. Section 50-5-301, MCA, is amended to read:

"**50-5-301. When certificate of need is required — definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the acquisition by any person of major medical equipment, provided the acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

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(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency;

(h) ~~the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or~~ *the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or*

(i) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, or inpatient rehabilitation.

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or residential treatment facility. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include adult foster care, licensed under 52-3-303; community homes for the developmentally disabled, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range

building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000.

(5) This section may not be construed to require a health care facility to obtain a certificate of need to undertake any activity that would not be subject to a certificate of need if undertaken by a person other than a health care facility."

Section 4. Section 50-5-302, MCA, is amended to read:

"**50-5-302. Letter of intent — application and review process.** (1) The department may adopt rules including but not limited to rules for:

(a) the form and content of letters of intent and applications;

(b) the scheduling ~~and consolidation~~ of reviews;

(c) the abbreviated review of a proposal that:

(i) does not significantly affect the cost or use of health care;

(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;

(iii) is necessary to comply with licensure or certification standards; or

(iv) would add a health service that is subject to a certificate of need review under 50-5-301(1)(c);

(d) the format of public informational hearings and reconsideration hearings;

(e) ~~the establishment of batching periods for certificate of need applications for new beds and major medical equipment, challenge periods, and~~ the circumstances under which applications ~~from different batches~~ may be comparatively reviewed; and

(f) the circumstances under which a certificate of need may be approved for the use of hospital beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients or residents needing only that level of care.

(2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50% or more of an existing health care facility, they shall submit to the department a lettor noting intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

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(3) Any person intending to initiate an activity for which a certificate of need is required shall suhmit a letter of intent to the department.

(4) ~~If the proposal is for new beds or major medical equipment, the~~ *The* department ~~shall place the letter of intent in the appropriate batch~~ *may determine that the proposals should be comparatively reviewed with similar proposals* unless, in the case of beds, the proposal is determined to be exempt from review.

(5) ~~Any~~ *On the 10th day of each month, the department shall publish in a newspaper of general circulation in the area to be served by the proposal a description of each letter of intent received by the department during the preceding calendar month. Within 30 days of the publication, any* person who desires comparative review with a proposal ~~in a batch~~ *described in the publication* must submit a challenge letter of intent ~~at least by the end of the challenge period following the batching period for that batch~~ *requesting comparative review.*

(6) The department shall give to each person submitting a letter of intent written notice of the deadline for submission of an application for certificate of need, which will be no less than 30 days after the notice is sent.

(7) Within 20 working days after receipt of an application, the department shall determine whether it is complete and, if the application is found incomplete, shall send a written request to the applicant for the necessary additional information. Upon receipt of the additional information from the applicant, the department shall have *an additional* 15 working days to determine if the application is complete and to send a notice to the applicant that the application is complete or incomplete. ~~The request for added information may be repeated as long as the information submitted remains incomplete, and the department shall have 15 working days after each submission to send a notice that the application is complete or incomplete.~~

(8) If a proposal is to undergo comparative review with another proposal but the applicant fails to submit the necessary additional information requested by the department by the deadline prescribed by department rules, the application ~~must be dropped from the current batch and assigned to the next batching period~~ *is considered withdrawn.*

(9) If the department fails to send the notices within the periods prescribed in subsection (7), the application is considered to be complete on the last day of the time period during which the notice should have been sent.

(10) ~~After an application is designated complete, immediate notification must be sent to the applicant and all other affected persons regarding the department's projected time schedule for review of the application.~~ The review period for an application may be no longer than 90 calendar days after the ~~notice is sent~~ *application is initially received* or, if ~~a challenging~~ *the* application ~~has been submitted~~ *is to be comparatively reviewed* as provided in subsection (5), within 90 days after ~~the notice has been sent for~~ all ~~such challenging~~ applications *to be comparatively reviewed are received.* A longer period is permitted with the consent of all affected applicants.

(11) During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.

(12) Each completed application may be considered in relation to other applications pertaining to similar types of facilities or equipment affecting the same health service area.

(13) The department shall, after considering all commente received during the review period, issue a certificate of need, with or without conditions, or deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period.

(14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may apply te district court for a writ of mandamus to force the department to ~~render a decision~~ *issue the certificate of need.*"

Section 5. Section 50-5-304, MCA, is amended to read:

"**50-5-304. Review criteria, required findings, and standards.** The department shall hy rule promulgate and ~~utilize~~ *use*, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the degrcc to which the proposal being reviewed:

(a) demonstrates that the service is needed by the population within the service area defined in the proposal;

(b) provides data that demonstrates the need for services contrary to the current state health plan, including but not limited to waiting lists, projected service volumes, differences in cost and quality of services, and availability of services; or

(c) is consistent with the current state health plan;

(2) the need that the population served or to be served by the proposal has for the services;

(3) the availability of less costly quality-equivalent or more effective alternative methods of providing ~~such~~ *the* services;

(4) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(5) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

(6) the consistency of the proposal with joint planning efforts by health care providers in the area;

(7) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs, for the provision of

services proposed to be provided and the availability of alternative uses of ~~such~~ *the* resources for the provision of otber health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project; ~~and~~

(10) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal*; and*

(11) in the case of a project to add long-term care facility beds:

(a) the need for the beds that takes into account the current and projected occupancy of long-term care beds in the community;

(b) the current and projected population over 65 years of age in the community; and

(c) other appropriate factors."

Section 6. Section 50-5-306, MCA, is amended to read:

"**50-5-306. Right to hearing and appeal.** (1) An affected person may request ~~the department to hold a public hearing and to reconsider its decision. The department shall grant the request if the affected person submits the request in writing and if the request is received by the department within 30 calendar days after the initial decision is announced.~~ *a contested case hearing before the department under the provisions of Title 2, chapter 4, by filing a written request with the department within 30 days after receipt of the notification required in 50-5-302(13). The written request for a hearing must include:*

(a) a statement describing each finding and conclusion in the department's initial decision that will be contested at the hearing and why each finding and conclusion is objectionable or in error; and

(b) a summary of the evidence that will be submitted to contest the findings and conclusion identified in subsection (1)(a).

(2) The hearing must be limited to the issues identified under subsection (1) and any other issues identified through discovery.

~~(2)~~*(3)* The public hearing ~~to reconsider~~ must be held within 30 calendar days after the request is received unless ~~the requestor agrees to waive the time limit.~~ *the hearings examiner extends the time limit for good cause.*

~~(3) The reconsideration hearing must be conducted pursuant to the provisions for informal proceedings of the Montana Administrative Procedure Act.~~

(4) The department shall make its final decision and serve the appellant with written findings of fact and conclusions of law in support of the decision within 30 days after the conclusion of the ~~reconsideration~~ hearing.

(5) Any *adversely* affected person *who was a party to the hearing* may appeal the department's final decision to the district court as provided in Title 2, chapter 4, part 7.

(6) ~~If a petition to appeal the decision is filed, the decision must be stayed pending resolution of the appeal by the courts.~~ *On application by a person whose proposal has been approved under the procedure provided for in 50-5-302, a district court may order a person who requested a contested case hearing to pay the successful applicant's costs and attorney fees incurred in the hearing and on appeal, if the court determines that the reasons for requesting the contested case hearing were frivolous.*

(7) The department may by rule prescribe in greater detail the hearing and appellate procedures."

Section 7. Section 50-5-310, MCA, is amended to read:

"**50-5-310. Fees.** (1) There is no fee for filing a letter of intent.

(2) An application for certificate of need approval must be accompanied by a fee that is at least equal to 0.3% of the capital expenditure projected in the application, except that the fee may *not* be ~~no~~ less than $500.

(3) With the exception of the department and an applicant whose proposal is approved and who does not request the hearing, each affected person who is a party in a reconsideration hearing held pursuant to 50-5-306(1) shall pay the department $500.

(4) Fees collected under this section must be deposited in ~~a state special revenue account for use by the department in conducting certificate of need reviews~~ *the general fund.*"

Section 8. Section 20-7-436, MCA, is amended to read:

"**20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth that have the treatment of chemical dependency as the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally disturbed as defined in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care te persons under 21 years of age;

(iii) is licensed by the department of health and environmental sciences; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; ~~or~~

~~(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of health and environmental sciences pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.~~

(b) The term does not include programs for children and youth who have the treatment of chemical dependency as a primary reason for treatment."

Section 9. Section 33-31-111, MCA, is amended to read:

"**33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter may not be considered te be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

~~(4) The provisions of this chapter do not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.~~"

Section 10. Section 33-31-203, MCA, is amended to read:

"**33-31-203. Powers of insurers and health service corporations.** (1) An insurer authorized to transact insurance in this state or a health service corporation authorized to do business in this state may, either directly or

through a subsidiary or affiliate, organize and operate a health maintenance organization under the provisions of this chapter. Notwithstanding any other law which may be inconsistent with this section, two or more insurers, health service corporations, or subsidiaries or affiliates ~~thereof~~ *of insurers or health service corporations* may jointly organize and operate a health maintenance organization. The business of insurance is considered te include the provision of health care services by a health maintenance organization owned or operated by an insurer or a subsidiary ~~thereof~~ *of an insurer.*

(2) Notwithstanding any insurance or bealth service corporation laws, an insurer or a health service corporation may contract with a health maintenance organization te provide insurance or similar protection against the cost of care provided through a health maintenance organization and to provide coverage if the health maintenance organization fails to meet its obligations.

(3) The enrollees of a health maintenance organization constitute a permissible group under this title. The insurer or healtb service corporation may make benefit payments to health maintenance organizations for health care services rendered by providers under the contracts described in subsection (2).

~~(4) Nothing in this section exempts a health maintenance organization that provides health care services from complying with the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.~~"

Section 11. Section 33-31-221, MCA, is amended to read:

"**33-31-221. Powers of health maintenance organizations.** (1) The powers of a health maintenance organization include but are not limited to the following:

(a) the purchase, lease, construction, renovation, operation, or maintenance of a hospital, a medical facility, or both, its ancillary equipment, and ~~such~~ property as may reasonably be required for its principal office or for ~~such~~ purposes as may be necessary in the transaction of the business of the organization;

(b) the making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation under its control for the purpose of acquiring or constructing a medical facility or hospital or in furtherance of a program providing health care services to enrollees;

(c) the furnishing of health care services through a provider who is under contract with or employed by the health maintenance organization;

(d) the contracting with a person for the performance on its behalf of certain functions, sucb as marketing, enrollment, and administration;

(e) the contracting with an insurer authorized to transact insurance in this state, or with a health service corporation authorized to do business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the healtb maintenance organization; and

(f) the offering of other health care services in addition to basic health care services.

(2) A health maintenance organization shall file notice, with adequate supporting information, with the commissioner before exercising a power granted in subsection (1)(a), (1)(b), or (1)(d). The commissioner may, after notice and hearing, within 60 days disapprove the exercise of a power under subsection (1)(a), (1)(b), or (1)(d) only if, in ~~his~~ *the commissioner's* opinion, it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. The commissioner may make reasonable rules exempting from the filing requirement of this subsection those activities having a de minimis effect. The commissioner may exempt certain contracts from the filing requirement whenever exercise of the authority granted in this section would have little or no effect on the health maintenance organization's financial condition and ability to meet obligations.

~~(3) Nothing in this section exempts the activities of a health maintenance organization from any applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.~~"

Section 12. Section 50-4-102, MCA, is amended to read:

"**50-4-102. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Authority" means the Montana health care authority created by 50-4-201.

(2) "Board" means one of the regional health care planning boards created pursuant to 50-4-401.

(3) "Certificate of public advantage" or "certificate" means a written certificate issued by the authority as evidence of the authority's intention that the implementation of a cooperative agreement, when actively supervised by the authority, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(4) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(5) "Data base" means the unified health care data base created pursuant te 50-4-502.

(6) "Health care" includes both physical health care and mental health care.

(7) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in *the definition of health care facility in* 50-5-101~~(19)~~. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(8) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability

insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

(9) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(10) "Management plan" means the health care resource management plan required by 50-4-304.

(11) "Region" means one of the health care planning regions created pursuant te 50-4-401.

(12) "Statewide plan" means one of the statewide universal health care access plans for access to health care required by 50-4-301."

Section 13. Section 50-5-101, MCA, is amended te read:

"**50-5-101. Definitions.** As used in parts 1, *2,* ~~through~~ *and* 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, ~~a member of the public who will be served by the proposal,~~ a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, *or* a third-party payer who reimburses health care facilities in the area affected hy the proposal~~, or an agency that plans or assists in planning for health care facilities~~.

(4) "Ambulatory surgical facility" means a facility~~, not part of a hospital,~~ that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

~~(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.~~

~~(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.~~

~~(7)~~*(5)* "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

~~(8) "Capital expenditure" means:~~

~~(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or~~

~~(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.~~

~~(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.~~

~~(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which a person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.~~

~~(11)~~*(6)* "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

~~(12)~~*(7)* "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, patbological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

~~(13)~~*(8)* "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.~~

~~(15)~~*(9)* "Construction" means the physical erection of a health care facility and any stage of the physical erection, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(16)~~*(10)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(17)~~*(11)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(13)~~*(12)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(16)~~*(13)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed te provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. Tbe term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical

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assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

~~(20)~~*(14)* "Health maintenance organization" means a public or private organization that provides or arranges for health care services te enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

~~(21)~~*(15)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(20)~~*(16)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care te meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and tbat includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(23)~~*(17)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~(24)~~*(18)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

~~(20)~~*(19)* "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(26)~~*(20)* "Kidney treatment center" means a facility that specializes in treatment of kidney diseases, including freestanding hemodialysis units.

~~(27)~~*(21)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include adult foster care licensed under 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or individuals with related problems.

(e) "Personal care" means the provision of services and care for residents needing some assistance in performing the activities of daily living.

~~(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.~~

~~(29)~~*(22)* "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

~~(30)~~*(23)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill individuals, or any combination of these services.

~~(31)~~*(24)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(32)~~*(25)* "Observation bed" means a bed occupied ~~for not more than 6 hours~~ by a patient recovering from surgery or other treatment.

~~(33)~~*(26)* "Offer" means the holding out by a health care facility that it can provide specific health services.

~~(34)~~*(27)* "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

~~(35)~~*(28)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(36)~~*(29)* "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(37)~~*(30)* "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

~~(38)~~*(31)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(39)~~*(32)* "Resident" means an individual who is in a long-term care facility for intermediate or personal care.

~~(40)~~*(33)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(41)~~*(34)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(42)~~*(35)* "State health plan" means the plan prepared by the department te project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 14. Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of health care facility license — provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not bave the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 ~~through 3~~ *and 2* is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

~~(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.~~

~~(4)~~*(3)* The department may provide in its revocation order that the revocation will be in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the board or court."

Section 15. Repealer. Sections 50-4-311, 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, and 50-5-316, MCA, are repealed.

Section 16. Contingent effective dates. (1) Subject to subsection (2), [sections 1 through 7] and this section are effective on passage and approval.

(2) If House Bill No. 2 does not contain funding for the certificate of need program of at least $240,000 for the ensuing biennium, then [sections 1 through 7] are void and [sections 8 through 15] are effective July 1, 1995. If House Bill No. 2 contains funding for the certificate of need program of at least $240,000 for the ensuing biennium, then [sections 8 through 15] are void.

Approved April 12, 1995

CHAPTER NO. 399

[SB 418]

AN ACT REVISING THE TAXABILITY OF TAX BENEFIT ITEMS FOR MONTANA INDIVIDUAL INCOME TAX PURPOSES; INCORPORATING THE FEDERAL TAX BENEFIT LAW RELATED TO THE RECOVERY OF AMOUNTS DEDUCTED IN A PRIOR TAX YEAR; DISALLOWING DEDUCTIONS FOR EXPENSES ASSOCIATED WITH THE PRODUCTION

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OF EXEMPT OR EXCLUDABLE INCOME; AMENDING SECTIONS 15-30-111 AND 15-30-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income ~~shall be~~ *is* the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition ~~shall include~~ *includes* the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision ~~thereof~~ *of another state*;

(b) refunds received of federal income tax, to the extent the deduction of ~~such~~ *the* tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; ~~and~~

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15)*; and*

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision ~~thereof~~ *of the state*;

(b) interest income earned by a taxpayer age 65 or older in a ~~taxable~~ *tax* year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must

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be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; ~~and~~

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"*; and*

(j) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in ~~his~~ *the shareholder's* adjusted gross income tbe earnings and profits of the DISC in the same manner as provided by ~~federal law (~~section 995~~,~~ *of the* Internal Revenue Code~~)~~ for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ *the taxpayer's* business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the ~~taxable~~ *tax* year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married

couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 2. Section 15-30-123, MCA, is amended to read:

"**15-30-123. Nondeductible items in computing net income.** In computing net income, ~~no~~ deductions ~~shall in any case be~~ *are not* allowed ~~in respect of~~ *for*:

(1) personal, living, or family expenses;

(2) any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) any amount expended in restoring property or in making good the exhaustion ~~thereof~~ *of the property* for which an allowance is or has been made; ~~or~~

(4) premiums paid on any life insurance policy covering the life of any officer or employee or of any person financially interested in any trade or business carried ~~on~~ by the taxpayer when the taxpayer is directly or indirectly a beneficiary under ~~such~~ *the* policy*; or*

(5) expenses that are associated with the production of exempt or excludable income. This subsection (5) does not apply to the deductibility of federal income taxes paid on income that is excludable or exempt for Montana income tax purposes."

Section 3. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Approved April 12, 1995

CHAPTER NO. 400

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 53RD LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE

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TAXES; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Approval of renewable resource projects and authorizations to provide loans. The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans te the political subdivisions of state government and local governments listed below in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(1) GROUP A: Notwithstanding the provisions of [section 5], the interest rate for the projects in this group must be at the rate at which the state bonds are sold for the anticipated 20-year term of the loan. The projects in this group are eligihle for grants authorized under House Bill No. 6. If a grant is authorized but available grant funds are insufficient, the applicant must be offered the opportunity to receive a loan for up to the total amount of the authorized loan under [sections 1 through 8] plus the amount of the authorized grant approved in House Bill No. 6.

	Loan Amount
CONRAD, CITY OF	
Reconstruct Outlet Conduit on Lake Francis East Dam	$50,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Deadman's Basin Water Quality Improvement Project	111,081
GREENFIELDS IRRIGATION DISTRICT	
Main Canal Flow Control System	50,000
BOZEMAN, CITY OF	
Separator Waste Collection Facility	158,850
HYSHAM, TOWN OF	
Sewer System Improvements	200,000
MANHATTAN, TOWN OF	
Manhattan Water System	50,000
SUN RIVER WATER USERS ASSOCIATION	
Sun River Water System	250,000

(2) GROUP B: Notwithstanding the provisions of [section 5], the interest rate for the project in this group may be 1% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

	Loan Amount
WHITEHALL, TOWN OF	
Water System Improvements	$400,000

(3) GROUP C: Notwithstanding the provisions of [section 5], the interest rate for the project in this group is 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

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	Loan Amount
HILL COUNTY WATER DISTRICT	
Water Treatment System	$400,000

(4) GROUP D: Notwithstanding the provisions of [section 5], the interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

	Loan Amount
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Petrolia Dam Rehabilitation	$358,000

Section 2. Projects not completing requirements — projects reauthorized. The legislature finds that the following renewahle resource projects that were approved by the 53rd legislature in Chapter 497 and Chapter 613, Laws of 1993, may not complete the requirements necessary to obtain the loan funds prior to June 30, 1995. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed below in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(1) GROUP A: Notwithstanding the provisions of [section 5], the interest rate for projects in this group must be at the rate at which the bonds are sold for the anticipated 20-year term of the loan.

	Loan Amount
DODSON IRRIGATION DISTRICT	
Water Use Efficiency Improvements	$31,326
EAST GLACIER WATER AND SEWER DISTRICT	
Midvale Diversion Structure	76,537
FORT SHAW IRRIGATION DISTRICT	
Rehabilitation of Headworks and "A" System Diversion	200,000
HILGER WATER AND SEWER DISTRICT	
Sewage and Collection Treatment Facilities	50,000
HILL COUNTY	
Salinity Control Project	50,000
HUNTLEY WATER AND SEWER DISTRICT	
Water System Rehabilitation	50,000
NEIHART, TOWN OF	
Water System Improvements	150,000
RYEGATE, TOWN OF	
Water System Improvements	150,000

(2) GROUP B: Notwithstanding the provisions of [section 5], the interest rate for the project in this group may be 1% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

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	Loan Amount
ENNIS, TOWN OF	
Water Storage and Distribution System Improvements	$1,100,000

(3) GROUP C: Notwithstanding the provisions of [section 5], the interest rate for the projects in this group may be 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

	Loan Amount
FORSYTH, CITY OF	
Water Treatment Plant Improvements	$1,543,916
GLENDIVE, CITY OF	
Water System Improvements	2,240,762
SEELEY LAKE-MISSOULA COUNTY WATER DISTRICT	
Water System Improvements	922,150
WHITEFISH, CITY OF	
Water Treatment and Distribution	5,535,800

(4) GROUP D: Notwithstanding the provisions of [section 5], the interest rate for the project in this group is 3.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

	Loan Amount
HUNTLEY PROJECT IRRIGATION DISTRICT	
Irrigation System Improvements	$4,875,440

(5) GROUP E: Notwithstanding the provisions of [section 5], the interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

	Loan Amount
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
North Fork of the Smith River Dam	$1,035,467
TIN CUP IRRIGATION DISTRICT	
Tin Cup Lake Dam Rehabilitation	304,204

(6) GROUP F: Notwithstanding the provisions of [section 5], the interest rate for the project in this group is 6% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

	Loan Amount
MILL CREEK WATER AND SEWER DISTRICT	
Mill Creek Gravity Sprinkler Irrigation Project	$151,000

Section 3. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax honds for financing specific approved renewable resource projects as part of

the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds may also be used for the projects approved in [sections 1 through 8]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed $24,710,852, of which $20,513,207 is to be used to finance the projects approved in [sections 1 and 2], $1,951,204 is to be used to finance additional loans in lieu of grants for projects listed in [section 1] (if grant funds are not sufficient), and up to $2,246,441 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2].

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan state special revenue account.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to he issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

Section 5. **Condition of loans.** (1) Disbursement of funds under [sections 1 through 8] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory compietion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan

program project evaluations and recommendations report for the 1997 biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 6. Interest rates on loans. Loans made from proceeds of coal severance tax bonds must be at interest rates specified in [sections 1 and 2], except that when loan requests are reduced, interest rates must be recalculated based on the methodology described in the renewable resource grant and loan program project evaluations and recommendations report submitted to the 54th legislature for the 1997 biennium. If the bonds or notes bear interest at an adjustable rate, the department of natural resources and conservation shall establish, at the time of the sale of each bond, an assured rate of interest as if the bond bore interest at a fixed rate. The assured rate of interest must be the rate of interest on the bonds for the purpose of calculating the interest rates on the loans pursuant to [sections 1 and 2].

Section 7. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 8. Appropriations established. For any entity of state government that receives a loan under [sections 1 through 7] an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective July 1, 1995.

Approved April 13, 1995

CHAPTER NO. 401

[HB 18]

AN ACT INCREASING THE STATUTORY APPROPRIATION FOR AN EMERGENCY OR DISASTER DUE TO FIRE; AMENDING SECTION 10-3-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-312, MCA, is amended to read:

"10-3-312. Maximum expenditure by governor — appropriation. (1) (a) Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $2 million in any biennium.

(b) Whenever an emergency or disaster due to fire is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed ~~$3~~ *$10* million in any biennium. The amount appropriated in this subsection (b) may be combined with the amount appropriated in subsection (1)(a) for an emergency or disaster due to fire.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and he *the governor* is authorized to expend from the general fund, an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 402

[HB 121]

AN ACT REVISING THE SCOPE OF PODIATRY TO INCLUDE THE HUMAN ANKLE; REQUIRING CERTIFICATION BY THE BOARD OF MEDICAL EXAMINERS FOR ANKLE SURGERY; LIMITING THE SITES AT WHICH ANKLE SURGERY MAY BE PERFORMED; AND AMENDING SECTIONS 37-6-101 AND 37-6-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-6-101, MCA, is amended to read:

"37-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means tbe board of medical examiners provided for in 2-15-1841.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Podiatrist" means a physician or surgeon of the foot *and ankle*, licensed to diagnose and treat ailments of the human functional foot *and ankle*.

(4) "Podiatry" means the diagnosis and treatment of ailments of the human functional foot *and ankle* as provided in 37-6-102."

Section 2. Section 37-6-102, MCA, is amended to read:

"**37-6-102. Scope of practice.** (1) A podiatrist may diagnose and treat ailments of the human functional foot *and ankle* by all systems and means. The functional foot is the anatomical foot and any muscle, tendon, ligament, or other soft tissue structure that is directly attached to the anatomical foot and that impacts on or affects the foot or foot function. *The ankle is the articulation between the talus, tibia, and fibula and their related soft tissue structures.*

(2) A podiatrist may not administer any anesthetic other than a local anesthetic."

Section 3. Certification required for ankle surgery. Notwithstanding any other provisions in this title, a podiatrist may not perform surgical treatments of the ankle unless certified to do so by the board. The board shall certify a podiatrist whom it considers qualified by education, training, and experience or who is certified by tbe American board of podiatric surgery.

Section 4. Site of performance of ankle surgery. A surgical treatment of the ankle performed in accordance with [section 3] must be performed in a hospital or ambulatory surgical center licensed under Title 50.

Section 5. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 37, chapter 6, part 1, and the provisions of Title 37, chapter 6, part 1, apply te [sections 3 and 4].

Approved April 13, 1995

CHAPTER NO. 403

[HB 150]

AN ACT CLARIFYING THE COMPOSITION AND DUTIES OF A YOUTH PLACEMENT COMMITTEE; REQUIRING A YOUTH PLACEMENT COMMITTEE TO MAKE RECOMMENDATIONS FOR PLACEMENT OF A YOUTH PRIOR TO COMMITMENT OF THE YOUTH TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTIONS 41-5-525, 41-5-526, AND 41-5-527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-525, MCA, is amended to read:

"**41-5-525. Youth placement committees — composition.** (1) In each judicial district, the department shall establish a youtb placement committee for tbe purposes of:

(a) recommending an appropriate placement of a youth referred to the department under 41-5-403; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of ~~committed to~~ the department under 41-5-523. *However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.*

(2) The committee consists of not less than five members~~, appointed by the department,~~ and must include *persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth. Members may include:*

(a) ~~a representative~~ *two representatives* of the department;

(b) a representative of ~~a county department of public welfare~~ *the department of social and rehabilitation services;*

(c) ~~a youth~~ *either the chief probation officer or the youth's* probation officer;

(d) a mental health professional;

(e) a representative of a school district located within the boundaries of the judicial district; ~~and~~

(f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters*;*

(g) a parent or guardian; and

(h) a youth services provider.

(3) Committee members serve without compensation.

(4) Notwithstanding the provisions of 41-5-527, the committee may be convened by the department or the probation officer of the youth court."

Section 2. Section 41-5-526, MCA, is amended to read:

"41-5-526. Duties of the youth placement committee. A youth placement committee shall:

(1) review all information relevant to the placement of a youth referred or committed to the department;

(2) consider available resources appropriate to meet the needs of the youth;

(3) consider the treatment recommendations of any professional person who has evaluated the youth;

(4) *consider options for the financial support of the youth;*

(5) recommend in writing to the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, ~~at Mountain View school, at Pine Hills school~~ *at a state youth correctional facility*, or with a parent, other family member, or guardian.

~~(5)~~*(6)* review temporary and emergency placements as required under 41-5-528; and

~~(5)~~*(7)* conduct placement reviews *at least semiannually and at other times* as requested by the department."

Section 3. Section 41-5-527, MCA, is amended to read:

"41-5-527. Youth placement committee to submit recommendation to department — acceptance or rejection of recommendation by department. (1) ~~When a youth has been referred or committed to the department for placement, the department shall notify the appropriate~~ *Prior to commitment of a youth to the department pursuant to 41-5-523, a* youth placement committee *must be convened.* The committee shall submit in writing to the department *and to the youth court judge* its ~~recommendation~~ *primary and alternative recommendations* for placement of the youth. ~~The committee shall send a copy of the recommendation to the appropriate youth court judge.~~

(2) If tbe department accepts *either of* the committee's ~~recommendation, the youth must be placed according to the recommendation~~ *recommendations, it shall promptly notify the committee in writing.*

(3) If the department rejects *both of* the committee's ~~recommendation~~ *recommendations*, it sball promptly notify the committee in writing of the reasons for rejecting the ~~recommendation. The department shall send a copy of the notice to the appropriate youth court~~ judge *recommendations and shall make an appropriate placement for the youth.*

(4) ~~After receiving a notice under subsection (3), the committee shall submit in writing to the department a recommendation for an alternative placement of the youth.~~

~~(5) If the department accepts the committee's recommendation for alternative placement, the youth must be placed according to the recommendation.~~

~~(6) If the department rejects the committee's recommendation for alternative placement, the department shall promptly notify the committee in writing of the reasons for rejecting the recommendation and shall determine an appropriate placement for the youth. The youth must be placed as determined by the department.~~ *Within 72 hours after making a decision on a placement or change of placement, the department shall notify the youth court of the decision and of the placement or change of placement."*

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 404

[HB 158]

AN ACT REVISING THE STATE SCAFFOLDING LAWS; AUTHORIZING THE USE OF COMPARATIVE NEGLIGENCE LAW IN DETERMINING

LIABILITY; AMENDING SECTION 50-77-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-77-101, MCA, is amended to read:

"50-77-101. ~~Construction of scaffolds~~ *Scaffolds — definition — safety practices.* ~~All scaffolds erected in this state for use in the erection, repair, alteration, or removal of buildings shall be well and safely supported, of sufficient width, and properly secured so as to ensure the safety of persons working on them or passing under them or by them and to prevent them from falling or to prevent any material that may be used, placed, or deposited on them from falling~~ *(1) As used in this part, "scaffold" or "scaffolding" means a temporarily elevated platform and its supporting structure that is used on a construction site to support a person, material, or both. The term includes a ladder or other equipment that is the exclusive route of access to the scaffold but does not include any other ladder or other mobile construction equipment.*

(2) Employers and employees shall follow safety practices commonly recognized in the construction industry as well as applicable state and federal occupational safety laws."

Section 2. Liability of employer for negligence — exceptions. (1) Subject to the comparative negligence principles provided in Title 27, chapter 1, part 7, a contractor, subcontractor, or builder who uses or constructs a scaffold on a construction site is liable for damages sustained by any person who uses the scaffold, except a fellow employee or immediate employer, when the damages are caused by negligence of the contractor, subcontractor, or builder in the use or construction of the scaffold.

(2) If a person dies from an injury caused by the negligent use or construction of a scaffold, the right of action survives and may be prosecuted and maintained by the decedent's heirs or personal representatives.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 77, part 1, and the provisions of Title 50, chapter 77, part 1, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 405

[HB 164]

AN ACT PROVIDING FOR THE COLLECTION OF A TAX ON COMPRESSED NATURAL GAS AT THE RETAIL LEVEL; ESTABLISHING REQUIREMENTS FOR DEALER LICENSING AND RECORDKEEPING AND PROCEDURES FOR INSPECTION, PAYMENT OF TAX, PENALTIES, AND ADMINISTRATION RELATED TO THE TAX; REQUIRING THE OWNERS OF CERTAIN VEHICLES POWERED BY COMPRESSED NATURAL GAS TO

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PURCHASE A TEMPORARY TRIP PERMIT; AMENDING SECTIONS 15-70-104 AND 15-71-102, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of transportation is required by 15-70-104 to adopt rules for the administration and enforcement of the tax on compressed natural gas. The legislature contemplates that rules promulgated under 15-70-104 address, at a minimum, the licensing of compressed natural gas dealers and, with respect to compressed natural gas dealers, requirements established by the department for reporting, recordkeeping, and invoicing.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 17], the following definitions apply:

(1) "Bond" means:

(a) a bond executed by a compressed natural gas dealer as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon performance of all requirements of [sections 1 through 17], including the payment of all taxes, penalties, and other obligations of the compressed natural gas dealer arising out of [sections 1 through 17]; or

(b) a deposit with the department by the compressed natural gas dealer, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(2) "Compressed natural gas" means a product that is used as a fuel and that contains carbon or hydrogen, or both, and is compressed to greater than 24 pounds per square inch absolute base pressure and up to 3,600 pounds per square inch absolute base pressure when sold for use in moter vehicles operated on the public roads and highways of this state.

(3) "Compressed natural gas dealer" or "dealer" means a person who delivers any part of compressed natural gas into the fuel supply tank or tanks of a motor vehicle.

(4) "Department" means the department of transportation.

(5) "Motor vehicle" means any vehicle that is self-propelled by compressed natural gas and that is driven upon the public roads and highways of this state.

(6) (a) "Person" means and includes any person, firm, association, joint-steck company, syndicate, partnership, or corporation.

(b) When used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, person means and includes the partners or members of a firm, association, syndicate, or partnership; as applied to a joint-stock company or corporation, the term means and includes the officers of the joint-stock company or corporation.

(7) "Public roads and highways of this state" means all streets, roads, highways, and related structures that are:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

Section 2. Compressed natural gas dealer's license. A person may not act as a compressed natural gas dealer in this state unless the person holds a valid compressed natural gas dealer's license issued by the department.

Section 3. Application for license. An application for a compressed natural gas dealer's license must be filed on a form prescribed hy the department. The application must contain information that the department considers necessary.

Section 4. Bonding, release of surety, and additional bond. (1) Except as provided in this section, a compressed natural gas dealer's license may not be issued to a person and may not be continued in force unless the person has furnished a bond, in a form prescribed by the department, to secure the dealer's compliance with [sections 1 through 17] and has paid all taxes, interest, and penalties due under [sections 1 through 17]. The department shall waive the bond requirement of a compressed natural gas dealer who is not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required must be equivalent to twice the compressed natural gas dealer's estimated monthly tax payments but may not be less than $1,000 for any compressed natural gas dealer who:

(a) requests a compressed natural gas dealer's license to be reissued after the license was canceled for cause; or

(b) fails to file timely reports and pay the tax due as required by [section 11].

(3) A surety on a bond furnished as provided in this section must be released and discharged from any liability to the state accruing on the bond after 30 days from the date when the surety has provided to the department a written request to be released and discharged. However, this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. Upon receiving a release request, the department shall promptly notify the compressed natural gas dealer who furnished the bond, and unless the dealer, on or before tbe expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as described in [section 1(1)(b)], the department shall cancel tbe dealer's license.

(4) The department may require a compressed natural gas dealer to give a new or additional surety bond or to deposit additional securities pursuant to [section 1(1)(b)] if the department determines that the security of the surety

bond previously filed by the dealer or the market value of the property deposited as security by the dealer is impaired or inadequate. If the compressed natural gas dealer fails to give an additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the dealer's license.

Section 5. Issuance of license — grounds for refusal — hearing. (1) Except as provided in subsection (2), upon receipt of the application and bond in proper form, the department shall issue to the applicant a license to act as a compressed natural gas dealer. A license is valid until suspended or revoked for cause or otherwise canceled.

(2) The department may refuse to issue a compressed natural gas dealer's license to any person:

(a) who formerly held a license that, prior to the time of filing the application, has been revoked for cause;

(b) who is not the real party in interest and the license of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

(3) Before refusing to issue a license, the department shall grant the applicant a hearing and shall provide the dealer with at least 10 days' written notice of the time and place of hearing.

(4) A compressed natural gas dealer's license is not transferable.

Section 6. Revocation of license — notice. (1) The department may revoke the license of any compressed natural gas dealer for reasonable cause. Before revoking a license, the department shall notify the licensee of the department's intent to revoke the license. The notice must be made by certified mail addressed to the licensee's last-known address shown in the files of the department. The notice must include a statement that the licensee has the right to appear before the department at a time specified in the notice and to show cause, if any, why the license should not be revoked. The time specified by the department may not be more than 30 days or less than 10 days from the date of the notice. At any time prior to and during the hearing, the department may in the exercise of reasonable discretion suspend the license.

(2) Upon revocation of a license, the licensee shall immediately surrender the license to the department for cancellation.

Section 7. Cancellation of license upon surrender. The department shall cancel a license to act as a compressed natural gas dealer immediately upon surrender of the license by the licensee.

Section 8. Tax on compressed natural gas. (1) Each compressed natural gas dealer shall collect the tax on compressed natural gas from the user at the time the compressed natural gas is placed into the supply tank of a motor vehicle.

(2) (a) The total tax cue is computed according to the formula provided in subsection (2)(b).

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(h) T = (R/V) x TV, where:

(i) T is the total tax due;

(ii) R is 7 cents;

(iii) V is 120 cubic feet of compressed natural gas at 14.73 pounds per square inch absolute base pressure; and

(iv) TV is the total volume of compressed natural gas placed into the supply tank of a motor vehicle.

(3) The dealer shall pay the tax to the department as provided in [section 11].

(4) The United States, the state of Montana, and any political subdivision of this state are exempt from the levy and imposition of this tax.

Section 9. Recordkeeping. (1) Each compressed natural gas dealer and each person importing, manufacturing, refining, dealing in, transporting, or storing compressed natural gas in this state shall keep all records, receipts, invoices, and other pertinent documents that the department may require and shall produce them for the inspection of the department at any time during regular business hours.

(2) The records, receipts, invoices, and other pertinent documents must he kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made.

Section 10. Examination of records — enforcement — reciprocity. (1) The department shall enforce the provisions of [sections 1 through 17].

(2) The department or its authorized representative may examine the records, receipts, invoices, documents, and equipment of any compressed natural gas dealer or of any person importing, manufacturing, refining, dealing in, transporting, or storing compressed natural gas and may investigate the character of the disposition that any person makes of compressed natural gas in order to determine whether all taxes due under [sections 1 through 17] are being properly reported and paid. If the records, receipts, invoices, documents, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department or at the business location of the dealer or other person and must, if requested by the department, be accompanied by the dealer or other person.

(3) The department shall, upon request from an official who is responsible for the enforcement of the compressed natural gas tax law of any other state, the District of Columbia, the United States, a territory or possession of the United States, or a province of Canada, forward to the official any information that it has relative to the receipt, sterage, delivery, sale, use, or other disposition of compressed natural gas by any compressed natural gas dealer if the other governmental entity furnishes similar information to the department.

Section 11. Returns required — payment. (1) For the purpose of determining the amount of liability for the tax due under [sections 1 through 17], each compressed natural gas dealer shall file with the department a monthly tax return on forms prescribed by the department.

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(2) The dealer shall file the return on or before the last day of the next calendar month following the month for which the tax is due. For good cause, the department may grant a taxpayer a reasonable extension of time for filing, but the extension may not exceed 30 days.

(3) The tax return must be accompanied by payment of the amount of tax due under [section 8] for compressed natural gas sold during the preceding month.

Section 12. Penalties for refusal or failure to file return or pay tax when due. (1) If a compressed natural gas dealer refuses or fails to file a return required by [sections 1 through 17] within the time prescribed by 15-70-103 and [section 11], there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. If a compressed natural gas dealer establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty imposed by this section.

(2) Whenever a compressed natural gas dealer files a return but fails to pay in whole or in part the tax due under [sections 1 through 17], there must be added to the unpaid amount due interest at the rate of 1% per month or fraction of a month from the date the tax was due to the date of payment in full.

Section 13. Deficiency — penalty. If the department determines that the tax reported by a compressed natural gas dealer is deficient, the department shall assess the deficiency on the basis of information available to the department. There must be added to the deficiency interest on the deficient amount at the rate of 1% per month or fraction of a month from the date the return was due.

Section 14. Determination if no return made — penalty — presumption. (1) If a compressed natural gas dealer, whether or not the dealer is licensed, fails, neglects, or refuses to file a compressed natural gas tax return when due, the department shall, on the basis of information available to the department, determine the tax liability of the compressed natural gas dealer for the period during which a return was not filed and add to the tax determined the penalty and interest provided for in [section 12].

(2) An assessment made by the department pursuant to [section 12 or 13] or this section is presumed to be correct. Whenever the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by a preponderance of the evidence that it is erroneous or excessive.

Section 15. Fraudulent return — penalty. If a compressed natural gas dealer files a fraudulent return with intent to evade the tax imposed by [sections 1 through 17]:

(1) there must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at the rate of 1% per month or fraction of a month on the deficiency from the date

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the tax was due to the date of payment. The penalty and interest are in addition to all other penalties prescribed by law.

(2) the person is guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than $100 or more than $2,000 or imprisonment of not less than 30 days or more tban 6 montbs, or botb.

Section 16. Warrant for distraint. If all or part of the tax imposed by [sections 1 through 17] is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the lien is filed by the department. An action may not be maintained to enjoin the collection of all or any part of the license tax.

Section 17. Statute of limitations. Except in the case of a fraudulent return or of neglect or refusal to make a return, a deficiency must be assessed within 3 years from the due date of the return or the date of filing the return.

Section 18. Section 15-70-104, MCA, is amended to read:

"15-70-104. Rules to be established by department. (1) The department of transportation shall ~~have the power and it shall be its duty to~~ adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this chapter.

(2) The department may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of:

(a) part 3;

(b) [sections 1 through 17]; and

~~(b)~~*(c)* the International Fuel Tax Agreement authorized by 15-70-121."

Section 19. Section 15-71-102, MCA, is amended to read:

"15-71-102. Temporary trip permit required. (1) Upon entering the state, a nonresident operating any motor vebicle *that is* powered by liquefied petroleum gas *or a vehicle with a gross vehicle weight in excess of 26,000 pounds or greater that is powered by compressed natural gas* is required to purchase a ~~liquid~~ *liquefied* petroleum gas *or a compressed natural gas* temporary trip permit. The permits must be issued by scale house personnel, motor carrier services division personnel, Montana highway patrol officers, and other enforcing agents that the department of transportation may prescribe.

(2) A temporary ~~liquid~~ *liquefied* petroleum gas permit *or compressed natural gas permit* costs $20. ~~The~~ *A* permit is valid for a period of time not to exceed 72 hours and is automatically void if the vehicle leaves the state during this period. Special ~~liquid~~ *liquefied* petroleum gas permits *or compressed natural gas permits*, remittance forms, and any other papers necessary for tbe enforcement of this chapter must be furnished by the department."

Section 20. Codification instruction. [Sections 1 through 17] are intended to be codified as an integral part of Title 15, chapter 70, and the provisions of Title 15, chapter 70, apply to [sections 1 through 17].

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Section 21. Effective dates. (1) [Sections 1 through 17, 19, and 20] are effective January 1, 1996.

(2) [Section 18] and this section are effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 406

[HB 197]

AN ACT REVISING THE TYPES OF INVESTMENT OF PUBLIC MONEY ALLOWED BY LOCAL GOVERNING BODIES; SUBJECTING SCHOOL DISTRICT TRUSTEES TO SIMILAR LIMITATIONS; AMENDING SECTIONS 7-6-202, 7-6-206, AND 20-9-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7 6-202, MCA, is amended to read:

"**7-6-202. Investment of public money in direct obligations of the United States.** (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in *the following eligible securities*:

(a) ~~direct obligations of the~~ United States government *treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations*;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

~~(b)~~*(c)* ~~securities issued by~~ *obligations of the following* agencies of the United States~~;~~, *subject to the limitations in subsection (2):*

(i) federal home loan bank;

(ii) federal national mortgage association;

(iii) federal home mortgage corporation; and

(iv) federal farm credit bank.

~~(c) securities guaranteed by the United States or by an agency of the United States but not issued by agencies of the United States; or~~

~~(d) mutual funds that invest only in:~~

~~(i) government obligations;~~

~~(ii) securities issued by agencies of the United States; or~~

~~(iii) securities guaranteed by the United States or by an agency of the United States but not issued by agencies of the United States.~~

~~(2) The local governing body may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:~~

~~(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and~~

~~(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.~~

(2) An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.

(3) The local governing body may invest in a United States government security money market fund if:

(a) the fund is sold and managed by a management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as may be amended;

(b) the fund consists only of eligible securities as described in this section;

(c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(d) the fund is listed in a national financial publication under the category of "money market mutual funds", showing the fund's average maturity, yield, and asset size; and

(e) the fund's average maturity does not exceed 397 days.

(4) An investment authorized in this part may not have a maturity date exceeding 5 years, except when the investment is used in an escrow account to refund an outstanding bond issue in advance.

(5) This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2."

Section 2. Section 7-6-206, MCA, is amended to read:

"7-6-206. Time deposits — repurchase agreement. (1) Public money not necessary for immediate use by a county, city, or town that is not invested ~~in direct obligations of the United States government or in mutual funds~~ as

authorized in 7-6-202 may be placed in time or savings deposits with a bank, savings and loan association, or credit union in the state or placed in repurchase agreements as authorized in 7-6-213. Money placed in repurchase agreements is subject to subsection (2).

(2) The local governing body may solicit bids for time or savings deposits from a bank, savings and loan association, or credit union in the state. The local governing body may deposit public money in the institutions unless a local financial institution agrees to pay the same rate of interest bid by a financial institution not located in the county, city, or town. The governing body may solicit bids by notice sent by mail to the investment institutions ~~who~~ *that* have requested that their names be listed for bid notice with the department of administration."

Section 3. Section 20-9-213, MCA, is amended to read:

"**20-9-213. Duties of trustees.** The trustees of each district have the sole power and authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants to be issued for the payment of lawful obligations;

(3) issue warrants on any budgeted fund in anticipation of budgeted revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in ~~direct obligations of the United States government~~ *eligible securities, as authorized in 7-6-202*; in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state; or in a repurchase agreement, as authorized in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6.

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly

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report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted not later than September 1 to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district."

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Applicability. This act does not apply to and does not require the sale of securities that were legal investments before [the effective date of this act]. Upon the liquidation of an investment authorized prior to [the effective date of this act], the proceeds must be invested pursuant to [this act].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 407

[HB 214]

AN ACT GENERALLY REVISING THE LAWS RELATING TO REGISTRATION OF SEXUAL OFFENDERS; EXTENDING REGISTRATION REQUIREMENTS AND EMPLOYMENT RESTRICTIONS TO CERTAIN VIOLENT OFFENDERS; MAKING REGISTRATION OF VIOLENT OFFENDERS MANDATORY; REVISING THE DEFINITION OF SEXUAL OFFENSE FOR PURPOSES OF REGISTRATION; REVISING THE PROCEDURES FOR REGISTRATION; MAKING REGISTRATION A LIFETIME REQUIREMENT; INCREASING THE PENALTY FOR FAILURE TO REGISTER; AUTHORIZING RELEASE TO THE PUBLIC OF REGISTRATION INFORMATION NECESSARY FOR PUBLIC PROTECTION; AND AMENDING SECTIONS 46-18-201, 46-18-254, 46-18-255, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, AND 46-23-507, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

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"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonahle restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, *an* order *that* the offender ~~to~~ be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of ~~the above~~ *subsections (1)(a)(i) through (1)(a)(xii).*

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections and human services for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(h) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual *or violent* offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 2. Section 46-18-254, MCA, is amended to read:

"**46-18-254. Release of sexual *or violent* offender — duties of court and department.** A sexual *or violent* offender must be informed in writing at

the time of sentencing of the duty to register under 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced. The department of corrections and human services shall obtain the address ~~where~~ *at which* the person expects to reside upon release or discharge or suspension of the person's sentence. The department of corrections and human services shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

Section 3. Section 46-18-255, MCA, is amended to read:

"**46-18-255. Sentence upon conviction — restriction on employment.** A judge sentencing a person upon conviction of a sexual *or violent* offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant."

Section 4. Section 46-23-501, MCA, is amended to read:

"**46-23-501. Short title.** Sections 46-18-254, 46-18-255, and this part may be cited as the "Sexual *or Violent* Offender Registration Act"."

Section 5. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(2) "Sexual *or violent* offender" means a person who has been convicted of a sexual *or violent* offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, *45-5-504(2)(c),* 45-5-505, (as that section pertains to deviate sexual conduct with an animal as described in 45-2-101), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a).

(4) "Violent offense" means:

(a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (4)(a)."

Section 6. Section 46-23-503, MCA, is amended to read:

"**46-23-503. Release of sexual *or violent* offender from place of confinement — duties of official in charge.** A sexual *or violent* offender who is released from the custody of the department of corrections and human services or the department of family services must be informed in writing prior

to release of ~~his~~ *the* duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of confinement. The official shall obtain the address ~~where~~ *at which* the person expects to reside upon ~~his~~ *the person's* release and report the address to the department of corrections and human services. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

Section 7. Section 46-23-504, MCA, is amended to read:

"**46-23-504. ~~Duty~~ *Persons required* to register — *procedure.*** *(1)* A sexual *or violent* offender shall, within 14 days of ~~coming into~~ *conviction or release from prison or within 14 days of entering* a county ~~in which he resides or is temporarily domiciled~~ *of this state for the purpose of residing or setting up a temporary domicile for 14 days or more,* register, as required under 46-18-254, 46-18-255, and this part, with the chief of police of the municipality or the sheriff of the county if he *the offender* resides in an area other than a municipality.

(2) At the time of registering, the person shall sign a statement in writing giving the information required by the department. The chief of police or sheriff shall fingerprint the person, unless the person's fingerprints are on file with the department of justice, and shall photograph the person. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department and the department of justice and to the sheriff of the county where the person resides, if registration is with the chief of police.

(3) The person registered under this section is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration.

(4) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 14 days after entry of the judgment."

Section 8. Section 46-23-505, MCA, is amended to read:

"**46-23-505. ~~Change~~ *Notice of change* of address — duty to inform — *forwarding of information.*** If a person required to register under 46-18-254, 46-18-255, and this part changes ~~his~~ residence, ~~he~~ *the person* shall within 10 days give written notification of ~~his~~ *the person's* new address to the law enforcement agency with whom ~~he~~ *the person* last registered. The law enforcement agency shall, within 3 days after receipt of ~~such~~ *the* information, forward it to the department, *the department of justice,* and the local law enforcement agency having jurisdiction over the new place of residence *and shall forward a copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency having jurisdiction over the new place of residence.*"

Section 9. Section 46-23-506, MCA, is amended to read:

"**46-23-506. Duration of registration.** (1) A person required to register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for *the remainder of the person's life, except as provided in subsection (2) of this section or during* a period of ~~10 years after conviction, if not imprisoned during that period. If a person required to register under 46-18-254, 46-18-255, and this part is imprisoned during the initial 10-year~~

~~period, he shall comply with the provisions of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison~~ *time during which the person is in prison.*

~~(2) A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this part.~~

(2) At any time after 10 years since the date of the offender's last conviction for a sexual or violent offense, the offender may petition a district court for an order relieving the offender of the duty to register under 46-18-254, 46-18-255, and this part. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society."

Section 10. Section 46-23-507, MCA, is amended to read:

"46-23-507. Penalty. A sexual *or violent* offender who knowingly fails to register under 46-18-254, 46-18-255, and this part may be sentenced to a term of imprisonment of not ~~less than 90 days or a fine not to exceed $250, or both~~ *more than 5 years or may be fined not more than $10,000, or both."*

Section 11. Dissemination of information in register. Information in the register maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that:

(1) the name of a registered sexual offender is public criminal justice information, as defined in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection.

Section 12. Codification instruction. [Section 11] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply to [section 11].

Approved April 13, 1995

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CHAPTER NO. 408

[HB 232]

AN ACT REQUIRING THAT A WRITTEN STATEMENT OF A SHERIFF'S CAUSE FOR DENIAL OF A CONCEALED WEAPON PERMIT BE GIVEN TO THE APPLICANT; CLARIFYING THE APPEAL OF THE DENIAL OF A PERMIT; ALLOWING THE FAMILIARITY WITH FIREARMS PREREQUISITE TO A PERMIT TO BE SATISFIED BY THE APPLICANT PHYSICALLY SHOWING THE SHERIFF OR THE SHERIFF'S DESIGNEE THAT THE APPLICANT KNOWS HOW TO HANDLE FIREARMS; ALLOWING THE GOVERNOR TO NEGOTIATE CONCEALED WEAPON PERMIT RECIPROCITY AGREEMENTS WITH OTHER STATES AND REQUIRING THE GOVERNOR TO ESTABLISH AN ADVISORY COUNCIL; ADDRESSING THE FEDERAL BACKGROUND CHECK AND 5-DAY WAITING PERIOD REQUIREMENTS FOR A HANDGUN PURCHASE; AMENDING SECTIONS 45-8-321 AND 45-8-324, MCA; AND PROVIDING CONTINGENT TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-321, MCA, is amended to read:

"**45-8-321. Permit to carry concealed weapon.** (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen *who is* 18 years of age or older *and* who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) has been convicted in any state or federal court ~~in any state~~ of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless ~~he~~ *the applicant* has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for ~~his~~ *the applicant's* arrest;

(f) has been adjudicated in a criminal or civil proceeding in ~~a court of~~ any state or ~~in a~~ federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation,

suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in ~~a court of~~ any state or ~~in a~~ federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. *At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.*

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency; ~~or~~

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); *or*

(e) evidence that the sheriff may or may not accept that the applicant, during military service, was found to be qualified to operate handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm."

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Section 2. Section 45-8-324, MCA, is amended to read:

"**45-8-324. Appeal.** The denial or revocation of a permit to carry a concealed weapon or refusal of a renewal is subject to appeal to the district court, *which may consider and determine facts as well as law and which is not bound by any factual, legal, or other determination of the sheriff,* and from that court to the Montana supreme court. *To the extent applicable, Title 25, chapter 33, governs the appeal.*"

Section 3. Concealed weapon permit reciprocity agreements — advisory council. (1) The governor may negotiate concealed weapon permit reciprocity agreements with other states that have concealed weapon permit laws similar to those of Montana.

(2) The governor shall establish a council, composed of interested persons, including law enforcement personnel and gun owners, to advise the governor on and pursue reciprocity issues and agreements.

Section 4. Exemption of concealed weapon permittee from federal handgun purchase background check and waiting period. A person possessing a concealed weapon permit is:

(1) considered te have a permit constituting completion of the background check required by 18 U.S.C. 921 through 925A; and

(2) is exempt from that act's 5-day waiting period for the purchase of a handgun.

Section 5. Contingent termination. (1) [Section 4(1)] terminates on the date of an executive order of the governor certifying that the federal background check referred to in that subsection is no longer required under federal statutory or case law.

(2) [Section 4(2)] terminates on the date of an executive order of the governor certifying that the federal 5-day waiting period referred to in that subsection is no longer required under federal statutory or case law.

Section 6. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45 apply to [sections 3 and 4].

Approved April 13, 1995

CHAPTER NO. 409

[HB 286]

AN ACT CLARIFYING THAT IT IS AN UNLAWFUL ACT FOR ANY BREWER OR BEER IMPORTER TO COERCE, ATTEMPT TO COERCE, OR PERSUADE A BEER WHOLESALER TO SET A PRICE FOR ANY PRODUCT; AND AMENDING SECTION 16-3-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-221, MCA, is amended to read:

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"**16-3-221. Illegal acts by brewers or beer importers.** It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

(1) coerce~~, or~~, attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action ~~which~~ *that* would violato or tend to violate any of the laws of this state or any rules promulgatod by the department;

(2) sell its products in the stato without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

(3) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing ~~herein shall prohibit~~ *in this part prohibits* the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; ~~and~~

(4) fix or maintain the price at which a wholesale distributor resells the brewer's or beer importer's products. Without limitation, it is a violation of this section if:

(a) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor for those products within 60 days; or

(b) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor in an amount proportionately larger than the amount that it raised the wholesale distributor's prices initially when compared to the resale price that it recommended to the wholesale distributor.

~~(4)~~ *(5)* cancel or terminate, except for just cause or in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or ~~thereafter~~ entered into *after that date* to sell beer manufactured by the brewer or imported by tbe beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving *that* the classification was reasonable and not arbitrary. After July 1, 1974, the provisions of 16-3-221 through 16-3-226 ~~shall~~ *must* be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer or heer importer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer."

Approved April 13, 1995

CHAPTER NO. 410

[HB 295]

AN ACT REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO ISSUE ORDERS OF NONCOMPLIANCE FOR FAILURE TO MEET CAMPAIGN FINANCE REPORTING REQUIREMENTS; AND AMENDING SECTION 13-37-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-121, MCA, is amended to read:

"13-37-121. Inspection of statements and reports — issuance of orders of noncompliance. (1) Each statement and report filed with the commissioner during an election or within 60 days ~~thereafter~~ *after the election* ~~shall~~ *must* be inspected within 10 days after it *the statement or report* is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance. *If the person fails to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this section.*

(2) ~~Such an~~ *An* order of noncompliance ~~shall~~ *may* be issued when:

(a) upon examination of the official hallot, it appears that the person has failed to file a statement or report as required by this chapter or that a statement or report filed hy a person does not conform to law; or

(b) it is determined that a statement or report filed with the commissioner does not conform to the requirements of this chapter or that a person has failed to file a statement or report required by law.

~~(2)~~*(3)* If an order of noncompliance is issued during a campaign period or within 60 days after an election, a candidate or political committee shall submit the necessary information within 5 days after receiving the ~~notice~~ *order* of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

~~(3)~~*(4)* If an order of noncompliance is issued during any period other than that described in subsection ~~(2)~~ *(3)*, a candidate or political committee shall submit the necessary information within 10 days after receiving the ~~notice~~ *order* of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125."

Approved April 13, 1995

CHAPTER NO. 411

[HB 305]

AN ACT AUTHORIZING THE ISSUANCE OF A LOAN TO THE DEPARTMENT OF JUSTICE TO BE APPROPRIATED FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE LITIGATION IN THE CLARK FORK RIVER BASIN; EXTENDING REPAYMENT AND PROVIDING FOR INTEREST ON PREVIOUS LOANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Natural resource damage program loan authorization and appropriation. (1) There is authorized to the department of justice from the coal severance tax permanent fund for fiscal years 1996 and 1997 a loan in the amount of $2,359,857, the proceeds of which are appropriated for the biennium ending June 30, 1997, for the purpose of conducting the litigation and natural resource damage claim against the atlantic richfield company (ARCO) through the natural resource damage litigation program.

(2) Repayment of principal and interest on the loan authorized in subsection (1) is extended through the end of the 1997 biennium in accordance with 17-2-107(8).

Section 2. Extension of previous loans. Repayment of principal and interest on all loans authorized from the coal severance tax permanent fund under Cbapter 354, Laws of 1993, is extended through the end of the 1997 biennium in accordance with 17-2-107(8).

Section 3. Rate of interest. The interest to be paid on the loan authorized under [section 1] and the previous loan extended under [section 2] must be the highest rates allowable for interest recoverable under 42 U.S.C. 9607(a), which are based on the rates specified for interest on investments of the hazardous substance superfund established under 26 U.S.C. 9507. The interest is payable as of the date on which the loan proceeds were or are transferred from the coal severance tax trust fund. The loan contract authorized under Chapter 354, Laws of 1993, must be revised to reflect the interest rates in this section and the transfer of the program from the department of health and environmental sciences to the department of justice. All obligations of the department of health and environmental sciences referenced in Chapter 354, Laws of 1993, and not completed by the time of transfer of the program to the department of justice must be transferred to the department of justice.

Section 4. Loan contract. In order to make the loan authorized in [section 1] and extend the previous loans authorized in Chapter 354, Laws of 1993, the board of investments shall enter into a revised contract with the department of justice pledging the amount recovered in the litigation to the repayment of the loans to the full extent allowable under the law. The contract must provide that loan repayments must be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term pool. The loan

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authorized in [section 1] may not be made until tbe contract required by this section has become effective.

Section 5. Three-fourths vote. Because [section 1] appropriates money from the coal severance tax permanent fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 6. Effective date. [This act] is effective July 1, 1995.

Approved April 13, 1995

CHAPTER NO. 412

[HB 325]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CERTAIN RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; DESIGNATING JURISDICTION AND VENUE FOR JUDICIAL REVIEW OF FINAL ADMINISTRATIVE DECISIONS OF THE BOARD; PROHIBITING INDEPENDENT CONTRACTORS FROM BECOMING MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING THE CALCULATION OF THE PERS SURVIVORSHIP BENEFIT; CLARIFYING THE DEFINITION OF DEPUTY SHERIFF FOR PURPOSES OF DETERMINING ELIGIBILITY FOR MEMBERSHIP IN THE SHERIFFS' RETIREMENT SYSTEM; ALLOWING THE BOARD TO USE MAILING LISTS OF PERSONS PARTICIPATING IN THE RETIREMENT SYSTEMS ADMINISTERED BY THE BOARD FOR PURPOSES OF MAILING MATERIALS ON BEHALF OF CERTAIN THIRD PARTIES FOR A FEE; AMENDING DISABILITY PROVISIONS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS ADMINISTERED BY THE BOARD TO CONFORM WITH PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT; PROVIDING FOR CONVERSION OF THE DISABILITY RETIREMENT OF A MEMBER OF THOSE SYSTEMS TO A SERVICE RETIREMENT WHEN THE MEMBER REACHES NORMAL RETIREMENT AGE; CLARIFYING THE TYPES OF INVESTMENTS THAT THE BOARD OF INVESTMENTS IS REQUIRED TO INVEST IN FOR THE SOCIAL SECURITY AGENCY ACCOUNT; PROVIDING FOR THE DIRECT TRANSFER OF MEMBERS' CONTRIBUTIONS BETWEEN PUBLIC RETIREMENT SYSTEMS; AMENDING SECTIONS 2-6-109, 19-1-202, 19-1-602, 19-2-303, 19-2-401, 19-2-406, 19-2-704, 19-3-403, 19-3-509, 19-3-511, 19-3-1015, 19-3-1205, 19-5-612, 19-6-612, 19-6-802, 19-7-101, 19-7-612, 19-7-802, 19-8-712, 19-8-902, 19-9-405, 19-9-904, 19-13-404, 19-13-804, AND 19-20-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE PROVISIONS.

STATEMENT OF INTENT

A statement of intent is required for this bill because 19-7-101 gives the public employees' retirement board authority to adopt rules that clarify the training and salary requirements for persons to be eligible for membership in the sheriffs' retirement system because of their appointment as deputy sheriffs.

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It is the intent of the legislature that only full-time, professional law enforcement officers be eligible for membership in the sheriffs' retirement system. Because persons without the requisite training and salary required to be paid to deputy sheriffs have been erroneously reported to the sheriffs' retirement system in the past, it is the intent of this bill to require the board te adopt rules that will reflect up-to-date training and salary requirements for appointed deputy sheriffs acting in a professional law enforcement capacity.

The legislature intends that persons employed in the following positions and who are not permanent, full-time law enforcement officers employed by county sheriffs not be eligible for membership in this retirement system: jailers; communications officers; other administrative, clerical, or support personnel; and other persons deputized to act as reserve deputies.

A statement of intent is further required for this bill because [section 2] gives the board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to provide the board with the option of generating fees from the sale of the use of mailing lists composed of participants in the retirement systems administered by the board. However, the legislature intends that such use be restricted by the board so that retirement system participants are neither deprived of their right of privacy concerning confidential information nor inundated with excessive mailings, particularly as concerns commercial interests, individual political candidates and ballot issues, or other specific political issues.

The legislature intends to allow the board discretion in promulgating rules concerning procedures to effectuate this intent. The legislature intends that the board have discretion to determine, for example, that mailings may not he allowed at all under this provision, that mailings may be tried for a limited period of time only, that mailings may be limited to tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code, that specific types of mailings may be allowed, that mailings can be limited to specific categories of participants, or that participants have a right to be excluded from mailings on request.

The legislature intends that the fees generated by mailings for third parties not reduce the amount of appropriation otherwise allocated for the administration of the retirement system but be used as the board considers appropriate, such as for additional communication by the board with retirement system participants regarding retirement system rights, obligations, and similar issues.

A statement of intent is further required for this bill because general rulemaking authority is granted to the board to establish rules requiring employers to provide information germane to processing an application for disability retirement of a public employee retirement system member.

Tbe Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq., requires employers to define the essential elements of each position and to make reasonable accommodations for employees with disabilities.

In recognition of the purpose of the ADA, it is intended that the board, when determining if an applicant is totally and permanently disabled and thereby

eligible for benefits from one of the retirement systems administered by it, consider whether the member is able to perform the essential elements of the position after the employer makes accommodations required by the ADA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-109, MCA, is amended to read:

"2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty. (1) Except as provided in subsections (3) through ~~(7)~~ *(8)*, in order to protect the privacy of those who deal with state and local government:

(a) ~~no~~ *an* agency may *not* distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) ~~no~~ *a* list of persons prepared by the agency may *not* be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a mailing list by examination of original documents or applications ~~which~~ *that* are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or to lists of persons holding driver's licenses provided for under 61-5-126.

(5) This section ~~shall~~ *does* not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted ~~therefrom~~ *from that chapter* as provided in 20-30-102.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a third party with tax-exempt status under section 501(c)(3) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the third party.

~~(8)~~*(9)* A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Section 2. Third-party mailings by board to system participants — rules. (1) The board may implement third-party mailings under the provisions

of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures.

(2) Fees generated by third-party mailings must be deposited in an account in the state special revenue fund and must be appropriated to the board for the benefit of participants of retirement systems administered by the board.

Section 3. Section 19-1-202, MCA, is amended to read:

"**19-1-202. Costs of administration.** All costs allocable to the administration of this chapter ~~shall~~ *must* be charged to the ~~retirement division~~ pension trust fund *of the public employees' retirement system.* ~~So much of the~~ *The amount of administrative* costs ~~as are~~ not defrayed by interest and income earned upon the contribution account, which ~~has~~ *had* been credited to the ~~retirement division~~ pension trust fund~~,~~ *of the public employees' retirement system,* as provided in 19-1-602, *prior to July 1, 1987,* ~~shall~~ *must* be paid to the state agency for deposit to the ~~retirement division~~ pension trust fund *of the public employees' retirement system* by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions."

Section 4. Section 19-1-602, MCA, is amended to read:

"**19-1-602. Management of account.** (1) All ~~moneys~~ *money* in the account ~~shall~~ *must* be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency ~~is vested with~~ *has* full power, authority, and jurisdiction over the account, including all ~~moneys~~ *money* and property or securities belonging ~~thereto~~ *to the account.* It may perform any ~~and all~~ acts, whether or not specifically designated, ~~which~~ *that* are necessary to the administration of the account and *that* are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account ~~in investments of the same character as are permitted by 17-6-211 for the investment of moneys in the long-term investment fund~~ *as part of the unified investment program described in Title 17, chapter 6, part 2.* The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the state general fund.

(4) ~~No later than June 30, 1986~~ *By the end of the fiscal year during which all payments determined to be due and payable from the state to the social security administration have been paid,* the state agency shall ~~calculate an amount equal to the earned income from current and previous fiscal years in the contribution account, less all payments and credits due or owing, and~~ transfer ~~this amount~~ *any funds remaining in the contribution account* to the state general fund."

Section 5. Section 19-2-303, MCA, is amended to read:

"**19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

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(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is an employee of an employer and who is making the required contributions to tbe system based on the member's compensation paid by the employer.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made hy a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid hy a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disahility retirement or survivorship benefit provided hy a *retirement* system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing annuity after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member to receive any survivorship benefits or lump-sum payments upon the death of the member, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the memher to perform the member's duties by reason of physical or mental incapacity. The disability must

be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Division" means the public employees' retirement division of the department of administration.

(17) "Employee" means a person who is employed by an employer in any capacity and whose salary is paid by the employer.

(18) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(19) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

~~(19)~~*(20)* "Fiscal year" means any year commencing with July 1 and ending the following June 30.

~~(20)~~*(21)* "Inactive member" means a member who has terminated service with an employer and has not withdrawn the member's accumulated contributions from the retirement system.

~~(21)~~*(22)* "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

~~(20)~~*(23)* "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(23)~~*(24)* "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a *retirement* system.

~~(24)~~*(25)* "Pension" means payments for life derived from contributions to a system made from state- or employer-controlled funds.

~~(25)~~*(26)* "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

~~(26)~~*(27)* "Regular contributions" means contributions required from members under a retirement system.

~~(27)~~*(28)* "Regular interest" means interest at the rate set from time to time by the board.

~~(28)~~*(29)* "Retirement" or "retired" means the status of a member who has terminated from service with a retirement benefit under a retirement system.

~~(29)~~*(30)* "Retirement benefit" means the periodic benefit payable following service, early, or disability retirement under a retirement system.

~~(30)~~*(31)* "Retirement system" means one of the public employee retirement systems enumerated in 19-2-302.

~~(31)~~*(32)* "Service" means employment of an employee in a position covered by a retirement system.

~~(32)~~*(33)* "Supplemental cost" means an element of the total actuarial cost of a *retirement* system arising from benefits payable for service performed prior to the inception of the *retirement* system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure te fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

~~(33)~~*(34)* "Survivorship benefit" means payments for life to the beneficiary of a deceased member who died while in service under a retirement system.

~~(34)~~*(35)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(35)~~*(36)* "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

~~(33)~~*(37)* "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

Section 6. Section 19-2-401, MCA, is amended to read:

"**19-2-401. Location of board — *jurisdiction and venue for judicial review* — quorum — officers and employees.** (1) The board shall maintain its office in the city of Helena. *Jurisdiction and venue for judicial review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County, unless otherwise stipulated by the parties.*

(2) A quorum of the board is three members.

(3) The board sball elect one of its members presiding officer. The board may appoint a committee of one or more of its members to perform routine acts, such as retirement of members and fixing of retirement benefits, approval of death claims, and correction of records necessary in the administration of the systems in accordance with the provisions of chapters 3, 5 through 9, 12, 13, and 15 of this title and in accordance with the rules of the board. The attorney general is the legal counsel for the board."

Section 7. Section 19-2-406, MCA, is amended to read:

"**19-2-406. Determination of disability by board — *compliance with federal law — conversion to service retirement benefit — rules.*** (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or

any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement.

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

~~(2)~~*(3)* The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained the minimum age required for normal service retirement. The board shall notify the member in writing as to the change in status."

Section 8. Section 19-2-704, MCA, is amended to read:

"**19-2-704. Purchasing service credits allowed.** *(1)* Subject to the rules promulgated by the board, an eligible member may elect to contribute amounts in addition to the mandatory employee contributions required by the retirement system in which the member participatos for the purpose of purchasing service credits as provided by the statutes governing the retirement system..

(2) A member eligible to qualify service under the provisions of 19-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404 may, at any time prior to retirement, elect to transfer all or a portion of the member's accumulated contributions on deposit in a pension trust fund from which service is being transferred to the pension trust fund of another plan in which service is being credited. The transfer of contributions may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the accumulated contributions on deposit in a pension trust fund is being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall identify at the time of the transfer the taxed and tax-deferred amounts being transferred."

Section 9. Section 19-3-403, MCA, is amended to read:

"**19-3-403. Exclusions from membership.** The following persons may not become members of the retirement system:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training, but who receive compensation;

(3) independent contractors~~, unless there is a written contract that specifies the creation of an employer-employee relationship for purposes of retirement coverage under the retirement system~~;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, solely for the purposes of making regular contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6) full-time students employed at and attending the same public elementary school, high school, ~~vocational-technical center~~ *school of technology*, or community college or any unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive credited service for the excluded service under the provisions of 19-3-505."

Section 10. Section 19-3-509, MCA, is amended to read:

"**19-3-509. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify as service in this retirement system all or any portion of the member's service credit in the highway patrol officers', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which the member *either* has received *or is eligible to receive* a refund of membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in

subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal cost contribution rato minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. The board may grant service credit upon contribution by the employee of the actuarial cost of granting this service in the public employees' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 11. Section 19-3-511, MCA, is amended to read:

"**19-3-511. Transfer of service credits *and contributions* from teachers' retirement system.** (1) ~~A~~ *An active* member may at any time before retirement make a written election with the board to qualify in the public employees' retirement system all of the member's service in the teachers' retirement system *for which the member either has received or is eligible to receive a refund.* The amount that must be paid *or transferred* to the retirement system to qualify this service under this section is the sum of subsections (2) and (3).

(2) ~~The~~ *In addition to the amounts directly paid or transferred by the member under subsection (3), the* teachers' retirement system shall transfer to the public employees' retirement system an amount equal to 72% of the amount ~~determined in accordance with subsection (3)~~ *payable by the member.*

(3) The ~~employee~~ *member* shall pay *either directly or by transferring contributions on account with the teachers' retirement system* an amount equal to the ~~employee's~~ *member's* accumulated contributions at the time ~~the employee terminated~~ *that* active membership *was terminated* with the teachers' retirement system~~, as defined in 19-20-302~~, plus accrued interest. *Interest must be calculated* from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

(4) The amount of service credit granted in subsection (1) must be on a month-by-month basis. Military service credit transferred from the teachers' retirement system must be included in the 5-year maximum military service credit provided for in 19-3-503.

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(5) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit qualified under this section and the amount paid to the retirement system under subsections (2) and (3).

(6) If a *an active* member who *also* has service credit in the teachers' retirement system dies before the member qualifies this service in the public employees' retirement system and if the service credits from both systems, when combined, entitle the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to qualify this service in the public employees' retirement system as provided in subsections (2) and (3)."

Section 12. Section 19-3-1015, MCA, is amended to read:

"**19-3-1015. Medical examination of disability retiree — cancellation and reinstatement.** (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform *the essential elements of* either ~~the duties of~~ the position held by the member when the member retired or the ~~duties~~ *position* proposed to be assigned to the member. If the board determines the member is not incapacitated or if the member refuses to submit to a medical examination, the member's retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in the same classification with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to have been discontinued coincident with the commencement of the member's retirement benefit."

Section 13. Section 19-3-1205, MCA, is amended to read:

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"19-3-1205. **Amount of survivorship benefit.** The survivorship benefit payable to a member's designated beneficiary is the actuarial equivalent of ~~either~~:

(1) the accrued portion of the ~~service~~ *early* retirement benefit that would have been payable to the member commencing at age ~~60~~ *50* pursuant to ~~19-3-904~~ *19-3-906*, if the member had not attained age ~~60~~ *50 or earned 25 years of service credit* at the time of death; ~~or~~

(2) if the deceased member had attained age 50 or earned 25 years of service credit at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

~~(2)~~*(3)* if the deceased member had attained age 60 or earned 30 years of service credit at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death."

Section 14. Section 19-5-612, MCA, is amended to read:

"19-5-612. **Medical examination of disability retiree — cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ *essential elements* of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability retirement benefit."

Section 15. Section 19-6-612, MCA, is amended to read:

"19-6-612. **Medical examination of disability retiree — cancellation of benefit.** (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the ~~duties~~ *essential elements* of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3). If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may

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request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must he reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in the same classification within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review."

Section 16. Section 19-6-302, MCA, is amended to read:

"**19-6-802. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service in the public employees', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which the member *either* has received *or is eligible to receive* a refund of the member's membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service credit in the highway patrol officers' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the highway patrol officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the highway patrol officers' retirement system, according to the most recent actuarial valuation.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the highway patrol officers' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This employment may not be credited in more than one retirement system under Title 19."

Section 17. Section 19-7-101, MCA, is amended to read:

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"**19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a memher out of funds controlled by an employer before any deductions are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "Sheriff" means any elected or appointed county sheriff, *or* undersheriff, or ~~regularly~~ *any* appointed, *lawfully trained, appropriately salaried,* and *regularly* acting deputy sheriff. *The board shall adopt rules incorporating both the peace officers standards and training council's current law enforcement training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs who are eligible for membership in this retirement system.*"

Section 18. Section 19-7-612, MCA, is amended to read:

"**19-7-612. Medical examination of disability retiree — cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ *essential elements* of the position held hy the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2). If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) A person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in the same classification within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty ~~which~~ *that* the person may have or claim to have.

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(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's department. If the board's findings are upheld, the public body shall pay the cost of the review."

Section 19. Section 19-7-802, MCA, is amended to read:

"**19-7-802. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service in the public employees', highway patrol officers', firefighters' unified, game wardens', or municipal police officers' retirement system for which the member *either* has received *or is eligible to receive* a refund of the member's membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit upon contribution by the employee of the actuarial cost of granting this service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 20. Section 19-8-712, MCA, is amended to read:

"**19-8-712. Medical examination of disability retiree — cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ *essential elements* of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's

disability retirement benefit must be canceled when the recipient is offered a position under subsection (3). If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in the same classification within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(4) The department of fish, wildlife, and parks may request a medical or psychological review as to the ability of the recipient to return to work as a game warden. If the board's findings are upheld, the department of fish, wildlife, and parks shall pay the cost of the review."

Section 21. Section 19-8-902, MCA, is amended to read:

"**19-8-902. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or municipal police officers' retirement system for which the member *either* has received *or is eligible to receive* a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the game wardens' retirement system, as determined by the board, based on the most recent actuarial valuation of the system minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the game wardens' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this

service in the game wardens' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 22. Section 19-9-405, MCA, is amended to read:

"**19-9-405. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game wardens' retirement system for which the member *either* has received *or is eligible to receive* a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the municipal police officers' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the regular contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the municipal police officers' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the regular contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 23. Section 19-9-904, MCA, is amended to read:

"**19-9-904. Termination of benefit.** The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the

board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the ~~duties~~ *essential elements* of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905. If the inactive member refuses to submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the detormination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time."

Section 24. Section 19-13-404, MCA, is amended to read:

"19-13-404. **Qualification of other Montana puhlic service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', sheriffs', municipal police officers', or game wardens' retirement system for which the member *either* has received *or is eligible to receive* a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the firefighters' unified retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under suhsection (1)(a), the division shall transfer from the member's former retirement system to the firefighters' unified retirement system an amount equal to the employer contributions made during the member's service, but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the firefighters' unified retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 25. Section 19-13-804, MCA, is amended to read:

"19-13-804. **Medical examination of disahility retiree — cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a

disability retirement benefit to undergo a medical examination at the board's expense. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on. Based on the results of the examination, the board shall determine whether the recipient has the physical or mental capacity to perform the ~~duties~~ *essential elements* required by the recipient's *former* position. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled. The board shall notify the recipient of this determination and the cancellation of the recipient's benefit.

(2) The cancellation of a disability retirement benefit because a member is no longer incapacitated does not prejudice any right of the memher to a service retirement benefit."

Section 26. Section 19-20-409, MCA, is amended to read:

"**19-20-409. Transfer of service credits *and contributions* from public employees' retirement system.** (1) A *An active* member may at any time before ~~his~~ retirement make a written election with the retirement board to qualify in the teachers' retirement system all of ~~his~~ *the member's previous* creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to qualify this service under this section is the sum of subsections (2) and (3).

(2) ~~The~~ *In addition to the amounts directly paid or transferred by the member under subsection (3), the* public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount ~~determined in accordance with subsection (3)~~ *payable by the member.*

(3) The ~~employee~~ *member* shall pay *either directly or by transferring contributions on account with the public employees' retirement system* an amount equal to ~~his~~ *the member's* accumulated contributions at the time ~~he terminated~~ *that* active membership ~~under 19-2-601~~ *was terminated,* plus accrued interest. *Interest must be calculated* from the date of termination until payment is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who qualifies service from the public employees' retirement system in the teachers' retirement system must complete 5 years of membership service in the teachers' retirement system to qualify or purchase military service, out-of-state teaching service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If a *an active* member who *also* has creditable service in the public employees' retirement system dies before ~~he qualifies~~ *qualifying* this service in the teachers' retirement system and if ~~his~~ *the member's* service credits from both systems, when combined, entitle ~~his~~ *the member's* beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions

necessary to qualify this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) If the retirement board determines that an individual's membership was erroneously classified *and reported to the public employees' retirement system*, the member's accumulated contributions and service must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in 19-20-602 and 19-20-605 are the liability of the employee and the employing entity where the error occurred, respectively."

Section 27. Codification instruction. [Section 2] is intended to he codified as an integral part of Title 19, chapter 2, part 4, and the provisions of Title 19, chapter 2, part 4, apply to [section 2].

Section 28. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 29. Retroactive applicability. (1) [Section 14] applies retroactively, within the meaning of 1-2-109, to any service performed by an individual for a county sheriff's department.

(2) [Sections 5, 7, 12, 14, 15, 18, 20, 23, and 25] apply retroactively, within the meaning of 1-2-109, to initial disahility determinations and reviews of ongoing disability status on and after January 1, 1994.

Section 30. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 413

[HB 354]

AN ACT REVISING THE LAWS GOVERNING MICROBUSINESS DEVELOPMENT; INCREASING THE ALLOWABLE AMOUNT OF A MICROBUSINESS LOAN; APPROPRIATING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF COMMERCE FOR MICROBUSINESS DEVELOPMENT; AMENDING SECTIONS 17-6-407 AND 17-6-411, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-407, MCA, is amended to read:

"17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations. (1) There is in the state special revenue fund a microbusiness development loan account into which the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, *money appropriated pursuant to [section 3],* and money received in repayment of the principal of development loans must be deposited. The department may

make development loans from the account in amounts not to exceed $250,000 a loan to a certified microbusiness development corporation.

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which all interest received on development loans, service charges or fees received from certified microbusiness development corporations, grants, donations, and private or public income must be deposited. Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(3) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

(4) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) geographic representation of all regions of the state, including both urban and rural communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with its plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with its plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

(5) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to

provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed ~~$20,000~~ *$35,000* and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed ~~$20,000~~ *$35,000*;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed ~~$20,000~~ *$35,000*, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed ~~$20,000~~ *$35,000*.

(6) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(7) Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio of at least $1 from other sources for each $6 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(8) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department that are consistent with the purposes of and with rules promulgated to implement this part.

(9) (a) Unless subject to federal law or rule, each certified microbusiness development corporation that receives a development loan under this part shall pay the cost of an audit of its operations to be conducted at least once every 2 years. The department shall designate an auditor to conduct the audit.

(b) If an audit is performed under a requirement of federal law or rule, the department shall waive the audit required in subsection (9)(a) with respect to all issues addressed by the federal audit report. However, the department may require an audit of matters that are not, in the department's judgment, addressed by the federal report—for example, verification of compliance with

requirements specific to the program, such as job-generation standards and reporting.

(10) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on the receivables of the corporation receiving the loan."

Section 2. Section 17-6-411, MCA, is amended to read:

"17-6-411. Microbusiness advisory council — appointment of members — organization — nonvoting legislative consulting panel. (1) Subject to the provisions of subsection (5), there is a microbusiness advisory council composed of 13 members appointed by the governor from a list of candidates submitted by the director of the department after the department provides by rule for a process of requesting and receiving nominations from the public. No more than seven of the council members may live in the same congressional district as the congressional districts existed on December 31, 1990. At least three members must be representatives of certified community lead organizations. At least two of the three community representatives shall reside in communities with a population of less tban 15,000. At least three members must be owners of oualified microbusinesses as defined in 17-6-403. At least two memhers must ~~have expertise in administering revolving loan funds that primarily serve microbusinesses~~ *have expertise in administering loan funds*. The membership must include representation of minorities, women, and low-income persons.

(2) ~~(a) At the first meeting of the council, members shall draw lots to determine six members whose terms expire June 30, 1992, and seven members whose terms expire June 30, 1993.~~

~~(b) Members serving terms beginning after the expiration of the terms set in subsection (2)(a) shall serve 2 year~~ *Members shall serve 4-year* terms.

~~(c)~~ A member appointed to fill an unexpired term sball serve until the term expires.

(3) The members of the council shall elect a ~~chairman~~ *presiding officer* and other officers as they determine necessary.

(4) The council shall meet at least once each quarter and more often as the ~~chairman~~ *presiding officer* or a majority of the members determine necessary.

(5) (a) There is a legislative consulting panel of four members. The panel:

(i) shall meet with the council, participate in deliberations of the council, and advise the council in performance of its functions under subsection (7) hut may not vote on any motion before the council; and

(ii) consists of:

(A) two representatives, including one from each party, appointed by the speaker of the house of representatives; and

(B) two senators, including one from each party, appointed by the committee on committees.

(b) The members:

(i) must be appointed on or before the 10th day of each regular session of the legislature and shall serve until the convening of the next regular session of the legislature. If a vacancy on the panel occurs during a legislative interim, that vacancy must be filled in the same manner as the original appointment.

(ii) are entitled to compensation in the same manner as members of the council, as provided in subsection (6).

(6) Members of the council are not entitled to compensation for their services except for reimbursement of expenses as provided in 2-18-501 through 2-18-503.

(7) The function of the council is to advise the department regarding the creation, operation, and maintenance of the program and the policies and operations affecting the certified microbusiness development corporations."

Section 3. Appropriation. (1) There is appropriated $3,250,000 to the department of commerce from the coal severance tax permanent fund provided for in 17-5-703 for the microbusiness finance program provided for in Title 17, chapter 6, part 4. Funds must be used to make loans pursuant to 17-6-407.

(2) The funds appropriated in subsection (1) must remain in the coal severance tax permanent fund until the department has decided to make a loan to a certified microbusiness development corporation. When the department has decided to make a loan, the director of the department shall notify the state treasurer, who shall transfer the requested funds to the microbusiness development loan account.

Section 4. Three-fourths vote required. Because [section 3] appropriates money from the coal severance tax trust fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 5. Effective date. [This act] is effective July 1, 1995.

Approved April 13, 1995

CHAPTER NO. 414

[HB 578]

AN ACT MAKING PERMANENT THE JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES; APPROPRIATING FUNDS FOR USE BY THE OVERSIGHT COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Joint Oversight Committee on Children and Families, established by Chapter 301, Laws of 1993 (House Bill No. 19), was recommended as a permanent study committee by the Joint Interim Subcommittee on Children and Families at the conclusion of the 1991-92 interim; and

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WHEREAS, the Joint Oversight Committee on Children and Families was assigned to study many of the issues that are also designated as appropriate, ongoing study areas within this reauthorization legislation; and

WHEREAS, the Joint Oversight Committee on Children and Families concluded its 1993-94 interim study assignments by recommending numerous policy and programmatic changes that are presented in the Committee's final report to the 54th Legislature.

THEREFORE, the Legislature of the State of Montana finds it appropriate to make permanent a Joint Oversight Committee on Children and Families to continue monitoring the implementation of legislative recommendations and to continue further study of emerging issues related to programs for children and families in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative oversight committee — appointment — staff assistance. (1)(a) There is a joint oversight committee on children and families. The oversight committee is composed of eight members who are appointed as follows:

(i) four members of the house of representatives, not more than two of whom may be from one political party, appointed by the speaker of the house; and

(ii) four members of the senate, not more than two of whom may be from one political party, appointed by the committee on committees.

(b) The members appointed under subsection (1)(a) must include representatives from the house appropriations subcommittee on human services and aging and the senate finance and claims subcommittee on human services and aging.

(2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(3) Members are entitled to salary and expenses as provided in 5-2-302.

(4) The oversight committee may request staff assistance from the legislative council, which assistance may be provided within limits established by the legislative council, given other priorities and responsibilities.

(5) Each state agency that provides services or funding for a program or service for children and families shall provide assistance and information upon request of the oversight committee.

Section 2. Duties of oversight committee. The joint oversight committee on children and families shall:

(1) examine public and private programs, services, and planning for children and families for the purpose of identifying duplications, inefficiencies, and any unmet needs within those programs, services, and plans;

(2) review federal, state, local, and private funds available to state and local jurisdictions for programs and services for children and families and consider feasible methods of refinancing those resources to maximize overall funding for existing and new programs;

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(3) monitor interagency coordination of programs and services for children and families and study ways to improve coordination and collaboration among public and private human service providers at all levels of government in Montana;

(4) study the issues surrounding teenage parents and their families, including problems related te employment, education, parenting skills, and public assistance;

(5) monitor implementation of state and national welfare reforms relatod to at-risk families, child care, teenage parents, and other human service concerns;

(6) continue to study issues related to adult protective services; and

(7) report the results of its study in writing to each regular session of the legislature. The oversight committee shall also provide copies of its report to the governor and appropriate state agencies.

Section 3. Appropriation. There is appropriated $12,000 from the general fund to the legislative council for the biennium ending June 30, 1997, to support the activities of the joint oversight committee on children and families made permanent in [section 1].

Section 4. Effective date. [This act] is effective July 1, 1995.

Approved April 13, 1995

CHAPTER NO. 415

[SB 90]

AN ACT PROVIDING IMMUNITY FROM LIABILITY TO CERTAIN FIREARMS SAFETY INSTRUCTORS FOR THE CONDUCT, ACTS, AND OMISSIONS OF STUDENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, many qualified persons are reluctant to become firearms safety instructors because of a perception of potential exposure to liability for the conduct, acts, or omissions of students; and

WHEREAS, providing an exemption from liability will encourage more persons to undertake the teaching of firearms safety, thereby improving the quality and availability of firearms safety instruction in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Immunity of certain firearms safety instructors. A person who is designated as a firearms safety instructor by the department of fisb, wildlife, and parks under 87-2-105 or certified as an instructor by a national firearms association, who trains people in the lawful use of firearms, and wbo is not employed by a governmental entity is not liable for the conduct, acts, or omissions of a student handling firearms unless the instructor exhibits gross negligence giving rise to causation of the damages.

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Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 416

[SB 135]

AN ACT CLARIFYING THE REQUIREMENT THAT ACTIVITIES, SERVICES, OR FACILITIES THAT ARE REQUIRED OF LOCAL GOVERNMENTS OR SCHOOL DISTRICTS BY THE STATE MUST CONTAIN A METHOD TO FULLY FUND THE ACTIVITIES, SERVICES, OR FACILITIES; PROHIBITING THE INTRODUCTION OF A BILL VIOLATING SECTION 1-2-112 OR 1-2-113, MCA; REQUIRING AN ESTIMATE OF THE FISCAL IMPACT OF A BILL BEFORE INTRODUCTION OF THE BILL; PROVIDING FOR ENFORCEMENT; AND AMENDING SECTIONS 1-2-112 AND 1-2-113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-2-112, MCA, is amended to read:

"1-2-112. Statutes imposing new local government duties. (1) Any law enacted by the legislature ~~after July 1, 1979, which~~ *that* requires a local government unit to perform an activity or provide a service or facility ~~which will require~~ *that requires* the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than ~~the existing authorized~~ mill levies or the all-purpose mill levy. Any law that fails to provide a specific means to finance any *activity,* service, or facility ~~other than the existing authorized mill levies or the all-purpose mill levy~~ is not effective until specific means of financing are provided by the legislature *from state or federal funds.*

(2) The legislature may fulfill the requirements of this section by providing for an increase in the existing authorized mill levies, ~~or~~ the all-purpose mill levy, special mill levies, or *the* remission of money by the state ~~of Montana~~ to local governments~~; however~~. *However*, an increase in the existing authorized mill levies, ~~or~~ the all-purpose mill levy, or any special mill levy must provide an amount necessary to finance the additional costs, and if financing is provided by remission of funds by the state ~~of Montana~~, the remission ~~shall~~ *must* bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) ~~No subsequent~~ *Subsequent* legislation ~~shall~~ *may not* be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that ~~such~~ *the* legislation ~~shall do~~ *does* so expressly.

(4) This section ~~shall~~ *does* not apply to any law under which the required expenditure of additional local funds is ~~incidental to the main purpose of the~~

~~law~~ *an insubstantial amount that can be readily absorbed into the budget of an existing program. A required expenditure of the equivalent of approximately 0.1 mill or less levied on taxable property of the local government unit may be considered an insubstantial amount.*"

Section 2. Section 1-2-113, MCA, is amended to read:

"**1-2-113. Statutes imposing new duties on a school district to provide means of financing.** (1) Any law enacted by the legislature ~~after July 1, 1981, except any law implementing a federal law or a court decision,~~ that requires a school district to perform an activity or provide a service or facility and that will require the direct expenditure of additional funds ~~shall~~ *must* provide a specific means to finance the activity, service, or facility other than the existing property tax mill levy. Any law that fails to provide a specific means to finance ~~such a~~ *the* service or facility is not effective until a specific means of financing meeting the requirements of subsection (2) is provided by the legislature.

(2) Financing must be by means of a remission of money by the state for the purpose of funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) ~~No legislation~~ *Legislation* passed and approved ~~after October 1, 1981, supersedes or modifies~~ *may not supersede or modify* any provision of this section, except to the extent that the legislation expressly does so.

(4) This section does not apply to any law under which the required expenditure of additional funds by the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing program."

Section 3. Bill restriction. (1) A bill may not be introduced enacting a new law or amending an existing law to require a local government unit to perform an activity or provide a service or facility that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113.

(2) The estimate of fiscal impact provided in accordance with [section 4] must be considered in determination of whether a bill is introduced in violation of subsection (1).

Section 4. Estimate of fiscal impact on local government required. (1) A bill that, if enacted, may require a local government unit to perform an activity or provide a service or facility that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113 must be accompanied, at the time that the bill is presented for introduction to the chief clerk of the house of representatives or the secretary of the senate, by an estimate of all direct and indirect fiscal impacts on a local government unit. The estimate of fiscal impacts must be prepared by the budget director in cooperation with a local government unit affected by the bill. The budget director has 10 days to prepare the estimate.

(2) The estimato must show in dollar amounts the increase in expenditures that may be required by the bill. Comment or opinion relative to the merits of the bill may not be included in tbe estimate. However, technical or mechanical

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defects may he noted. Upon completion of the estimate, the budget director shall submit the estimate to the requestor of the bill.

Section 5. Enforcement. (1) A local government unit may use a remedy provided in subsection (2), (3), or (4) te prevent the application of a law enacted in violation of 1-2-112 or 1-2-113.

(2) A local government may, with the consent of a state agency charged with the implementation of the law, arbitrate the application of the law pursuant to the Uniform Arbitration Act.

(3) A local government unit may request a bearing before an administrative agency charged with the administration of the law. A hearing held pursuant to this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act. The decision of the agency may be appealed in accordance with Title 2, chapter 4, part 7.

(4) A local government unit may bring a civil action in the district court of the county in which the local government unit is located to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113. The stato of Montana may be named as the respondent or defendant in an action brought pursuant to this section.

Section 6. Codification instruction. (1) [Sections 3 and 5] are intended to be codified as an integral part of Title 1, chapter 2, part 1, and the provisions of Title 1, chapter 2, part 1, apply to [sections 3 and 5].

(2) [Section 4] is intended to be codified as an integral part of Title 5, chapter 4, part 2, and the provisions of Title 5, chapter 4, part 2, apply to [section 4].

Section 7. Saving clause. [This act] does not affect obligations that were created, rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 13, 1995

CHAPTER NO. 417

[SB 210]

AN ACT GENERALLY REVISING AND CLARIFYING THE LAW REGARDING VIOLATIONS OF FISH AND GAME CRIMINAL STATUTES AND RESIDENCY REQUIREMENTS; REVISING DEFINITIONS; REVISING PENALTIES; ALLOWING FORMER GAME WARDENS TO BE APPOINTED AS EX OFFICIO WARDENS; CREATING THE OFFENSE OF UNLAWFUL POSSESSION OF A HUNTING LICENSE OR PERMIT OF ANOTHER; CREATING THE FELONY OFFENSE OF SALE OF WILDLIFE OR WILDLIFE PARTS; PROVIDING THAT ONE-HALF OF THE MONEY FROM CERTAIN FINES RELATING TO VIOLATIONS OF STATE FISH AND GAME LAWS BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTIONS 87-1-102, 87-1-111, 87-1-503, 87-1-601, 87-2-101, 87-2-102, 87-2-103, 87-2-106, 87-2-109, 87-2-110, 87-2-401, 87-2-402, 87-2-403, 87-2-404, 87-2-411, 87-2-501, 87-2-504, 87-2-507, 87-2-508, 87-2-509, 87-2-708, 87-2-803, 87-2-807, 87-3-101, 87-3-104, 87-3-107, 87-3-109, 87-3-118, 87-3-301, 87-3-305,

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87-3-402, 87-3-501, 87-5-404, AND 87-5-406, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-102, MCA, is amended to read:

"**87-1-102. Penalties.** (1) A person who purposely ~~or~~, knowingly, *or negligently* violates any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined not less than $50 or more than ~~$500~~ *$1,000*, imprisoned in the county jail for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, ~~shall~~ *may* be subject to forfeiture of ~~his~~ *that person's* license and the privilege to hunt, fish, or trap ~~within~~ *in* this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period ~~of not less than 24 months from the date of conviction or forfeiture~~ *set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.*

(2) (a) A person convicted of unlawfully taking, killing, possessing, *or* transporting~~, or wasting of~~ a bighorn sheep, moose, wild ~~bison~~ *buffalo*, caribou, mountain goat, *black bear,* or grizzly bear or any part of these animals shall be fined not less than $500 or more than ~~$1,000~~ *$2,000*, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for ~~not less than~~ 30 months from the date of conviction or forfeiture, *unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.*

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, *or* mountain lion~~, or black bear~~ or any part of these animals ~~or wasting a deer, antelope, or elk~~ shall be fined not less than $300 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for ~~not less than~~ 24 months from the date of conviction or forfeiture, *unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.*

(c) A person convicted of unlawfully attempting to trap~~, take, shoot,~~ or ~~kill~~ *hunt* a game animal shall be fined not less than $200 or more than $600, imprisoned in the county jail for not more than 60 days, or both.

(d) ~~A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully~~

~~attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than $50 or more than $200 or imprisoned in the county jail for not more than 30 days, or both.~~

~~(c)~~ A person convicted of purposely ~~or~~, knowingly, *or negligently* taking, killing, *trapping,* possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than ~~$50~~ *$100* or more than $1,000, ~~or~~ imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap *in this state* for ~~not less than~~ 24 months from the date of conviction or forfeiture, *unless the court imposes a longer forfeiture period,* and any pelts possessed unlawfully must be confiscated. *For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.*

~~(f)~~*(e)* A person convicted of hunting, fishing, or trapping while ~~his~~ *that person's* license is forfeited or ~~his~~ privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than $500 or more than ~~$1,000~~ *$2,000.*

(3) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined not less than $500 or more than ~~$1,000~~ *$2,000,* ~~or~~ imprisoned in the county jail for not more than 60 days, or both.

(4) A person convicted or who has forfeited bond or bail under ~~subsection (2)~~ *this section* and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined not less than $500 or more than ~~$1,000~~ *$2,000,* ~~or~~ imprisoned in the county jail for not more than 60 days, or both.

(5) Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2."

Section 2. Section 87-1-111, MCA, is amended to read:

"**87-1-111. (Temporary) Restitution for illegal killing or possession of certain wildlife.** (1) In addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal *taking,* killing, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each ~~such~~ bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, grizzly bear, and endangered species, $2,000;

(b) elk, mountain goat, carihou, bald eagle, *black bear,* and moose, $1,000;

(c) mountain lion, ~~black bear,~~ lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, *bull trout longer than 18 inches,* and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, *river-dwelling grayling,* and paddlefish, $300;

(e) ~~grayling and~~ fur-bearing animals, as defined in 87-2-101, and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section. (Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)

87-1-111. (Effective July 1, 2003) Restitution for illegal killing or possession of certain wildlife. (1) In addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal killing, *taking,* or possession of a wild bird, mammal, or fish listod in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, grizzly bear, and endangered species, $2,000;

(b) elk, mountain goat, caribou, bald eagle, *black bear,* and moose, $1,000;

(c) mountain lion, ~~black bear,~~ lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, *bull trout longer than 18 inches,* and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, *river-dwelling grayling,* and white sturgeon, $300;

(e) paddlefish, ~~grayling,~~ and fur-bearing animals, as defined in 87-2-101, and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section."

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Section 3. Section 87-1-503, MCA, is amended to read:

"**87-1-503. Ex officio wardens.** All sheriffs and their deputies, constables, all peace officers of the state or any subdivision of the state, all state forest officers, and, as authorized by cooperative agreement, ~~all~~ officers of the United States forest service, agents of the United States fish and wildlife service, peace officers of the bureau of land management, national park service, and corps of engineers that are assigned to duty in this state, *former fish and game wardens,* and field personnel of the department, as the director may appoint, are ex officio wardens, without pay, except that the department may, in its discretion, allow traveling expenses as provided for in 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and game funds. Ex officio wardens have the same powers with reference to the enforcement of the fish and game laws of this state and the laws relating to parks and outdoor recreation contained in chapters 1 and 2 of Title 23, except chapter 2, part 7, as regularly appointed wardens, and it is their duty to assist, whenever possible, in the enforcement of those laws."

Section 4. Section 87-1-601, MCA, is amended to read:

"**87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this stato, from appropriations, or received by the department from any other stato source must be turned over to the state treasurer and placed ~~by him~~ in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be depositod in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) That money must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in ~~subsection~~ *subsections* (7) *and (8),* all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 must be deposited by the state treasurer and credited to the

department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) Money received hy the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition must be deposited in an account within the nonexpendable trust fund of tbe state treasury. The interest derived from the fund, but not tbe principal, may be used only for the purpose of operation, development, and maintenance of real property of tbe department, and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited as follows:

(a) 50% in an account for use by tbe department for the enforcement of 77-1-801, 77-1-806, and rules adopted under 77-1-804; and

(b) 50% in the state lands recreational use account established by 77-1-808 for use by the department of state lands in the management of state lands.

(8) After [the effective date of this act], the state treasurer shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102."

Section 5. Section 87-2-101, MCA, is amended to read:

"**87-2-101. Definitions.** As used in this chapter, ~~and~~ chapter 3, *and 87-1-102,* unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means ~~the taking of or attempting to take fish by hook and single line or single rod, in hand or within immediate control~~ *to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.*

(2) *"Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds. The term does not include decoys, silhouettes, or other replicas of wildlife body forms; scents used only to mask human odor; or types of scents that are approved by the commission for attracting game animals or game birds.*

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(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

~~(3)~~*(4)* "Commission" means the state fish, wildlife, and parks commission.

~~(4)~~*(5)* "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

~~(5)~~*(6)* "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

~~(6)~~*(7)* "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

(8) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

~~(7)~~*(9)* "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves; however, the open season on mourning doves ~~shall be~~ *is* restricted to the open season on upland game birds as defined in subsection ~~(12)~~*(15)* ~~below~~.

~~(8)~~*(10)* "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

~~(9)~~*(11)* "Open season" means the time during which game birds, fish, *and* game and fur-bearing animals may be lawfully taken.

~~(10)~~*(12)* "Person" means individuals, associations, partnerships, and corporations.

~~(11)~~*(13)* "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(12)~~*(15)* "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(13)~~*(16)* "Wild buffalo" means buffalo or bison ~~which~~ *that* have not been reduced to captivity."

Section 6. Lawful means of angling or fishing. The only lawful means of angling or fishing is by hook and single line or single rod, in hand or within immediate control. All other methods of angling or fishing, unless authorized by commission rule, are unlawful.

Section 7. Section 87-2-102, MCA, is amended to read:

"87-2-102. Resident defined. In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions apply:

(1) A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-113, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(a) the member was a resident of Montana under the provisions of subsection ~~(2)~~*(4)* at the time the member entered the armed forces and continues to meet residency criteria of ~~subsection~~ *subsections* ~~(2)~~*(4) (b) through (4)(e)*; or

(b) the member is currently *stationed in and* assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and a certificate of competency, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. *Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.*

(2) ~~A person who has been a resident of the state of Montana for a period of 6 months immediately prior to making application for a license is eligible to receive a resident hunting, fishing, or trapping license. A person is considered a resident if the person meets the following criteria:~~

~~(a)~~ *A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately prior to making application for any license is eligible to receive hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.*

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana ~~the person lives in Montana or has a fixed intent to return to this state when the person leaves it~~;

(b) the person files Montana state income tax returns *as a resident* if required to file ~~as a resident~~;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) the person does not ~~use~~ *possess or apply for* any resident hunting, fishing, or trapping *licenses from another state or country or exercise resident hunting, fishing, or trapping* privileges in another state or country ~~during the time the resident Montana license is valid~~; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a post-secondary educational institution out of state and who would qualify for Montana resident tuition or otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

~~(3)~~*(6)* ~~Any~~ *An* enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

~~(4)~~*(7)* A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection ~~(4)~~ *(7)*.

~~(5)~~*(8)* An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status."

Section 8. Section 87-2-103, MCA, is amended to read:

"87-2-103. License required. (1) Except as provided in subsection (2), it is unlawful for a person to:

(a) ~~pursue,~~ hunt~~,~~ *or* trap~~, take, shoot, or kill~~ or attempt to *hunt or* trap~~, take, shoot, or kill~~ any game animal, any game bird, or any fur-bearing animal or ~~take, kill, trap, or~~ *to* fish for any fish within this state or ~~have, keep, or~~ possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts ~~thereof~~ *of those animals or birds*, except as ~~herein~~ provided *by law* or as provided by the department; or

(b) ~~pursue,~~ hunt~~,~~ *or* trap~~, take, shoot, or kill~~ or attempt to *hunt or* trap~~, take, shoot, or kill~~ any game animal, game bird, or fur-bearing animal or ~~take, kill, trap, or~~ *to* fish for any fish, except at the places and during tbe periods and in the manner ~~herein~~ defined *by law* or as defined by the department; or

(c) ~~pursue,~~ hunt~~,~~ *or* trap~~, take, shoot, or kill~~ or attempt to *hunt or* trap~~, take, shoot, or kill~~ any game animal, game bird, or fur-bearing animal or ~~take, kill, trap, or~~ fish for any fish within this state or ~~have, keep,~~ possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts ~~thereof~~ *of fur-bearing animals* without first having obtained a proper license or permit from the department to do so; or

(d) trap or ~~snare or~~ attempt to trap ~~or snare~~ predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident as defined in 87-2-102.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to ~~pursue, hunt, take, shoot, or~~ kill or attempt to ~~pursue, hunt, take, shoot, or~~ kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence."

Section 9. Section 87-2-106, MCA, is amended to read:

"87-2-106. Application for license — penalties for violation — forfeiture of privileges. (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state the applicant's name, age, occupation, ~~place of~~ *address of permanent* residence, *and* post-office address, the *applicant's* qualifying length of time as a resident in the state of Montana, whether a citizen of the United States or an alien, and other facts, data, or descriptions as may be required by the department. An applicant for a resident license sball present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a

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license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102~~(4)~~*(7)*, the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102~~(4)~~*(7)*. The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for ~~his~~ *the resident's* spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this ~~statute~~ *subsection* is guilty of a misdemeanor.

(7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to a false statement to obtain a resident license shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(8) It is unlawful and a misdemeanor for a person te purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section."

Section 10. Section 87-2-109, MCA, is amended to read:

"87-2-109. Carrying and exhibiting license and identification. (1) ~~It~~ *Except as provided in [section 11(2)], it* is unlawful for a person to whom a license or permit has been issued to fish ~~for or take any fish or pursue~~, *to* hunt~~, shoot, kill, or take~~ *for* any game bird or game animal, or *to* attempt to ~~trap, trap, or take~~ *hunt for* any fur-bearing animal in this state unless the person has *is*

carrying the *required* license, licenses, or permit ~~in the person's possession~~ at the time.

(2) It is unlawful to refuse to exhibit a license or permit and the identification used in purchasing a license or permit for inspection to a warden or other officer requesting to see it."

Section 11. Unlawful possession of hunting license or permit of another — penalties. (1) Except as provided in subsection (2), it is unlawful for a person to carry or have physical control over a valid and unused hunting license or permit issued to another person while in any location that the species to be hunted may inhabit.

(2) The following exceptions apply to the prohibition in subsection (1):

(a) A person may carry or have physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person.

(b) The prohibition does not apply to a properly validated license or permit attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section is guilty of a misdemeanor punishable as provided in 87-1-102(1).

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to another person or persons and that are used or intended te be used on game animals not taken by the person or persons to whom the licenses were issued, is guilty of a felony and upon conviction shall be fined not more than $50,000, imprisoned in the state prison for not more than 5 years, or both.

(5) In addition to the penalties set out in subsections (3) and (4), a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permit and license privileges for not less than 3 years or up to a lifetime revocation from the date of conviction.

Section 12. Section 87-2-110, MCA, is amended to read:

"**87-2-110. Alteration, *attachment,* or transfer of license.** ~~No~~ *A* person may *not* at any time alter or change in any material manner or loan or transfer *any license* to another *person.* ~~any license, nor may any~~ *A* person other than the person to whom ~~it~~ *a license* is issued *may not* use ~~it~~ *the license. A person may not attach the person's license to a game animal killed by another person.*"

Section 13. Section 87-2-401, MCA, is amended to read:

"**87-2-401. Class A-1—resident upland game hird license.** Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older may, upon payment of a fee of $6, receive a Class A-1 license ~~which~~ *that* will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ upland game birds, cranes, rails, snipes, and mourning doves and possess the carcasses of upland game birds, cranes, rails, snipes, and mourning doves as authorized by department rules."

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Section 14. Section 87-2-402, MCA, is amended to read:

"87-2-402. Class B-1—nonresident upland game bird license. Except as otherwise provided in this chapter, a person *who is* not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $55 may receive a Class B-1 license ~~which shall entitle~~ *that entitles* the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ upland game birds, cranes, rails, snipes, and mourning doves and possess the carcasses of upland game birds, cranes, rails, snipes, and mourning doves as authorized by department rules."

Section 15. Section 87-2-403, MCA, is amended to read:

"87-2-403. (Temporary) Wild turkey tags and fee. (1) The department may issue wild turkey tags te the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag ~~shall entitle~~ *entitles* the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ one wild turkey and possess the carcass ~~thereof~~ *of the turkey*, during ~~such~~ times and ~~such~~ places ~~as~~ *that* the ~~department~~ *commission* ~~shall authorize~~ *authorizes* an open season on wild turkey.

(2) The fee for a wild turkey tag is $4 beginning March 1, 1992, and $5 beginning March 1, 1994, for residents and $13 for nonresidents. Turkey tags ~~shall~~ *must* be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of ~~his~~ *that person's* wildlife conservation license. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-403. (Effective March 1, 2006) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag ~~shall entitle~~ *entitles* the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ one wild turkey and possess the carcass ~~thereof~~ *of the turkey*, during ~~such~~ times and ~~such~~ places ~~as~~ *that* the ~~department~~ *commission* ~~shall authorize~~ *authorizes* an open season on wild turkey.

(2) The fee for a wild turkey tag ~~shall be~~ *is* $5. Turkey tags ~~shall~~ *must* be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of ~~his~~ *that person's* wildlife conservation license."

Section 16. Section 87-2-404, MCA, is amended to read:

"87-2-404. Three-day nonresident captive-reared bird hunting stamp. A person who is 12 years of age or older and *who is* not a resident, as defined in 87-2-102, may, upon payment of a fee of $20, receive a 3-day nonresident shooting preserve bird hunting stamp that authorizes the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ game specified under 87-4-522 on a shooting preserve licensed under 87-4-501 for 3 consecutive calendar days as indicated on the license."

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Section 17. Section 87-2-411, MCA, is amended to read:

"87-2-411. Stamp required to hunt waterfowl. (1) It is unlawful for any person 15 years of age or older to ~~pursue,~~ hunt~~, shoot, or kill~~ waterfowl without first having obtained a valid watorfowl stamp from the department. The fee for ~~such~~ *the* stamp is $5.

(2) For the purpose of this section, the term "waterfowl" means wild ducks, wild geese, brant, and swans."

Section 18. Section 87-2-501, MCA, is amended to read:

"87-2-501. Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference. (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only~~,~~ *and* who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses at the prescribed cost ~~which~~ *that* will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, ~~$11 beginning March 1, 1992, and~~ $13 ~~beginning March 1, 1994~~;

(b) Class A-4, deer B tag, ~~$7 beginning March 1, 1992, and~~ $8 ~~beginning March 1, 1994~~;

(c) Class A-5, elk tag, ~~$13 beginning March 1, 1992, and~~ $16 ~~beginning March 1, 1994~~;

(d) Class A-6, black or brown bear tag, ~~$11 beginning March 1, 1992, and~~ $15 ~~beginning March 1, 1994~~;

(e) Class A-7, antlerless elk tag, ~~$13 beginning March 1, 1992, and~~ $16 ~~beginning March 1, 1994~~.

(2) (a) The holder of a Class A-7 antlerless elk license is entitled to ~~take~~ *hunt* antlerless elk in areas designated by the commission and at ~~such~~ *the* times and upon ~~such~~ *the* terms as set forth by the commission.

(b) ~~No~~ *A* person may *not* take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section ~~shall~~ *must* be issued, upon application, a Class A-7 license.

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(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 19. Section 87-2-504, MCA, is amended to read:

"**87-2-504. (Temporary) Class B-7 and B-8—nonresident deer licenses.** Except as otherwise provided in this chapter, a person *who is* not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $150; Class B-8, deer B tag, $50; and will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion ~~thereof~~ *of a specific administrative region*. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state. Not more than 5,000 Class B-7 licenses may be sold in any license year. Money received from the sale of Class B-7 licenses in excess of 1,700 must be used as provided in 87-1-242(1). (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-504. (Effective March 1, 2006) Class B-7 and B-8—nonresident deer licenses. Except as otherwise provided in this chapter, a person *who is* not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $100; Class B-8, deer B tag, $50; and will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion ~~thereof~~ *of a specific administrative region*. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state."

Section 20. Section 87-2-507, MCA, is amended to read:

"**87-2-507. (Temporary) Class D-1—nonresident mountain lion license.** Except as otherwise provided in this chapter, a person *who is* not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $320 may receive a Class D-1 license ~~which shall entitle~~ *that entitles* the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ mountain lion and possess the carcass ~~thereof~~ *of the mountain lion* as authorized by department

rules. If a holder of a valid mountain lion license under this section kills a mountain lion, ~~he~~ *the licensee* ~~must~~ *shall* purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport ~~such~~ *the* trophy. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-507. (Effective March 1, 2006) Class D-1—nonresident mountain lion license. Except as otherwise provided in this chapter, a person *who is* not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $300 may receive a Class D-1 license ~~which shall entitle~~ *that entitles* the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ mountain lion and possess the carcass ~~thereof~~ *of the mountain lion* as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, ~~he~~ *the licensee* ~~must~~ *shall* purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport ~~such~~ *the* trophy."

Section 21. Section 87-2-508, MCA, is amended to read:

"**87-2-508. Class D-2—resident mountain lion license.** Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older, upon payment of a fee of ~~$13 beginning March 1, 1992, and~~ $15 ~~beginning March 1, 1994~~, may receive a Class D-2 license ~~which shall entitle~~ *that entitles* the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ mountain lion and possess the carcass ~~thereof~~ *of the mountain lion* as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, ~~he~~ *the licensee* ~~must~~ *shall* purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport ~~such~~ *the* trophy."

Section 22. Section 87-2-509, MCA, is amended to read:

"**87-2-509. Tagging of carcasscs of game animals.** (1) Each license issued by the department authorizing the holder of the license to ~~pursue, shoot, kill, capture, take, or possess~~ *hunt* game animals, whether issued to a resident or a nonresident, must provide any tags, coupons, or markers as the department prescribes. When any person ~~takes or~~ kills any game animal under the license, the person shall immediately cut out from the tag, coupon, or other marker the date the animal was killed ~~or taken~~ and attach the tag, coupon, or other marker to the animal, completely filled out with the name of the license holder, the license holder's address, and any other information requested on the tag, coupon, or other marker. The tag, coupon, or other marker must be kept attached to the carcass as long as any considerable portion of the carcass remains unconsumed~~, and when~~. *When a game animal has been lawfully killed and* the proper tag, coupon, or other marker is attached to the game animal that was killed, the game animal becomes the property of the person who ~~tagged~~ *lawfully killed* the animal and may be possessed, used, stored, donated to another or to a charity, or transported.

(2) It is unlawful for a person who kills any game animal by authority of any license issued for the killing of the game animal to fail or neglect to cut out the day and month of the kill or provide any other information that is required and attach the tag, coupon, or other marker provided with the license issued to the

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carcass of the game animal or portion of the game animal. It is unlawful for a person to fail to keep the tag, coupon, or other marker attached to the game animal or portion of the game animal while the animal is possessed by the person. *It is unlawful for a person to tag a game animal with a tag restricted to a hunting district other than the hunting district where the game animal was killed.*"

Section 23. Section 87-2-708, MCA, is amended to read:

"**87-2-708. Class A-2—special bow and arrow license.** A holder of a valid hunting license for which a special archery season is set by the department may receive, upon payment of an additional fee of $8, a Class A-2 license ~~which shall authorize~~ *that authorizes* the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ with bow and arrow the game animals ~~so~~ authorized by the licenses held and to possess the carcass ~~thereof~~ *of the game animals* during seasons and in areas~~, as~~ designated by the department."

Section 24. Section 87-2-803, MCA, is amended to read:

"**87-2-803. Disabled persons.** (1) Disabled persons are entitled to fish and to hunt game birds with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years ~~old~~ *of age* or older and who is under 62 years of age.

(3) A resident or nonresident disabled person who is certified as disabled hy the department and who is not residing in an institution may carry a permit on a form prescribed hy the department. A disabled person issued a permit under this subsection is entitled to have the department stamp the permit with "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that the person is permanently physically handicapped and nonambulatory or that the person's mobility is substantially impaired.

(4) A disabled person carrying a permit as required in subsection (3), upon which is stamped "Permission to Hunt From a Vehicle", may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle *that is* parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or ~~may hunt by shooting a firearm from within a self-propelled or drawn vehicle~~ *that is* parked in an area, not a public highway, wbere hunting is permitted. Nothing in this subsection allows a disabled person to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A disabled person who hunts as authorized in this subsection must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the disabled hunter by ~~pursuing,~~ hunting~~, taking, shooting, or killing~~ a game animal that has been wounded by the disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. Any vehicle from which a disabled person is hunting must be conspicuously marked with an

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orange-colored international symbol of the handicapped on the front, rear, and each side of the vehicle.

(5) A resident of Montana who is certified by the department as a blind individual, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish ~~with hook and line or rod,~~ as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure."

Section 25. Section 87-2-807, MCA, is amended to read:

"**87-2-807. Taking migratory game birds for propagation — avicultural permit.** (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101~~(7)~~*(9)*, for the purpose of propagation. Before issuing an aviculturaI permit, the department ~~must~~ *shall* determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

(a) the species of migratory game birds allowed to be taken under the permit;

(b) whether eggs or hatched birds, or both, may be taken;

(c) the number of eggs or hatched birds, or both, that may be taken;

(d) areas in which collection may be made;

(e) means by which collection may be made;

(f) the time period for which the permit is valid; and

(g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit as provided in this section become the private property of the holder of the permit who propagates ~~such~~ *the* migratory game birds, and the owner may sell or transfer ~~such~~ *the* birds as private property, subject te any applicable state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing ~~such~~ *the* permit.

(5) The department shall adopt rules implementing this section."

Section 26. Section 87-3-101, MCA, is amended to read:

"**87-3-101. General restrictions.** Except as provided in 87-2-803(4), it is unlawful for anyone to ~~take, capture, shoot, kill, or attempt to take, capture, shoot, or kill~~ *hunt or attempt to hunt* any game animal or game bird:

(1) from any self-propelled or drawn vehicle;

(2) on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-202, in the state of Montana; or

(3) by the aid or with the use of any set gun, jacklight, *spotlight* or other artificial light, trap, snare *(except as allowed in 87-3-127 and 87-3-128)*, ~~or~~ salt lick, *or bait*~~; nor may any such set gun, jacklight or other artificial light, trap, snare, salt lick, or other device to entrap or entice game animals or game birds be used, made, or set~~."

Section 27. Section 87-3-104, MCA, is amended to read:

"87-3-104. **Unlawful to hunt or fish during closed season.** It is unlawful and a misdemeanor for any person during the closed season on any species of game animal, game bird, or fish to attempt to ~~take, shoot, kill, or capture~~ *hunt* or to ~~take,~~ hunt~~, shoot, kill, or capture~~ any ~~such~~ game animal or ~~such~~ game bird or to fish for or catch any fish."

Section 28. Section 87-3-107, MCA, is amended to read:

"87-3-107. **Use of snare lawful under certain conditions.** (1) It ~~shall be~~ *is* lawful to use a snare trap for the purpose of snaring ~~any animal or bird~~ *a fur-bearing animal, a predatory animal, or a nongame species* under the following conditions:

(a) ~~Each~~ *A* snare trap must be tagged with a numbered metal device identifying the owner's name, address, and telephone number.

(b) It is unlawful to set snare traps on private property without the landowner's consent.

(c) Snare traps ~~shall~~ *must* be set in a manner and at a time so as not to unduly endanger livestock.

(d) A person who injures livestock in snare traps is liable for damages to the owner of the livestock.

(2) A person convicted of violating the provisions of this section is guilty of a misdemeanor.

(3) The commission may adopt rules to enforce this section."

Section 29. Section 87-3-109, MCA, is amended to read:

"87-3-109. **Attempting to take simulated wildlife decoy — penalty.** (1) It is unlawful for a person to discharge a firearm or other hunting implement at a simulated wildlife decoy in violation of any state statute or commission rule regulating the hunting ~~or taking~~ of the wildlife being simulated when the decoy is being used by a certified peace officer.

(2) Upon conviction, the penalty for attempting to ~~take~~ *hunt* a simulated wildlife decoy is the same as prescribed for ~~unlawful taking~~ *the state statute or commission rule violated during the attempted hunting* of the actual wildlife being simulated.

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(3) In addition to any other penalty, a person convicted under this section shall pay restitution of $50 to the department for the repair of damages to simulated wildlife decoys."

Section 30. Section 87-3-118, MCA, is amended to read:

"87-3-118. ~~Sale~~ *Felony sale* or possession of ~~unlawfully taken~~ wildlife — penalty. (1) A person commits the offense of sale of unlawfully taken wildlife if ~~he~~ *the person* purposely or knowingly:

(a) sells, barters, purchases, or exchanges *unlawfully taken wildlife* for anything of value; or ~~if he~~

(b) offers to sell, barter, purchase, or exchange *unlawfully taken wildlife* for anything of value~~, unlawfully taken wildlife~~.

(2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than $1,000 if ~~he~~ *the person* purposely or knowingly has actual or constructive possession of or transports or causes to be transported unlawfully taken wildlife having a value of more than $1,000. The value of the unlawfully taken wildlife must be determined from the schedule of restitution values set out in 87-1-111.

(3) *(a) A person commits the offense of unlawful sale or possession of wildlife if the person purposely or knowingly:*

(i) sells, barters, purchases, or exchanges wildlife for anything of value;

(ii) attempts to sell, barter, purchase, or exchange wildlife for anything of value;

(iii) transports, causes to be transported, or is in the process of transporting out of state wildlife for purposes of sale, barter, purchase, or exchange for anything of value.

(b) For the purposes of this subsection (3), "wildlife" includes the edible meat, internal organs, tissue, fluids, or sex organs of wildlife having a value of more than $1,000 or edible meat of wildlife in excess of 150 pounds, except meat allowed to be sold under the provisions of 71-3-1505.

(c) For purposes of determining the total pounds of edible meat of wildlife, any nonwildlife meat or ingredients mixed with the meat of wildlife must be included in the total.

(4) For purposes of this section, the value of all wildlife actually or constructively possessed, transported, sold, bartered, bought, or exchanged for anything of value within a 45-day period must be added together to determine whether the value of the wildlife is greater than $1,000.

(5) A person who violates this section is guilty of a felony and upon conviction shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime revocation from the date of conviction."

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Section 31. Section 87-3-301, MCA, is amended to read:

"**87-3-301. Shotgun loads regulated by department.** ~~No~~ *A* person may *not* use a shotgun to hunt~~, kill, or shoot~~ deer or elk except with weapon type and loads as specified by the department."

Section 32. Section 87-3-305, MCA, is amended to read:

"**87-3-305. Unlawful to ~~take~~ *hunt* deer within city or town boundaries.** It is unlawful to ~~shoot, kill, take~~ *hunt*~~, or cause to be shot, killed, taken, or captured~~ or to attempt to ~~shoot, kill, take, or capture~~ *hunt* any deer within the boundaries of any incorporated or unincorporated city or town of this state."

Section 33. Section 87-3-402, MCA, is amended to read:

"**87-3-402. Unlawful to violate closed season on certain game birds.** It is unlawful for any person to hunt~~, shoot, kill, capture, possess, or cause to be hunted, killed, or captured~~ or attempt to ~~shoot, kill, or capture~~ *hunt* any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey until ~~such time as~~ the ~~department shall provide~~ *commission provides* an open season on any quail, Cbinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool ben, prairie chicken, ruffed grouse, ptarmigan, or wild turkey."

Section 34. Section 87-3-501, MCA, is amended to read:

"**87-3-501. Open and closed season for fur-bearing animals — exception.** (1) It ~~shall hereafter be~~ *is* unlawful and a misdemeanor for ~~any~~ *a* person to ~~shoot,~~ trap~~, kill, or capture or cause to be shot, trapped, killed, or captured or to attempt to shoot, trap, kill, or capture any marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx, or black-footed ferret~~ or *hunt or attempt to trap or hunt any fur-bearing animal* until ~~such time as~~ the commission ~~shall provide~~ *provides* an open season on any ~~marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx, or black-footed ferret~~ *fur-bearing animal*. The furs and hides of ~~such~~ *fur-bearing* animals legally taken during the open season may be possessed, bought, and sold at any time except as ~~hereinafter~~ provided *by law*.

(2) When it is shown that muskrats or beaver are doing severe injury upon or are a menace to the structures, canal banks, or other works of an irrigation project or district or stock water pond, any employee or resident landowner on ~~such~~ *the* project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks, or other works of ~~such~~ *the* project or district or stock water pond during the closed season on muskrats or beaver, after having secured from the director a permit ~~so~~ to do *so*, except that from June 1 to August 31, both dates inclusive, of each year ~~no such~~ *a* permit ~~shall be~~ *is not* required."

Section 35. Section 87-5-404, MCA, is amended to read:

"87-5-404. **Flathead Lake bird preserve — *university of Montana biological reserve.*** (1) Those ~~certain~~ islands, two in numher, including lot one of hlock one, containing two and fifty-seven hundredths acres; lot two of hlock one, containing two and sixty hundredths acres; lot one of hlock two, containing one and sixty-five hundredths acres, all heing in the villa site of islands situated in Flathead Lake in the county of Flathead, Montana, according to the official plat and survey of ~~said~~ *the* land returned to the general land office by the surveyor general, ~~be and the same~~ are ~~hereby made~~ a perpetual place of refuge for birds of all kinds, ~~the same~~ *and those lands are* to be called ~~and known as~~ *the* "Flathead Lake bird preserve"~~, which said lands shall be specially~~. *The lands are* reserved for the breeding, propagating, and protection of all species of hirds.

(2) It ~~shall be~~ *is* unlawful for any person to ~~kill, shoot, capture,~~ *hunt, as defined in 87-2-101,* or destroy or in any way injure any hird on ~~said~~ *the* islands or to interfere with their eggs or nests or to ~~shoot at, wound, or kill~~ *hunt* any bird within a distance of 400 yards from the shoreline of ~~said~~ *the* islands.

(3) It ~~shall be~~ *is* unlawful for any person to ~~kill, shoot, capture,~~ *hunt, as defined in 87-2-101,* or destroy or in any way injure any bird or animal on the university of Montana biological reserve located on the east shore of Flathead Lake or to interfere with their eggs or their young or their nests or to ~~shoot at, wound, or kill~~ *hunt* any bird or any animal within 400 yards of ~~said~~ *the* university of Montana biological reserve or to discharge any firearms on ~~said~~ *the* reserve or within 400 yards ~~thereof~~ *of the reserve.*"

Section 36. Section 87-5-406, MCA, is amended to read:

"87-5-406. **Gates of tbe Mountains game preserve.** (1) Beginning in section 2, township 12 north, range 3 west, at the southeast corner of upper Holter Lake and proceeding westerly along the northern shoreline of ~~said~~ upper Holter Lake in the Gates of the Mountains area located in Lewis and Clark County, Montana, and then northerly along Stoney Point Beacon road, then northerly along the powerline to ~~said~~ *the* beacon, then along the hulldozer road to the point of the ridge in section 23, township 13 north, range 3 west, then northerly to the Missouri River, then easterly across ~~said~~ *the* river and lake to the forest service boundary to the wilderness houndary, then south following the wilderness boundary to the southeast corner of section 1, township 12 north, range 3 west, then west back to the upper Holter Lake to the point of heginning, intending ~~hereby~~ to include in ~~said~~ *the* game preserve all that territory adjacent to the Gates of the Mountains area, ~~shall be~~ *is* called ~~and known as~~ the Gates of the Mountains game preserve.

(2) It ~~shall be~~ *is* unlawful for any person to ~~shoot, kill, capture,~~ *hunt, as defined in 87-2-101,* or destroy or in any way injure any hird or fur-hearing animal in ~~said~~ *the* area or to interfere with their eggs or nests or to ~~shoot at, wound, or kill~~ *hunt* any bird or fur-bearing animal within ~~said~~ *the* preserve. ~~Said~~ *The* area ~~shall be~~ *is* closed to all hunting at all times."

Section 37. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severahle from the invalid applications.

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Section 38. Codification instruction. [Sections 6 and 11] are intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [sections 6 and 11].

Section 39. Effective date. [This act] is effective July 1, 1995.

Approved April 13, 1995

CHAPTER NO. 418

[SB 234]

AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW STATE GOVERNMENT BY GENERALLY REVISING THE ENVIRONMENTAL AND NATURAL RESOURCE FUNCTIONS OF STATE GOVERNMENT; CREATING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW; REORGANIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AS THE DEPARTMENT OF PUBLIC HEALTH; REVISING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AS THE BOARD OF PUBLIC HEALTH; ELIMINATING THE DEPARTMENT OF STATE LANDS; ELIMINATING THE BOARD OF NATURAL RESOURCES AND CONSERVATION; TRANSFERRING THE BOARD OF LAND COMMISSIONERS' POWERS, EXCEPT RULEMAKING AUTHORITY, TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTIONS 2-1-202, 2-1-209, 2-15-104, 2-15-212, 2-15-213, 2-15-225, 2-15-1519, 2-15-1523, 2-15-1845, 2-15-1875, 2-15-2101, 2-15-2104, 2-15-2105, 2-15-2108, 2-15-2110, 2-15-2204, 2-15-2210, 2-15-3307, 2-15-3308, 7-1-111, 7-7-4407, 7-8-2507, 7-13-202, 7-13-231, 7-13-4502, 7-13-4513, 7-13-4517, 7-14-120, 7-22-2151, 7-22-2403, 7-22-2409, 7-22-2418, 7-33-2402, 7-34-2301, 7-34-2412, 13-2-402, 15-6-135, 15-6-201, 15-32-102, 15-32-106, 15-32-203, 15-60-101, 15-60-201, 17-5-101, 20-5-402, 20-6-621, 20-6-624, 20-7-436, 20-25-212, 20-25-604, 23-1-302, 23-2-522, 27-6-206, 27-32-302, 37-2-104, 37-2-301, 37-7-103, 37-9-101, 37-14-322, 37-21-101, 37-27-320, 37-27-321, 37-30-403, 37-30-412, 37-30-422, 37-31-204, 37-31-331, 37-41-104, 37-42-102, 40-1-107, 40-1-203, 40-1-204, 40-1-206, 40-1-208, 40-1-209, 40-5-235, 40-5-704, 40-6-105, 40-6-106, 40-6-123, 40-6-126, 40-6-128, 50-1-101, 50-1-302, 50-2-101, 50-2-116, 50-4-201, 50-4-304, 50-4-402, 50-5-101, 50-5-602, 50-5-1103, 50-6-102, 50-6-103, 50-6-104, 50-6-203, 50-6-207, 50-6-302, 50-8-101, 50-9-102, 50-10-101, 50-15-101, 50-15-304, 50-15-702, 50-16-101, 50-16-102, 50-16-602, 50-16-701, 50-16-1003, 50-17-102, 50-18-102, 50-18-103, 50-18-104, 50-18-105, 50-18-109, 50-18-113, 50-19-101, 50-19-201, 50-19-303, 50-20-104, 50-21-102, 50-23-101, 50-23-103, 50-23-105, 50-23-106, 50-30-102, 50-31-103, 50-31-307, 50-34-101, 50-36-101, 50-40-103, 50-44-102, 50-49-103, 50-50-102, 50-51-102, 50-52-101, 50-53-102, 50-60-204, 50-60-803, 50-70-103, 50-70-110, 50-71-109, 50-78-102, 52-2-111, 52-2-202, 52-2-303, 52-2-704, 52-2-731, 52-2-733, 52-2-735, 52-3-605, 52-3-811, 52-4-204, 52-4-205, 53-2-322, 53-6-106, 53-6-107, 53-6-108, 53-6-110, 53-6-401, 53-20-213, 53-20-305, 53-20-307, 53-21-145, 53-21-165, 53-21-201, 53-21-204, 53-21-212, 60-11-111, 67-4-211, 69-3-1204, 69-3-1205, 72-16-217, 72-17-102, 75-1-201, 75-2-103, 75-2-502, 75-3-103, 75-3-401, 75-3-502, 75-3-602, 75-5-103, 75-5-221, 75-5-1105, 75-5-1106, 75-6-102, 75-7-117, 75-7-401, 75-7-411, 75-10-103,

75-10-203, 75-10-403, 75-10-404, 75-10-501, 75-10-503, 75-10-532, 75-10-602, 75-10-623, 75-10-625, 75-10-626, 75-10-701, 75-10-802, 75-10-903, 75-10-913, 75-10-918, 75-10-950, 75-10-1003, 75-10-1101, 75-11-203, 75-11-302, 75-20-104, 75-20-202, 75-20-205, 75-20-208, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-218, 75-20-219, 75-20-220, 75-20-221, 75-20-225, 75-20-226, 75-20-301, 75-20-302, 75-20-303, 75-20-304, 75-20-401, 75-20-402, 75-20-406, 75-20-501, 75-20-1202, 76-2-411, 76-2-412, 76-3-504, 76-3-505, 76-4-102, 76-5-102, 76-5-103, 76-5-106, 76-5-109, 76-5-201, 76-5-202, 76-5-203, 76-5-204, 76-5-205, 76-5-206, 76-5-208, 76-5-209, 76-5-301, 76-5-302, 76-5-402, 76-5-404, 76-5-405, 76-5-406, 76-11-101, 76-11-102, 76-12-104, 76-13-102, 76-13-132, 76-13-302, 76-13-401, 76-13-415, 76-13-501, 76-13-601, 76-15-103, 76-15-201, 76-15-203, 76-15-204, 76-15-205, 76-15-206, 76-15-207, 76-15-209, 76-15-210, 76-15-211, 76-15-212, 76-15-213, 76-15-216, 76-15-301, 76-15-305, 76-15-314, 76-15-319, 76-15-408, 76-15-505, 76-15-530, 76-15-721, 76-15-725, 76-15-726, 76-15-727, 76-15-803, 76-15-804, 76-15-806, 76-15-807, 76-15-808, 76-15-809, 76-16-103, 76-16-104, 76-16-105, 76-16-109, 76-16-202, 76-16-203, 76-16-207, 76-16-209, 76-16-210, 76-16-211, 76-16-213, 76-16-307, 76-16-319, 76-16-325, 77-1-101, 77-1-113, 77-1-211, 77-1-706, 77-1-707, 77-2-107, 77-2-215, 77-2-302, 77-2-327, 77-2-342, 77-2-401, 77-5-104, 77-5-302, 77-5-402, 77-6-306, 80-8-110, 80-8-201, 80-8-305, 80-15-102, 80-15-104, 80-15-105, 80-15-107, 80-15-108, 80-15-201, 80-15-202, 80-15-203, 80-15-211, 80-15-213, 80-15-216, 80-15-217, 80-15-301, 80-15-302, 80-15-403, 80-15-411, 80-15-412, 81-2-106, 81-9-202, 81-9-233, 81-21-103, 81-22-208, 81-22-209, 81-22-301, 81-22-403, 81-22-404, 81-22-414, 81-22-421, 81-23-103, 82-4-102, 82-4-103, 82-4-111, 82-4-112, 82-4-123, 82-4-129, 82-4-141, 82-4-203, 82-4-204, 82-4-205, 82-4-223, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-239, 82-4-240, 82-4-242, 82-4-251, 82-4-254, 82-4-303, 82-4-306, 82-4-308, 82-4-311, 82-4-321, 82-4-322, 82-4-323, 82-4-331, 82-4-332, 82-4-334, 82-4-335, 82-4-336, 82-4-337, 82-4-338, 82-4-339, 82-4-340, 82-4-341, 82-4-342, 82-4-349, 82-4-352, 82-4-360, 82-4-362, 82-4-403, 82-4-421, 82-4-422, 82-4-423, 82-4-424, 82-4-425, 82-4-426, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, 82-4-441, 85-1-102, 85-1-201, 85-1-203, 85-1-204, 85-1-206, 85-1-209, 85-1-210, 85-1-211, 85-1-301, 85-1-303, 85-1-305, 85-1-306, 85-1-307, 85-1-308, 85-1-309, 85-1-310, 85-1-321, 85-1-323, 85-1-502, 85-1-503, 85-1-504, 85-1-505, 85-1-508, 85-1-509, 85-1-514, 85-2-102, 85-2-105, 85-2-112, 85-2-113, 85-2-122, 85-2-141, 85-2-304, 85-2-306, 85-2-311, 85-2-316, 85-2-319, 85-2-330, 85-2-331, 85-2-336, 85-2-341, 85-2-343, 85-2-426, 85-2-436, 85-2-437, 85-2-502, 85-2-506, 85-2-507, 85-2-512, 85-2-514, 85-2-520, 85-2-603, 85-2-701, 85-2-806, 85-3-101, 85-3-102, 85-3-104, 85-3-201, 85-3-202, 85-3-203, 85-3-206, 85-3-207, 85-3-212, 85-3-214, 85-6-109, 85-7-102, 85-9-104, 85-9-202, 85-9-204, 85-20-109, 87-1-223, 87-1-224, 87-1-303, 87-1-601, 87-3-106, 90-2-140, 90-2-141, 90-4-102, 90-4-103, 90-4-602, 90-4-1002, 90-6-207, 90-6-307, 90-6-703, AND 90-15-102, MCA; REPEALING SECTIONS 2-15-3201, 2-15-3202, 2-15-3302, 2-15-3306, 75-10-628, 76-11-203, 76-11-204, 80-15-219, 85-1-202, 85-1-212, AND 85-2-519, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-1-202, MCA, is amended to read:

"2-1-202. Jurisdiction over lands purchased by United States — reservation of rights to state. Pursuant to Article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given and exclusive jurisdiction *is* ceded to the United States over and with respect to any

lands within the limits of this state ~~which shall be~~ *that are* acquired by the complete purchase by the United States for any of the purposes described in ~~said~~ paragraph *17* of the constitution of the United States~~;~~. ~~said~~ *The* jurisdiction ~~to~~ *must* continue as long as ~~said~~ *the* lands are held and occupied by the United States for ~~said~~ *the described* purposes~~;~~. ~~reserving, however, to this~~ *The* state *reserves* the right to serve and execute civil or criminal process lawfully issued by the courts of the state within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or ~~without such~~ *outside of the* territory~~;~~. ~~and reserving further to the said~~ *The* state *also reserves* the right to tax persons and corporations~~;~~ *and* their franchises and property within ~~said~~ *the* territory~~;~~ ~~and reserving further to the~~. *The* state and its inhabitants and citizens *reserve* the right to fish and hunt and the right of access, ingress, and egress to and through ~~said~~ *the* ceded territory to all persons owning or controlling livestock for the purpose of watering the ~~same, and saving further to the~~ *livestock. The* state ~~of Montana~~ *reserves* jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of ~~health and~~ environmental ~~sciences~~ *quality* and the enforcement of any regulations promulgated by ~~said~~ *the* departments in accordance with the laws of the state ~~of Montana~~~~;~~. ~~provided, however, that jurisdiction shall~~ *Jurisdiction does* not vest until the United States, through the proper officers, ~~shall file~~ *files* an accurate map or plat and description by metes and bounds of ~~said~~ *the* lands in the office of the county clerk and recorder of the county in which ~~said~~ *the* lands are situated. If ~~such~~ *the* lands ~~shall be~~ *are* within the corporate limits of any city, ~~such~~ *the* map or plat ~~shall~~ *must* also be filed in the office of the city clerk of ~~said~~ *the* city. The filing of ~~such~~ *the* map ~~as herein provided shall constitute~~ *constitutes* acceptance of the jurisdiction by the United States as ~~herein~~ ceded."

Section 2. Section 2-1-209, MCA, is amended to read:

"**2-1-209. Concurrent jurisdiction over Fort Peck Dam ceded to United States — reservation of rights to state.** Consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction ~~shall be and the same~~ is ~~hereby~~ ceded to the United States over the Fort Peck Dam, the body of water or artificial lake created by ~~such~~ *the* dam, the land under ~~such~~ *the* body of water, and any lands now owned or ~~which~~ *that* may be ~~hereafter~~ acquired by the United States and ~~which shall~~ *that* touch ~~such~~ *the* body of water, all ~~such~~ *land and water* being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum, and Fergus, state of Montana~~, saving, however, to the said~~. *The* state *reserves* the right to serve civil or criminal process within the limits of the territory over which jurisdiction is ~~so~~ ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in ~~said~~ *this* state, within or ~~without said~~ *outside of the* territory~~;~~. ~~and saving further to the said~~ *The* state *also reserves* the right to tax persons and corporations~~;~~ *and* their franchises and property within ~~said~~ *the* territory~~;~~. ~~and reserving further to the said~~ *The* state and its inhabitants, citizens, and nonresidents *reserve* the right to fish or hunt by boat or otherwise and the right of access, ingress, and egress to and through ~~said~~ *the* ceded territory to all persons owning or controlling livestock for the purpose of watering the ~~same~~ *livestock*~~;~~. ~~and saving further to the~~ *The* state *reserves* jurisdiction in the enforcement of ~~the~~ state laws relating to the duties of the department of livestock and the department of ~~health and~~ environmental ~~sciences~~ *quality* and

the enforcement of regulations promulgated by ~~said~~ *the* departments in accordance with the laws of ~~said~~ *the* state~~;~~. ~~provided, however, that jurisdiction shall~~ *Jurisdiction does* not vest until the United States, through the proper officers, notifies the governor of the state of Montana that it assumes police or military jurisdiction over ~~said~~ *the* territory."

Section 3. Section 2-15-104, MCA, is amended to read:

"**2-15-104. Structure of executive hranch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;

(b) department of military affairs;

(c) department of revenue;

(d) state board of education;

(e) department of labor and industry;

(f) department of commerce;

(g) department of justice;

(h) department of *public* health ~~and environmental sciences~~;

(i) department of social and rehabilitation services;

(j) department of corrections and human services;

(k) department of transportation;

(l) department of public service regulation;

(m) department of agriculture;

(n) department of livestock;

(o) ~~department of state lands;~~

~~(p)~~ department of natural ~~resources and conservation~~ *resources and conservation*;

~~(q)~~*(p)* department of fish, wildlife, and parks;

~~(r)~~*(q)* department of family services*;*

(r) department of environmental quality.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division is headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.

(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."

Section 4. Section 2-15-212, MCA, is amended to read:

"2-15-212. Reserved water rights compact commission. (1) There is created a reserved water rights compact commission. *In negotiations, the commission is acting on behalf of the governor.*

(2) Commissioners are appointed as follows:

(a) two members of the house of representatives appointed by the speaker, each from a different political party;

(b) two members of the senate appointed by the president, each from a different political party;

(c) four memhers designated by the governor; and

(d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the ~~governor's office~~ *department of natural resources and conservation* for administrative purposes only, *as prescribed in 2-15-121, unless inconsistent with the provisions of Title 85, chapter 2, part 7. A sufficient and appropriate staff must be assigned to serve the commission within the budget established by the legislature. The commission staff is a principal unit within the department, and the commission shall direct and assign the staff.* ~~The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in 85-2-241.~~

(5) Members are appointed for 4-year terms and may be reappointed. A legislative member position is vacant if the person no longer serves in the legislature. The position of a member appointed hy the governor or attorney general is vacant if that person is elected to the legislature. A vacancy must be filled in the manner of the original appointment."

Section 5. Section 2-15-213, MCA, is amended to read:

"2-15-213. Flathead basin commission — membership — compensation. (1) There is a Flathead basin commission.

(2) The commission consists of 21 members selected as follows:

(a) seven members appointed by the governor from industrial, environmental, and other interests affected by Title 75, chapter 7, part 3, one of whom must he on the governor's staff and who also serves as the executive director;

(b) one member who ~~shall be~~ *is* the ~~commissioner of state lands or his~~ *director of the department of natural resources and conservation or the director's* designee;

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior, national park service~~,~~ regional director for the Rocky Mountain region;

(h) six ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; the regional administrator of the United States department of interior, bureau of reclamation; the administrator of the Bonneville ~~Power Administration~~ *power administration*; the chief of engineers of the United States army corps of engineers; and the holder of a license issued for the Flathead project under the Federal Power Act;

(i) two ex officio members who ~~shall be~~ *are* the director of the department of ~~health and~~ environmental ~~sciences~~ *quality* and the director of the department of fish, wildlife, and parks or their designees.

(3) The commissioners shall serve without pay. ~~Commissioners mentioned~~ *The commissioners listed* in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the governor's office for administrative purposes only."

Section 6. Section 2-15-225, MCA, is amended to read:

"**2-15-225. Interagency coordinating council for state prevention programs.** (1) There is an interagency coordinating council for state prevention programs consisting of the following 10 members:

(a) the director of the department of family services provided for in 2-15-2401;

(b) the director of the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101;

(c) the director of the department of corrections and human services provided for in 2-15-2301;

(d) the attorney general provided for in 2-15-501;

(e) the director of the department of social and rehabilitation services provided for in 2-15-2201;

(f) the superintendent of public instruction provided for in 2-15-701;

(g) the presiding officer of the Montana children's trust fund board;

(h) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services; and

(i) the administrator of the board of crime control provided for in 2-15-2006.

(2) The coordinating council shall perform the following duties:

(a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;

(b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;

(c) study various financing options for prevention programs and services;

(d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs; and

(e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist ~~in~~ *the council by* providing staff and budgetary, administrative, and clerical services ~~to the council as~~ *that* the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Section 7. Section 2-15-1519, MCA, is amended to read:

"**2-15-1519. Fire services training advisory council.** (1) The board of regents shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

(a) a fire chief;

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) a representative of the insurance industry; and

(g) a professional educator.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1) ~~of this section~~.

(3) Members ~~appointed~~ shall serve for ~~a~~ 4-year ~~term~~ *terms* and may be removed for cause. If a vacancy occurs, a member ~~shall~~ *must* be appointed to fill the unexpired term. A member may be reappointed.

(4) A representative of the state fire prevention and investigation program of the department of justice, a fire control officer designated by the ~~commissioner of state lands~~ *director of the department of natural resources and conservation*, and the director of the fire services training school are ex officio members of the council."

Section 8. Section 2-15-1523, MCA, is amended to read:

"**2-15-1523. Ground water assessment steering committee.** (1) There is a ground water assessment steering committee consisting of an employee of each of the following state agencies ~~having~~ *that have* responsibility for ground water protection, management, or information. ~~who~~ *The member* must be appointed by the head of the respective state agency:

(a) the department of natural ~~resources and conservation~~ *resources and conservation*;

(b) the department of ~~health and~~ environmental ~~sciences~~ *quality*;

(c) the department of agriculture;

~~(d) the department of state lands;~~ and

~~(e)~~*(d)* the Montana state library, natural resource information system.

(2) The ground water assessment steering committee may include representatives of the following agencies and units of government with expertise or management responsibility related to ground water and representatives of the organizations and groups specified in subsection (2)(h), who shall serve as ex officio members:

(a) the environmental quality council;

(b) the board of oil and gas conservation;

(c) the Montana bureau of mines and geology;

(d) ~~a representative from~~ a unit of the university system, other than the Montana bureau of mines and geology, appointed by the board of regents of higher education for the Montana university system;

(e) a county government, appointed by an organization of Montana counties;

(f) a city, town, or city-county government, appointed by an organization of Montana cities and towns;

(g) each principal federal agency ~~having~~ *that has* responsibility for ground water protection, management, or research, appointed by the Montana head of tbe respective federal agency; and

(h) one representative of each of the following, appointed by the governor:

(i) agricultural water users;

(ii) industrial water users; and

(iii) a conservation or ecological protection organization.

(3) The ground water assessment steering committee shall elect a ~~chairman~~ *presiding officer* from its voting members.

(4) The Montana bureau of mines and geology shall provide staff support to the committee."

Section 9. Section 2-15-1845, MCA, is amended to read:

"2-15-1845. Board of nursing home administrators. (1) There is a board of nursing home administrators.

(2) The board consists of five voting members appointed by the governor with the consent of the senate. No more than two members ~~shall~~ *may* be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members ~~shall~~ *must* be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The director of the department of *public* health ~~and environmental sciences~~ or his *a* designee and the director of the department of social and rehabilitation services or ~~his~~ *a* designee are ex officio, nonvoting members of the board.

(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member ~~shall~~ *must* be filled by the governor for the unexpired term.

(5) Appointive members may be removed by the governor only for cause.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 10. Section 2-15-1875, MCA, is amended to read:

"2-15-1875. Board of plumbers. (1) There is a board of plumbers.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) two master plumbers and two journeyman plumbers who are ~~at least~~ 18 years ~~old~~ *of age or older*, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment;

(b) one registered professional engineer qualified in mechanical engineering;

(c) three representatives of the public who are not engaged in the business of installing or selling plumbing equipment;

(d) one appointed representative of the department of *public* health ~~and environmental sciences~~, who ~~shall~~ *must* be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for ~~a term~~ *terms* of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 11. Section 2-15-2101, MCA, is amended to read:

"**2-15-2101. Department of *public* health ~~and environmental sciences~~ — head.** There is a department of *public* health ~~and environmental sciences~~. The department head is the director of *public* health ~~and environmental sciences~~ appointed by the governor in accordance with 2-15-111."

Section 12. Section 2-15-2104, MCA, is amended to read:

"**2-15-2104. Board of *public* health ~~and environmental sciences~~ — membership — quasi-judicial.** (1) There is a board of *public* health ~~and environmental sciences~~.

(2) The board consists of seven members appointed by the governor as follows:

(a) two members ~~having~~ *who have* professional qualifications in a human health service licensed by a board within a department ~~of~~ *that issues* professional and occupational licenses, one of whom must be a doctor of medicine licensed by the board of medical examiners;

(b) one member ~~being~~ *who is* a doctor of veterinary medicine licensed in this state *and* who is engaged in food animal medicine; and

(c) four members who do not have the qualifications described in subsection (2)(a) or (2)(b) and who have demonstrated an active interest in the field of public health and the economic welfare of the state.

(3) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 13. Section 2-15-2105, MCA, is amended to read:

"**2-15-2105. Water and wastewater operators' advisory council.** (1) There is a water and wastewater operators' advisory council.

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(2) The council consists of seven members. Except as provided in subsection (2)(e), the members must be appointed by the governor. The members are:

(a) two members who are employed water supply system or water treatment plant operators holding valid certificates. One of these members must hold a certificate by examination of the highest class issued by the department of ~~health and~~ environmental ~~sciences~~ *quality*. There is no restriction on the classification of the certificate held by the other operator.

(b) two members who are employed wastewater treatment plant operators holding valid certificates. One of these members must hold a certificate by examination of the highest class issued by the department of ~~health and~~ environmental ~~sciences~~ *quality*. There is no restriction on the classification of the certificate held by the other operator.

(c) one member serving on the faculty of a university or college whose major field is related to water supply systems, wastewater treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) one member who is a representative of a municipality *that is* required to employ a certified operator and who holds a position of city manager, city engineer, director of public works, works manager, or an equivalent position;

(e) a qualified member of the staff of the department of ~~health and~~ environmental ~~sciences~~ *quality*, appointed by the department's director.

(3) Members, except the ex officio ~~voting~~ member from the department of ~~health and~~ environmental ~~sciences~~ *quality*, shall serve for ~~a term~~ *terms* of 6 years."

Section 14. Section 2-15-2108, MCA, is amended to read:

"**2-15-2108. Petroleum tank release compensation board.** (1) There is a petroleum tank release compensation board.

(2) The board consists of seven members appointed by the governor as follows:

(a) the director of the department of ~~health and~~ environmental ~~sciences~~ *quality* or ~~his~~ *a* representative;

(b) a representative of the state fire prevention and investigation program of the department of justice;

(c) a representative of the petroleum services industry;

(d) a representative of independent petroleum marketers and chain retailers;

(e) a representative of the general public;

(f) a representative of service station dealers; and

(g) a representative of the insurance industry.

(3) The board shall elect a ~~chairman~~ *presiding officer*.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503."

Section 15. Section 2-15-2110, MCA, is amended to read:

"**2-15-2110. Small business compliance assistance advisory council.** (1) There is a small business compliance assistance advisory council.

(2) The council consists of seven members, as follows:

(a) two members that are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) four members that are owners or representatives of owners of small business stationary sources and who are not legislators, one to be appointed by the majority and minority leadership of the house of representatives and one to be appointed by the majority and minority leadership of the senate; and

(c) one member that is a representative of the department of ~~health and~~ environmental ~~sciences~~ *quality*, appointed by the director of that department.

(3) Appointed members shall serve for terms of 3 years.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members."

Section 16. Section 2-15-2204, MCA, is amended to read:

"**2-15-2204. Developmental disabilities planning and advisory council.** (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of at least 24 but no more than 26 members and consists of the following:

(a) the directors of the departments of social and rehabilitation services, *public* health ~~and environmental sciences~~, corrections and human services, and family services or their designees;

(b) the superintendent of public instruction or a designee;

(c) two recognized professionals, one each in the disciplines of medicine and law;

(d) one member of the state senate;

(e) one member of the state house of representatives;

(f) seven persons, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;

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(g) one member of each of the five regional councils provided for in 53-20-207, ~~who~~ *each of whom* has a developmental disability or *who* is an immediate family member or guardian of a person with a developmental disability;

(h) the director of the university-affiliated or satellite program on developmental disabilities, created pursuant to 42 U.S.C. 6031, or a designee of the director;

(i) the directer of the state protection and advocacy system, created pursuant to 42 U.S.C. 6012, or a designee of the director; and

(j) a representative of a statewide developmental disabilities service provider organization whose member agencies provide direct services to persons with developmental disabilities.

(3) (a) Each member or ~~his~~ *the member's* designee who serves on the council pursuant to subsection (2)(a), (2)(b), (2)(h), or (2)(i) shall serve for a term concurrent with ~~his~~ *the member's* respective term as a director or *as* the superintendent of public instruction~~, as the case may be~~. Upon ~~his~~ removal from office, ~~his~~ *the member's* or his designee's torm as a member of the council is automatically terminated and ~~his~~ *the member's* successor in office or ~~his~~ *the* successor's designee is automatically a member of the council.

(b) Each member who serves on the council pursuant to subsection (2)(d) or (2)(e) ~~shall~~ *must* be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsection (2)(c), (2)(f), (2)(g), (2)(j), or (3)(d) ~~shall~~ *must* be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members serving on the council pursuant to subsection (2)(c), (2)(f), (2)(g), (2)(j), or (3)(d) ~~shall~~ *must* be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(d) Representatives named to the council pursuant to this section, in addition to fulfilling the requirements listed in subsections (2)(a) through (2)(j), may also be selected to represent the following areas: psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities. A minimum of one member of the council shall represent each of these areas. In the event that the persons listed in subsections (2)(a) through (2)(j) do not represent all of the areas of psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities, up to two representatives may be added to the membership of the council to represent not more than two of these groups.

(4) The council is allocated to the department for administrative purposes only, and; unless inconsistent with the provisions of this section and 53-20-206, the provisions of 2-15-121 apply."

Section 17. Section 2-15-2210, MCA, is amended to read:

"2-15-2210. State advisory council on food and nutrition. (1) There is a state advisory council on food and nutrition.

(2) The council is composed of 11 members appointed by the governor as follows:

(a) one person from the department of social and rehabilitation services who supervises or administers services under the food stamp program;

(b) one person from the department of *public* health ~~and environmental sciences~~ who supervises or administers supplemental food programs for women, infants, and children;

(c) one person from the office of public instruction who is responsible for administration of school food programs under the National School Lunch Act;

(d) one person from a statewide organization active in food, nutrition, and hunger issues;

(e) one person representing local food bank programs;

(f) one person from among local, private operators of food and nutrition programs for the elderly;

(g) one person representing the general public who is knowledgeable and active in food, nutrition, and hunger issues;

(b) one person who is an agent in the Montana cooperative extension service;

(i) one Native American; and

(j) one member of the house of representatives and one member of the senate, who must be paid their compensation and expenses as provided in 5-2-302 while engaged in ~~advisory~~ council business.

(3) The council is allocated to the department of *public* health ~~and environmental sciences~~ for administrative purposes only as provided in 2-15-121.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members."

Section 18. Section 2-15-3307, MCA, is amended to read:

"**2-15-3307. Board of water well contractors.** (1) There is a board of water well contractors.

(2) The board ~~shall be~~ *is* composed of five voting members, consisting of:

(a) one technical adviser *who is a* hydrogeologist appointed by the Montana bureau of mines and geology;

(b) two licensed Montana water well contractors appointed by the governor with the concurrence of the senate;

(c) one *member* appointed by the director of ~~natural resources and conservation~~ *environmental quality*; and

(d) one *member* appointed by the director of ~~health~~ *natural resources and conservation* ~~and environmental sciences~~.

(3) The members of the board ~~shall~~ *must* have been hona fide residents of this state for a period of a least 3 years prior to such appointment.

(4) The members of the hoard shall serve for ~~a term~~ *terms* of 3 years. In case of a vacancy in the office of a member of the board, an appointment ~~shall~~ *must* he made to fill the ~~same~~ *vacancy* in the manner prescribed by the constitution and laws of this state.

(5) The members of the board shall, upon entering on the duties of their office, take and subscribe to the oath specified in the constitution of Montana, and ~~such~~ *the* oath ~~shall~~ *must* be filed in the office of the secretary of state.

(6) The hoard is allocated to the department *of natural resources and conservation* for administrative purposes only as prescribed in 2-15-121."

Section 19. Section 2-15-3308, MCA, is amended to read:

"**2-15-3308. Drought advisory committee.** (1) There is a drought advisory committee ~~allocated to~~ *in* the department of natural ~~resources and conservation~~ *resources and conservation* ~~for administrative purposes only as provided in 2-15-121~~.

(2) The drought advisory committee is chaired hy a representative of the governor and consists of representatives of the departments of natural ~~resources and conservation~~ *resources and conservation*; agriculture; commerce; fish, wildlife, and parks; military affairs; ~~health and~~ environmental ~~sciences~~ *quality*; ~~state lands;~~ and livestock. The governor's representative must be appointed by the governor, and the representative of each department must be appointed by the head of that department. Additional, nonvoting memhers who represent drought-affected federal and local government agencies and public and private interests may also he appointed hy the governor.

(3) The drought advisory committee shall:

(a) with the approval of the governor, develop and implement a state drought plan;

(b) review and report drought monitering information to the public;

(c) coordinate timely drought impact assessments;

(d) identify areas of the state with a high probability of drought and target reporting and assistance efforts to those areas;

(e) upon request, assist in organizing local drought advisory committees for the areas identified under suhsection (3)(d);

(f) request state agency staff to provide technical assistance to local drought advisory committees; and

(g) promote ideas and activities for groups and individuals to consider that may reduce drought vulnerability.

~~(4) The department of natural resources and conservation shall provide staff assistance to the drought advisory committee.~~

~~(5)~~*(4)* The drought advisory committee shall meet, at a minimum, on or around ~~the 15th day of the months of~~ October *15* and February *15* of each year to assess moisture conditions and, as appropriate, begin preparations for drought mitigation.

~~(6)~~*(5)* By March ~~15th~~ *15* of each year, the drought advisory committee shall submit a report to the governor describing the potential for drought in the coming year. If the potontial for drought merits additional activity by the drought advisory committee, the report must also describe:

(a) activities to be taken by the drought advisory committee for informing the public ahout the potential for drought;

(b) a schedule for completing activities;

(c) geographic areas for which the creation of local drougbt advisory committees will be suggested to local governments and citizens; and

(d) requests for the use of any available state resources that may be necessary to prevent or minimize drought impacts.

~~(7)~~*(6)* Nothing in this section is intended to remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought advisory committee supplement and are consistent with those of the division of disaster and emergency services for drought planning, preparation, coordination, and mitigation."

Section 20. Department of environmental quality — head. There is a department of environmental quality. Tbe department head is the director of environmental quality appointed hy the governor in accordance witb 2-15-111.

Section 21. Board of environmental review. (1) There is a board of environmental review.

(2) The board consists of seven members appointed by the governor. The members must be representative of the geographic areas of the state. One member must have expertise or background in hydrology. One member must have expertise or background in local government planning. One member must have expertise or background in one of the environmental sciences. One member must have expertise or background as a county health officer or as a medical doctor.

(3) A vacancy occurring on the board must be filled by the governor in the same manner and from the same representative area as the original appointment.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(5) The board is attached to the department of environmental quality for administrative purposes only as provided in 2-15-121.

Section 22. Section 7-1-111, MCA, is amended te read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited ~~the exercise of~~ *from exercising* the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of *7-33-4128 or* Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation) ~~or 7-33-4128~~, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power ~~which~~ *that* it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of ~~state lands~~ *environmental quality* with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of ~~natural resources and conservation~~ *environmental quality* with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute ~~or which~~, *that* defines an offense as a felony, or ~~which~~ *that* fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, ~~or~~ 6 months' imprisonment, or both ~~such fine and imprisonment~~, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that ~~it~~ *a local government* has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects ~~Title 87 (fish and wildlife) or~~ Title 75, chapter 7, part 1 (streambeds)*, or Title 87 (fish and wildlife)*."

Section 23. Section 7-7-4407, MCA, is amended to read:

"**7-7-4407. Role of state agencies.** ~~It shall not be necessary for any~~ *A* municipality ~~proceeding under~~ *acting pursuant to* this part *is not required* to

obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other ~~like~~ instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, bettor, extend, maintain, and operate an undertaking~~.~~ ~~but the~~ *The* supervisory powers and duties of the department of ~~health and environmental sciences shall continue as heretofore~~ *environmental quality apply to projects under this part.*"

Section 24. Section 7-8-2507, MCA, is amended te read:

"**7-8-2507. Land management alternatives.** The board may:

(1) (a) grant permits or licenses to use the lands in ~~such~~ *the* manner ~~as~~ *that* the board ~~may determine~~ *determines* and in the best interests of the county and for the public benefit and welfare; and

(b) fix the terms, conditions, and price of ~~such~~ *the* permits or licenses;

(2) enter into cooperative use agreements with individuals, groups of individuals, corporations, associations, cooperative state grazing districts, the state of Montana, the United States of America, and any stato or federal subdivision, department, bureau, commission, or agency, including but not limited to the Montana department of fish, wildlife, and parks, the bureau of land management, conservation districts, and the Montana department of ~~state lands~~ *natural resources and conservation*;

(3) trade or exchange ~~such~~ *the* lands with individuals or other *state or federal* governmental agencies, ~~state or federal, such trades or exchanges to be made~~ pursuant to terms, conditions, and procedures adopted by the board;

(4) (a) grant leases of the lands for ~~such~~ *the* purposes and uses ~~as~~ *that* the board ~~may determine~~ *determines* are in the best interests of the county, including the exploration and development of oil, gas, and other minerals; and

(b) fix tbe terms and conditions of ~~such~~ *the* leases and the consideration to be paid by any lessee; and

(5) sell ~~such~~ *the* lands or any part ~~thereof~~ *of the lands* pursuant te the procedures provided in this part."

Section 25. Section 7-13-202, MCA, is amended to read:

"**7-13-202. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the board of directors as provided for in 7-13-213.

(2) "Commissioners" means the board of county commissioners.

(3) "Family residential unit" means the residence of a single family.

(4) *(a)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal;

discarded home and industrial appliances; and wood products or wood hyproducts and inert materials. ~~"Solid waste"~~

(b) The term does not mean municipal sewage, industrial wastewater effluents, or mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, slash and forest debris regulated under laws administered hy the department of ~~state lands~~ *natural resources and conservation*, or marketable byproducts.

(5) "Solid waste management district" means an area established within a county for the purpose of planning and operating a solid waste management system as defined in 75-10-103."

Section 26. Section 7-13-231, MCA, is amended to read:

"7-13-231. Authorization for charges for services. (1) To defray the cost of maintenance and operation of ~~said~~ *a* solid waste management district, the hoard shall establish a fee for service, with approval of the county commissioners, provided *that* a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of ~~such~~ *the* increase is given as provided in 7-13-208(1) and (2) and *an* opportunity for protest is allowed as provided in 7-13-209 and 7-13-211.

(2) This fee ~~shall~~ *must* be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of ~~said~~ *the* district.

(3) An opportunity for protest or hearing is not required to increase fees for the purpose of paying fees imposed hy the department of ~~health and~~ environmental ~~sciences~~ *quality* under 75-10-115. Notice must be provided to all units of the rate or portion of any rate that is directly attributable to the fee imposed."

Section 27. Section 7-13-4502, MCA, is amended to read:

"7-13-4502. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board of directors" means the hoard of directors provided for in 7-13-4516 or a joint board of directors provided for in 7-13-4527.

(2) "Board of ~~health and~~ environmental ~~sciences~~ *review*" ~~as used in this part~~ means the board of ~~health and~~ environmental ~~sciences~~ *review* as provided in ~~2-15-2104~~ *[section 21]*.

(3) "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

(4) "Family residential unit" means a single-family dwelling.

(5) "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mohile homes as defined in 15-24-201.

(6) "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by this part."

Section 28. Section 7-13-4513, MCA, is amended to read:

"**7-13-4513. Insufficient protest to bar proceedings — resolution creating district — power to implement local water quality program.** (1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have approved a referendum as provided in 7-13-4512.

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with tbe resolution of intention introduced and passed by the commissioners or *in accordance* with the terms of the referendum.

(3) The commissioners and board of directers may implement a local water quality program after tbe program is approved by the board of ~~health and~~ environmental ~~sciences~~ *review* pursuant to 75-5-311."

Section 29. Section 7-13-4517, MCA, is amended to read:

"**7-13-4517. Powers and duties of board of directors.** The board of directors of a local water quality district, with the approval of the commissioners, may:

(1) develop a local water quality program, to be submitted to the board of ~~health and~~ environmental ~~sciences~~ *review*, for the protection, preservation, and improvement of the quality of surface water and ground water in the district. In developing the program, the board of directors shall consult with the board or boards of supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of jurisdiction is included within the boundaries of the local water quality district.

(2) implement a local water quality program;

(3) administer the budget of the local water quality district;

(4) employ personnel;

(5) purcbase, rent, or lease equipment and matorial necessary to develop and implement an effective program;

(6) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local ~~governments~~ *government*, in order to develop and implement an effective program;

(7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift, deed, or purchase, land necessary to implement the local water quality program;

(8) administer local ordinances that are adopted by the commissioners and governing bodies of the participating cities and towns and that pertain to the

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protection, preservation, and improvement of the quality of surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than $5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment."

Section 30. Section 7-14-120, MCA, is amended to read:

"**7-14-120. Transloading facility.** (1) The department of transportation is authorized to issue to a local government a grant for construction of a demonstration truck/train transloading facility. The department shall solicit and accept proposals for no less than 2 months following the issuance of requests for proposals and shall award the grant primarily on the basis of simple payback in energy savings. The department shall also consider impact on freight rates, job creation, geographic proximity to raw materials, and access to new markets for Montana producers and shippers.

(2) The department of ~~natural resources and conservation~~ *environmental quality* is authorized to administratively transfer funds to the department of transportation for a demonstration truck/train transloading facility as provided in subsection (1)."

Section 31. Section 7-22-2151, MCA, is amended to read:

"**7-22-2151. Cooperative agreements.** (1) ~~Any~~ *A* state agency ~~controlling~~ *that controls* land within a district, including the department of transportation; ~~the department of state lands~~; the department of fish, wildlife, and parks; the department of corrections and human services; the department of natural ~~resources and conservation~~ *resources and conservation*; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for noxious weed management on state-owned or state-controlled land within the district.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out ite noxious weed management program in cooperation with boards of other districts, with state and federal

governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties."

Section 32. Section 7-22-2403, MCA, is amended to read:

"**7-22-2403. Petition to create mosquito control district — hearing required.** (1) When a petition, signed by not less than 25% of the qualified electors of the proposed district or 25% of the owners of any property within the boundaries whose names appear as ~~such~~ property owners upon the last-completed assessment roll of the county in which the proposed district is situated, is presented to the board of commissioners of the county, asking for the creation of a mosquito control district, the commissioners shall set a day for a hearing on the petition and order notice of the hearing to be given to all persons interested.

(2) The commissioners by resolution shall fix a time for a hearing upon the petition at not less than 2 or more than 4 weeks from the time of presentation ~~thereof~~ *of the petition* unless additional time is needed to prepare a survey and study as authorized by this subsection. Before setting a time for *a* hearing, the commissioners may cause a survey and study of the area sought to be included in such *the* district to be made by competent personnel and may submit a report ~~thereof~~ *of the study* to the department of ~~health and environmental sciences~~ *environmental quality* for its review and recommendations."

Section 33. Section 7-22-2409, MCA, is amended to read:

"**7-22-2409. Adjournment of hearing.** (1) ~~Said~~ *The* hearing may be adjourned ~~from time to time~~ for determination of facts, but ~~no~~ *an* adjournment ~~shall~~ *may not* exceed 2 weeks in all from and after the date originally noticed and published for the hearing.

(2) (a) ~~Where~~ *If* at the time of the hearing the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of ~~health and environmental sciences~~ *environmental quality* to determine if it would be advisable to exclude the geographical area from the district.

(b) Upon reconvening, the commissioners shall define and establish ~~such~~ *the* boundaries ~~as~~ *that* are advisable."

Section 34. Section 7-22-2418, MCA, is amended to read:

"**7-22-2418. Relationship of mosquito control districts and boards with department of ~~health and environmental sciences~~ *environmental quality* and department of agriculture.** (1) ~~It shall be the duty of the~~ *The* department of ~~health and environmental sciences to~~ *environmental quality shall* advise the commissioners of ~~any~~ *a* county ~~relative~~ *with regard* to the creation of mosquito control districts within ~~such~~ *the* county and upon request ~~to~~ advise the boards of ~~such~~ *the* districts in connection with their control programs.

(2) ~~Annually on~~ *On* or before February 1 *of each year*, the board of each district shall submit to the department of ~~health and environmental sciences~~ *environmental quality* and the department of agriculture, for their review and

advice, a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year."

Section 35. Section 7-33-2402, MCA, is amended to read:

"**7-33-2402. Area services.** A fire service area created pursuant to 7-33-2401 may provide residents of the area with adequate and standard:

(1) (a) fire and emergency response equipment, personnel, facilities, and maintenance, for a fire service agency providing service to the area; or

(b) fire protection by contracting for the services of a fire service agency; and

(2) emergency medical services and equipment, licensed by the department of *public* health ~~and environmental sciences~~, and related personnel, facilities, and maintenance."

Section 36. Section 7-34-2301, MCA, is amended to read:

"**7-34-2301. Construction and operation of county boarding or nursing home authorized.** The board of county commissioners may erect, equip, maintain, and operate a boarding home or nursing home for the aged, subject to standards established by the department of *public* health ~~and environmental sciences~~."

Section 37. Section 7-34-2412, MCA, is amended to read:

"**7-34-2412. Applicability.** The authority granted under 7-34-2411 through 7-34-2418 is available only to counties in which no hospital exists or in which the only existing hospital has been ordered *to be* closed or cannot ~~be~~ reasonably *be* brought into compliance with the standards established by the department of *public* health ~~and environmental sciences~~ under Title 50, chapter 5, parts 1, 2, and 3."

Section 38. Section 13-2-402, MCA, is amended to read:

"**13-2-402. Other reasons for cancellation.** The election administrator shall cancel the registration of ~~any~~ *an* elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of ~~any~~ *the* elector is filed or if ~~an~~ *the* elector is reported as deceased by the department of *public* health ~~and environmental sciences~~ in the department's reports submitted to the county under 72-16-217;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of ~~an~~ *the* elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if ~~an~~ *the* elector is successfully challenged and not allowed to vote at an election upon determination of an election judge; or

(7) if a notice is received from another county or state that the elector has registered in that county or state."

Section 39. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property — description — taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in ~~subsection (1)(b) of~~ 15-6-137*(1)(b)*;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution *control* equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants~~, which~~ *that*, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must he made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicahle rules, laws, orders, or permit conditions. Certification remains in effect only ~~for~~ as long as suhstantial compliance continues.

(c) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution *control* equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution *control* equipment. The department of ~~health and~~ environmental ~~sciences~~ *quality* shall identify and track compliance in the use of certified air and water pollution *control* equipment and report continuous acts or pattorns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of ~~health and~~ environmental ~~sciences~~ *quality* as the

respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) *(a)* "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fahricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

~~(5) New industrial property does not include:~~

~~(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);~~

~~(b) a plant that will create adverse impact on existing state, county, or municipal services; or~~

~~(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.~~

~~(6)~~*(5)* Class five property is taxed at 3% of its market value."

Section 40. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of *public* health ~~and environmental sciences~~ and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of *public* health ~~and environmental sciences~~ and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property tbat ~~meets the following conditions~~ *is*:

(i) ~~is~~ owned and held by ~~any~~ *an* association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

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(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land ~~whose~~ *with a* surface title *that* is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization ~~owning and operating~~ *that operates* facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation *that is* organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or otber personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) ~~beginning January 1, 1994,~~ timber as defined in 15-44-102; and

(v) all trailers and semitrailers with a licensed gross weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used te be drawn hy a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

(2) (a) ~~The~~ *For the purposes of subsection (1)(e), the* term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to bold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonahly necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made ~~after January 1, 1979,~~ in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

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Section 41. Section 15-32-102, MCA, is amended to read:

"15-32-102. Definitions. As used in this part, the following definitions apply:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, ~~which~~ *that* is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or ~~more~~ *both* of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

(4) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

(5) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(6) "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of ~~health and~~ environmental ~~sciences~~ *quality* pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of ~~health and~~ environmental ~~sciences~~ *quality* pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of ~~health and~~ environmental ~~sciences~~ *quality* pursuant to 15-32-203.

(7) "Recognized nonfossil forms of energy generation" means:

(a) a system ~~for the utilization of~~ *that captures energy or converts energy sources into usable sources by using* solar energy, including passive solar systems~~,~~*;* wind~~,~~*;* solid ~~wastes,~~ *waste;* or the decomposition of organic wastes ~~for capturing energy or converting energy sources into usable sources~~;

(b) a system ~~for the production of~~ *that produces* electric power from solid wood wastes; or

(c) a small system ~~for the utilization of~~ *that uses* water power by means of an impoundment *that is* not over 20 acres in surface area."

Section 42. Section 15-32-106, MCA, is amended to read:

"**15-32-106. Procedure for obtaining benefit of deduction or credit.** The department of revenue shall provide forms on which a taxpayer may apply for a tax credit under 15-32-109. The department of revenue shall approve a deduction or credit under 15-32-103 or 15-32-109 ~~which~~ *that* demonstrably promotes energy conservation or ~~utilizes~~ *uses* a recognized nonfossil form of energy generation. The department of revenue may refer a deduction or credit involving energy generation to the department of ~~natural resources and conservation~~ *environmental quality* for its advice, and the department of ~~natural resources and conservation~~ *environmental quality* shall respond within 60 days. The department of revenue may refer a deduction or credit involving energy conservation to the department of administration for its advice, and the department of administration shall respond within 60 days. The department of revenue may deny a deduction or credit ~~which~~ *that* it finds to be impractical or ineffective."

Section 43. Section 15-32-203, MCA, is amended to read:

"**15-32-203. Department to make rules.** (1) The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

(2) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall adopt rules establishing emission testing and emission certification standards for low emission wood or biomass combustion devices and *shall* maintain a list of ~~such~~ *the* devices that are certified."

Section 44. Section 15-60-101, MCA, is amended to read:

"**15-60-101. Definitions.** For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Bed day" means each ~~whole~~ 24-hour period that a resident of a nursing facility is present in the facility and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while the resident is on temporary leave from tbe facility.

(b) The term includes all periods of 24 hours described in subsection (1)(a), regardless of the source of payment. The term also includes the day of a resident's admission to a nursing facility and the day of the resident's death, even though the resident is present *for* less than a ~~whole~~ 24-hour period on these days.

(2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

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(3) "Department" means the department of revenue.

(4) "Nursing facility" or "facility" means a health care facility licensed by the department of *public* health ~~and environmental sciences~~ as a nursing facility to provide skilled nursing care or intermediate nursing care. The term includes nursing facilities~~,~~ whether they are:

(a) operated as nonprofit or for-profit facilities;

(b) freestanding or part of another health care facility; or

(c) publicly or privately operated.

(5) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are defined in 50-5-101.

(6) "Report" means the report of bed days required in 15-60-201.

(7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as provided in 15-60-102."

Section 45. Section 15-60-201, MCA, is amended to read:

"15-60-201. Reporting and collection of fee. (1) A nursing facility shall report to the department of revenue, following the end of each calendar quarter, the number of bed days in the facility during the quarter. The report must be in the form prescribed by the department and is due on or before the last day of the month following the close of each calendar quarter. The report must be accompanied by a payment in an amount equal to the fee required to be paid under 15-60-102.

(2) The department of *public* health ~~and environmental sciences~~ shall provide the department at the end of each calendar quarter with a list of facilities as defined in 15-60-101(4)."

Section 46. Section 17-5-101, MCA, is amended to read:

"17-5-101. Definitions. ~~The following terms, as~~ *As* used in this part, ~~have~~ the following ~~meanings~~ *definitions apply*:

(1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(3) *(a)* "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state. ~~but shall~~

(b) The term does not include the state of Montana, the board of examiners, ~~the division of water resources of~~ the department of natural ~~resources and conservation~~ *resource management*, the state highway commission, or any other board, agency, or commission of the state."

Section 47. Section 20-5-402, MCA, is amended to read:

"**20-5-402. Definitions.** ~~For the purposes of~~ *As used in* this part, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school, preschool, or postsecondary school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health department" means a city, city-county, county, or district health department.

(5) "Local health officer" means a city, city-county, county, or district health officer.

(6) "Postsecondary school" means a vocational-technical center, a community college, a unit of the Montana university system, or a private university or college.

(7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

(a) serves no child under 5 years of age for more than 3 hours a day; and

(b) serves no child 5 years of age for more than 6 hours a day.

(8) "School" means a place or institution for the teaching of individuals, the curriculum of which is ~~comprised~~ *composed* of the work of:

(a) any combination of kindergarten through grade 12;

(b) a postsecondary school; or

(c) a preschool."

Section 48. Section 20-6-621, MCA, is amended to read:

"**20-6-621. Selection of school sites, approval election, and lease of state lands.** (1) The trustees of ~~any~~ *a* district ~~shall have the authority to~~ *may* select the sites for school buildings or for other school purposes, but ~~such~~ *the* selection ~~shall~~ *must* first be approved by the qualified electors of the district before ~~any~~ *a* contract for the purchase of ~~such~~ *the* site is entered into by the trustees, except the trustees ~~shall have the authority to~~ *may* purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. ~~Furthermore, the~~ *The* trustees may take an option on a site prior to the site approval election.

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(2) The election for tbe approval of a site ~~shall~~ *must* be called under the provisions of 20-20-201 and ~~shall~~ *must* be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election ~~shall be~~ *is* qualified te vote under tho provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees ~~shall have the authority to~~ *may* purchase ~~such sites~~ *the site*. A site approval election ~~shall~~ *is* not ~~be~~ required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of ~~such~~ *the* site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees ~~shall~~ *must*:

(a) be in a place that is convenient, accessihle, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of *public* health ~~and environmental sciences of the state of Montana~~; and

(c) comply with the statewide building regulations, if any, promulgated by the department of commerce.

(4) The board of land commissioners ~~shall have the authority to~~ *may* sell, at the appraised value, or ~~to~~ lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than 10 acres to be used as a school site in ~~such~~ *the* district."

Section 49. Section 20-6-624, MCA, is amended to read:

"**20-6-624. School building plans and specifications approval before payment.** (1) The trustees of a district ~~shall~~ *may* not make any payment under ~~any~~ *a* contract for the construction of school facilities until the plans and specifications for ~~such~~ *the* construction have been approved under the provisions of 20-6-622.

(2) ~~Any~~ *A* contractor, architect, trustee, or any other person, firm, or corporation who ~~shall violate~~ *violates* the provisions of 20-6-622, this section, or any regulation promulgated by the ~~state~~ board of *public* health ~~and environmental sciences~~ or the department of justice ~~shall be deemed~~ *is* guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 or more than $500."

Section 50. Section 20-7-436, MCA, is amended to read:

"**20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric bospital" means a freestanding hospital in Montana that:

(i) lias the primary purpose of providing clinical care for children whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth ~~that have~~ *for whom* the treatment of chemical dependency ~~as~~ *is* the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age, ~~and~~ *who* is emotionally disturbed as defined in 20-7-401 or 52-2-101, and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

(iii) is licensed by the department of *public* health ~~and environmental sciences~~; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of *public* health ~~and environmental sciences~~ pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth ~~who have~~ *for whom* the treatment of chemical dependency ~~as a~~ *is the* primary reason for treatment."

Section 51. Section 20-25-212, MCA, is amended to read:

"**20-25-212. Bureau of mines and geology — purpose.** The bureau of mines and geology shall:

(1) compile and publish statistics relative te Montana geology, mining, milling, and metallurgy;

(2) collect:

(a) typical geological and mineral specimens;

(b) samples of products;

(c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and

(d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;

(3) study the geological formations of Montana, with special reference to their economic mineral resources and ground wator;

(4) examine the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) study the mining, milling, and smelting in Montana relative to their improvement;

(6) publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) make qualitative examinations of rocks and mineral samples;

(8) consider scientific and economic problems *that* the regents consider valuahle to the people of Montana;

(9) communicate special information of *on* Montana geology, mining, and metallurgy;

(10) cooperate with:

(a) departments of the *university* system;

(b) the state mine inspector;

(c) departments of the state;

(d) the United States geological survey; and

(e) the United States bureau of mines;

(11) make examinations of state land regarding its geology and mineral value at the request of the department of ~~state lands~~ *natural resources and conservation* and make investments. These services are limited to the time available for ~~such work~~ *the services* after all other duties of the bureau of mines and geology are served. Written reports ~~shall~~ *must* be made. Travel expenses incurred by the examiner ~~shall~~ *must* be paid, as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ by the agency requesting the examination upon the presentation of claims in the ordinary form.

(12) deposit all material collected in the state museums or in the Montana college of mineral science and technology after completed use by the bureau of mines and geology;

(13) distribute duplicates of representative material to the units of the university system to their best educational advantage; and

(14) print the regular and special reports with illustrations and maps and distribute them on direction of the *board of* regents."

Section 52. Section 20-25-604, MCA, is amended to read:

"20-25-604. Department in advisory capacity. The department of *public* health ~~and environmental sciences~~ shall act in an advisory capacity in establishing all courses required under this part, and ~~said~~ *the* courses ~~shall~~ *may* be established only after consultation with and advice by the department."

Section 53. Section 23-1-302, MCA, is amended to read:

"**23-1-302. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Corps" means the Montana conservation corps.

(2) "Corps coordinator" means the person who acts as the corps administrative officer and employs the staff necessary to implement the provisions of this chapter.

(3) "Corpsmember" means a participant in the corps.

(4) "Crewleader" means a participant in the corps who supervises corpsmembers.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Division" means the parks division of the department of fish, wildlife, and parks.

(7) "State agencies" means the departments of fish, wildlife, and parks; social and rehabilitation services; labor and industry; ~~state lands~~ *environmental quality*; family services; and natural ~~resources and conservation~~ *resources and conservation*."

Section 54. Section 23-2-522, MCA, is amended to read:

"**23-2-522. Discharge of waste from vessel prohibited.** (1) ~~No~~ *A* person ~~shall~~ *may not* discharge or cause, permit, or ~~suffer~~ *allow* to be discharged any garbage, refuse, waste, or sewage from any vessel into, upon, or near the waters at ~~any~~ *a* stream, river, or lake within the boundaries of the state of Montana.

(2) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall adopt rules to protect water quality and aquatic ecosystems by establishing guidelines for the installation of vessel pumpout facilities.

(3) In adopting the rules, the department shall use these definitions:

(a) ~~"Vessel terminal" means a private or public shoreside installation on any waters of Montana that provides mooring, docking, berthing, and other facilities for the use of vessels.~~

~~(b)~~ "Marine sanitation device" means any equipment on board a vessel that is designed to receive, retain, treat, or discharge sewage~~,~~ and *also means* any process to treat the sewage.

(b) "Vessel terminal" means a private or public shoreside installation on any waters of Montana that provides mooring, docking, berthing, and other facilities for the use of vessels.

(4) The rules must include standards for the construction, operation, and maintenance of vessel pumpout facilities.

(5) ~~Nothing in this~~ *This* section may *not* be construed to require the department to install pumpout facilities without prior legislative approval and an appropriation."

Section 55. Section 27-6-206, MCA, is amended to read:

"**27-6-206. Funding.** (1) There is ~~created~~ a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it ~~shall~~ *must* be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but ~~shall be~~ *is* open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge ~~shall~~ *must* be levied on all health care providers. The amount of the assessment must be ~~annually~~ set *annually* by the director and must be apportioned among physicians, dentists, hospitals, and other health care providers by group. ~~As to~~ *For* the group of all physicians, the group of all dentists, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment~~, as to all claims closed since April 19, 1977~~. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of *public* health ~~and environmental sciences~~. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all dentists must be equally assessed against all dentists. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, ~~over and~~ above the amount required for the annual administration of the chapter ~~shall~~ *must* be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge ~~shall~~ *must* be paid on or before the date *that* physicians' and dentists' annual registration or renewal fees are due under 37-3-313 and 37-4-307. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians' and dentists' annual registration or renewal fees."

Section 56. Section 27-32-302, MCA, is amended to read:

"**27-32-302. Clerk to certify and file judgment.** The clerk of the court shall certify to two copies of ~~such~~ *the* judgment and file one with the department of *public* health ~~and environmental sciences~~, *in* Helena, and the other with the ~~county~~ clerk and recorder of the county in which the judgment was obtained."

Section 57. Section 37-2-104, MCA, is amended to read:

"37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section prohibits:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family planning clinic under contract with the department of *public* health ~~and environmental sciences~~ if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract pbysician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or *any* controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353b."

Section 58. Section 37-2-301, MCA, is amended to read:

"37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person whom ~~he~~ *the physician or practitioner* believes has a communicable disease or a disease declared reportable by the department of *public* health ~~and environmental sciences~~, ~~he~~ *the physician or practitioner* shall immediately report the case to the local health officer. The report ~~shall~~ *must* be in the form and contain *the* information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, ~~he~~ *the person* shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, ~~shall~~ *must* be paid to the county treasurer of the county in which the violation occurs."

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Section 59. Section 37-7-103, MCA, is amended to read:

"**37-7-103. Exemptions.** Subject only to 37-7-401 and 37-7-402:

(1) nothing in this chapter subjects a person ~~duly~~ *who is* licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board or prevents ~~such~~ *the* person from compounding or using drugs, medicines, chemicals, or poisons in ~~his~~ *the person's* practice or prevents ~~one duly~~ *a person who is* licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons ~~as he~~ *that the person* considers proper in the treatment of the patient;

(2) nothing in this chapter prevents the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing in this chapter prevents the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this chapter prevents the sale of common household preparations and other drugs, provided stores selling them are licensed under the terms of this chapter;

(4) nothing in this chapter applies to or may interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) nothing in this chapter prevents a registered nurse employed by a family planning clinic under contract with the department of *public* health ~~and environmental sciences~~ from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and *is in accordance* with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs."

Section 60. Section 37-9-101, MCA, is amended to read:

"**37-9-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

(4) "Long-term care facility" means ~~any~~ *a* skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of *public* health ~~and environmental sciences~~, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

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(5) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether ~~his~~ *the* functions and duties are shared with one or more individuals."

Section 61. Section 37-14-322, MCA, is amended to read:

"**37-14-322. Inspections.** Inspections for compliance with the provisions of this chapter may be performed by:

(1) tbe board of radiologic technologists;

(2) the department of commerce;

(3) the department of *public* health ~~and environmental sciences~~."

Section 62. Section 37-21-101, MCA, is amended to read:

"**37-21-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Autborized agency" means a private agency or institution authorized by the department to establish academic, experience, and training qualifications for dietitians.

(2) "Department" means the department of *public* health ~~and environmental sciences~~ as provided in 2-15-2101."

Section 63. Section 37-27-320, MCA, is amended to read:

"**37-27-320. Reports — failure to report.** (1) A licensed direct-entry midwife shall submit semiannually to the board, on forms supplied by the board, a summary report on each patient *who was* given care. The report must include vital statistics on each patient and information on the procedures and scope of care administered, including ~~any~~ transport of the patient to a hospital and physician referrals, but may not include information disclosing the identity of the patient.

(2) A licensed direct-entry midwife shall report within 72 hours to the board and to the department of *public* health ~~and environmental sciences~~ any maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been given.

(3) Failure of a direct-entry midwife to submit required reports constitutes grounds to deny renewal of a license."

Section 64. Section 37-27-321, MCA, is amended to read:

"**37-27-321. Filing of birth certificate.** (1) When a birth occurs with a licensed direct-entry midwife in attendance, the direct-entry midwife shall prepare and file a birth certificate, as required by 50-15-201, with the department of *public* health ~~and environmental sciences~~ within 30 days of the birth of the newborn.

(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under this chapter."

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Section 65. Section 37-30-403, MCA, is amended to read:

"**37-30-403. Facilities required for licensure — inspection.** (1) Before a license is issued to conduct a barbershop, *barber* school, or *barber* college in this state, the barbershop, *barber* school, or *barber* college must be inspected by the department and approved by the board and ~~shall~~ *must* meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, ~~hot water~~ *hot water* tanks ~~shall~~ *must* have not less than a 2-gallon capacity with gravity pressure. Wastewater ~~shall~~ *must* be disposed of through ~~some~~ *a* system carrying it away from the building. ~~This shall be done~~ by sewer connections or in a manner ~~meeting~~ *that meets* the requirements of the department of ~~health and~~ environmental ~~sciences~~ *quality* rules~~;~~ *and* city ordinances~~;~~ and ~~having~~ *that has* the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use~~;~~ and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or *barber* colleges ~~shall~~ *must* be open *to members of the department* for inspection during business hours~~, to members of the department~~.

(3) The board shall inspect annually each barbershop, *barber* school, or *barber* college to determine compliance with statutory requirements and board rules. The board may suspend or revoke the license of any barbershop, *barber* school, or *barber* college that violates statutory requirements or board rules.

(4) The board may grant a temporary license to a barbershop, *barber school, or barber college* until ~~such time as~~ the initial inspection is completed.

(5) Barber schools and *barber* colleges ~~must~~ *shall* also comply with the provisions of 37-30-406 and 37-30-407."

Section 66. Section 37-30-412, MCA, is amended to read:

"**37-30-412. Barbershop owner's duty to monitor employees.** An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of *public* health ~~and environmental sciences~~ and the department of commerce and *shall* report to the department of commerce the name of a person practicing barbering ~~therein~~ *in the barbershop* who has a communicable disease."

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Section 67. Section 37-30-422, MCA, is amended to read:

"37-30-422. Maintenance of sanitary conditions. Barbershops, barber schools, and barber colleges ~~shall~~ *must* be operated and maintained in a sanitary condition in order to preserve tbe public health and prevent the spread of disease. The board of barbers, in consultation with the department of *public* health, ~~and environmental sciences~~ may adopt rules to preserve the public health and prevent the spread of disease."

Section 68. Section 37-31-204, MCA, is amended to read:

"37-31-204. Sanitary rules. Tbe board, subject to the approval of the department of *public* health ~~and environmental sciences~~, shall prescribe sanitary rules *that* it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases."

Section 69. Section 37-31-331, MCA, is amended to read:

"37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetology salon, manicuring salon, school of cosmetology, or school of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of *public* health ~~and environmental sciences~~ for the regulation of cosmetology salons, manicuring salons, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person *who* knowingly ~~having~~ *has* an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used ~~where~~ *when* the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) ~~However, the~~ *The* board may not refuse to authorize the department to issue or renew a license or *to* revoke or suspend a license already issued until after notice and opportunity for a hearing."

Section 70. Section 37-41-104, MCA, is amended to read:

"37-41-104. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(3) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

(4) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

(5) "Septage" means waste material from cesspools, septic tanks, or privies."

Section 71. Section 37-42-102, MCA, is amended to read:

"**37-42-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Certificate" means a certificate of competency issued hy the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(4) "Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state), wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

(5) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(6) "Wastewater treatment plant" means a facility *that is* designed te remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes, ~~and which~~ *that* discharges an effluent directly into this state's waters, and ~~which~~ *that* serves 10 or more families or serves an industry employing 10 or more persons.

(7) "Water distribution system" means that portion of the water supply system ~~in which~~ *that conveys* water ~~is conveyed~~ from the water treatment plant or other supply source to the premises of the consumer and ~~which~~ *that* serves 10 or more families or supplies an industry employing 10 or more persons.

(8) "Water supply system" means ~~the~~ *a* system of pipes, structures, and facilities through which ~~the~~ water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and ~~which~~ *that* serves 10 or more families or serves an industry employing 10 or more persons.

(9) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water ~~rendering~~ *and renders* it safe and palatable for human use."

Section 72. Section 40-1-107, MCA, is amended to read:

"**40-1-107. Form of application, license, marriage certificate, and consent.** (1) The director of the department of *public* health ~~and environmental sciences~~ shall prescribe the form for an application for a marriage license, which ~~shall~~ *must* include the following information:

(a) name, sex, address, *and* date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, ~~his~~ *the party's* name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of *public* health ~~and environmental sciences~~ shall prescribe the forms for the marriage license, the marriage certificate, and the consent te marriage."

Section 73. Section 40-1-203, MCA, is amended te read:

"**40-1-203. Proof of age and medical certificate required.** (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant ~~therefor~~ *for a license* shall ~~exhibit to him~~ *provide* a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of *public* health ~~and environmental sciences~~, shall file with the license issuer a medical certificate from a physician, *who is* licensed to practice medicine and surgery in any state or United States territory, or *from* any other person authorized by rule of the department te ~~make~~ *issue* a medical certificate. The certificate ~~shall~~ *must* state that the applicant has been given a standard serological test, ~~and~~ that the report of the results of the serological test has been ~~exhibited~~ *shown* to the applicant tested, and that the other party to the proposed marriage contract has examined the report of the serological test.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the lahoratory, the physician or ~~any~~ other person authorized ~~by the laws of Montana~~ to ~~make~~ *issue* a medical certificate shall designate that it is a premarital test."

Section 74. Section 40-1-204, MCA, is amended to read:

"**40-1-204. Contents and form of medical certificate.** (1) The medical certificate ~~shall~~ *must* contain a statement from a physician or other person authorized by rule of the department of *public* health ~~and environmental sciences~~ to make ~~such~~ *the* reports, setting forth:

(a) the name of the test;

(b) the name and address of the physician or other person authorized by rule of the department to sign the certificate;

(c) the name and address of the laboratory performing the test; and

(d) the name of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, ~~such~~ *the* results ~~will~~ *must* be expunged from the records of the department of *public* health ~~and environmental sciences~~.

(3) (a) The certificate and statement ~~shall~~ *must* be on a form to be provided and distributed, upon request, by the department of *public* health ~~and environmental sciences~~.

(b) This form is ~~hereinafter~~ referred to in 40-1-205 through 40-1-209 as the "certificate form"."

Section 75. Section 40-1-206, MCA, is amended to read:

"**40-1-206. Premarital test — approved laboratories — rules.** (1) For the purpose of 40-1-203 through 40-1-209, a standard serological test ~~shall be~~ *is* a test for rubella immunity ~~which~~ *that* is approved by the department of *public* health ~~and environmental sciences~~.

(2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is performed by one of the following:

(a) the laboratory of the department *of public health*;

(b) a laboratory approved by the department;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or the United States armed forces.

(3) The standard serological test may be made on request at the laboratory of the department of *public* health ~~and environmental sciences~~.

(4) The department of *public* health ~~and environmental sciences~~ shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnisbing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital serological test."

Section 76. Section 40-1-208, MCA, is amended to read:

"**40-1-208. Penalties.** (1) An applicant for a marriage license, a physician or other person authorized by rule of the department of *public* health ~~and environmental sciences~~ to ~~make~~ *issue* a medical certificato, or ~~any~~ *a* person in charge of or authorized to make reports or statements for a laboratory who misrepresents ~~his~~ *the person's* identity or any of the facts called for by the

certificate form prescribed by 40-1-203 through 40-1-205, ~~any~~ *a* licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges ~~such~~ *the* information or opens to inspection ~~such~~ *the* certificates, statements, reports, or applications, without authority, to any person not ~~by law~~ entitled to the ~~same~~ *material by law* is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100."

Section 77. Section 40-1-209, MCA, is amended to read:

"40-1-209. **Expenses.** The department of *public* health ~~and environmental sciences~~ shall provide the necessary printing and pay the necessary expenses ~~relative~~ *related* to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for ~~such~~ *the* expenses ~~shall~~ *must* be submitted for approval and audit to the department of *public* health ~~and environmental sciences~~ and ~~shall~~ *must* be paid in accordance with law."

Section 78. Section 40-5-235, MCA, is amended te read:

"40-5-235. **Effect of order establishing paternity — birth records — relief from order.** (1) An administrative order of the department declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of the child, the department shall file a copy of its order with the department of *public* health ~~and environmental sciences~~, which shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the ~~time frames~~ *timeframes* provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7."

Section 79. Section 40-5-704, MCA, is amended to read:

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"**40-5-704. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of an order suspending a license, a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the obligor whose name appears on the order;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; and

(d) if required by law, demanding surrender of the suspended license.

(2) An order issued by a support enforcement entity under 40-5-703 suspending a license must be processed by the licensing authority without an additional review or hearing involving the licensing authority concerning suspension of the license.

(3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by a support enforcement entity suspending a license must be implemented by the licensing authority and continues until the support enforcement entity advises the licensing authority that the suspension has been stayed or terminated.

(4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

(5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the business, occupation, profession, or other licensed activity while the *obligor's* license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with this part.

(7) The licensing authority has no jurisdiction te modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

(8) To the extent that inconsistencies exist between this part and the procedural requirements for suspension of a license issued by the department of *public* health ~~and environmental sciences~~, this part supersedes those requirements."

Section 80. Section 40-6-105, MCA, is amended to read:

"**40-6-105. Presumption of paternity.** (1) A ~~man~~ *person* is presumed to be the natural father of a child if:

(a) ~~he~~ *the person* and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, ~~he~~ *the person* and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, ~~he~~ *the person* and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) ~~he~~ *the person* has acknowledged ~~his~~ paternity of the child in writing filed with the department of *public* health ~~and environmental sciences~~ or with the district court for the county where he *the person* resides; or

(ii) with his *the person's* consent, ~~he~~ *the person* is named as the child's father on the child's birth certificate; or

(iii) ~~he~~ *the person* is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, ~~he~~ *the person* receives the child into ~~his~~ *the person's* home and openly holds out the child as ~~his~~ *the person's* natural child; or

(e) ~~he~~ *the person* acknowledges ~~his~~ paternity of the child in a writing filed with the department of *public* health ~~and environmental sciences~~ or with the district court of the county where ~~he~~ *the person* resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and ~~she~~ *the mother* does not dispute the acknowledgment within a reasonable time after being informed ~~thereof~~ *of the acknowledgment*, in a writing filed with the department of *public* health ~~and environmental sciences~~ or with the district court of the county where the acknowledgment was filed. If another ~~man~~ *person* is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence."

Section 81. Section 40-6-106, MCA, is amended to read:

"**40-6-106. Artificial insemination.** (1) If, under the supervision of a licensed physician and with the consent of ~~her~~ *the* husband, a wife is inseminated artificially with semen donated by a ~~man~~ *person who is* not ~~her~~ *the*

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husband, the husband is treated in law as if ~~he~~ *the husband* were the natural father of a child ~~thereby~~ conceived *by artificial insemination*. The husband's consent must be in writing and signed by ~~him~~ *the husband* and ~~his~~ *the* wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the department of *public* health ~~and environmental sciences~~, where it ~~shall~~ *must* be kept confidential and in a sealed file. However, the physician's failure to ~~do so~~ *file the consent* does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he *the donor* ~~were~~ *is* not the natural father of a child ~~thereby~~ conceived *by artificial insemination*."

Section 82. Section 40-6-123, MCA, is amended to read:

"**40-6-123. Birth records.** (1) Upon order of a court of this state or upon request of a court of another state, the department of *public* health ~~and environmental sciences~~ shall prepare a substitute certificate of birth consistent with the findings of the court and shall substituto the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth ~~shall~~ *may* not be ascertainable from the new certificato, but the actual place and date of birth ~~shall~~ *must* be shown.

(3) The evidence upon which the new certificato was made and the original birth certificate ~~shall~~ *must* be kept in a sealed and confidential file and ~~shall be~~ *are* subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown."

Section 83. Section 40-6-126, MCA, is amended to read:

"**40-6-126. Notice of intent to claim paternity.** (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice ~~shall~~ *must* be prescribed by the director of the department of *public* health ~~and environmental sciences~~ and supplied to the clerks of the district courts. The notice ~~shall~~ *must* include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of *public* health ~~and environmental sciences~~. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 ~~shall be~~ *is* presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. ~~Such~~ *The* notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child

for purposes of that section. ~~Such~~ *The* notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate ~~his~~ *the person's* paternal rights to the child."

Section 84. Section 40-6-128, MCA, is amended to read:

"**40-6-128. Proceeding to determine father's identity and terminate rights.** (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating ~~her~~ *the mother's* rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical te determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release *must be filed with the court,* or the putative father's verified acknowledgment of notice of intent to release ~~shall~~ *must* be filed with the court~~,~~ if ~~such~~ *the* notice was given to the putative father. The court shall request the records and statistics bureau of the department of *public* health ~~and environmental sciences~~ to send to the court a copy of any notice of intent to claim paternity of the particular child ~~which the bureau has received~~. *The records and statistics bureau shall send the court a copy of any notice that it has received.*

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort te identify the natural father. The inquiry ~~shall~~ *must* include the following:

(a) whether the mother was married at the time of conception of the child or at any time ~~thereafter~~ *after conception*;

(b) whether the mother was cohabiting with a ~~man~~ *person of the opposite sex* at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support payments with respect to the child or in connection with ~~her~~ *the* pregnancy; or

(d) whether any ~~man~~ *person* has formally or informally acknowledged or declared ~~his~~ *the person's* possible paternity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of ~~her~~ *the* right to privacy, ~~no~~ *a* mother of a child who is the subject of proceedings under this part may *not* be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing ~~shall~~ *must* be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedure or any manner ~~which~~ *that* the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other ~~male~~ *person* who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing ~~shall~~ *must* inform the putative father that ~~his~~ failure to appear at the hearing constitutes a denial of ~~his~~ *the putative father's* interest in custody of the child, which denial will result in the court's termination of ~~his~~ *the putative father's* rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) ~~shall~~ *must* be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing ~~need~~ *is* not ~~be~~ required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with ~~her~~ *the mother's* written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(9) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived ~~his~~ *the* right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing."

Section 85. Section 50-1-101, MCA, is amended to read:

"**50-1-101. Definitions.** Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of *public* health ~~and environmental sciences,~~ provided for in 2-15-2104.

(2) "Communicable disease" means a disease designated communicable by the department.

(3) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21."

Section 86. Section 50-1-302, MCA, is amended to read:

"50-1-302. Board meetings. (1) The board may adopt bylaws governing meetings.

(2) The director of *public* health ~~and environmental sciences~~ shall serve as secretary to the board.

(3) The board shall meet once every ~~two~~ *2* months and may hold additional meetings on the call of the ~~chair~~ *presiding officer*, at the request of the director of *public* health ~~and environmental sciences~~, or at the request of a majority of the members.

(4) If a member has three unexcused absences from meetings in a calendar year, ~~his~~ *the member's* position is vacant and the governor shall appoint a ~~person to replace him~~ *replacement*.

(5) In suits or proceedings in which board actions are the subject of inquiry, meetings ~~shall~~ *must* be considered to have been called and held unless the contrary is proven."

Section 87. Section 50-2-101, MCA, is amended to read:

"50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated *as* communicable by the department.

(2) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a county, city, city-county, or district board of health.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(5) "Physician" means a physician legally authorized to practice medicine in this state."

Section 88. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix ~~his~~ *the officer's* salary;

(b) elect a ~~chairman~~ *presiding officer* and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) adopt necessary regulations that are no less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of ~~health and~~ environmental ~~sciences~~ *review* and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things that are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. ~~{~~*The* fees must be deposited with the county treasurer~~}~~.

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in puhlic accommodations that might endanger human lives; and

(v) for the maintenance of sewage treatment systems that do not discharge an effluent directly inte state waters and that are not required to have an operating permit as required hy rules adopted under 75-5-401."

Section 89. Section 50-4-201, MCA, is amended to read:

"50-4-201. Montana health care authority — allocation — membership. (1) There is a Montana health care authority.

(2) The authority is allocated to the department of *public* health ~~and environmental sciences~~ for administrative purposes as provided in 2-15-121.

(3) The authority consists of five voting members appointed by the governor. At least one member must ~~represent~~ *be a representative of* consumer organizations. Members of the authority must be appointed as follows:

(a) ~~Within 30 days of May 3, 1993, the~~ *The* speaker and minority leader of the house of representatives shall select an individual with recognized expertise or interest, or both, in health care. The speaker and minority leader and the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

(b) ~~Within 30 days of May 3, 1993, the~~ *The* president and minority leader of the senate shall select an individual with recognized expertise or interest, or both, in health care. The president and minority leader and the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

(c) ~~Within 90 days of May 3, 1993, the~~ *The* governor shall appoint from those nominated under subsections (3)(a) and (3)(b) five individuals to the authority.

(4) A vacancy must be filled in the same manner as original appointments under subsection (3), except that one individual must be selected under subsection (3)(a) and one under subsection (3)(b). The governor shall appoint from those nominated the individual to fill the vacancy.

(5) The presiding officer of the authority must be elected by majority vote of the voting members. The initial presiding officer ~~must~~ *shall* serve a 4-year term.

(6) Members *shall* serve torms of 4 years, except that of the members initially appointed, two members *shall* serve 4-year terms, two members *shall* serve 3-year terms, and one member ~~serves~~ *shall serve* a 2-year term, to be determined by lot.

(7) The directors of the department of social and rehabilitation services and the department of *public* health ~~and environmental sciences~~ and the commissioner of insurance are nonvoting, ex officio members of the authority.

(8) The attorney general is an ex officio, nonvoting member of the authority only for the purpose of the authority's approval or denial of certificates of public advantage, supervision of cooperative agreements, and revocation of certificates of public advantage pursuant to Title 50, chapter 4, part 6.

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(9) A member shall acknowledge a direct conflict of interest in a proceeding in which the member has a personal or financial interest."

Section 90. Section 50-4-304, MCA, is amended to read:

"**50-4-304. Health care resource management plan.** (1) Each statewide plan must contain a health care resource management plan that takes into account the provisions of 50-4-303. The management plan must provide for the distribution of health care resources within the regions established pursuant to 50-4-401 and within the state as a whole, consistent with the principles provided in subsection (2).

(2) The management plan must include:

(a) a statement of principles used in the allocation of resources and in establishing priorities for health services;

(b) identification of the current supply and distribution of:

(i) hospital, nursing home, and other inpatient services;

(ii) home health and mental health services;

(iii) treatment services for alcohol and drug abuse;

(iv) emergency care;

(v) ambulatory care services, including primary care resources;

(vi) nutrition benefits, prenatal benefits, and maternity care;

(vii) human resources;

(viii) health sciences library resources and services;

(ix) major medical equipment; and

(x) health screening and early intervention services;

(c) a determination of the appropriate supply and distribution of the resources and services identified in subsection (2)(b) and of the mechanisms that will encourage the appropriate integration of these services on a local or regional basis. To arrive at a determination, the authority shall consider the following factors:

(i) the needs of the statewide population, with special consideration given to the development of health care services in underserved areas of the state;

(ii) the needs of particular geographic areas of the state;

(iii) the use of Montana facilities by out-of-state residents;

(iv) the use of out-of-state facilities by Montana residents;

(v) the needs of populations with special health care needs;

(vi) the desirability of providing high-quality services in an economical and efficient manner, including the appropriate use of midlevel practitioners; and

(vii) the cost impact of these resource requirements on health care expenditures;.

(d) a component that addresses health promotion and disease prevention and that is prepared by the department of *public* health ~~and environmental sciences~~ in a format established by the authority;

(e) incentives to improve access to and use of preventive care; primary care services, including mental health services; and community-based care;

(f) incentives for healthy lifestyles;

(g) incentives to improve access to health care in underserved areas, including:

(i) a system by which the authority may identify persons with an interest in becoming health care professionals and provide or assist in providing health care education for those persons; and

(ii) tax credits and other financial incentives to attract and retain health care professionals in underserved areas; and

(h) a component tbat addresses integration of the plan, to the extent allowed by state and federal law, with services provided by the Indian health service, ~~and~~ by the United States department of veterans affairs, and by the medicare and medicaid programs.

(3) In adopting the management plan, the authority shall consider the regional bealth resource plans recommended by regional panels.

(4) The management plan must be revised annually in a manner determined by the authority.

(5) Prior to adoption of the management plan, the authority shall hold one or more public hearings for the purpose of receiving oral and written comment on a draft plan. After hearings have been concluded, the authority shall adopt the management plan, taking comments into consideration."

Section 91. Section 50-4-402, MCA, is amended to read:

"50-4-402. Powers and duties of boards. (1) A board shall:

(a) meet at the time and place designated by the presiding officer, but not less than quarterly;

(b) submit an annual budget and grant application to the authority at the time and in the manner directed by the authority;

(c) adopt procedures governing its meetings and other aspects of its day-to-day operations as *that* the board determines necessary;

(d) develop regional health resource plans in the format determined by the authority that must address the health care needs of the region and address the development of health care services in underserved areas of the region and other matters;

(e) revise the regional plan annually;

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(f) hold at least one puhlic hearing on the regional plan within the region at the time and in the manner determined by the regional board;

(g) transmi% the regional plan to the authority at tbe time determined by the authority;

(h) apply to the authority for grant funds for operation of the regional board and account, in the manner specified by the authority, for grant funds provided by the authority; and

(i) seek from public and private sources money to supplement grant funds provided by the authority.

(2) Regional boards may:

(a) recommend that the authority sanction voluntary agreements between health care providers and between health care consumers in the region that will improve the quality of, access to, or affordability of health care but that might constitute a violation of antitrust laws if undertaken without government direction;

(b) make recommendations to the authority regarding major capital expenditures or the introduction of expensive new technologies and medical practices that are being proposed or considered by health care providers;

(c) undertake voluntary activities to educato consumers, providers, and purchasers and promote voluntary, cooperative community cost containment, access, or quality of care projects; and

(d) make recommendations to the department of *public* health ~~and environmental sciences~~ or to the authority, or both, regarding ways of improving affordability, accessibility, and quality of health care in the region and throughout the state.

(3) Each regional board may review and advise the authority on regional technical matters relating to the statewide plans required by 50-4-301, the common benefits package, procedures for developing and applying practice guidelines for use in the statewide plans, provider and facility contracts with the state, utilization review recommendations, expenditure targets, and uniform health care benefits and the impact of the benefits upon the provision of quality health care within the region."

Section 92. Section 50-5-101, MCA, is amended to read:

"**50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on an intermittent basis, with tbe care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificato of need, a member of the puhlic who will be served by the proposal, a health care facility located in the geographic area affected by tbe application, an agency that establishes rates

for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency that plans or assists in planning for health care facilities.

(4) "Ambulatory surgical facility" means a facility, *that is* not part of a hospital, *and* that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule, during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of *public* health ~~and environmental sciences,~~ provided for in 2-15-2104.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule, during which a person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(12) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of ~~any~~ *a* disease or assessment of a medical condition.

(13) "College of American pathologists" means the organization nationally recognized by that name, with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in

that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including ~~ground-breaking~~ *groundbreaking*, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(17) "Federal acts" means federal statutes for the construction of health care facilities.

(18) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(19) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, *that is* used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes but is not limited to *adult day-care centers,* ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, *and* residential treatment facilities~~, and adult day-care centers~~.

(20) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(21) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The torm includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service ~~as~~ allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. ~~This~~ *The* term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name, with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care te a total of two or more individuals or that provides personal care. The term does not include adult foster *family* care *homes* licensed under 52-3-303~~,~~; community homes for the developmentally disabled licensed under 53-20-305~~,~~; community homes for ~~individuals~~ *persons* with severe disabilities licensed under 52-4-203~~,~~; youth care facilities licensed under 41-3-1142~~,~~; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals *who do* not ~~requiring~~ *require* institutional health care~~,~~; or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or *for* individuals with related problems.

(e) "Personal care" means the provision of services and care for residents ~~needing~~ *who need* some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions ~~which~~ *that* is used to provide medical or other health services and *that* costs a substantial sum of money.

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, ~~or~~ the rehabilitation of mentally ill individuals, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(33) "Offer" means the ~~holding out~~ *representation* by a health care facility that it can provide specific health services.

(34) "Outpatient facility" means a facility, located in or apart from a hospital, ~~providing~~ *that provides*, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(35) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(36) "Person" means ~~any~~ *an* individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means an individual who is in a long-term care facility for intermediate or personal care.

(40) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral

dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must he individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(41) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(42) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 93. Section 50-5-602, MCA, is amended to read:

"**50-5-602. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101.

(2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ system or disease entity.

(3) "Residency training" means a community-based family practice program to train family practice resident physicians, sponsored by one or more community hospitals and physicians in Montana, for inpatient and outpatient training.

(4) "Resident physician" means any physician in advanced medical specialty training."

Section 94. Section 50-5-1103, MCA, is amended to read:

"**50-5-1103. Definitions.** ~~In~~ *As used in* this part, the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person ~~holding~~ *who has* a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ *provided for in Title 2, chapter 15, part 21.*

(4) "Facility" or "long-term care facility" means a facility or part ~~thereof~~ *of a facility* licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility."

Section 95. Section 50-6-102, MCA, is amended to read:

"**50-6-102. Department to establish and administer program.** The department of *public* health ~~and environmental sciences~~ shall establish and administer an emergency medical services program."

Section 96. Section 50-6-103, MCA, is amended to read:

"**50-6-103. Powers of department.** (1) The department of *public* health ~~and environmental sciences~~ is authorized to confer and cooperate with any ~~and~~ all other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any ~~and~~ all funds ~~which~~ *that* are now available or ~~which~~ *that* may be donated, granted, or appropriated to the department."

Section 97. Section 50-6-104, MCA, is amended to read:

"**50-6-104. Interdepartmental cooperation required.** The department of *public* health ~~and environmental sciences~~, the department of justice, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis."

Section 98. Section 50-6-203, MCA, is amended to read:

"**50-6-203. Rules.** (1) The board, after consultation with the department of *public* health ~~and environmental sciences~~, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of emergency medical technicians and administration of drugs.

(2) The board may, by rule, establish various levels of emergency medical technician certification and shall specify for each level the training requirements, acts allowed, recertification requirements, and any other requirements regarding the training, performance, or certification of that level of emergency medical technician that it considers necessary ~~or desirable~~."

Section 99. Section 50-6-207, MCA, is amended to read:

"**50-6-207. Construction.** ~~Nothing in this~~ *This* part ~~shall~~ *may not* be construed to detract from the powers granted to the department of *public* health

~~and environmental sciences~~ to regulate emergency medical services provided for in part 3 of this chapter."

Section 100. Section 50-6-302, MCA, is amended to read:

"50-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) *(a)* "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include:

(i) a motor vehicle or aircraft owned by or operated under the direct control of the United States~~.~~; *or*

(ii) ~~The term also does not include~~ air transportation services, such as charter or fixed-based operators, *that are* regulated by the federal aviation administration~~,~~ *and* that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the board of *public* health ~~and environmental sciences,~~ provided for in 2-15-2104.

(4) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(5) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(6) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

(7) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

(8) "Off-line medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers his services as an off-line medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include ~~a person~~ *an individual* who is nonambulatory and who needs transportation assistance

solely because that ~~person~~ *individual* is confined to a wheelchair as ~~his~~ *the individual's* usual means of mobility.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States."

Section 101. Section 50-8-101, MCA, is amended to read:

"**50-8-101. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of corrections and human services, the department of *public* health ~~and environmental sciences~~, and the department of family services.

(2) "Facility" means:

(a) for the department of corrections and human services, nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for ~~alcohol/drug~~ *alcohol or drug* treatment or emergency detoxification;

(b) for the department of family services:

(i) community homes for the developmentally disabled, community homes for physically disabled persons, and adult foster *family* care homes; and

(ii) youth care facilities; and

(c) for the department of *public* health ~~and environmental sciences~~:

(i) public accommodations, including roominghouses, ~~and~~ retirement homes, hotels, and motels;

(ii) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(iii) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(iv) personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statuto to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

Section 102. Section 50-9-102, MCA, is amended to read:

"**50-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who bas primary responsibility for the treatment and care of the patient.

(2) "Board" means the Montana state board of medical examiners.

(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "Department" means the department of *public* health ~~and environmental sciences~~ *provided for in Title 2, chapter 15, part 21.*

(5) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

(6) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the ~~law~~ *laws* of this state to administer health care in the ordinary course of business or practice of a profession.

(7) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, ~~will serve~~ *serves* only to prolong the dying process.

(8) "Living will protocol" means a locally developed, community-wide metbod or a standardized, ~~state-wide~~ *statewide* method developed by the department and approved by the board~~,~~ of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(10) "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

(11) "Qualified patient" means a patient 18 ~~or more~~ years of age *or older* who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

(12) "Reliable documentation" means a standardized, ~~state-wide~~ *statewide* identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(14) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time."

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Section 103. Section 50-10-101, MCA, is amended to read:

"50-10-101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ *provided for in Title 2, chapter 15, part 21.*

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

Section 104. Section 50-15-101, MCA, is amended to read:

"50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Board" means the board of *public* health ~~and environmental sciences~~ provided for in 2-15-2104.

(2) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(3) "Department" means the department of *public* health and ~~environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(5) "Fetal death" means a birth after 20 weeks of gestation, or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery, that is not a live birth.

(6) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(7) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(8) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(9) "Person in charge of interment" means a person who places or causes ~~to be placed~~ a dead body or the ashes after cremation *to be placed* in a grave, vault, urn, or other receptacle or *who* otherwise disposes of the body.

(10) "Physician" means a person legally authorized to practice medicine in this state.

(11) "Vital statistics" ~~includes~~ *means* the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, *and* marital status~~,~~ and incidental supporting data."

Section 105. Section 50-15-304, MCA, is amended to read:

"**50-15-304. Substitute birth certificate for person adopted.** (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of ~~a foreign~~ *another* state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and *the* sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of *public* health" ~~and environmental sciences~~" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute *birth* certificate ~~of birth~~ for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute *birth* certificate to the local registrar and to the county clerk and recorder.

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(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in ~~its~~ *their* files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original *birth* certificate to its place in its files and notify the local registrar and county clerk and recorder."

Section 106. Section 50-15-702, MCA, is amended to read:

"**50-15-702. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Hospital" means a facility ~~providing~~ *that provides*, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

(3) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a physician licensed *under Title 37, chapter 3,* to practice medicine in Montana."

Section 107. Section 50-16-101, MCA, is amended to read:

"**50-16-101. Public officials and corporations to furnish information on request.** On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of *public* health ~~and environmental sciences~~."

Section 108. Section 50-16-102, MCA, is amended to read:

"**50-16-102. Information on infant morbidity and mortality.** (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of *public* health ~~and environmental sciences~~, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an in-hospital staff committee.

(2) A person ~~furnishing~~ *who furnishes* information under subsection (1) ~~of this section~~ is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) ~~of this section~~ may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of ~~persons~~ *a person* whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or ~~his~~ *the person's* legal representative, is prejudicial error resulting in a mistrial."

Section 109. Section 50-16-602, MCA, is amended to read:

"50-16-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) *(a)* "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and *that* relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

(b) The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board."

Section 110. Section 50-16-701, MCA, is amended to read:

"50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying the emergency services provider of exposure.

(4) "Emergency services provider" means a person employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

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(6) "Health care facility" ~~means a health care facility as defined~~ *has the meaning provided* in 50-5-101.

(7) "Infectious disease" means a communicable disease transmittable through an exposure, including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.

(8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless."

Section 111. Section 50-16-1003, MCA, is amended to read:

"**50-16-1003. Definitions.** As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means:

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject bas shared hypodermic needles or syringes; or

(b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of tbe human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

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(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(13) "Person" means an individual, corporation, organization, or other legal entity.

(14) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(16) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(17) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin, *or* significant other, or a person designated by the subject in hospital records to act on the subject's behalf~~, and that includes~~. *The written informed consent must include* at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;

(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;

(iv) a statement that the test may be obtained anonymously if the subject wishes;

(v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and

(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.

(b) The department shall develop ~~a form~~ *an* agreement *form* that may be used for purposes of this subsection."

Section 112. Section 50-17-102, MCA, is amended to read:

"**50-17-102. Definitions.** As used in this chaptor, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved course of treatment" means a course of treatment for tuberculosis ~~which~~ *that* includes medical treatment prescribed by a physician and consistent with accepted medical standards, as well as appropriate followup to ~~assure~~ *ensure* public health and safety as set out in the rules of the department.

(2) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a city, county, city-county, or district board of health.

(4) "Tuberculosis" means a disease caused by mycobacterium tuberculosis."

Section 113. Section 50-18-102, MCA, is amended to read:

"**50-18-102. Powers and duties of department.** The department of *public* health ~~and environmental sciences~~ shall undertake to prevent, control, and prescribe treatments for sexually transmitted diseases and may conduct education campaigns for this purpose."

Section 114. Section 50-18-103, MCA, is amended to read:

"**50-18-103. Cooperation with federal agencies — federal funds.** (1) The department of *public* health ~~and environmental sciences~~ shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of sexually transmittod diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of sexually transmitted diseases, deposit funds in the state treasury, and disburse the funds."

Section 115. Section 50-18-104, MCA, is amended to read:

"**50-18-104. Serological test for syphilis.** (1) The department of *public* health ~~and environmental sciences~~ shall approve a standard serological test for syphilis. It shall also approve laboratories ~~which~~ *that* may make ~~such~~ *the* tests.

(2) On request, the department shall make laboratery tests required by this chapter."

Section 116. Section 50-18-105, MCA, is amended to read:

"**50-18-105. Rules of department binding.** Rules adopted by the department of *public* health ~~and environmental sciences~~ for carrying out the provisions of this chapter are binding on all persons and bave the effect of law."

Section 117. Section 50-18-109, MCA, is amended to read:

"**50-18-109. Permissible release of information concerning infected persons.** (1) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

(a) to personnel of the department of *public* health ~~and environmental sciences~~;

(b) to a physician who has written consent of the person whose record is requested;

(c) to a local health officer; or

(d) by the department of *public* health ~~and environmental sciences~~ or a local health officer or board under tbe circumstances allowed by Title 50, chapter 16, part 6.

(2) For the purposes of this section, the torm "information" includes all knowledge or intelligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, state, or federal employees or officers engaged in sexually transmitted disease eradication work~~, and such~~. *Communications to and from* personnel are privileged *as provided in 26-1-810.*

(3) The purpose of this section is to protect and preserve the principle of confidentiality in sexually transmitted disease work by *local, state, and federal* public personnel, ~~local, state, and federal, such~~ *as* confidentiality ~~being all~~ *is* important to the success of all sexually transmitted disease eradication work and endeavor, and to require that the principle of confidentiality in ~~such~~ *the* work remain inviolate."

Section 118. Section 50-18-113, MCA, is amended to read:

"**50-18-113. Violation a misdemeanor.** A person who violates provisions of this cbapter or rules adopted by the department of *public* health ~~and~~

~~environmental sciences~~ concerning a sexually transmitted disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor."

Section 119. Section 50-19-101, MCA, is amended to read:

"**50-19-101. Definitions.** (1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department."

Section 120. Section 50-19-201, MCA, is amended to read:

"**50-19-201. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ *provided for in Title 2, chapter 15, part 21.*

(2) "Newborn" means ~~any~~ *an* infant under 28 days of life.

(3) "Person" means ~~any~~ *an* individual, firm, partnership, association, corporation, or ~~any~~ other entity, whether organized for profit or not."

Section 121. Section 50-19-303, MCA, is amended to read:

"**50-19-303. Definitions.** For purposes of this part, the following definitions apply:

(1) "Council" means the MIAMI project advisory council established in 2-15-2109.

(2) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101.

(3) "Low income" means, with respect to an individual or family, income that does not exceed the official federal poverty threshold as defined by the federal office of management and budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(4) "Project" means the MIAMI project established in 50-19-311.

(5) "Service provider" means a person, agency, or organization that has a contract to provide services under the MIAMI project."

Section 122. Section 50-20-104, MCA, is amended to read:

"**50-20-104. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abortion" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to torminate a pregnancy without live birtb.

(2) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(3) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(4) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to ~~her~~ *the woman* by the physician who is to perform the abortion of ~~such~~ *any* of the following information as *that* is reasonably chargeable to the knowledge of the physician in ~~his~~ *the physician's* professional capacity:

(a) the stage of development of the fetus, the method of abortion to be ~~utilized~~ *used*, and the effects of ~~such~~ *the* abortion method upon the fetus;

(b) the physical and psychological effects of abortion; and

(c) available alternatives to abortion, including childbirth and adoption.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid."

Section 123. Section 50-21-102, MCA, is amended to read:

"**50-21-102. Procedure to procure cadavers.** The procedure to procure a human body for use in teaching and demonstrations of anatomy is as follows:

(1) The medical school shall apply to the person or organization ~~having~~ *that has* custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy.

(2) The medical school shall file a notarized statement with the department of *public* health ~~and environmental sciences~~ showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) The body ~~shall~~ *must* be kept at the unit, institution, or hospital for at least 3 weeks after the date of death before it can be used.

(4) The medical school shall pay the costs of special preparation and transportation of the body.

(5) A burial permit ~~shall~~ *must* accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school.

(6) If there was no request by the deceased person that ~~his~~ *the* body be buried immediately, the person or organization ~~having~~ *that has* custody may deliver an unclaimed body to the medical school applying.

(7) The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy."

Section 124. Section 50-23-101, MCA, is amended to read:

"**50-23-101. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

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(1) "Department of *public* health" ~~and environmental sciences~~" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Department of livestock" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(4) "Wild animal" means a skunk, fox, raccoon, or bat. Other species of normally nondomesticated animals known to be capable of transmitting rabies may be added to this list through the adoption of rules by the department of *public* health, ~~and environmental sciences~~ with the approval of the department of livestock."

Section 125. Section 50-23-103, MCA, is amended to read:

"**50-23-103. Quarantine — destruction — testing.** (1) Whenever a person unlawfully possesses a wild animal, the department of *public* health ~~and environmental sciences~~ or the department of livestock may impound the animal and take any other action considered reasonable to protect public health.

(2) If a wild animal, whether unlawfully or lawfully in the possession of a person, has bitten or otherwise exposed a person to the ~~potentiality~~ *possibility* of contracting rabies, the animal may be impounded by the department of *public* health ~~and environmental sciences~~, the department of livestock, or a local health officer and either quarantined or destroyed and the animal's brain may be tested for rabies.

(3) ~~Any~~ *A* lawfully possessed wild animal that is quarantined pursuant to subsection (2) and found not to be rabid ~~shall~~ *must* be returned to its owner."

Section 126. Section 50-23-105, MCA, is amended to read:

"**50-23-105. Authority to adopt rules.** The department of *public* health ~~and environmental sciences~~, with the approval of the department of livestock, may adopt rules necessary for the implementation and administration of this part."

Section 127. Section 50-23-106, MCA, is amended to read:

"**50-23-106. Injunction — recovery of costs.** (1) In addition to any other remedies provided by law, the department of *public* health ~~and environmental sciences~~ or, upon the request of the department of *public* health ~~and environmental sciences~~, an appropriate county attorney may file an action to enjoin a violation of this part or *a* rule adopted pursuant to it.

(2) The department of *public* health ~~and environmental sciences~~ or the county attorney, if either prevails in any action brought pursuant to subsection (1) above, is entitled to recover from the other party the costs, expenses, and reasonable ~~attorney's~~ *attorney* fees incurred."

Section 128. Section 50-30-102, MCA, is amended to read:

"**50-30-102. Definitions.** In this chapter, the following definitions apply:

(1) "Commerce" means all commerce within this state and subject to the jurisdiction ~~thereof~~ *of the state* and includes the operation of any business or service establishment.

(2) "Court" means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "Person" includes an individual, partnership, corporation, or association or its legal representative or agent."

Section 129. Section 50-31-103, MCA, is amended to read:

"50-31-103. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or ~~which~~ *that* are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source *and* that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material ~~which~~ *that*:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or *that is* extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with ~~other~~ *another* substance) of imparting color thereto.

(b) ~~This~~ *The* term does not include material ~~which~~ *that* has been or is exempted under the federal act.

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. *201*, et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label ~~which~~ *that*, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and ~~which~~ *that* falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and *that* contains not more than 10 parts per million total solids.

(14) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments,

apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ *humans* or other animals;

(b) to affect the structure or function of the body of ~~man~~ *humans* or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ *humans* or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of ~~man~~ *humans* or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and *that* complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for ~~man~~ *humans* or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22)(a) "Food additive" means a substance, the intended use of which results or may be reasonably expected te result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific

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procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) ~~This~~ *The* term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, tbe Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 ~~C.F.R.~~ *CFR* 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less tban 88%.

(25) "Honey" means the nectar and saccharine *plant* exudations ~~of plants~~, gathered, modified, and stored in the comb by honey bees~~; is~~, *that are* levorotatory~~, contains~~ *and that contain* not more than 25% of water, not more than ~~.25%~~ *0.25%* of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means ~~any~~ *a* list presented to the patron ~~which~~ *that* states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but ~~which~~ *that* has not, ~~otherwise~~ *other* than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) "Organic food" means food that conforms to the definition in 50-31-222.

(33) *(a)* "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. ~~but~~

(b) The term does not include:

~~(a)~~*(i)* shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

~~(b)~~*(ii)* shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(34) "Person" includes an individual, partnership, corporation, and association.

(35) "Pesticide chemical" means a substance ~~which~~ *that* alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.~~, secs.~~ 135-135k), as amended, and ~~which~~ *that* is used in the production, storage, or transportation of raw agricultural commodities.

(36) "Placard" means ~~any~~ *a* nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(37) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of ~~such~~ *the* food in a package.

(39) "Purified water" means water *that is* produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the pharmacopoeia of the United States of America, 1980.

(40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

(43) "State board" or "board" means the board of *public* health ~~and environmental sciences~~ provided for in 2-15-2104.

(44) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

(45) "Water-bottling plant" means ~~any~~ *a* facility in which bottled water is produced.

(46) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device ~~utilizing~~ *using* external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."

Section 130. Section 50-31-307, MCA, is amended to read:

"**50-31-307. Dispensing of prescription drugs.** (1) A drug intended for use by ~~man~~ *humans* that ~~falls~~ *is included* in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling ~~any~~ *a* written or oral prescription if the refilling is authorized by the ~~prescriber~~ *practitioner*, either in the original prescription or hy *an* oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or by a registered nurse employed hy a family planning clinic under contract with the department of *public* health ~~and environmental sciences~~ pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale."

Section 131. Section 50-34-101, MCA, is amended to read:

"50-34-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(2) "Flour" means the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(3) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

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(4) "Rolls" includes plain white rolls and buns of the ~~semi-bread~~ *semibread* dough type, ~~namely:~~ *including* soft rolls, such as hamburger rolls, hot dog rolls, *or* parkerhouse rolls~~;~~ ~~and~~ hard rolls, such as Vienna rolls, kaiser rolls, *or* yeast-raised sweet rolls~~;~~ or sweet buns made with fillings or coatings, such as cinnamon rolls or huns and butterfly rolls.

(5) "White bread" means any bread *that is* made with flour, whether baked in a pan or on a hearth or screen, and ~~which~~ *that* is commonly known or ~~usually~~ represented and sold as white bread, including Vienna bread, French bread, and Italian bread."

Section 132. Section 50-36-101, MCA, is amended to read:

"**50-36-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(2) "Mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion, or pillow *that is* filled with any soft material ~~capable of use~~ *and that may be used* for sleeping or reclining purposes."

Section 133. Section 50-40-103, MCA, is amended to read:

"**50-40-103. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Enclosed public place" means ~~any~~ *an* indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5) "Place of work" means an enclosed room where more than one employee works.

(6) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(7) "Smoking area" means a designated area in which smoking is permitted."

Section 134. Section 50-44-102, MCA, is amended to read:

"**50-44-102. Establishment of program.** (1) The department of *public* health ~~and environmental sciences~~ shall establish a program to provide treatment to persons suffering from chronic renal diseases, including dialysis

and other medical procedures and techniques, ~~which will~~ *that may* have a lifesaving effect in the care and treatment of such persons. The department shall extend financial assistance te persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for ~~such~~ *the* diseases, including the rental or purchase of home dialysis equipment and supplies.

(2) The department shall by rule establish standards for determining the amount or duration of financial assistance to be extended to individuals under this program in order that treatment ~~shall be~~ *is* provided to those who are financially unable to obtain services without causing severe economic imbalance in the family economic unit. ~~Such~~ *The* standards ~~shall~~ *must* be established without reference to maximum or minimum income levels.

(3) The department is not liable to any person for a failure to provide financial assistance to that person under this section if sufficient funds are not appropriated by the legislature."

Section 135. Section 50-49-103, MCA, is amended to read:

"**50-49-103. Definitions.** For purposes of this part, unless the contoxt requires otherwise, the following definitions apply:

(1) "Council" means the state advisory council on food and nutrition established in 2-15-2210.

(2) "Department" means the department of *public* health ~~and environmental sciences~~ as provided in 2-15-2101.

(3) "Food programs and nutrition services" means puhlic or private programs to provide food and nutrition assistance to persons who have need. The term includes but is not limited to the food stamp program, food programs for the elderly, and supplemental food programs for women, infants, and children."

Section 136. Section 50-50-102, MCA, is amended to read:

"**50-50-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of *public* health ~~and environmental sciences~~, provided for in 2-15-2104.

(2) "Commercial establishment" means an establishment operated primarily for profit.

(3) "Department" means the department of *public* health ~~and environmental sciences~~, provided for in Title 2, chapter 15, part 21.

(4) "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

(5) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

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(6) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(7) *(a)* "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

(b) The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

(8) *(a)* "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets~~;~~.

(b) ~~but~~ *The term* does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

(9) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(10) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(12) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

(13) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment."

Section 137. Section 50-51-102, MCA, is amended to read:

"50-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of *public* health ~~and environmental sciences~~.

(2) "Commercial establishment" means an establishment operated primarily for profit.

(3) "Department" means the department of *public* health ~~and environmental sciences~~.

(4) "Establishment" means a botel, motel, roominghouse, boardinghouse, retirement home, or tourist home.

(5) "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(6) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, boardinghouse, tourist home, retirement home, or roominghouse.

(7) "Roominghouse", "boardinghouse", or "retirement home" means buildings in which separato sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(8) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of tbe traveling public.

(9) "Transient guest" means a guest for only a brief stay, such as the traveling public."

Section 138. Section 50-52-101, MCA, is amended to read:

"**50-52-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Campground" means a parcel of land available to and principally used by the public for camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.

(2) "Department" means the department of *public* health ~~and environmental sciences~~.

(3) "Establishment" means a campground, trailer court, work camp, or youth camp.

(4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous lots, in the possession of, owned by, or managed by the same person.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of a campground, trailer court, work camp, or youth camp.

(6) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

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(7) *(a)* "Trailer court" means a parcel of land upon which two or more spaces are available to the public and designated for occupancy by trailers or mobile homes for use as residences~~, except that the~~.

(b) The term does not include a parcel composed of platted lots, each lot of which:

(i) is filed with the county clerk and recorder~~,~~;

(ii) contains only one trailer space~~,~~; and

(iii) is served by a public water supply system and public sewage system ~~which~~ *that* meet the requirements of rules for ~~such~~ systems adopted pursuant to Title 75, chapter 6, part 1, and ~~which is~~ *that are* located within the boundaries of an incorporated city or town.

(8) "Work camp" means a parcel of land on which housing is provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of ~~such~~ *the* person and the families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited to camping spaces; trailer parking spaces; mobile, modular, or permanent barracks or structures; and any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. ~~"~~Housing~~"~~ does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

(9) *(a)* "Youth camp" means a parcel of land on which permanent buildings, tents, or other structures are maintained as living quarters for 10 or more people and that is used primarily for educational or recreational use by minors. The term includes any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities.

(b) The term does not include any site used solely by the members and their families of a private organization that owns the site."

Section 139. Section 50-53-102, MCA, is amended to read:

"50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

(4) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

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(6) "Public swimming pool" means an artificial pool and hathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of ~~his~~ *the owner's* family, or their invited guests; or

(b) medicinal bot water baths for individual use."

Section 140. Section 50-60-204, MCA, is amended to read:

"**50-60-204. Public hearing required — effective date of certain rules.** (1) Except as provided in subsection (2) ~~of this section~~, ~~no~~ *a* rule, amendment, or repeal of the state building code may *not* take effect until after a public hearing by the department.

(2) If a hearing has been held by the department of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the department of *public* health ~~and environmental sciences~~, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of tbe department and filing with the secretary of state as a part of the state building code."

Section 141. Section 50-60-803, MCA, is amended to read:

"**50-60-803. Energy labeling sticker.** (1) The department *of commerce*, in consultation with the department of ~~natural resources and conservation~~ *environmental quality*, shall prescribe by rule requirements for a labeling sticker to be affixed to a new residential building that describes the energy efficiency components of the home, including but not limited to heating appliance efficiencies and R-value or U-value of ceilings, walls, floors, windows, and doors in new residential buildings.

(2) A person constructing a new residential building shall affix to that residential building in a manner prescribed by the department *of commerce* a labeling sticker as described in subsection (1)."

Section 142. Section 50-70-103, MCA, is amended to read:

"**50-70-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Board" means the board of ~~health~~ *environmental review* ~~and environmental sciences,~~ provided for in ~~2-15-2104~~ *[section 23]*.

(3) "Department" means the department of ~~health~~ *environmental quality* ~~and environmental sciences,~~ provided for in ~~Title 2, chapter 15, part 21~~ *[section 22]*.

(4) "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

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(5) "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice ~~which~~ *that* is hazardous to health;

(c) has symptoms of an industrial disease ~~which~~ *that* is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside ~~his~~ *the person's* employment.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers ~~which~~ *that* are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, ~~lunch rooms~~ *lunchrooms*, sewage disposal systems, and potable water systems.

(10) "Threshold limit values" means airborne concentrations of substances ~~which~~ *that*, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

(11) "Workplace" is a place or location where a person is gainfully employed.

(12) "Worker" is a person gainfully employed at any place."

Section 143. Section 50-70-110, MCA, is amended to read:

"50-70-110. **Hearing officer.** The board may designate the director of ~~health~~ *environmental quality* ~~and environmental sciences~~ as the hearing officer at any hearing set by the board and authorize ~~him~~ *the director* to make rulings on evidence and conduct the hearing. The board or the director of ~~health~~ *environmental quality* ~~and environmental sciences~~ as hearing officer may compel the attendance of witnesses and the production of evidence at hearings."

Section 144. Section 50-71-109, MCA, is amended to read:

"50-71-109. **Duties of department regarding occupational health hazards.** The department shall report occupational health hazards discovered in its investigations and inspection of places of employment to the department of ~~health~~ *environmental quality* ~~and environmental sciences~~ and shall cooperate with ~~the~~ *that* department in carrying out its duties as specified in chapter 70 of this title."

Section 145. Section 50-78-102, MCA, is amended to read:

"50-78-102. **Definitions.** As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in standard industrial classification codes 20 through 39, as defined in the federal Standard Industrial Classification Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of ~~health~~ *environmental quality* ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(5) "Designated representative" means:

(a) tbe individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard te written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to otber distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in ~~his~~ *the* workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity engaged in business or providing services that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds ~~which~~ *that* is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and ~~which~~ *that* has been identified as such by the federal occupational safety and health administration or the manufacturer and has been so filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

(a) the chief of the municipal fire department or ~~his~~ *the chief's* agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or ~~his~~ *the chief's* agent, for any workplace not located within a city or town.

(13) "Manufacturing employer" means an employer with a workplace classified in any standard industrial classification code 20 through 39 who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace in any standard industrial classification code other than 20 through 39.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 ~~C.F.R.~~ *CFR* 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, ~~which~~ *that* is used in an employer's business and ~~which~~ *that* gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under this chapter or under subsection (e)(1)(i) of the OSHA standard."

Section 146. Section 52-2-111, MCA, is amended to read:

"**52-2-111. Administrative duties of department.** Subject to the authority and regulations of the department and in cooperation with the federal government, the department shall:

(1) adopt rules necessary to carry out the purposes of this part;

(2) administer or supervise all child welfare services of the stato, except the child welfare services ~~which~~ *that* are administered by the department of *public* health ~~and environmental sciences~~ and the department of social and rehabilitation services."

Section 147. Section 52-2-202, MCA, is amended to read:

"52-2-202. **Definitions.** For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Children with multiagency service needs" means children under 18 years of age who have a need for services that are available from more than one state agency.

(2) "Services" means publicly funded social services for children, including public education, child protective services, mental health services, child health care, and related services.

(3) "State agency" means:

(a) the department of family services provided for in 2-15-2401;

(b) the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101;

(c) tbe department of corrections and human services provided for in 2-15-2301;

(d) the board of crime control provided for in 2-15-2006;

(e) the department of social and rehabilitation services provided for in 2-15-2201; and

(f) the superintendent of public instruction provided for in 2-15-701."

Section 148. Section 52-2-303, MCA, is amended to read:

"52-2-303. **Multiagency service placement plan committee — membership — administration.** (1) There is a multiagency service placement plan committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department;

(b) an appointee of the superintendent of public instruction;

(c) an appointee of the director of the department of corrections and human services;

(d) an appointee of the director of the department of *public* health ~~and environmental sciences~~; and

(e) an appointee of tbe director of the department of social and rehabilitation services.

(3) The committee is attached to the department for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122."

Section 149. Section 52-2-704, MCA, is amended te read:

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"52-2-704. **Lead agency — duties of department.** (1) The department is designated as the lead agency for the purposes of planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

(a) assess child-care needs and resources within the state;

(h) develop a state child-care plan after consultation with the local family services advisory councils established under 52-1-203 and the child-care advisory council estahlished in 52-2-705;

(c) coordinate child-care programs administered hy the department and the departments of social and rehabilitation services, *public* health ~~and environmental sciences~~, and labor and industry;

(d) issue licenses to persons to receive children into a day-care center on a regular basis;

(e) prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued;

(f) adopt rules for day-care facilities consistent with the purposes of this part; and

(g) issue registration certificates to a person or persons to receive children into a family day-care home or group day-care home on a regular basis.

(3) The department may:

(a) enter into interagency agreements to administer and coordinate child-care programs;

(b) accept any federal funds made available for the improvement or promotion of child-care services within the state;

(c) administer any state and federal funds that may be appropriated for the purposes of the part."

Section 150. Section 52-2-731, MCA, is amended to read:

"52-2-731. **Standards for day care.** In developing standards, the department shall seek the advice and assistance of the department of *public* health ~~and environmental sciences~~ and superintendent of public instruction, representatives of day-care facilities, specialists in child care, and representatives of parent groups who use the services of day-care facilities. The standards may pertain to:

(1) character, suitability, and qualifications of an applicant and other persons directly responsible for the care of children;

(2) the number of individuals or staff required for adequate supervision and care of children in day-care facilities;

(3) child-care programs and practices necessary to ensure the health, safety, safety in transportation, development, and well-being of children;

(4) adequate and appropriate admission policies;

(5) adequacy of physical facilities and equipment;

(6) general financial ability and competence of an applicant to provide necessary care for children and maintain prescribed standards;

(7) the ages and numbers of children that may be cared for in a day-care facility."

Section 151. Section 52-2-733, MCA, is amended to read:

"52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants. (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department ~~must~~ *shall* visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) The department shall make annual unannounced visits to day-care centers.

(5) Upon request of the department, the department of *public* health ~~and environmental sciences~~ or the state fire prevention and investigation program of the department of justice shall inspect any ~~day care~~ *day-care* facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of ~~his~~ *the licensee's* program.

(7) ~~Nothing in this~~ *This* section may *not* be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part."

Section 152. Section 52-2-735, MCA, is amended to read:

"52-2-735. Health protection — certification required. (1) The department of *public* health ~~and environmental sciences~~ shall adopt rules for the protection of children in day-care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases. Rules adopted by the department must include rules requiring children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted for care in the facility, unless an exemption has been claimed as provided in 20-5-405.

(2) Local public health authorities shall arrange to provide training to day-care center providers and employees regarding health hazards. Upon

successful completion of tbe training, the local public health authorities shall issue certificates to the providers and employees.

(3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of approval to child-care center providers.

(4) Each applicant for a license to operate a day-care center shall submit to the department a certificate issued pursuant to suhsection (2) or (3) before the department will issue a license.

(5) The local public health authority may charge tbe applicant a reasonable fee, not to exceed $25, for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for training it provides under this section."

Section 153. Section 52-3-605, MCA, is amended to read:

"**52-3-605. Enforcement of access.** (1) A person who violates tbe provisions of 52-3-604 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department of *public* health ~~and environmental sciences~~ or, upon request of that department, the county attorney of the county in wbich the long-term care facility in question is located may petition the district court to impose, assess, and recover tbe civil penalty. Money collected as a civil penalty must he deposited in the state general fund.

(2) The department of *public* health ~~and environmental sciences~~ or, upon request of that department, tbe county attorney of the county in which the long-term care facility in question is located may bring an action to enjoin a violation of any provision of 52-3-604 in addition to or exclusive of the remedy in subsection (1)."

Section 154. Section 52-3-811, MCA, is amended to read:

"**52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of *public* health ~~and environmental sciences~~. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of tbe report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services ~~which~~ *that* may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a developmentally disabled person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official; and

(h) a person providing services to an older person or a developmentally disabled person pursuant to a contract with a state or federal agency.

(4) Any other person may submit a report as provided in subsection (1)."

Section 155. Section 52-4-204, MCA, is amended to read:

"**52-4-204. Health and safety standards.** (1) A community home for persons with severe disabilities must be certified annually for fire and life safety by the department of justice. The department of justice shall notify the department whenever a community home has been certified or refused certification.

(2) (a) Local health officers shall inspect a community home for persons with severe disabilities to ensure compliance with health and safety standards. If for any reason the local authority cannot complete the inspection in a timely manner, the department of *public* health ~~and environmental sciences~~ may make the inspection to ensure compliance with the standards.

(b) The inspecting health officer shall notify the department whether a community home is or is not in compliance with applicable standards.

(c) A reasonable fee may be charged by health authorities conducting compliance inspections."

Section 156. Section 52-4-205, MCA, is amended to read:

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"52-4-205. **Rulemaking.** (1) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety requirements for community homes for persons with severe disabilities in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

(2) The department of *public* health ~~and environmental sciences~~ and the state fire prevention and investigation program of the department of justice shall provide advice and recommendations to the department concerning licensing requirements for health and safety."

Section 157. Section 53-2-322, MCA, is amended to read:

"53-2-322. **County to levy taxes, budget, and make expenditures for public assistance activities.** (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much of that amount as may be necessary. The board may levy up to an additional 12 mills if approved by the voters in the county. A county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. The department shall notify the counties of the number of mills required to be levied. Once an additional levy has been approved, the amount of the approved levy may continue to be levied without voter approval.

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance and protective services purposes as necessary to reimburse the department and the department of family services for the county's proportionate share of the administrative costs and of all public assistance and protective services and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department and the department of family services must be sufficient to make all of these reimbursements in full. The budget must make separate provision for each one of these public assistance and protective services activities, and proper accounts must be established for the funds for all the activities.

(4) The department shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy must be mailed to the department, and at any time before the final adoption of the budget, the department shall make recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

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(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) The county poor fund, irrespective of the source of any part of the fund, may not be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for paying the county's proportionate share of public assistance and protective services or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may he made out of money in the county poor fund, whether the money was produced by the mill levy provided for in subsection (1) or from any additional levy authorized by law. The expenditure may be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for the huilding by the department of *public* health ~~and environmental sciences~~ and when the expenditure has been approved by the department of social and rehabilitation services and the department of family services.

(8) Money in the county poor fund may be used as matching funds for the receipt of federal money."

Section 158. Section 53-6-106, MCA, is amended to read:

"**53-6-106. Health care facility standards — definitions.** (1) For purposes of 53-6-106 through 53-6-108, the following definitions apply:

(a) "Department" means the department of social and rehabilitation services.

(b) "Health care facility" means a health care facility as defined in 50-5-101.

(2) The department and the department of *public* health ~~and environmental sciences~~ may enter into agreements with appropriate federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

(3) The department of *public* health ~~and environmental sciences~~ shall adopt rules prescribing minimum standards for the maintenance and operation of health care facilities, including standards for the quality of care provided by those facilities receiving reimbursement under the Montana medicaid program. These standards must include, as a minimum, those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may he amended, and by the implementing regulations contained in 42 CFR 430, et seq., as may be amended. The authority to prescribe standards and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department of *public* health ~~and environmental sciences~~ pursuant to Title 50, chapter 5.

(4) Standards adopted by the department of *public* health ~~and environmental sciences~~ may include but are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration, admission policies, patient care

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planning, training, medication, health services, rehabilitation services, and social services and activities."

Section 159. Section 53-6-107, MCA, is amended to read:

"**53-6-107. Sanctions — penalties.** (1) The department may suspend, terminate, or refuse to renew an agreement with a health care facility that has failed to meet the requirements for certification adopted for the Montana medicaid program under 53-6-106 through 53-6-108. The department may also impose sanctions in the form of denial of medicaid payments for new admissions or other penalties as described in 53-6-111.

(2) The department may impose a civil monetary penalty, with interest not to exceed 12% per annum, for each day that a facility is substantially out of compliance with stsndards adopted by the department of *public* health ~~and environmental sciences~~ under the authority of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and may he applied to the protection of the health and property of residents of health care facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(3) The department may appoint temporary management personnel to oversee the operation of the facility and to assure the health and safety of the facility's residents if there is a need for temporary management because:

(a) an orderly closure of the facility is necessary; or

(b) improvements are being made to bring the facility into compliance with applicable standards.

(4) The department shall, in the case of an emergency, close the facility or transfer residents in the facility to other facilities, or both."

Section 160. Section 53-6-108, MCA, is amended to read:

"**53-6-108. Rules governing sanctions or remedies.** The department shall adopt rules governing the application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the standards adopted by the department of *public* health ~~and environmental sciences~~ or those federal standards established in 53-6-106 may not exceed $1,000 for each day the deficiency remains uncorrected. A health care facility aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6."

Section 161. Section 53-6-110, MCA, is amended to read:

"**53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information required in 17-7-111, the department of social and rehabilitation services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

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(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) As an integral part of the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of *public* health ~~and environmental sciences~~.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(5) Whenever the department of social and rehabilitation services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting."

Section 162. Section 53-6-401, MCA, is amended te read:

"**53-6-401. Definitions.** As used in this part, the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

(2) "Department" means the department of social and rehabilitation services ~~as~~ provided for in Title 2, chapter 15, part 22.

(3) "Long-term care facilities" means facilities that are certified by the department of *public* health ~~and environmental sciences~~ to provide skilled or intermediate nursing care services, including intermediate nursing care services for the developmentally disabled.

(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.

(5) "Long-term care preadmission screening and resident review" means an evaluation that results in a determination as to whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities."

Section 163. Section 53-20-213, MCA, is amended to read:

"**53-20-213. Departments to cooperate.** The department of corrections and human services, the department of social and rehabilitation services, the department of *public* health ~~and environmental sciences~~, tho department of family services, and the office of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled."

Section 164. Section 53-20-305, MCA, is amended to read:

"**53-20-305. Local control of community homes — departmental licensing, administration, operation, *and* health and safety standards.** (1) Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating community homes are authorized te establish homes and programs *that* they believe in the best interest of their homes.

(2) (a) A community home for the developmentally disabled ~~shall~~ *must* be licensed annually by the department of family services.

(b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) (a) The department of family services, for the purpose of licensing, shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for the developmentally disabled.

(b) The department of *public* health ~~and environmental sciences~~ shall provide advice and recommendations to the department of social and rehabilitation services and the department of family services concerning the standards for health and safety."

Section 165. Section 53-20-307, MCA, is amended to read:

"**53-20-307. Health and safety standards for licensing.** (1) (a) After initial certification by the state fire prevention and investigation program of the department of justice, community homes must be certified annually for fire and life safety by the department of justice.

(b) The department of justice shall notify the department of social and rehabilitation services and the department of family services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of *public* health

~~and environmental sciences~~ is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties, as defined in 53-20-303, for the health and safety certification."

Section 166. Section 53-21-145, MCA, is amended to read:

"**53-21-145. Right to be free from unnecessary or excessive medication.** Patients have a right to be free from unnecessary or excessive medication. ~~No medication shall~~ *Medication may not* be administered unless at the written order of a physician. The attending physician ~~shall be~~ *is* responsible for all medication given or administered to a patient. The use of medication ~~shall~~ *may* not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication ~~shall~~ *must* be kept in ~~his~~ *the individual's* medical records. The department of *public* health ~~and environmental sciences~~ shall adopt rules governing attending physician review of the drug regimen of each patient under ~~his~~ *the physician's* care in a mental health facility, except that the drug regimen of inpatients in hospitals ~~shall~~ *must* be reviewed no less than weekly. Except in the case of outpatients, all prescriptions ~~shall~~ *must* be written with a termination date, which ~~shall~~ *may* not exceed 30 days. Medication ~~shall~~ *may* not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program."

Section 167. Section 53-21-165, MCA, is amended to read:

"**53-21-165. Records to be maintained.** Complete patient records must be kept by the mental health facility for the length of time required by rules established by the department of *public* health ~~and environmental sciences~~. All records kept by the mental health facility must be available to any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records must also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records must include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation that notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination that describes the results of the examination;

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(6) a copy of the individual treatment plan and any modifications to the plan;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan, required under 53-21-162(4), that analyzes the successes and failures of the treatment program and includes recommendations for appropriate modification of the treatment plan;

(8) a copy of the individualized discharge plan and any modifications to the plan and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status that includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a summary of each significant contact by a professional person with the patient;

(11) documentation of the implementation of the treatment plan;

(12) documentation of all treatment provided to the patient;

(13) chronological documentation of the patient's clinical course;

(14) descriptions of any changes in the patient's condition;

(15) a signed order by a professional person for any restrictions on visitations and communications;

(16) a signed order by a professional person for any physical restraints and isolation;

(17) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that the staff member has personal knowledge of the incident or specifying any other source of information. The summary of the incident must be initialed within 24 hours by a professional person.

(18) a summary by the professional person in charge of the facility or hy an appointed agent of the determination made after the 30-day review provided for in 53-21-163."

Section 168. Section 53-21-201, MCA, is amended to read:

"**53-21-201. Definitions.** As used in this part, the following definitions apply:

(1) "Community mental health center" means a facility, not necessarily encompassed within one building, that is licensed by the department of *public* health ~~and environmental sciences~~ as a mental health center, as defined in 50-5-101, and that offers comprehensive mental health services that include at least the following services to the public:

(a) outpatient services, including specialized outpatient services for children, the elderly, individuals who have serious mental illness, and residents of its service area who have been discharged from inpatient treatment at a mental health facility;

(b) 24-hour-a-day emergency care services;

(c) day treatment or other partial hospitalization services or psychosocial rehabilitation services;

(d) screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission; and

(e) consultation and education in mental health.

(2) "Department" means the department of corrections and human services."

Section 169. Section 53-21-204, MCA, is amended to read:

"**53-21-204. Mental health corporations.** (1) Mental health regions must be established in the state mental health plan and must conform to the mental health regions as established in the state mental health construction plan promulgated by the board of *public* health ~~and environmental sciences~~ under the federal Community Mental Health Centers Act.

(2) The mental health regions must be established under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations may not be considered agencies of the department or the state of Montana; however, they may retain and enter into retirement programs as established under Title 19, chapter 3, The Public Employees' Retirement System Act.

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board consists of three members-at-large who must be chosen according to the corporate bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following four groups:

(i) parents of children with emotional disturbances;

(ii) advocates of mental health services for the elderly;

(iii) health care professionals; or

(iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

(4) ~~Nothing in this~~ *This* section ~~prohibits~~ *does not prohibit* a regional mental health corporation from voluntarily expanding its board membership to include

members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board must be established under guidelines adopted by the bylaws of the corporation. All appointments to the board must be for torms of 2 years, and the department must be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of money and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, taxes, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part must be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members must be reimbursed from funds of the beard for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned hy the hoard.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(9) The regional board of mental health, with the approval of the department, shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with subsection (6)(d)."

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Section 170. Section 53-21-212, MCA, is amended to read:

"**53-21-212. Definition.** As used in 53-21-211 through 53-21-214, the term "state agency" means:

(1) the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101;

(2) the department of social and rehabilitation services provided for in 2-15-2201;

(3) the department of corrections and human services provided for in 2-15-2301; and

(4) the mental disabilities board of visitors provided for in 2-15-211."

Section 171. Section 60-11-111, MCA, is amended to read:

"**60-11-111. Identification and acquisition of railroad rights-of-way — identification of railroad lines for rehabilitation.** (1) Identification of those railroad lines proposed for abandonment in the stato of Montana that may bave potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements therein.

(2) Identification of those railroad branch lines in the state that may have potential for local rail freight transportation service is necessary to determine the feasibility of providing loans or grants to the owner or operator of the railroad line as provided in 60-11-120.

(3) The department of transportation:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the stato of Montana of those rights-of-way that may be abandoned;

(b) shall identify, under the state rail planning program, railroad branch lines that should be preserved for continued operation;

(c) shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to subsections (3)(a) and (3)(b);

(d) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection (3)(a) and:

(i) hold all acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriato local authority, other than an agency of state government, shall transfer to the local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (3)(d);

(e) shall cooperate with and assist persons representing recreational, transportation, and utility interests and other interestod persons, including

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adjacent landowners, in acquiring ownership or easement of abandoned railbeds; and

(f) shall establish procedures, including the use of federal funds received for rail freight assistance programs under 49 U.S.C. 1654, for providing loans and grants under 60-11-120.

(4) Abandoned rights-of-way acquired and held in trust pursuant to subsection (3)(d)(i) must be administered by the department of ~~state lands~~ *natural resources and conservation*, as prescribed in Title 77, until the land is needed for transportation purposes."

Section 172. Section 67-4-211, MCA, is amended to read:

"**67-4-211. State lands.** When an airport influence area lies partially or entirely on state-owned lands, the department of ~~state lands~~ *natural resources and conservation* shall administer the affected lands in conformance with the criteria and guidelines prescribed by the local governing body."

Section 173. Section 69-3-1204, MCA, is amended to read:

"**69-3-1204. Integrated least-cost plan.** (1) The commission may adopt rules requiring a public utility to prepare and file a plan for meeting the requirements of its customers in the most cost-effective manner consistent with the public utility's obligation to serve. The rules may prescribe the content and the time for filing a plan.

(2) A plan must contain but is not limited to an evaluation of the full range of cost-effective means for the public utility to meet the service requirements of its Montana customers, including conservation or similar improvements in the efficiency by which services are used.

(3) The commission may adopt rules providing guidelines to be used in preparing a plan and identifying the criteria to be used in determining cost-effectiveness. The criteria may include externalities associated with the acquisition of a resource by a public utility. The rules must establish the minimum filing requirements for acceptance of a plan by the commission for further review. If a plan does not meet the minimum filing requirements, it must be returned to the public utility with a list of deficiencies. A corrected plan must be submitted within the time established by the commission.

(4) A plan filed with the commission by a utility, as defined in 75-20-104, must be provided to the department of ~~natural resources and conservation~~ *environmental quality* and the consumer counsel."

Section 174. Section 69-3-1205, MCA, is amended to read:

"**69-3-1205. Public comment.** (1) The commission shall conduct a public meeting for the purpose of receiving comment on a plan. The commission or the department of public service regulation may comment on the plan. A comment by the commission or the department may not be construed as preapproval by the commission of rate treatment for any proposed resource.

(2) The department of ~~natural resources and conservation~~ *environmental quality*:

(a) shall review a plan and comment on the need for new resources, the alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related issues that it considers important. The department shall coordinato and deliver all comments from other executive branch agencies.

(b) may use a plan in the development of studies for a specific energy facility for which an application for a certificate of environmental compatibility and public need is submitted under Title 75, chapter 20.

(3) The consumer counsel shall review and may comment on a plan."

Section 175. Section 72-16-217, MCA, is amended to read:

"72-16-217. List of deaths to be made by department of *public* health — copy to county clerk. The department of *public* health ~~and environmental sciences~~ shall prepare on or before the fifth of January, April, July, and October of each year a list of all deaths, together with the date of ~~such~~ death, reported to it during ~~such~~ *the* period and shall send a copy of ~~such~~ *the* list of deaths to the county clerk of each county in the state."

Section 176. Section 72-17-102, MCA, is amended to read:

"72-17-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "Document of gift" means a card, a statoment attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(5) "Donor" means an individual who makes a gift of all or part of the individual's body.

(6) "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.

(7) "Hospital" means a facility licensed, accredited, or approved under the laws of any stato or a facility operated as a hospital by the United States government, a state, or a suhdivision of a state.

(8) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(9) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

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(10) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(11) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(12) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Technician" means an individual who is certified by the state board of medical examiners to remove or process a part."

Section 177. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state ~~shall~~ *must* be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) ~~utilize~~ *use* a systematic, interdisciplinary approach ~~which~~ *that* will ~~insure~~ *ensure* the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking ~~which~~ *that* may have an impact on ~~man's~~ *the* environment;

(ii) identify and develop methods and procedures ~~which~~ *that* will ~~insure~~ *ensure* that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects ~~which~~ *that* cannot be avoided ~~should~~ *if* the proposal ~~be~~ *is* implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of ~~man's~~ *the* environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources ~~which~~ *that* would be involved in the proposed action ~~should~~ *if* it ~~be~~ *is* implemented;

(iv) study, develop, and describe appropriate alternatives te recommend courses of action in any proposal ~~which~~ *that* involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, ~~where~~ *when* consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed te maximize national cooperation in anticipating and preventing a decline in the quality of ~~mankind's~~ *the* world environment;

(vi) make available te counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and ~~utilize~~ *use* ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency ~~which~~ *that* has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of ~~such~~ *the* statement and the comments and views of the appropriate state, federal, and local agencies ~~which~~ *that* are autborized to develop and enforce environmental standards ~~shall~~ *must* be made available to the governor, the environmental quality council, and the public and ~~shall~~ *must* accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).~~

~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31, 1989, that must include but not be limited to:~~

~~(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;~~

~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;~~

~~(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;~~

~~(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;~~

~~(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and~~

~~(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.~~

~~(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council.~~"

Section 178. Section 75-2-103, MCA, is amended to read:

"**75-2-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or *that* would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(6) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(7) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

(9) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(10) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(11) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of ~~all or~~ any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(13) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(14) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

(15) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

(16) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, or slash and forest debris regulated under laws administered by the department of ~~state lands~~ *natural resources and conservation*."

Section 179. Section 75-2-502, MCA, is amended to read:

"**75-2-502. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Accreditation" means a certificate issued by the department that permits a person to work in an asbestos-related occupation.

(2) "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, or actinolite.

(3) "Asbestos project" means the encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, or the transportation or disposal of asbestos-containing waste. The term does not include a project that involves less than 3 square feet in surface area or 3 linear feet of pipe.

(4) "Asbestos-related occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.

(5) "Department" means the department of ~~health and environmental sciences as~~ *environmental quality* provided *for* in ~~2-15-2101~~ *[section 22]*.

(6) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity."

Section 180. Section 75-3-103, MCA, is amended to read:

"**75-3-103. Definitions.** The definitions used in this chapter are intended to be consistent with those used in 10 CFR 1-199 and 49 CFR 173.389-173.399. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Byproduct material" means:

(a) any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or ~~utilizing~~ *using* special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Department" means the department of ~~health and environmental sciences~~ *environmental quality*.

(3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment ~~utilizing~~ *using* quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General

licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, hut not sound or radio waves or visible, infrared, or ultraviolet light.

(6) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389(b).

(7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency ~~thereof~~ *of a political subdivision*, and any legal successor, representative, agent, or agency of the foregoing, other than the Unitod States nuclear regulatory commission, any successor ~~thereto~~, or federal agencies licensed by the nuclear regulatory commission.

(8) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.

(9) "Source material" means uranium, thorium, or any other material ~~which~~ *that* the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in ~~such~~ *a* concentration ~~as~~ *that* the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in ~~such~~ *that* concentration to be source material.

(10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material ~~which~~ *that* the department or the United States nuclear regulatory commission or any successor ~~thereto~~ declares by order to be special nuclear material or any material artificially enriched by any of the foregoing hut does not include source material.

(11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment ~~utilizing~~ *using* quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially."

Section 181. Section 75-3-401, MCA, is amended to read:

"**75-3-401. Administrative hearings.** In a proceeding under this chapter for granting, suspending, revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted under this chapter, the board of ~~health and environmental sciences~~ *environmental review* shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding."

Section 182. Section 75-3-502, MCA, is amended to read:

"75-3-502. **Administration of compact — fees.** (1) The department of ~~health and environmental sciences~~ *environmental quality*, as the state radiation control agency, shall administer the provisions of the compact.

(2) The department may assess and collect fees for services rendered in inspecting and regulating low-level radioactive waste generators, transporters, and disposal facilities. ~~Such~~ *The* fees must cover the department's costs for those services and must be deposited in the state special revenue fund for use by the department. State and local government agencies, including the university system, are exempt from the payment of fees.

(3) The departmont may adopt rules under the authority contained in 75-3-201(3)(b) to implement the provisions of this compact."

Section 183. Section 75-3-602, MCA, is amended to read:

"75-3-602. **Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of ~~health and environmental sciences~~ *environmental quality*.

(2) "Inhabitable real property" means any real property that includes a building affixed to land.

(3) "Mitigation project" means to repair or alter a building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere.

(4) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, consultant, state or municipal agency, political subdivision of the state, or any other entity.

(5) "Radon" means any of the gaseous radioactive decay products of uranium or thorium.

(6) "Radon progeny" means any of the radioactive decay products of radon.

(7) "Radon-related occupation" means the occupation of any person who performs radon gas or radon progeny measurements, including sample collection, analysis, or interpretation of those measurements, or who performs radon gas or radon progeny mitigation."

Section 184. Section 75-5-103, MCA, is amended to read:

"75-5-103. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Contamination" means impairment of the quality of state waters hy sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

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(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents ~~which~~ *that* are discharged inte state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by tbe board.

(14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(15) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(16) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(17) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

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(18) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(19) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters ~~which~~ *that* exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water ~~which~~ *that* will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration, or flow ~~which~~ *that* is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(20) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(22) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants ~~which~~ *that* reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, ~~where~~ *when* practicable, a standard permitting no discharge of pollutants.

(23) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters ~~where~~ *when* the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(24) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(25) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(26) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 185. Section 75-5-221, MCA, is amended to read:

"75-5-221. Water pollution control advisory council — general. (1) The council provided for in 2-15-2107 shall select a ~~chairman~~ *presiding officer* from among its members. The director of ~~health and~~ environmental ~~sciences~~ *quality* shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two regular meetings each calendar year. Special meetings ~~shall~~ *must* be held at the call of the ~~chairman~~ *presiding officer* or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform ~~his~~ *the member's* duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution."

Section 186. Section 75-5-1105, MCA, is amended to read:

"75-5-1105. Rulemaking. The ~~board and the board of natural resources and conservation~~ *department and the department of natural resources and conservation* may adopt rules ~~within their respective authorities established within~~ *to implement* the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the critoria for awarding loans;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans to be made to municipalities and private concerns, if considered appropriate and necessary for the successful administration of the program."

Section 187. Section 75-5-1106, MCA, is amended to read:

"75-5-1106. Revolving fund. (1) There is established in the state treasury a separate account designated as the wastewater treatment works revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a stato allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state pursuant to the federal act as capitalization grants for a stato revolving fund to assist construction of wastewater treatment works and grants or transfers of grants received under subchapter II of the federal act for construction of wastewater treatment works;

(b) the state allocation account, the net proceeds of bonds of the state issued pursuant to 75-5-1121 and other money appropriated by the legislature;

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(c) the administration account, 4%, or the maximum amount allowed by the federal act, of the capitalization grant award for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account, the interest portion of loan repayments.

(3) Each loan made as authorized by 75-5-1113 must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department ~~of natural resources and conservation as recommended by the department~~ *and the department of natural resources and conservation as recommended by the department*. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If honds have been issued pursuant to 75-5-1121 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

(4) The department ~~of natural resources and conservation~~ *of natural resources and conservation* may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and this part."

Section 188. Section 75-6-102, MCA, is amended to read:

"**75-6-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the hoard of ~~health and environmental sciences~~ *environmental review* provided for in ~~2-15-2104~~ *[section 23]*.

(2) "Community water system" means any public water supply system that serves at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(4) "Department" means the department of ~~health and environmental sciences~~ *environmental quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 22]*.

(5) "Drainage" means rainfall, surface, and subsoil water.

(6) "Industrial waste" means any wasto substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

(7) "Maximum contaminant level" means the maximum permissible level of a contaminant in water ~~which~~ *that* is delivered to any user of a public water supply system.

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(8) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(9) "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

(10) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters ~~which~~ *that* exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water ~~which~~ *that* will or is likely te create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge ~~which~~ *that* is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(11) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

(12) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

(13) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations ~~at~~ *set forth in* Title 40, CFR, ~~Parts~~ *parts* 141 and 142.

(14) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(15) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

(16) "Transient noncommunity water system" means any public water supply system that is not a community water system and that serves persons on a transient basis."

Section 189. Section 75-7-117, MCA, is amended to read:

"75-7-117. Rules — minimum standards. (1) The ~~board~~ *department* of natural ~~resources and conservation~~ *resources and conservation*, after consultation with the association of conservation districts, shall adopt and may from time to time revise rules setting minimum standards and guidelines for the purposes of this part.

(2) The supervisors of each district shall adopt and may from time to time revise by resolution after a public hearing rules setting standards and guidelines

for projects and exclusions within their districts which meet, exceed, or are not covered by the minimum standards set by the ~~board~~ *department* under subsection (1)."

Section 190. Section 75-7-401, MCA, is amended to read:

"**75-7-401. Adoption and amendment of model rule on sale and distribution of certain pbospborus compounds.** (1) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall adopt a model rule to provide standards that counties may adopt under 75-7-411 to prohibit the sale and distribution of certain phosphorus compounds used for cleaning.

(2) The standards in the model rule must be designed to protect water quality and aquatic ecosystems by reducing the amount of phosphorus that will enter state waters.

(3) The department may amend the model rule to:

(a) reflect changing technology related to phosphorus compounds in cleaning products;

(b) incorporate new findings about the impacts of phosphorus compounds on water quality; or

(c) respond to other relevant information.

(4) The department shall follow the procedures of Title 2, chapter 4, part 3, in adopting or amending the model rule."

Section 191. Section 75-7-411, MCA, is amended to read:

"**75-7-411. County regulation of sale and distribution of certain pbospborus compounds.** (1) The governing hody of a county may adopt, through the procedures of 7-5-103 through 7-5-107, an ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes. The governing body may rescind, modify, or repeal ~~such~~ *the* ordinance at any time by use of the same procedures.

(2) An ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes may ~~only~~ be adopted *only* if:

(a) the county has a natural lake, whether or not it is fitted with a dam, for which the department of ~~health and~~ environmental ~~sciences~~ *quality* or the governing body of the county has determined that eutrophication enhanced by human activity is occurring and that phosphorus is the limiting factor; and

(b) other efforts are heing undertaken in the county to reduce the amount of phosphorus entering surface waters.

(3) Any ordinance adopted by the governing body of a county must contain standards designated by the model rule adopted by the department of ~~health and~~ environmental ~~sciences~~ *quality* under 75-7-401 and in effect at the time of the adoption of the county ordinance.

(4) Any ordinance adopted by the governing body of a county must be enforced by the county."

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Section 192. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Container site" means a solid waste management facility, generally open to the public, for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(7) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(9) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) *(a)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, slash and

forest debris regulated under laws administered by the department of ~~state lands~~ *natural resources and conservation*, or marketable byproducts.

(11) "Solid waste management system" means any system ~~which~~ *that* controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

(12) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 193. Section 75-10-203, MCA, is amended to read:

"**75-10-203. Definitions.** Unless the context requires otberwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste inte or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Household hazardous waste" means products commonly used in the home that due to corrosivity, iguitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

(5) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

(6) *(a)* "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles.

(7) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Resource recovery" means the recovery of material or energy from solid waste.

(9) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

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(10) "Resource recovery system" means a solid waste management system ~~which~~ *that* provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(11) *(a)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; asbes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, slash and forest debris regulated under laws administered by the department of ~~state~~ lands *natural resources and conservation*, or marketable byproducts.

(12) "Solid waste management system" means a system ~~which~~ *that* controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of tbis definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.

(13) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Treatment" means a method, technique, or process, including neutralization, designed to cbange the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 194. Section 75-10-403, MCA, is amended to read:

"**75-10-403. Definitions.** Unless the contoxt requires otherwiso, in this pa:t, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto tbe land or water so that tbe regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Facility" or "bazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the

land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, sterage, or disposal.

(10) "Manifest" means the shipping document originated and signed by the generator and ~~which~~ *that* is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(12) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction ~~thereof~~ *of crude oil*, ~~which~~ *that* is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

(13) "Storage" means the actual or intended containment of regulated substances, hazardous wastes, or both, either on a temporary basis or for a period of years.

(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(17) "Underground storage tank":

(a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):

(i) any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or

(C) state law comparable to the provisions of law referred to in subsection (17)(b)(ii)(A) or (17)(b)(ii)(B), if the facility is intrastato;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection systom;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)(vi)."

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Section 195. Section 75-10-404, MCA, is amended to read:

"75-10-404. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and puhlish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining te hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste or regulated substance.

(2) The department shall integrato all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of ~~state lands~~ *environmental quality* related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act ~~administered by the department of natural resources and conservation~~. The integration and coordination ~~shall~~ *must* be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

Section 196. Section 75-10-501, MCA, is amended te read:

"75-10-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21].*

(2) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20].*

(4) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, ~~which~~ *that* is not lawfully and validly licensed and remains inoperative or incapable of being driven.

(5) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

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(6) "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(9) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view."

Section 197. Section 75-10-503, MCA, is amended to read:

"**75-10-503. Adoption of rules.** (1) The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

(a) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(b) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(c) the inspection and evaluation of premises and records subject to or required by this part;

(d) the development of budget and fiscal forms and procedures for counties;

(e) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(f) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule ~~which~~ *that* requires any motor vehicle wrecking facility that existed prior to July 1, 1973, and has been continuously ~~utilized~~ *used* thereafter as a motor vehicle wrecking facility to construct a fence or manmade barrier ~~which~~ *that* would be in excess of 12 feet in height.

(2) The department ~~of health and environmental sciences~~ shall adopt rules authorizing the sale of junk vehicles by county motor vehicle graveyards to licensed motor vehicle wrecking facilities. ~~The department shall adopt these rules no later than July 1, 1992.~~"

Section 198. Section 75-10-532, MCA, is amended to read:

"75-10-532. Disposition of ~~moneys~~ *money* collected. All ~~moneys~~ *money* received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees ~~shall~~ *must* be deposited with the state treasurer to be ~~utilized~~ *used* for:

~~(1)~~ the control, collection, recycling, and disposal of junk vehicles and component parts~~; and~~

~~(2) implementation by the department of health and environmental sciences during the 1987 biennium of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with 75-10-601 through 75-10-604, and the Montana Hazardous Waste Act in accordance with 75-10-401 through 75-10-421, up to an amount not exceeding $58,690~~."

Section 199. Section 75-10-602, MCA, is amended to read:

"75-10-602. Definitions. As used in this part, the following definitions apply:

(1) "CERCLA" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510.

(2) *(a)* "Contaminant" includes but is not limited to any element, substance, compound, or mixture, including disease-causing agents, ~~which~~ *that* after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably he anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction), or physical deformations in ~~such~~ *the* organisms or their offspring.

(b) The term does not include petroleum (including crude oil or any fraction ~~thereof~~ *of crude oil* that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and ~~such~~ synthetic gas.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(4) (a) "Hazardous substance" means:

(i) any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act;

(ii) any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal environmental protection agency pursuant to section 102 of CERCLA;

(iii) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the federal Solid Waste Disposal Act (but not

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including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of congress);

(iv) any toxic pollutant listed under section 307(a) of the ~~federal~~ *Federal* Water Pollution Control Act;

(v) any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the environmental protection agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.

(b) The term does not include petroleum (including crude oil or any fraction ~~thereof~~ *of crude oil* that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and ~~such~~ synthetic gas.

(5) "Hazardous waste" means a solid waste or combination of solid wastes ~~which~~ *that* because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(6) "President" means the president of the United States.

(7) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment~~,~~ but excludes:

(a) any release that results in exposure to persons solely within a workplace, with respect to a claim ~~which such~~ *that* persons may assert against ~~the~~ *their* employer ~~of such persons~~;

(b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(c) (i) *the* release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if ~~such~~ *the* release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of that act; or

(ii) for the purposes of section 104 of CERCLA or any other response action, any release of source byproduct or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the federal Uranium Mill Tailings Radiation Control Act of 1978; and

(d) the normal application of fertilizer.

(8) *(a)* "Remedial action" means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment that prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to the present or future public health or welfare or the environment. The term includes but is not limited to ~~such~~ *those* actions at the location of the release as storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; cleanup of released hazardous substances or contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive wastes; dredging or excavations; repair or replacement of leaking containers; collection of leachate and runoff; onsite treatment or incineration; provision of alternative water supplies; and any monitoring reasonably required to ~~assure~~ *ensure* that ~~such~~ *the* actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities if the president determines that, alone or in combination with other measures, such *the* relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or is otherwise necessary to protect the public health or welfare.

(b) The term does not include offsite transport of hazardous substances or the storage, treatment, destruction, or secure disposition offsite of ~~such~~ *the* hazardous suhstances or contaminated materials unless the president determines that ~~such~~ *the* actions:

~~(a)~~*(i)* are more cost-effective than other remedial actions;

~~(b)~~*(ii)* will create a new capacity to manage, in compliance with subtitle C of the federal Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

~~(c)~~*(iii)* are necessary to protect public health or welfare or the environment from a present or potential risk that may be created by further exposure to the continued presence of ~~such~~ *the* substances or materials."

Section 200. Section 75-10-623, MCA, is amended to read:

"75-10-623. CERCLA bonds. (1) When authorized by the legislature and within limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to finance the match requirements under section 104 of CERCLA and to finance the match requirements for federal money for underground storage tank corrective action. The full faith and credit and taxing powers of the stato are pledged for the prompt and full payment of all bonds ~~so~~ issued and interest and redemption premiums payable ~~thereon~~ *on the bonds* according to their terms.

(2) Each series of CERCLA bonds may be issued by the board of examiners upon request of the department of ~~health and~~ environmental ~~sciences~~ *quality*, at public or private sale, in ~~such~~ *the* denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with ~~such~~ provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds,

bearing interest at ~~such~~ *a* rate or rates, maturing at ~~such~~ *a* rate or rates, maturing at ~~such~~ *the* time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at ~~such~~ earlier times and prices and upon ~~such~~ notice, with ~~such~~ provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of ~~such~~ *the* banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of CERCLA bonds, the interest rates, maturities, and any mandatory redemption provisions ~~thereof~~ *of the bonds* must be established in ~~such~~ *a* manner that the funds then specifically pledged and appropriated by law to the CERCLA match debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of ~~such~~ *the* bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. ~~Such~~ *The* bonds, notes, and any interest coupons appurtenant ~~thereto~~ *to the bonds and notes* must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all ~~such~~ *the* bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hazardous waste/CERCLA special revenue account established in 75-10-621.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members."

Section 201. Section 75-10-625, MCA, is amended to read:

"**75-10-625. Authorization for sale of CERCLA bonds.** The board of examiners is authorized to issue and sell CERCLA general obligation bonds in an amount not exceeding $10 million upon the request of the department of ~~health and~~ environmental ~~sciences~~ *quality*, as provided for in 75-10-623. Proceeds of the bonds or notes are appropriated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621 to fund state participation in remedial action under section 104 of ~~the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980~~ *CERCLA*, as amended ~~(CERCLA)~~, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes."

Section 202. Section 75-10-626, MCA, is amended to read:

"75-10-626. Agreement with department of ~~health and~~ environmental ~~sciences~~ *quality*. For the proceeds of bonds or notes authorized and appropriated by this ~~act~~ *part*, the board of examiners and the department of ~~health and~~ environmental ~~sciences~~ *quality* may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves as may be required under ~~such~~ *the* bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for the purposes presented in ~~section 1~~ *75-10-625* must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year *that* the bonds are outstanding, if required. Payments by the department must be made from *available* funds ~~available therefor~~."

Section 203. Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(2) "Director" means the director of the department ~~of health and environmental sciences~~.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling steck, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other ~~such~~ resources within the state of Montana owned, managed, held in trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder bas participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and

state labels, and the use of commercial fertilizers, as defined in 80-10-101(2), when applied as part of accepted agricultural practice.

(12) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(13) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the stato, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(14) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection (14)(a) to provide services relating to a remedial action.

(15) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

Section 204. Section 75-10-802, MCA, is amended to read:

"**75-10-802. Definitions.** As used in this part, the following definitions apply:

(1) "Composting" means the controlled biological decomposition of organic matter into humus.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~2-15-2101~~ *[section 20].*

(3) "Integrated waste management" means the coordinated use of a priority of waste management methods, including waste prevention, as specified in 75-10-804.

(4) "Postconsumer material" means only those paper products generated by a consumer that have served their intended end uses and have heen separated or diverted from the solid waste stream.

(5) "Recycling" means all activities involving the collection of recyclable matorial, including but not limited to glass, paper, or plastic; the processing of recyclables to prepare tbem for resale; the marketing of recovered material for use in the manufacture of similar or different products; and the purchase of products containing recycled material.

(6) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the puhlic health, safety, and welfare and the environment.

(7) "Waste reduction" means practices that decrease the weight, volume, or toxicity of material entering the solid waste management stream after consumer or commercial use but prior to incineration or disposal."

Section 205. Section 75-10-903, MCA, is amended to read:

"75-10-903. Definitions. As used in 75-10-901 through 75-10-945, the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935 and the rules adopted under 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935.

(2) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(3) "Certificate" means the certificate of site acceptability issued by the board under 75-10-916 that is required for siting a megalandfill.

(4) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility inte a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

(5) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(6) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted inte the air or discharged into any water, including ground waters.

(7) (a) "Megalandfill" or "facility" means, except as provided in subsection (7)(b), any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid waste or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(8) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

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(9) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, slash and forest debris regulated under laws administered by the department of ~~state lands~~ *natural resource management*, or marketable byproducts.

(10) *(a)* "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles."

Section 206. Section 75-10-913, MCA, is amended to read:

"**75-10-913. Annual long-range plan submitted — contents — available to public.** (1) A person may not file an application for a certificate of site acceptability required by 75-10-916 unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;

(b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule, on its own initiative, or upon the advice of interested state agencies requests in order to carry out the purposes of 75-10-901 through 75-10-945.

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the environmental quality council, the department of transportation, ~~the department of state lands,~~ the

department of fish, wildlife, and parks, the department of commerce, and the department of natural ~~resources and conservation~~ *resources and conservation*. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan."

Section 207. Section 75-10-918, MCA, is amended to read:

"75-10-918. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under 75-10-916 in a form *that* the board requires, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;

(iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) baseline data for the primary and reasonable alternate locations;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of 75-10-901 through 75-10-945; and

(vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of fish, wildlife, and parks;

~~(c) department of state lands;~~

~~(d)~~*(c)* department of commerce;

~~(e)~~*(d)* department of transportation; and

~~(f)~~*(e)* department of natural ~~resources and conservation~~ *resources and conservation*.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility

is proposed or is alternatively proposed to be locatod by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application."

Section 208. Section 75-10-950, MCA, is amended to read:

"**75-10-950. Definitions.** As used in 75-10-950 through 75-10-954, the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

(2) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(4) (a) "Megalandfill" means, except as provided in subsection (4)(b), any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid wasto a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid wasto.

(5) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule."

Section 209. Section 75-10-1003, MCA, is amended to read:

"**75-10-1003. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* established in ~~2-15-2101~~ *[section 20]*.

(2) "Generator" means an individual, firm, facility, or company that produces infectious waste.

(3) "Infectious" means capable of producing disease. To be infectious, the following four factors simultaneously must be present:

(a) virulence, which is the ability of microorganisms to cause disease;

(b) dose, which is microorganisms in a quantity sufficient to cause infection;

(c) portal of entry, which is an opening or route of access into a human body; and

(d) host susceptibility, which means the host's natural resistance is incapable of preventing infection.

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(4) "Infectious waste" means waste capable of producing infectious disease. Infectious waste includes but is not limited to:

(a) cultures and stecks of infectious agents and associated biologicals;

(b) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;

(c) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and

(d) sharps that have been used in patient care, medical research, or industrial laboratories.

(5) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to needles, scalpel blades, and broken glass that may be contaminated with blood.

(6) "Steam sterilization" means a treatment method for infectious waste ~~utilizing~~ *using* saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste.

(7) "Storage" means the actual or intended containment of wastes on either a temporary basis or a long-term basis.

(8) "Transportation" means the movement of infectious waste from the point of generation to any intermediate points or to the point of ultimate treatment or disposal.

(9) "Treatment" means the application of a method, technique, or process, including incineration, designed to render infectious waste sterile."

Section 210. Section 75-10-1101, MCA, is amended to read:

"**75-10-1101. Waste oil notice.** (1) Each retailer and wholesaler offering motor oil for sale ~~must~~ *shall* visibly display at an appropriate location within the retail store or wholesale outlet a sign indicating the location of the nearest waste oil recycling collection center if the center is within 25 miles of the retailer or wholesaler.

(2) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall design an oil recycling sign to be used by retailers and wholesalers. The department may establish the specifications for the sign by rule."

Section 211. Section 75-11-203, MCA, is amended to read:

"**75-11-203. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(4) (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(5) "Installer" means an individual who installs or closes underground storage tank systems.

(6) "License" means a license issued by the department under 75-11-210 to conduct the installation or closure of underground storage tank systems and the installation of leak detection devices or cathodic protection systems.

(7) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

(8) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

(9) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(11) "Regulated substance" means a regulated substance as defined in 75-10-403.

(12) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-10-403, and, for purposes of this part, includes a leak detection device that is external to and not attached to an underground storage tank system."

Section 212. Section 75-11-302, MCA, is amended to read:

"**75-11-302. Definitions.** Except as provided in subsections (2), ~~(14)~~ *(15)*, and ~~(24)~~ *(25)*, the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for ~~third-party~~ *third-party* bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligihle costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline,

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special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to ~~the~~ *a* federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custedy first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) *(a)* "Owner" means a person who holds title te, controls, or possesses an interest in a petroleum storage tank.

(b) The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 213. Section 75-20-104, MCA, is amended to read:

"**75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment ~~which~~ *that* would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted ~~hereunder~~ *under this chapter.*

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of ~~natural resources and conservation~~ *environmental review* provided for in ~~2-15-3302~~ *[section 21].*

~~(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(6)~~*(5)* "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

~~(7)~~*(6)* "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by ~~(b) or (c) of~~ subsection ~~(10)~~ *(8)(b) or (8)(c)*, including upgrading to a design capacity covered by subsection ~~(10)(b)~~ *(8)(b)*, except that the term does not include normal maintenance or repair of an existing facility.

~~(8)~~*(7)* "Department" means the department of ~~natural resources and conservation~~ *environmental quality* provided for in ~~Title 2, chapter 15, part 33~~ *[section 20]*.

~~(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.~~

~~(10)~~*(8)* "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department ~~of health and environmental sciences~~ *and* added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) ~~utilizing~~ *using* or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners wbo collectively own more than 75% of the property along the centerline;

(c) each pipeline, whether partially or wholly witbin the state, greator than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

~~(11)~~*(9)* "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

~~(12)~~*(10)* "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

~~(13)~~*(11)* "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 214. Section 75-20-202, MCA, is amended to read:

"**75-20-202. Exemptions.** (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for tbe relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by tbis chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) ~~utilizes~~ *uses* coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

(3) A person proposing to construct an exempt facility shall pay to the department reasonable costs, if any, incurred by the department in processing the exemption.

(4) This chaptor does not apply to a facility defined in 75-20-104~~(10)(c)~~*(8)(c)* that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75, chapter 1, pursuant to Executive Order 4-81 and prior to July 1, 1985."

Section 215. Section 75-20-205, MCA, is amended te read:

"**75-20-205. Centerline location.** (1) For all facilities defined in 75-20-104~~(10)(b)~~*(8)(b)* and ~~(10)(c)~~*(8)(c)* and associated facilities certified under this chapter, the board shall condition the certificate upon board approval of a final centerline location.

(2) The final centerline location must be determined in a noncontested case proceeding before the board after the submission of a centerline location report by the department. Within 60 days after the commencement of a noncontestod case proceeding, the board shall render and record a decision approving a centerline location.

(3) The department shall consult with the certificate holder and the affected landowners prior to making its report.

(4) The department's report must be prepared considering the criteria set forth in 75-20-301 and 75-20-503 and the findings of fact and conclusions of law set out in the board decision.

(5) The department report may be completed on segments of a certified facility as is convenient to the certificate holder.

(6) The certificate holder shall initiate the final centerline location approval process by submitting a proposed centorline location plan to the department. The certificate holder shall pay to the department the actual costs incurred in processing a final centerline location not, to exceed 25% of the filing fee paid under 75-20-215."

Section 216. Section 75-20-208, MCA, is amended to read:

"**75-20-208. Certain electric transmission lines — verification of requirements.** (1) Prior to constructing a transmission line under 75-20-104~~(10)(b)(ii)~~*(8)(b)(ii)*, the person planning to construct the line ~~must~~ *shall* provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless extended by the board for good cause:

(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and

(b) sufficient information for the department to verify to the board that the requirements of 75-20-104~~(10)(b)(ii)~~*(8)(b)(ii)* are satisfied.

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(2) The provisions of 75-20-104~~(10)(b)(ii)~~*(8)(b)(ii)* do not apply to any facility for which public notice under 75-20-207 has been given but for which the requirements of subsection (1) *of this section* have not been complied with."

Section 217. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department ~~and department of health a joint~~ *an* application for a certificate under this chapter and for the permits required under the laws administered by the department ~~of health and the board of health~~ in ~~such~~ *the* form ~~as~~ *that* the board requires under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built ~~thereon~~;

(ii) a summary of any studies ~~which~~ *that* have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) for facilities defined in 75-20-104~~(10)(b)~~*(8)(b)* and ~~(10)(c)~~*(8)(c)*, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(v) (A) for facilities as defined in 75-20-104~~(10)(b)~~*(8)(b)* and ~~(10)(c)~~*(8)(c)*, baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104~~(10)(a)~~*(8)(a)*, ~~(10)(d)~~*(8)(d)*, and ~~(10)(e)~~*(8)(e)*, baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) ~~such~~ other information ~~as~~ *that* the applicant considers relevant or ~~as~~ *that* the board ~~and board of health~~ by order or rule or the department ~~and department of health~~ by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) ~~above~~ ~~shall~~ *must* be filed with the department, if ordered, and ~~shall~~ *must* be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination ~~which~~ *that* are physically and directly attached to each other and are operationally a single operating entity.

(3) An application ~~shall~~ *must* be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is

alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) ~~department of state lands~~ *department of natural resources and conservation*;

(e) department of commerce;

(f) department of transportation.

(4) The copy of the application ~~shall~~ *must* be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application ~~shall~~ *must* also be accompanied by proof that public notice ~~thereof~~ *of the application* was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 218. Section 75-20-213, MCA, is amended to read:

"75-20-213. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate ~~shall~~ *must* be in ~~such~~ *the* form and contain ~~such~~ *the* information ~~as~~ *that* the board by rule or the department by order prescribes. Notice of ~~such~~ an application ~~shall~~ *must* be given as set forth in ~~(3), (4), and (5) of~~ 75-20-211*(3) through (5)*.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department~~, the department of health,~~ or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require ~~such~~ additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required ~~shall be~~ *is* conclusive."

Section 219. Section 75-20-215, MCA, is amended to read:

"75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee ~~shall~~ *must* be deposited in the state special revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter~~, but which shall~~

The fee may not exceed the following scale based upon the estimated cost of the facility:

(i) 4% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus

(v) 0.125% of any amount of estimated cost over $300 million and up to $1 billion; plus

(vi) 0.05% of any amount of estimated cost over $1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required ~~hereunder~~ *under this chapter* or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department, together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount ~~which~~ *that* may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services, and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under ~~such~~ a contract ~~shall~~ *must* be credited against the fee payable ~~hereunder~~ *pursuant to this section*. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, ~~the department of health,~~ the board, ~~the board of health,~~ and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) ~~above~~ upon 30 days' notice to the applicant. The department and applicant may enter into a contract ~~which~~ *that* exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee ~~shall~~ *must* be based on the total estimated cost of the combined facilities.

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(5) The applicant is entitled to an accounting of ~~moneys~~ *money* expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund ~~shall~~ *must* be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The ~~revenues~~ *revenue* derived from filing fees ~~shall~~ *must* be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

Section 220. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department ~~and department of health~~ shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and *shall* list the deficiencies. ~~therein; and upon~~ *Upon* correction of these deficiencies and resubmission by the applicant, the department ~~and department of health~~ shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable critoria listed in 75-20-301 and 75-20-503, and ~~the department of health~~ shall ~~commence a study to enable it or the board of health to~~ issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department ~~and department of health~~ shall use, to the extent ~~they consider~~ *that it considers* applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department ~~of health~~ shall *issue* within 1 year following the date of acceptance of an application and the board of ~~health or department of health~~ *environmental review*, if applicable, within an additional 6 months~~;~~ *shall* issue any decision, opinion, order, certification, or permit required under the laws administered by the department ~~of health~~ or the board of ~~health~~ *environmental review* and this chapter. The department ~~of health~~ and the board ~~of health~~ shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the proposed location or any proposed alternate location in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department ~~of health~~ and *the* board ~~of health~~ administer, and *on* any of the criteria specified in ~~subsections (2) through (7) of~~ 75-20-503*(2) through (7)* that are a part of the determinations made under the laws administered by the department ~~of health~~ and the board ~~of health~~. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). ~~The decision, opinion, order, certification, or permit of the department of health or the board of health~~

~~satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the~~ *The* decision, opinion, order, certification, or permit ~~shall be served upon the department and the board and shall~~ *must* be ~~utilized as part of their~~ *used in the* final site selection process. Prior to the issuance of a preliminary decision by the department ~~of health~~ and pursuant to rules adopted by the board ~~of health~~, the department ~~of health~~ shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in ~~(a) and (d) of~~ 75-20-104~~(10)~~*(8)(a) and (8)(d)* and for a facility as defined in ~~(b) and (c) of~~ 75-20-104~~(10)~~*(8)(b) and (8)(c)* ~~which~~ *that* is more than 30 miles in length~~,~~ and within 1 year for a facility as defined in ~~(b) and (c) of~~ 75-20-104~~(10)~~*(8)(b) and (8)(c)* ~~which~~ *that* is 30 miles or less in length, the department shall make a report to the board ~~which shall~~ *that must* contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of transportation; commerce; fish, wildlife, and parks; ~~state lands~~ *natural resources and conservation*; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 221. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date — location — department to act as staff — hearings ~~to be held jointly~~. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more tban 120 days after tbe receipt. Certification hearings ~~shall~~ *must* be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion ~~thereof~~ *of the facility* is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board througbout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department ~~of health~~ and the board ~~of health~~ shall hold any required *air or water quality* permit *hearing* ~~hearings required under laws administered by those agencies~~ in conjunction with the board certification hearing. In ~~such~~ a conjunctive hearing, the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department ~~of health~~ and the board ~~of health~~."

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Section 222. Section 75-20-219, MCA, is amended to read:

"75-20-219. Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with ~~such~~ conditions as it ~~deems~~ *considers* appropriate.

(2) In those cases ~~where~~ *in which* the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon ~~such~~ terms or conditions ~~as~~ *that* the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

(5) If an amendment is required to a certificate ~~which~~ *that* would affect, amend, alter, or modify a decision, opinion, order, certification, or *air or water quality* permit issued by the department ~~of health~~ or board ~~of health~~, ~~such~~ *the* amendment must be processed under the applicable statutes administered by the department ~~of health~~ or board ~~of health~~."

Section 223. Section 75-20-220, MCA, is amended to read:

"75-20-220. Hearing examiner — restrictions — duties. (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, *or* an employee of the department, ~~or a member or employee of the department of health or board of health~~. A hearing examiner, if any, ~~shall~~ *must* be appointed by the board

within 20 days after the department's report has been filed with the board. ~~If a hearing is held before the board of health or the department of health, the board and the board of health or the department of health shall mutually agree on the appointment of a hearing examiner to preside at both hearings.~~

(2) A prehearing conference ~~shall~~ *must* be held following notice within 60 days after the department's report has been filed with the board.

(3) The prehearing conference shall *must* be organized and supervised by the hearing examiner.

(4) The prehearing conference ~~shall~~ *must* be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony ~~which~~ *that* they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on ~~shall~~ *must* be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery ~~which shall~~ *that must* be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order:

(a) specifying the issues of fact and of law;;

(b) identifying the witnesses of the active parties;;

(c) naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance;;

(d) outlining the order in which the hearing ~~shall~~ *will* proceed;;

(e) setting forth those ~~section 75-20-301~~ criteria *in 75-20-301* as to which no issue of fact or law has been raised ~~which~~ *and that* are to be conclusively presumed and are not subject to further proof, except for good cause shown;; and

(f) specifying any other special rules to expedite the hearing ~~which~~ *that* the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and

the ~~board of health or~~ department ~~of health~~ proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall ~~insure~~ *ensure* that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) ~~of this section~~ to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed."

Section 224. Section 75-20-221, MCA, is amended to read:

"75-20-221. Parties to certification proceeding — waiver — statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding involving the issuance of a *an air or water quality* decision, opinion, order, certification, or permit ~~by the board of health~~ under this chapter may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency~~, including the department of health,~~ entitled to receive service of a copy of the application under 75-20-211(3);

(c) any person entitled to receive service of a copy of the application under 75-20-211(5);

(d) any nonprofit organization formed in whole or in part to:

(i) promoto conservation or natural beauty;

(ii) ~~to~~ protect the environment, personal health, or other biological values;

(iii) ~~to~~ preserve historical sites;

(iv) ~~to~~ promote consumer interests;

(v) ~~to~~ represent commercial and industrial groups; or

(vi) ~~to~~ promote the orderly development of the areas in which the facility is to be located;

(e) any other interested person who establishes an interest in the proceeding.

(2) The department ~~shall~~ *must* be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in ~~(b), (c), (d), or (e) of~~ subsection (1)*(b), (1)(c), (1)(d), or (1)(e).*

(4) ~~Any~~ *A* party waives the right to be a party if the party does not participate in the hearing before the board ~~or the board of health~~.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-20-211(3) shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent ~~shall~~ *must* be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government."

Section 225. Section 75-20-225, MCA, is amended to read:

"**75-20-225. Certificate renewal — application — contents — filing fee.** (1) ~~Any~~ *A* certificate bolder for a facility, as defined in 75-20-104~~(10)(a)(i)~~*(8)(a)(i)*, may apply for renewal of a certificate prior to the certificate lapsing.

(2) An applicant for a renewal of a certificate shall file with the department ~~and department of health a joint~~ *an* application in ~~such~~ *the* form ~~as~~ *that* the board requires by rule.

(3) An application for renewal of a certificate must include updated information on the matters listed in 75-20-211(1)(a) that have changed since the original application and ~~such~~ other information ~~as~~ *that* the board requires by rule for certification. The matters listed in 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate locations must be updated only if the board determines that within the certified location significant changes bave occurred to warrant a review of alternate locations.

(4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3) through (5).

(5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in accordance with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the original application for a certificate pursuant to 75-20-215. The fee may not exceed the following scale:

(a) 0.125% of any estimated cost up to $300 million; plus

(b) 0.063% of any estimated cost over $300 million."

Section 226. Section 75-20-226, MCA, is amended to read:

"**75-20-226. Renewal study.** (1) Upon receipt of a completed application for renewal of a certificate, the department shall evaluate the updated information and any significant changes in need, alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken place since the original study performed in granting the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503 and the original board findings and certificate conditions.

(2) The department ~~of health~~ and the board ~~of health~~, within 10 months of acceptance of a complete renewal application, shall complete the statutory duties established in 75-20-216(3). ~~A copy of any~~ *Any air or water quality* decision, opinion, order, certification, or permit ~~must be served on the~~

~~department and the board and~~ must be used as part of their decisionmaking process *under 75-20-227 and subsection (3) of this section.*

(3) Within 12 months following acceptance of a complete application for renewal of a certificate, the department shall make a report to the board. This report must contain the department's studies, evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The department's report must be directed to the question of whether the original board findings and conditions have been or need te be altered as a result of any significant changes in need, alternatives, technology, baseline environment, or environmental impact since issuance of the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503.

(4) The departments of transportation; commerce; fish, wildlife, and parks; ~~state lands~~ *natural resources and conservation*; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of responsibility. The report may include opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the cost of compiling information and issuing the required reports."

Section 227. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of board — findings necessary for certification. (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon ~~such~~ *the* terms, conditions, or modifications of the construction, operation, or maintenance of the facility ~~as~~ *that* the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it ~~shall find~~ *finds* and ~~determine~~ *determines*:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct ~~shall~~ *will* be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued ~~thereunder~~ *under those laws*, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside ~~of~~ the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department ~~of health~~ or board ~~of health have~~ *has* issued ~~a~~ *any necessary air or water quality* decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) ~~of this section~~, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) ~~of this section~~;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other facters that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities."

Section 228. Section 75-20-302, MCA, is amended to read:

"**75-20-302. Conditions imposed.** (1) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon ~~such~~ *the* modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104~~(10)(a)(i)~~*(8)(a)(i)*, the board may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources."

Section 229. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation ~~which~~ *that* would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons ~~therefor~~ *for its finding.*

(3) Any certificate issued by the board ~~shall~~ *must* include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement ~~shall~~ *must* include but *is* not ~~be~~ limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects ~~which~~ *that* cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The board shall issue as part of the certificate the following time limits:

(i) For a facility as defined in ~~(b) or (c) of~~ 75-20-104~~(10)~~*(8)(b) or (8)(c)* that is more than 30 miles in length, construction must be completed within 10 years.

(ii) For a facility as defined in ~~(b) of~~ 75-20-104~~(10)~~*(8)(b)* that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in ~~(a) of~~ 75-20-104~~(10)~~*(8)(a)*, construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended or renewed in accordance with ~~subsection (4)(c) or~~ 75-20-225 through 75-20-227 *or subsection (4)(c) of this section*, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or

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certificate for the facility and the process of judicial review of ~~any~~ such *a* permit or certificate.

~~(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced.~~"

Section 230. Section 75-20-304, MCA, is amended to read:

"**75-20-304. Waiver of provisions of certification proceedings.** (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of ~~subsections (2)(c), (3)(b), and (3)(c) of~~ 75-20-301*(2)(c), (3)(b), and (3)(c)* and the requirements of ~~subsections (1)(a)(iv) and (v) of~~ 75-20-211*(1)(a)(iv) and (1)(a)(v)*, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a heneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in ~~subsections (10)(b), (c), (d), or (e) of~~ 75-20-104*(8)(b), (8)(c), (8)(d), or (8)(e)*, for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in ~~subsection (10)(a) of~~ 75-20-104*(8)(a)* to the extent that the

process or portion of the facility is not subject to a *an air or water quality* permit issued by the department ~~of health~~ or board ~~of health~~.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection ~~shall~~ *must* be credited toward the fee paid under 75-20-215 to the extent *that* the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 231. Section 75-20-401, MCA, is amended to read:

"75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions. (1) Notwithstanding any other law, no state or regional agency or municipality or other local government may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the ~~state air~~ *department* and ~~water quality agency or agencies shall~~ *board* retain *the* authority ~~which~~ *that* they have or may be granted te determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility."

Section 232. Section 75-20-402, MCA, is amended to read:

"75-20-402. Monitoring. The board, *and* the department, ~~the department of health, and the board of health~~ shall monitor the operations of all certificated facilities for ~~assuring~~ *ensuring* continuing compliance with this chapter and certificates issued ~~hereunder~~ *under this chapter* and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in ~~subsection (3)(b) or (3)(c) of~~ 75-20-303*(3)(b) or (3)(c)* te the extent federal funds available for the facility, as determined by the department ~~of health~~, have not been provided for ~~such~~ *those* purposes."

Section 233. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of board, ~~board of health,~~ and department ~~of health~~ decisions. (1) Any active party, as defined in 75-20-221, aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure ~~shall be~~ *is* the same as that for contested cases under the Montana Administrative Procedure Act.

(3) When the board ~~of health~~ or department ~~of health~~ conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the applicant is granted a permit

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or certification, with or without conditions, pursuant to the laws administered by the department ~~of health~~ and the board ~~of health~~ and this chapter, the decision may ~~only~~ be appealed *only* in conjunction with the final decision of the board as provided in subsections (1) and (2). If a *an air or water quality* permit or certification is denied by the department ~~of health~~ or the board ~~of health~~, the applicant may:

(a) appeal the denial under the appellate review procedures provided in the *air and water quality* laws administered by the department ~~of health~~ and the board ~~of health~~; or

(b) reserve the right to appeal the denial by the department ~~of health~~ or the board ~~of health~~ until after the board has issued a final decision.

(4) Nothing in this section may be construed to prohibit the board from holding a hearing as ~~herein~~ provided *in this section* on all matters that are not the subject of a pending appeal by the applicant under subsection (3)(a)."

Section 234. Section 75-20-501, MCA, is amended to read:

"75-20-501. Annual long-range plan submitted — contents — available to public — least-cost plan. (1) Except as provided in subsection (5), each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of planned development of utility facilities, a description of efforts by the utility or person to coordinate with other utilities and regional planning;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and *an* explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan ~~shall~~ *must* be furnished to the governing body of each county in which any facility included in the plan under *subsection* (2)(a) ~~of this section~~ is proposed to be located and *must be* made available to the public by the

department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, ~~the department of health and environmental sciences,~~ the department of transportation, the department of public service regulation, the department of ~~state lands~~ *natural resources and conservation*, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment for the plan to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan or other integrated resource plan required to be completed under federal rural electrification administration or other federal agency requirements in lieu of the long-range plan required in subsection (1).

(5) The provisions of subsections (1) through (4) do not apply to a public utility that submits an integrated least-cost resource plan to the public service commission pursuant to Title 69, chapter 3, part 12.

(6) A public utility that submits an integrated least-cost resource plan pursuant to Title 69, chapter 3, part 12, shall contract with the department to fund the actual and necessary costs of the department that are associated with preparing the department's comments on the public utility's plan and with obtaining other agencies' comments, as provided in 69-3-1205. If a contract is not entered into prior to the submission of the plan, the department, upon completion of its review and comment, shall bill the utility for the department's costs."

Section 235. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in ~~this part and~~ 75-20-201 through 75-20-203 *and this part*, the following definitions apply:

(1) "Facility", as defined in 75-20-104~~(10)~~*(8)*, is further defined to include any nuclear facility as defined in subsection (2)(a).

(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy."

Section 236. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons ~~which~~ *that* does not provide skilled or intermediate nursing care;

(2) a youth foster home or youth group home as defined in 41-3-1102;

(3) a halfway house operated in accordance with regulations of the department of *public* health ~~and environmental sciences~~ for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 237. Section 76-2-412, MCA, is amended to read:

"**76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and day-care homes to zoning.** (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of family services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department or any other agency of the state or a political subdivision ~~thereof which~~ *of the state that* is not applicable to residential occupancies in general may not be applied to a community residential facility serving ~~eight~~ *8* or fewer persons or to a day-care home serving 12 or fewer children.

(4) ~~Nothing in this~~ *This* section ~~shall~~ *may not* be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1)~~, provided such~~ *if the* home is licensed by the department of *public* health ~~and environmental sciences~~ and the department of family services. ~~No~~ *A* city or county may *not* require a conditional use permit in order to maintain a day-care home registered by the department of family services."

Section 238. Section 76-3-504, MCA, is amended to read:

"**76-3-504. Minimum requirements for subdivision regulations.** The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas ~~which~~ *that*, because of natural or man-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) water supply and sewage and solid waste disposal ~~which~~ *that*, at a minimum, meet the regulations adopted by the department of ~~health and~~ environmental ~~sciences~~ *quality* under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; ~~such~~ *A* utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing hody."

Section 239. Section 76-3-505, MCA, is amended to read:

"**76-3-505. Provision for summary review of subdivisions.** Local subdivision regulations ~~shall~~ *must* include procedures for the summary review and approval of subdivision plats containing five or fewer parcels ~~where~~ *when* proper access to all lots is provided, ~~where~~ *when* no land in the subdivision will be dedicated to public use for parks or playgrounds, and ~~which~~ *when the plats* have been approved by the department of ~~health and~~ environmental ~~sciences~~ *quality* ~~where such~~ *whenever* approval is required by part 1 of chapter 4; ~~provided that~~ *however,* reasonable local regulations may contain additional requirements for summary approval."

Section 240. Section 76-4-102, MCA, is amended to read:

"**76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review*.

(2) "Department" means *the* department of ~~health and~~ environmental ~~sciences~~ *quality*.

(3) "Extension of public sewage disposal system" means a sewer line that connects two or more sewer service lines to a sewer main.

(4) "Extension of public water supply system" means a water line that connects two or more water service lines te a water main.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by whicb water, sewage, or solid wastes might be transported or distributed.

(6) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(7) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(8) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(9) "Reviewing authority" means the department or a local department or board of health certified to conduct review under 76-4-104.

(10) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(11) "Sewer service line" means a sewer line that connects a single building or living unit to a public sewer system or extension of ~~such~~ a system.

(12) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(13) "Subdivision" means a division of land or land so divided ~~which~~ *that* creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, ~~which~~ *that* provides permanent multiple space for recreational camping vehicles or mobile homes.

(14) "Water service line" means a water line that connects a single building or living unit to a public water system or extension of ~~such~~ a system."

Section 241. Section 76-5-102, MCA, is amended to read:

"76-5-102. Policy and purposes. (1) The policy and purposes of parts 1 through 4 of this chaptor are to:

(a) guide development of the floodway areas of this state consistent with the enumerated findings;

(b) recognize the right and need of watercourses to periodically carry more than the normal flow of water;

(c) provide state coordination and technical assistance to local units in management of floodway areas;

(d) coordinate federal, state, and local management activities for floodway areas;

(e) encourage local governmental units to manage flood-prone lands, including the adoption, enforcement, and administration of land use regulations; and

(f) provide the department of natural ~~resources and conservation~~ *resources and conservation* with authority necessary to carry out a comprehensive floodway management program for the stato.

(2) Specifically, it is the purpose of parts 1 through 4 to:

(a) restrict or prohibit uses ~~which~~ *that* are dangerous to health or safety of property in times of flood or *that* cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities ~~which~~ *that* serve ~~such~~ *the* uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands ~~which~~ *that* are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;

(e) apply more restrictive land use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible, balance the greatest public good with the least private injury."

Section 242. Section 76-5-103, MCA, is amended to read:

"76-5-103. **Definitions.** As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction ~~which~~ *that* is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automohile hody, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway ~~which~~ *that* may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

~~(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(3)~~*(2)* "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

~~(4)~~*(3)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(5)~~*(4)* "Designated floodplain" means a floodplain whose limits have been designated and established by order of the ~~board~~ *department*.

~~(6)~~*(5)* "Designated floodway" means a floodway whose limits have been designated and established by order of the ~~board~~ *department*.

~~(7)~~*(6)* "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 montbs of the year and having a bed and well-defined banks.

~~(8)~~*(7)* "Establish" means construct, place, insert, or excavate.

~~(9)~~*(8)* "Flood" means the water of any watercourse or drainway ~~which~~ *that* is above the bank or outside the channel and banks of ~~such~~ *the* watercourse or drainway.

~~(10)~~*(9)* "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude ~~which~~ *that* has a 1% chance of occurring in any given year.

~~(11)~~*(10)* "Floodplain" means the area adjoining the watercourse or drainway ~~which~~ *that* would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.

~~(12)~~*(11)* "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel ~~which~~ *that* are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

~~(12)~~*(12)* "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause.

~~(14)~~*(13)* "Owner" means any person who bas dominion over, control of, or title to an obstruction.

~~(15)~~*(14)* "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

~~(10)~~*(15)* "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

~~(17)~~*(16) (a)* "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction te a current of water at least 9 months of the year and baving a bed and well-defined banks;.

(b) ~~provided that it shall, upon~~ *Upon* order of the ~~board~~ *department, the term* also ~~include~~ *includes* any particular depression ~~which~~ *that* would not otherwise be within the definition of watercourse."

Section 243. Section 76-5-106, MCA, is amended to read:

"76-5-106. Exemption for small drainage area. Parts 1 through 4 of this chapter ~~shall~~ *do* not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the ~~same~~ *watercourse or drainway*, either within or ~~without~~ *outside* the state, is less than 25 square miles in extent unless a particular watercourse or drainway is expressly declared to be within the coverage of parts 1 through 4 by order of the ~~board~~ *department*."

Section 244. Section 76-5-109, MCA, is amended to read:

"76-5-109. Other legal remedies preserved — immunity. (1) The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity.

(2) ~~Where~~ *When* it is shown that there is a wrongful failure to comply with parts 1 through 4 of this chapter, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(3) The use of any one of the remedies or powers given to the ~~board or the~~ department in parts 1 through 4 is not a bar to the exercise of any other remedy or power given by parts 1 through 4.

(4) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under parts 1 through 4 may not be brought against the state~~, the board, a member of the board,~~ or the department."

Section 245. Section 76-5-201, MCA, is amended to read:

"76-5-201. Program for delineation of floodplains and floodways. (1) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for ~~every~~ *each* watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for ~~such~~ *the* acquisition *of data*.

(2) Before the ~~board~~ *department* establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation ~~shall~~ *must* include but *is* not ~~be~~ limited to the following:

(a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and ~~such~~ other data ~~as~~ *that is* considered appropriate;

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(b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching ~~such~~ conclusions; and

(c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will bave an opportunity to bring relevant data to the attention of the department."

Section 246. Section 76-5-202, MCA, is amended to read:

"**76-5-202. Designation of floodplains and floodways.** (1) When sufficient data has been acquired by the department, the ~~board~~ *department* shall establish, by order after a public hearing, the designated floodplain within wbich a political subdivision may establish land use regulation.

(2) When sufficient data has been acquired, the ~~board~~ *department* shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(3) These designations ~~shall~~ *must* be based upon reasonable hydrological certainty. Designations made according to a flood hazard boundary map prepared by the federal emergency management agency have a rebuttable presumption of reasonable hydrological certainty.

(4) The department shall record all designated floodplains or designated floodways ~~established by the board~~ in the office of the county clerk and recorder of each county in which those floodplains or floodways are found."

Section 247. Section 76-5-203, MCA, is amended to read:

"**76-5-203. Alteration of floodplains or floodways.** The ~~board~~ *department* may alter the floodplains or floodways at any later time, by order after a public hearing, if a reevaluation of the then available flood data warrants it."

Section 248. Section 76-5-204, MCA, is amended to read:

"**76-5-204. What constitutes notice.** Notice of a hearing or order of the ~~board~~ *department* establishing or altering the floodplains or floodways ~~shall~~ *must* be given hy publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in tbe area involved, ~~the~~ *The* last publication of ~~which shall~~ *the notice may not* be ~~not~~ less than 10 days prior to the date set for the hearing or the effective date of the order."

Section 249. Section 76-5-205, MCA, is amended to read:

"**76-5-205. Furnishing of material to local governments.** (1) When the designated floodplain or the designated floodway bas been establisbed, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas, together with a map outlining the areas involved, a copy of parts 1 through 4 of this chapter, adopted rules of the ~~board~~ *department*, and suggested minimum standards adopted by the ~~board~~ *department*.

(2) These standards and rules ~~shall~~ *must* reflect gradations in flood hazard based on criteria as outlined in 76-5-406. In adopting these standards and rules,

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the ~~board~~ *department* shall consider local input from the affected political subdivisions."

Section 250. Section 76-5-206, MCA, is amended to read:

"76-5-206. Powers and duties of department relative to obstructions. (1) ~~Where~~ *When* an obstruction to a designatod floodway established under 76-5-202 through 76-5-205 has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the department may, in its discretion, remove the obstruction, in which case the cost of removal ~~shall~~ *must* be borne by the department.

(2) ~~Where~~ *When*, after investigation, notice, and hearing, an order has been issued by the ~~board~~ *department* to the owner of an obstruction not exempt under 76-5-401 through 76-5-404 for its removal or repair and the order is not complied with within ~~such~~ *a* reasonable time as may be prescribed or if the owner cannot be found or determined, the department may make *the removal or repairs* or cause the removal or repairs to be made~~,~~. ~~the~~ *The* cost of ~~which shall~~ *the removal or repairs must* be borne by the owner and ~~shall be~~ *are* recoverable in the same manner as debts are ~~now~~ recoverable by law."

Section 251. Section 76-5-208, MCA, is amended to read:

"76-5-208. Orders and rules. (1) The ~~board~~ *department* may adopt ~~such~~ orders and rules ~~as~~ *that* are necessary to implement parts 1 through 4 of this chapter. All orders and rules ~~adopted by the board shall~~ *must* be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under 76-5-401 through 76-5-404 for its removal or repair, the order ~~shall~~ *may* not become effective less than 10 days after a hearing is beld relating to the order.

(3) In addition to any requirement imposed by 76-5-202 through 76-5-205, ~~where~~ *when* an order is issued ~~which~~ *that* affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing ~~shall~~ *must* be mailed ~~by the department~~ to the titleholder of the land not less than 10 days before the effective date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to 76-5-206(2) if the owner cannot be found or determined."

Section 252. Section 76-5-209, MCA, is amended to read:

"76-5-209. Appeal from board order. (1) A person aggrieved by any order of the ~~board~~ *department* issued under parts 1 through 4 of this chapter may appeal from the order to a court of competent jurisdiction within 30 days after ~~its~~ *the order's* effective date. Service of notice of the appeal ~~shall~~ *must* be made upon the department.

(2) If an appeal is taken, enforcement of the order ~~shall be~~ *is* stayed pending the outcome of the appeal."

Section 253. Section 76-5-301, MCA, is amended to read:

"76-5-301. Land use regulations. (1) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations ~~which~~ *that* meet or exceed the minimum standards of the ~~board~~ *department*. ~~Such~~ *The* regulations may include, for the purposes of floodplain management only, floodplain management regulations within sheetflood areas as determined by the federal emergency management agency.

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the ~~board~~ *department* under 76-5-202 through 76-5-205, and ~~no~~ *an* artificial obstruction or nonconforming use may *not* be established by any person within the designated floodplain or the designated floodway unless specifically authorized by the ~~board~~ *department*.

(3) A political subdivision ~~which~~ *that* has failed to adopt land use regulations ~~which~~ *that* meet or exceed the minimum standards of the ~~board~~ *department* within the 6-month period may subsequently adopt ~~such~~ regulations, and if approved by the ~~board~~ *department*, ~~they shall be~~ *the regulations are* effective within the designated floodplain or floodway and *must be* administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the ~~board~~ *department* may shorten the 6-month period upon notification to the political subdivision and publication of a notice ~~thereof~~ *of the revised period* in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks."

Section 254. Section 76-5-302, MCA, is amended to read:

"76-5-302. Substitution of local control for state permit system. (1) If a political subdivision enacts, in harmony with the purposes of parts 1 through 4 of this chapter, permit issuance ordinances, regulations, or resolutions and land use ordinances, regulations, or resolutions ~~which~~ *that* meet or exceed the minimum standards of the ~~board~~ *department* and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the ~~board~~ *department*, ~~no~~ *a* permit from the department is *not* required.

(2) However, if the ~~board~~ *department* determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of parts 1 through 4 and the minimum standards adopted ~~thereunder~~ *under parts 1 through 4*, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the ~~board shall~~ *department must* be enforced by the department until ~~such time as~~ the ~~board~~ *department* determines that the political subdivision will comply."

Section 255. Section 76-5-402, MCA, is amended to read:

"76-5-402. Permissible uses within floodplain but outside ~~of~~ floodway. Permits ~~shall~~ *must* be granted for the following uses within that portion of the floodplain not contained within the designated floodway to the

extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;

(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) ~~such~~ *the* structures meet the minimum standards adopted by the ~~board~~ *department*;

(b) residential structures are constructed on fill such that the lowest floor elevation (including basements) is 2 feet above the 100-year flood elevation;

(c) commercial and industrial structures are either constructed on fill as specified in subsection *(2)*(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. ~~Such~~ *The* floodproofing ~~shall~~ *must* be in accordance with the minimum standards adopted by the ~~board~~ *department*."

Section 256. Section 76-5-404, MCA, is amended to read:

"**76-5-404. Artificial obstructions and nonconforming uses.** (1) An artificial obstruction or nonconforming use in a designated floodplain or designated floodway enforced under 76-5-301(1) and (2) and not exempt under ~~subsections (2) or (3) of this section or~~ 76-5-401 through 76-5-403 *or subsection (2) or (3) of this section* is a public nuisance unless a permit has been obtained for ~~such~~ *the* artificial obstruction or nonconforming use from the department or the responsible political subdivision.

(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway without a permit from the department or the responsible political subdivision.

(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use establisbed in the designated floodplain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the ~~board~~ *department* has enforced a designated floodplain or a designated floodway under 76-5-301(1) and (2).

(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whetber the obstruction proposed for alteration was located in the floodplain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration."

Section 257. Section 76-5-405, MCA, is amended to read:

"**76-5-405. Variance for obstruction or nonconforming use.** (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses ~~which~~ *that* would otherwise violate 76-5-401 through 76-5-404. The application for the permit ~~shall~~ *must* be submitted to the department or the responsible political subdivision and contain ~~such~~ *the* information ~~as~~ *that* the department

requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated floodplain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated floodplains or designated floodways ~~shall be~~ *are* conclusively ~~deemed~~ *considered* ~~to~~ have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after ~~such~~ *a* time ~~as~~ *that* the ~~board~~ *department* or the responsible political subdivision ~~shall specify~~ *specifies*, unless the department or tbe responsible political subdivision notifies the applicant tbat the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to ~~this section and~~ 76-5-406 *and this section*.

(3) An application for a permit ~~shall~~ *must* be accompanied by a nonrefundable application fee of $10, which the state treasurer shall credit to the floodway obstruction removal fund.

(4) The department or the responsible political subdivision may make a part of the permit any reasonable conditions *that* it may consider advisable. In order for the permit to continue to remain in force, the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit."

Section 258. Section 76-5-406, MCA, is amended to read:

"76-5-406. **Criteria to be considered in connection with variance request.** In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the ~~board~~ *department*:

(1) the danger to life and property by water ~~which~~ *that* may be backed up or diverted by the obstruction or use;

(2) the danger that the obstruction or use will be swept downstream to the injury of others;

(3) the availability of alternate locations;

(4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;

(5) the permanence of the obstruction or use;

(6) the anticipated development in the foreseeable future of the area ~~which~~ *that* may be affected by the obstruction or use; and

(7) ~~such~~ other factors ~~as are~~ in harmony with the purpose of parts 1 through 4 of this chapter."

Section 259. Section 76-11-101, MCA, is amended to read:

"76-11-101. **Protection of natural resources from fire.** The department of ~~state lands~~ *natural resources and conservation*, under ~~such~~ rules as *adopted by* the state board of land commissioners ~~may provide~~, shall protect the natural

resources of the state, especially the natural resources owned by the state, from destruction by fire and for ~~such~~ *that* purpose, in emergencies, may employ ~~men~~ *personnel* and incur other expenses when necessary."

Section 260. Section 76-11-102, MCA, is amended to read:

"**76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation.** (1) For the purpose of more adequately promoting and facilitating ~~the~~ cooperation, financial and otherwise, between the state and all of the public and private agencies ~~or individuals therein~~, the department of ~~state lands~~ *natural resources and conservation* may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing ~~thereon~~ *on the land* and also in the conservation and perpetuation of ~~such~~ *the* lands and resources, including the prevention of soil erosion and the regulation of stream flow.

(2) The state treasurer ~~is hereby authorized to~~ *may* receive money that may be appropriated or allotted for the purposes ~~named~~ *listed* in subsection (1) by the state, counties, municipalities, the United States government or any department ~~thereof~~ *of the federal government*, or other organization or individual."

Section 261. Section 76-12-104, MCA, is amended to read:

"**76-12-104. Definitions.** (1) "Board" means the board of land commissioners.

(2) "Department" means the department of ~~state lands~~ *natural resources and conservation*.

(3) "Natural area" means an area of land ~~which~~ *that* must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant and also must have one or more of the following characteristics:

(a) an outstanding mixture or variety of vegetation, wildlife, water resource, landscape, and scenic values;

(b) an important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational, or ecological purposes.

(4) "Natural areas system" means the composite of lands in the state that exhibit the characteristics of natural areas and that have been designated by the board or dedicated or otherwise protected and managed as natural areas.

(5) "Register" means the Montana register of natural areas established under 76-12-121."

Section 262. Section 76-13-102, MCA, is amended to read:

"**76-13-102. Definitions.** Unless the context requires otherwise, in ~~this part and~~ part 2 *and this part*, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana ~~Constitution~~ *constitution*.

(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(3) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in Title 2, chapter 15, part ~~32~~ *33*.

(4) "Forest fire" means a fire burning uncontrolled on forest lands.

(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

(6) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and ~~wherein~~ *in which* forest fire protection is provided through the medium of an agency recognized by the board.

(7) "Forest fire season" means the period of each year beginning ~~on~~ May 1 and ending ~~on~~ September 30, inclusive.

(8) "Forest land" means land ~~which~~ *that* has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(9) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) tbe harvest of firewood; or

(iv) the cutting of trees for personal use by an owner or operator.

(10) "Lands" for conservation purposes means all forest lands within this state ~~which~~ *that* are officially classified by the department as forest lands under 76-13-107.

(11) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

(12) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

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(13) "Person" means an individual, corporation, partnership, or association of any kind.

(14) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection te forest lands in accordance with rules adopted by the board.

(15) "Timber sale" means a series of forest practices designed te access, harvest, and regenerate trees on a defined land area."

Section 263. Section 76-13-132, MCA, is amended to read:

"76-13-132. Onsite consultation. (1) The department shall make its decision on whether or not to require an onsite consultation based on whether:

(a) tbe proposed timber sale is in a higb-priority location for watershed resources;

(b) a consultation could contribute to improved watershed management; and

(c) the department has sufficient resources to conduct the consultation.

(2) The department shall schedule an onsite consultation at a time mutually agreeable to the operater, the owner (if ~~he~~ *the owner* can be contacted and wishes to participate), and the department. Unless otherwise agreeable to the operator and a participating owner, a consultation must be held no later than:

(a) 10 calendar days after the mailing of the notice by the department, if the site is accessible; or

(b) if the site is temporarily inaccessible due to road conditions, weather conditions, or other factors, 10 calendar days after the operator indicates *that* the site is accessible.

(3) The onsite consultation must include representatives of the department, the operator, and, if the owner desires representation, the owner. Representatives of the department of ~~health and~~ environmental ~~sciences~~ *quality*, the department of fish, wildlife, and parks, and the local conservation district may also participate but ~~must~~ *shall* meet the consultation schedule established under 76-13-131(3)(c) or subsection (2) of this section.

(4) If the department and the operator are not able to schedule an onsite consultation within the time limits provided in subsection (2)(a) or (2)(b) or at another mutually agreeable time, tbe requirement for a consultation is terminated. The operator may then proceed with forest practices immediately upon the expiration of the time limits provided in subsection (2)(a) or (2)(b)."

Section 264. Section 76-13-302, MCA, is amended to read:

"76-13-302. Definitions. In this part, the following definitions apply:

(1) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in Title 2, chapter 15, part ~~32~~ *33*.

(2) "Forest land" means any land that has enough forest growth, standing or down, to constitute in the judgment of the department an insect or disease

infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(3) "Forest landowner" means the person, firm, association, or corporation having the actual, heneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

(4) "Salvage" means the timely removal of dead and dying timber or timber that is threatened by insects, disease, fire, or windthrow when the removal of timber will help contain insect or disease outbreaks, aid in the prevention of wildfire, or provide long-range protection for such forest resources as wildlife, water, soils, or air quality."

Section 265. Section 76-13-401, MCA, is amended to read:

"76-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Certification of clearance" means a certification issued by the department acknowledging that the fire hazard has been reduced or managed in accordance with this part and the fire hazard reduction agreement or agreements.

(3) "Contractor" means the person who executes the fire hazard reduction agreement and is responsible to fulfill the obligations established by the agreement.

(4) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in Title 2, chapter 15, part ~~32~~ *33*.

(5) "Fire hazard" means slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations that produce a cover of flammable material in which fire could spread through a cutting or adjacent area.

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management.

(7) "Fire hazard reduction or management" means the abatement of a fire hazard by methods that include but are not limited to separation, removal, scattering, lopping, crushing, piling and burning, broadcast burning, burying, or chipping.

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.

(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and persons engaged in continuing cutting operations of sufficient number and size to warrant covering these operations under a single agreement and a single bond.

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(10) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

(11) "Purchaser" means a person who purchases or contracts to purchase any forest products cut from private forest lands within the state. The term includes persons who purchase products manufactured on the cutting area."

Section 266. Section 76-13-415, MCA, is amended to read:

"76-13-415. Forestry extension service account — purpose — appropriation. (1) There is a forestry extension service account in the current restricted fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the fire hazard reduction agreement provided for in 76-13-408(3);

(b) all revenue from the master fire hazard reduction agreement provided for in 76-13-414(3)(b); and

(c) money received by the department ~~of state lands~~ in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money in the account is available to the Montana university system by appropriation for the uses set forth in subsection (4). Any unencumbered and unexpended balance of this account remaining at the end of a fiscal year does not lapse but must be carried forward for the purposes of this section until expended or appropriated.

(4) Except as provided in subsection (5), money in the account may be used by the university system only to fund forestry services through the Montana cooperative extension service of Montana state university. The forestry services must be conducted at Montana state university, the university of Montana, and Flathead Valley community college.

(5) The use of money in this account by the Montana university system is contingent upon the university system funding the extension service's forestry and natural resources program at a biennial level of at least $108,000 from sources other than the account."

Section 267. Section 76-13-501, MCA, is amended to read:

"76-13-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in Title 2, chapter 15, part ~~32~~ *33*.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than 5,000 feet per hour of operation."

Section 268. Section 76-13-601, MCA, is amended to read:

"76-13-601. Unlawful transportation of trees and boughs. (1) ~~No~~ *A* person may *not* transport on the ways of this state more than five coniferous

trees without having ~~in his~~ possession *of* a bill of sale showing ~~his~~ ownership of the trees. The bill of sale shall specify:

(a) the date of its execution;

(b) the name and address of the vendor or donor of the trees;

(c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or ~~his~~ *the owner's* agent, provided that agent has ~~in his~~ possession *of* a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested; *or*

(d) the transportation of coniferous trees by a common carrier.

(3) ~~No~~ *A* person may *not* transport on the ways of this stato more than 200 pounds of boughs from coniferous trees without written authorization of the owner of the boughs.

(4) The bill of sale required in subsection (1) or the written authorization required in subsection (3) must be exhibited on request of a law enforcement officer, highway patrol officer, state fish and game warden, an employee of the department of transportation as appointed under 61-12-201, or an agent of the department of ~~state lands~~ *natural resources and conservation*.

(5) A person who violates this section shall be punished by a fine not to exceed $500, ~~or~~ imprisonment not to exceed 6 months, or both.

(6) For the purposes of this section, "ways of this state" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner."

Section 269. Section 76-15-103, MCA, is amended to read:

"**76-15-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

~~(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(3)~~*(2)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(4)~~*(3)* "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions ~~hereinafter~~ set forth *in this chapter*.

~~(5)~~*(4)* "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area~~, the~~. *The* posting ~~to~~ *must* include, ~~where~~ *when* possible, posting at public places where it ~~may be~~ *is* customary to post notices concerning county or municipal affairs generally.

~~(6)~~*(5)* "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

~~(7)~~*(6)* "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity ~~who~~ *that* holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

~~(8)~~*(7)* "Petition" means a petition filed under 76-15-201 for the creation of a district.

~~(9)~~*(8)* "Qualified elector" means an elector as defined in Title 13.

~~(10)~~*(9)* "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

~~(11)~~*(10)* "United States" or "agencies of the United States" includes the United States of America, the ~~soil~~ *natural resource* conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America."

Section 270. Section 76-15-201, MCA, is amended to read:

"76-15-201. Petition to create conservation district. (1) Any 10% of the qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the ~~board~~ *department* approve the organization of a conservation district to function in the territory described in the petition.

(2) The petition shall *must* set forth:

(a) the proposed name of the district;

(b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;

(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions hut ~~shall be considered~~ *is* sufficient if generally accurate;

(d) a request that:

(i) the ~~board duly~~ *department* define the boundaries for the district;

(ii) ~~that~~ a referendum be held within the territory ~~so~~ defined on the question of the creation of a conservation district in the territory; and

(iii) ~~that~~ the ~~board~~ *department* determine that a district be created.

(3) Where more than one petition is filed covering parts of the same territory, the ~~board~~ *department* may consolidato all or any part of the petitions."

Section 271. Section 76-15-203, MCA, is amended to read:

"76-15-203. Hearing procedure if additional territory to be included. If it appears to the ~~board~~ *department* after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the ~~board~~ *department* shall adjourn the hearing and ~~the department~~ shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district~~,~~. ~~and the~~ *The* further hearing ~~shall~~ *must* be held by the department."

Section 272. Section 76-15-204, MCA, is amended to read:

"76-15-204. ~~Board determination~~ *Determination* of need for district. (1) After the hearing, if the ~~board~~ *department* determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available ~~to the department or the board~~, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district.

(2) If the ~~board~~ *department* determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made ~~thereon~~ *on the petitions*."

Section 273. Section 76-15-205, MCA, is amended to read:

"76-15-205. Criteria for determining need. In making the determinations and in defining the boundaries, the ~~board~~ *department* shall consider the topography of the area considered and of the state, the composition of soils ~~therein~~ *in the area*, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts

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already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous."

Section 274. Section 76-15-206, MCA, is amended to read:

"**76-15-206. Determination of administrative practicability of district.** After the ~~board~~ *department* has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory and has defined the boundaries ~~thereof~~ *of the district*, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chaptor is administratively practicable and feasible."

Section 275. Section 76-15-207, MCA, is amended to read:

"**76-15-207. Referendum on question of creating district.** (1) To assist the ~~board~~ *department* in the determination of ~~this~~ administrative practicability and feasibility, the department shall, within a reasonable time after entry of the ~~board's~~ finding that there is need for the organization of the proposed district and the determination of the boundaries ~~thereof~~ *of the district*, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given.

(2) The question ~~shall~~ *must* be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." ~~shall~~ *must* appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot ~~shall~~ *must* set forth the boundaries of the proposed district as determined by the ~~board~~ *department*.

(3) All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum."

Section 276. Section 76-15-209, MCA, is amended to read:

"**76-15-209. ~~Board procedure~~ *Procedure* following referendum.** (1) The department shall publish the result of the referendum, and ~~the board~~ shall ~~thereafter~~ consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the ~~board~~ *department* determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner ~~hereinafter~~ provided *in this chapter*.

(3) If the ~~board~~ *department* determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the ~~board~~ *department* that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant

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to the determination, subsequent petitions may be filed and action taken ~~thereon~~ *on the petitions* in accordance with this part."

Section 277. Section 76-15-210, MCA, is amended to read:

"**76-15-210. Criteria for determining administrative practicability.** (1) In making ita determination, the ~~board~~ *department* shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vota in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and ~~such~~ other economic and social factors relevant to the detormination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102.

(2) ~~However, the board~~ *The department* may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district."

Section 278. Section 76-15-211, MCA, is amended to read:

"**76-15-211. Appointment of supervisors.** If the ~~board~~ *department* determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided ~~hereinafter~~ *in this part*, as the initial governing body of the district."

Section 279. Section 76-15-212, MCA, is amended to read:

"**76-15-212. Submission of application by appointed supervisors.** The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(1) The two appointed supervisors shall present to the secretary of stato an application signed by them, which ~~shall~~ *must* set forth:

(a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the ~~board~~ *department* has appointed them as supervisors;

(b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

(c) the term of office of each of the supervisors;

(d) the name which is proposed for the district; and

(e) the location of the principal offices of the supervisors of the district.

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(2) The application ~~shall~~ *must* be subscribed and sworn to by each of the supervisors.

(3)*(a)* The application ~~shall~~ *must* be accompanied by a statement by the department which shall certify that:

(i) a petition was filed, notice issued, and hearing held as provided in this part;

(ii) ~~that~~ the ~~board~~ *department* determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries ~~thereof~~ *of the district*;

(iii) ~~that~~ notice was given and a referendum held on the question of the creation of the district; and

(iv) ~~that~~ the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that ~~thereafter~~ the ~~board~~ *department* detormined that the operation of the proposed district is administratively practicable and feasible.

(b) The statement ~~shall~~ *must* also set forth the boundaries of the district as they have been defined by the ~~board~~ *department*."

Section 280. Section 76-15-213, MCA, is amended to read:

"**76-15-213. Processing of application by secretary of state.** (1) The secretary of state shall examine the application and statement, and if ~~he~~ *the secretary of state* finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, ~~he~~ *the secretary of state* shall receive and file ~~them~~ *the application and statement* and shall record them in an appropriate book of record in ~~his~~ *the secretary of state's* office.

(2) If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, ~~he~~ *the secretary of state* shall certify that fact to the ~~board~~ *department*~~,~~ ~~which~~ *The department* shall ~~thereupon~~ submit to the secretary of state a new name for the district which is not subject to ~~such~~ *the* defects. Upon receipt of the new name free of ~~such~~ defects, the secretary of state shall record the application and statement with the *modified* name ~~so modified~~ in an appropriate book of record in ~~his~~ *the secretary of state's* office.

(3) The secretary of state shall make and issue to the supervisors, without cost, a certificate under the seal of the stato of the due organization of the district and shall record the certificate with the application and statement."

Section 281. Section 76-15-216, MCA, is amended to read:

"**76-15-216. Limitation on territory included in district.** The boundaries of the district ~~shall~~ *must* include the territory as determined by the ~~board~~ *department*, but ~~they~~ may not include any area included within the boundaries of another conservation district."

Section 282. Section 76-15-301, MCA, is amended to read:

"**76-15-301. Establishment and reorganization of supervisor areas.** (1) (a) The conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.

(b) Each supervisor area must be represented by one supervisor. If provided by ordinance of the conservation district, a supervisor shall reside in the supervisor area represented. A certified copy of the ordinance must be submitted to the election administrator in each affected county. If less than five supervisor areas are established, sufficient supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) In a district containing no incorporated municipalities, the ~~board~~ *department* may reorganize the district into seven supervisor areas."

Section 283. Section 76-15-305, MCA, is amended to read:

"**76-15-305. Transition to seven supervisors.** (1) At the time of reorganization under 76-15-301(2), the ~~board~~ *department* shall appoint:

(a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and

(b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.

(2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. ~~Thereafter, a~~ *A* district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections.

(3) Nominations for the election of supervisors in a district having seven supervisors must be made as provided in 76-15-302.

(4) The term of each elected supervisor is 4 years.

(5) The election administrator in each county having a seven-supervisor district shall conduct the election for that district in a manner similar to elections conducted for a district having five supervisors."

Section 284. Section 76-15-314, MCA, is amended to read:

"**76-15-314. Removal of a supervisor.** A supervisor may be removed by the ~~board~~ *department* and a vacancy created under 76-15-312(2)(d), upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason."

Section 285. Section 76-15-319, MCA, is amended to read:

"**76-15-319. Legal assistance.** (1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for ~~such~~ *the* legal services as they may require, or *they* may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of a conflict of interest, then the matter may be referred to the attorney general or the department ~~of natural resources and conservation~~."

Section 286. Section 76-15-408, MCA, is amended to read:

"76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the renewable resource fund. The department ~~of natural resources and conservation~~ shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts."

Section 287. Section 76-15-505, MCA, is amended to read:

"76-15-505. Authorization to borrow money — limitations. (1) If, after the levy of the annual assessments for the current year, the board *of supervisors* finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works ~~therein~~ *in the district*, the board *of supervisors* may:

(a) borrow additional funds needed to an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the ~~same~~ *funds*; or

(b) request the county commissioners to issue and register warrants in anticipation of further collections.

(2) The board *of supervisors* shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants ~~shall~~ *may* not exceed 90% of the assessment for the year."

Section 288. Section 76-15-530, MCA, is amended to read:

"76-15-530. Conservation district account — administration. (1) There is a conservation district account in the state special revenue fund of the stato treasury. Money is paid into this account under 15-35-108. The state treasurer shall draw warrants payable from this account on order from the department ~~of natural resources and conservation~~.

(2) The department ~~of natural resources and conservation~~ shall administer the conservation district account. The money ~~shall~~ *must* be distributed from the account to the conservation districts on the basis of need. A conservation district may submit an application to the department ~~of natural resources and conservation~~ for a grant of funds for purposes that conservation districts are authorized to perform.

(3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.

(4) The department ~~of natural resources and conservation~~ may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants."

Section 289. Section 76-15-721, MCA, is amended to read:

"76-15-721. Board of adjustment. (1) ~~Where~~ *When* the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment.

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(2) The board of adjustment ~~shall consist~~ *consists* of three members, each to be appointed for a term of 3 years, except that the members first appointed ~~shall~~ *must* be appointed for terms of 1, 2, and 3 years, respectively.

(3) The members of each board of adjustment ~~shall~~ *must* be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established ~~and~~. *The members* may be removed by the department, upon notice and hearing, *only* for neglect of duty or malfeasance in office ~~but for no other reason, the~~. *The* hearing ~~to~~ *must* be conducted jointly by the department and the supervisors of the district. ~~Members of the board of natural resources and conservation, employees~~ *Employees* of the department, and the supervisors of the district are ineligible ~~to~~ appointment as members of the board of adjustment.

(4) Vacancies in the board of adjustment ~~shall~~ *must* be filled in the same manner as original appointments and ~~shall be~~ *are* for the unexpired term of the member whose term becomes vacant.

(5) The members of the board of adjustment ~~shall~~ receive compensation for their services at the rate of $25 ~~per~~ *a* day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the ~~chairman~~ *presiding officer* of the board."

Section 290. Section 76-15-725, MCA, is amended to read:

"76-15-725. Board decision. (1) If, upon the facts presented at the hearing, the board *of adjustment* determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board *of adjustment* may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that:

(a) will relieve the great practical difficulties or unnecessary hardship;

(b) will not be contrary to the public interest; and

(c) will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done."

Section 291. Section 76-15-726, MCA, is amended to read:

"76-15-726. Appeal to district court from board decision. (1) A petitioner aggrieved by an order of the board *of adjustment* granting or denying, in whole or in part, the relief sought, the supervisors of the district, or an intervening party may obtain a review of the order in any district court of the county in which the lands of the petitioner lie by filing in the court a petition praying that the order of the board *of adjustment* he modified or set aside.

(2) A copy of the petition ~~shall~~ *must* immediately be served upon the parties to the hearing before the board *of adjustment*, and ~~thereupon~~ *after service* the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board *of adjustment*, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board *of adjustment*."

Section 292. Section 76-15-727, MCA, is amended to read:

"**76-15-727. Court proceedings.** (1) Upon the filing, the court shall cause notice ~~thereof~~ *of the filing* to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined ~~therein~~ *in the proceedings*, ~~and~~ may grant ~~such~~ temporary relief as it ~~deems~~ *considers* just and proper, and make and enter a decree enforcing, modifying and enforcing as ~~so~~ modified, or setting aside, in whole or in part, the order of the board *of adjustment*.

(2) A contention that is not urged before the board *of adjustment* may not be considered by the court unless the failure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board *of adjustment* as to the facts, if supported by evidence, are conclusive.

(3) If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board *of adjustment*, the court may order the additional evidence to be taken before the board *of adjustment* and to be made a part of the transcript. The board *of adjustment* may modify its findings as to the facts or make new findings, taking into consideration the additional evidence ~~so~~ taken and filed, and it shall file the modified or new findings which, if supported by evidence, are conclusive and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.

(4) The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court."

Section 293. Section 76-15-803, MCA, is amended to read:

"**76-15-803. Combination or division of districts.** (1) A petition may be filed with the department for the division of any district, ~~or~~ *for* the combination of any two or more districts, or for the division of a district and the combination of any divided part ~~thereof~~ *of a district* with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition ~~shall~~ *must* be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. ~~Upon the filing of the~~ *When a* petition *is filed*, the department shall within 30 days give ~~due~~ notice of *a* public hearing ~~upon~~ *on* the petition. All qualified electors within the affected districts and all other interested parties are entitled te attond the hearing and be heard. After the hearing, the ~~board of natural resources and conservation upon the record of the hearing~~ *department* shall determine *from the hearing record* whether the proposed division, the combination, or *the* division and combination of torritory is administratively practicable and feasible. In making the detormination, the

~~board~~ *department* shall give due regard to the legislative determinations set forth in 76-15-101 and 76-15-102 and to the considerations enumerated in 76-15-201 through 76-15-216, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(2) If the ~~board~~ *department* determines that the proposed division, combination, or division and combination is administratively practicable and feasible, the ~~board~~ *department* shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative, the ~~board~~ *department* shall make and record that determination and shall deny the petition. After 6 months from the denial of the petition, a new petition may be filed.

(3) ~~Upon the division of~~ *When* a district *is divided*, the supervisors ~~thereof~~ *of the district* shall allocate the property, rights, and liabilities (including contractual obligations) of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units, the degree and extent of soil erosion ~~therein~~ *in the district*, and other relevant factors. A statement of the allocation ~~shall~~ *must* be filed with the department within 30 days after the notification of the board's determination in favor of the division of the district. ~~Upon the failure of~~ *If* the supervisors *fail* to make or to agree upon the allocation, ~~it shall~~ *the division must* be made by the department after ~~such~~ *a* hearing as the department considers necessary and with due regard for the standards set out in this subsection for making the allocations."

Section 294. Section 76-15-804, MCA, is amended to read:

"**76-15-804. Petition to discontinue all or part of a district.** (1) At any time after 5 years after the organization of a district under this chapter, 10% or more of the qualified electors within the boundaries of the district may file a petition with the department ~~praying that the board terminate~~ *requesting the termination of* the operations of the district or a part of the district and ~~discontinue~~ *the discontinuance of* the existence of the district or that part of the district.

(2) The department may conduct ~~such~~ public meetings and public hearings upon the petition as *that* are necessary to assist it ~~and the board~~ in the consideration ~~thereof~~ *of the petition*."

Section 295. Section 76-15-806, MCA, is amended to read:

"**76-15-806. ~~Board decision~~ *Decision* in case of petition for discontinuance of entire district.** (1) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and ~~the board~~ shall ~~thereafter~~ consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the ~~board~~ *department* determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition.

(3) If the ~~board~~ *department* determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district."

Section 296. Section 76-15-807, MCA, is amended to read:

"76-15-807. ~~Board decision~~ *Decision* in case of petition for discontinuance of portion of district. (1) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and ~~the board~~ shall ~~thereafter~~ consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible.

(2) If the ~~board~~ *department* determines that tbe continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition.

(3) If the ~~board~~ *department* determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued, it shall record that determination and shall certify the determination to the supervisors of the district."

Section 297. Section 76-15-808, MCA, is amended to read:

"76-15-808. Criteria for ~~board~~ decision on discontinuance. (1) In making the determination, the ~~board~~ *department* shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to voto in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, tbe approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) ~~However, the board~~ *The department* may not determine that the continued operation of the district or part of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district."

Section 298. Section 76-15-809, MCA, is amended to read:

"76-15-809. Procedure to terminate district. (1) Upon ~~receipt from the department of a~~ certification of the ~~board~~ *department* that the ~~board~~ *department* has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to 76-15-804 through 76-15-810, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district.

(2) The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay ~~over~~ the proceeds of the sale ~~to be covered~~ into the state treasury.

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(3) The supervisors shall ~~thereupon~~ file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district and shall transmit with the application the certificate of the ~~board~~ *department*, setting forth the determination of the ~~board~~ *department* that the continued operation of the district or part of the district is not administratively practicable and feasible. The application ~~shall recite~~ *must state* that the property of the district or part of the district has been disposed of and the proceeds paid ~~over~~ *to the treasury* as provided in 76-15-804 through 76-15-810 and ~~shall~~ *must* set forth a full accounting of the properties and proceeds of the sale.

(4) The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificato in an appropriate book of record in ~~his~~ *the secretary of state's* office."

Section 299. Section 76-16-103, MCA, is amended to read:

"**76-16-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months old or over.

(2) "Assessment" means a special levy imposed on permittee members hy the state district to raise funds for specific purposes as provided in 76-16-323(1) ~~and~~. *The term* does not include fees.

~~(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302, except where the term is used in connection with the board of directors of a state district.~~

~~(4)~~*(3)* "Commensurate property" means land *that is* privately owned or controlled ~~which~~ *and that* is not range ~~as herein defined~~.

~~(5)~~*(4)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(6)~~*(5)* "Dependent commensurate property" is commensurate property ~~which~~ *that:*

(a) requires the use of range in connection with it to maintain its proper use; ~~and~~

(b) ~~which~~ produces or whose owner furnishes as part of ~~his~~ *the owner's* past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) ~~which~~ has been used in connection with the range for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of ~~such~~ *the* districts.

~~(7)~~*(6)* "Grazing preference" is a right to obtain a grazing permit from a state district.

~~(8)~~*(7)* "Permits" are evidence of grazing privileges granted by state districts.

~~(9)~~*(8)* "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

~~(10)~~*(9)* "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

~~(11)~~*(10)* "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors ~~and also~~. *The term* includes all lands owned or controlled by the state district or its members."

Section 300. Section 76-16-104, MCA, is amended to read:

"**76-16-104. Role of the department.** (1) The department ~~of natural resources and conservation~~ shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the ~~department of state lands and~~ boards of county commissioners, and supervise and coordinate the formation and operation of districts ~~which~~ *that* may be incorporated under this chaptor.

(2) The department may act in an advisory capacity to the ~~department of state lands and~~ boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or ~~without~~ *outside of* the boundaries of state districts in conformity with recognized conservation and stabilization policies."

Section 301. Section 76-16-105, MCA, is amended to read:

"**76-16-105. Powers of the department.** The department may:

(1) prepare and standardize various forms to be used by the state districts and supervise or regulate the organization and operation of stato districts;

(2) issue citations directed to any person requiring ~~his~~ *the person's* attendance before the department ~~or the board~~ and subpoena witnesses and pay ~~such~~ expenses ~~as~~ *that* would be allowed in a court action;

(3) require an officer or directer of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department;

(4) hold hearings on any matters affecting the department;

(5) require state districts to furnish itemized financial reports annually;

(6) cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter."

Section 302. Section 76-16-109, MCA, is amended to read:

"**76-16-109. Appeal procedure.** (1) Notice of a decision of a state district ~~shall~~ *must* be given in writing by the secretary of tbe state district to the interested parties or their attorneys by ~~registered or~~ certified mail at the address as shown on the records of the district.

(2) A person affected hy the decision of a state district may appeal ~~therefrom~~ to the ~~board which~~ *department, and the department* shall hear and decide all those appeals. An appeal from the decision of the district to the ~~board~~ *department* may be taken by filing written notice of the appeal with the department, and by filing a copy of the notice of appeal with the secretary of the district, and by serving a copy of the notice of appeal by ~~registered or~~ certified mail upon any interested parties who have appeared or *upon* their attorneys within 60 days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the ~~board shall~~ *department must* be taken and review ~~thereof had~~ *of the appeal must be* upon the record of any hearing conducted and considered by the state district~~; however~~. *However*, the ~~board~~ *department* may, at its discretion and for good cause shown, permit additional testimony to be submitted."

Section 303. Section 76-16-202, MCA, is amended to read:

"**76-16-202. Notice and hearing on question of incorporation.** (1) The persons deciding to incorporate the state grazing district shall ~~then~~ cause notice of the hearing to be given by publisbing a notice prescribed by the department once a week for 2 consecutive weeks, the first publication to be at least 30 days prior to the date of hearing, in a newspaper of general circulation in the area.

(2) The department ~~for and on behalf of the board~~ shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation. ~~The record taken upon the hearing, together with the report of the department, shall be submitted to the board.~~"

Section 304. Section 76-16-203, MCA, is amended to read:

"**76-16-203. Certificate of approval.** If the creation of the stato district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the district, the ~~board~~ *department* may issue a certificate of approval."

Section 305. Section 76-16-207, MCA, is amended to read:

"**76-16-207. Filing of map or plat of district.** A state district shall, upon completion of its organization, file with the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district and a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the ~~board~~ *department* after a hearing ~~thereon before the department~~, the state district shall file with the county clerk or clerks a map or plat indicating the changed boundaries."

Section 306. Section 76-16-209, MCA, is amended to read:

"**76-16-209. Alteration of district.** (1) A state district may change the boundaries of the district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented te by a majority of the members of each merging state district and approved by the ~~board~~ *department* after a hearing ~~thereon before the department~~.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the ~~board~~ *department* after a hearing ~~thereon before the department~~."

Section 307. Section 76-16-210, MCA, is amended to read:

"**76-16-210. Request for dissolution of district.** A state district, with the written consent of three-fourths of its permittee members, may at any time request the ~~board of natural resources and conservation~~ *department* to dissolve the state district."

Section 308. Section 76-16-211, MCA, is amended to read:

"**76-16-211. Dissolution of district ~~by board~~.** (1) If a state district ceases to function and it appears to the ~~board~~ *department* that the reinstatement and future operation of the district is no longer feasible, beneficial, and desirable to those who own or control more than 50% of the lands included in the district, the ~~board~~ *department*, after a hearing ~~thereon~~ and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district.

(2) A notice of the dissolution ~~shall~~ *must* be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located."

Section 309. Section 76-16-213, MCA, is amended to read:

"**76-16-213. Final report on dissolution proceedings.** A final report of all dissolution proceedings ~~shall~~ *must* be made to the department by the directors. Upon the approval of the report ~~by the department~~, the ~~board~~ *department* shall order the state district dissolved."

Section 310. Section 76-16-307, MCA, is amended to read:

"**76-16-307. Requirement to lease available state lands.** State land situated *that is* within the boundaries of a grazing district created under this chapter~~,~~ *and that is* not otherwise disposed of by the department ~~of state lands,~~ must be leased by the grazing district at a reasonable rental when offered for lease to the officers of the grazing district by ~~that~~ *the* department. However, the officers of the grazing district may appear or submit evidence in writing before the department ~~of state lands~~ and show reason and cause for a change in the rental. If there is cause, the department ~~of state lands~~ may reappraise the land in question. The department ~~of natural resources and conservation~~ shall require that all state districts comply with this section."

Section 311. Section 76-16-319, MCA, is amended to read:

"**76-16-319. No liability for official acts.** ~~No~~ *An* officer, ~~board~~ *the department*, ~~or~~ *an* employee of ~~such~~ *an* officer or ~~board~~ *the department*, or *an* employee of any county or of any state district ~~shall be~~ *is not* liable for any act performed in good faith in discharging official duties under this chapter. All ~~such~~ acts ~~shall be~~ *are* presumed to have been in good faith and in conformity with this chapter."

Section 312. Section 76-16-325, MCA, is amended to read:

"76-16-325. Compliance with department orders required. (1) If a stato district or the directors of a stato district fail to comply with an order of the department, the ~~board~~ *department* may order a hearing ~~thereon~~ *on the order* within the district or county and cite the directors of the district to appear before the ~~board~~ *department*.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as ~~herein-defined~~ *provided in this part* and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the department, the directors may be summarily removed ~~by the board~~ from office *by the department*, and ~~thereupon~~ the district shall elect new officers. During the period until the election, the department may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district ~~shall~~ *must* be paid by the noncomplying state district before it may be reinstated."

Section 313. Section 77-1-101, MCA, is amended to read:

"77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the *Montana* constitution ~~of this state~~.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

~~(3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.~~

~~(4)~~*(3)* "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in Title 2, chapter 15, part ~~32~~ *33*.

~~(5)~~*(4)* "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands. General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

~~(6)~~*(5)* "Legally accessible state lands" means state lands that can be accessed by dedicated public road, right-of-way, or easement; by public waters; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission.

~~(7)~~*(6) (a)* "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands *that* the state conveys through the issuance of patent;

(ii) lands *that are* used for building sites, campus grounds, or experimental purposes by any state institution *and* tbat are the property of that institution; or

(iii) lands acquired through foreclosure of any investments purchased under the provisions of 17-6-211."

Section 314. Section 77-1-113, MCA, is amended to read:

"**77-1-113. Restrictions on who may buy or lease state lands.** It is unlawful for any member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber ~~thereon~~ *on state lands*, or any ~~person connected with~~ *officer or employee of* the department ~~of state lands as an officer or employee~~ to purchase or lease, directly or indirectly, any ~~of the land of the~~ state *lands* or any timber ~~thereon~~ *on state lands*."

Section 315. Section 77-1-211, MCA, is amended to read:

"**77-1-211. Acceptance of federal land grants.** (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

(3) Notwithstanding any provisions of this title, the board, after consultation with the director of the department of ~~health and~~ environmental ~~sciences~~ *quality*, may accept any lands, including buildings, granted to the stato by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq. Legislative approval is not required for ~~such~~ acceptance."

Section 316. Section 77-1-706, MCA, is amended to read:

"**77-1-706. Treatment of highway lands.** The department of transportation is not required to file with the department ~~of state lands~~ records of land used for highway rights-of-way and maintenance but is required to file with the department ~~of state lands~~ ownership records of state land held for administrative purposes."

Section 317. Section 77-1-707, MCA, is amended te read:

"77-1-707. Rules. The department ~~of state lands~~ may adopt rules for implementing and administering this part concerning transfer and filing of ownership records."

Section 318. Section 77-2-107, MCA, is amended to read:

"77-2-107. Involvement of lessee when land subject to prior lease. (1) Whenever any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving ~~such~~ *the* grant shall give ~~due and~~ timely notice to the lessee and shall make just settlement with ~~him~~ *the lessee* for any damages resulting to ~~his~~ *the lessee's* improvements, ~~or~~ crops, or leasehold interests.

(2) ~~Upon such~~ *After the* settlement ~~being~~ *is* made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under ~~his~~ lease and otherwise cooperate in the opening of the right-of-way. Proof ~~shall~~ *must* be filed with the board that ~~such~~ *the* settlement has been made before the deed to the easement is issued.

(3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and the third by the two appointed arbitrators.

(b) If ~~any~~ *a* party refuses to appoint an arbitrator within 15 days of being requested to do so by the ~~commissioner~~ *director of the department*, the ~~commissioner~~ *director* may appoint an arbitrator for that party. An arbitrator appointed by the ~~commissioner~~ *director* has the same duties and powers as if appointed by one of the parties.

(c) The arbitrators may fix reasonable compensation for their services, ~~which~~. *The compensation* must be paid in equal shares by the owner of the easement and the lessee.

(d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties; however, if either party is dissatisfied with the valuation, he *the party* may, within 10 days, appeal from their decision to the department. The department shall examine the easements, and, except as provided in subsection *(3)*(e), its decision on the appeal is final. The department shall collect the actual cost of the reexamination from the owner of the easement and the lessee in ~~such~~ *the* proportion ~~as~~ *that*, in its judgment, justice may demand.

(e) If either party is dissatisfied with the valuation fixed by the department, he *the party* may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court in Lewis and Clark County for judicial review of the decision."

Section 319. Section 77-2-215, MCA, is amended to read:

"77-2-215. Notice and hearing concerning exchange of timbered lands. If the board approves a proposal for exchange pursuant to 77-2-211, the department ~~of state lands~~ shall publish at least once in ~~some~~ *a* newspaper of

general circulation in each county in which any of the lands involved are located a notice stating in general terms the proposal and describing the lands involved and *the* ownership ~~thereof~~ *of the lands*. The notice ~~shall~~ *must* fix a day not less than 20 and not more than 60 days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard."

Section 320. Section 77-2-302, MCA, is amended to read:

"**77-2-302. Disposition of former institutions and certain federal land grants.** (1) Notwithstanding any other section in this chapter, any lands, including buildings, *that were* formerly used as or by a state institution ~~which~~ *and that* are no longer used for institutional purposes may be disposed of in whole or in part on ~~such~~ *the* terms and in ~~such~~ *the* manner ~~as~~ *that* the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. Disposal of ~~such~~ *the* property ~~shall~~ *may* not be finally concluded until 60 days' public notice of the terms of the proposed disposal ~~shall have~~ *has* been given.

(2) Notwithstanding any other section in this chapter, any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., or acquired by the state as remedial action pursuant to 75-10-704, 75-10-711, or 75-10-712 may be disposed of in whole or in part on ~~such~~ *the* terms and in ~~such~~ *the* manner ~~as~~ *that* the board, after consultation with the director of the department of ~~health and~~ environmental ~~sciences~~ *quality*, determines to be in the state's best interest."

Section 321. Section 77-2-327, MCA, is amended to read:

"**77-2-327. Certificate of purchase.** (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the ~~commissioner of state lands~~ *director of the department* and attested by the seal of the board. The certificate of purchase ~~shall~~ *must* contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate ~~shall~~ *must* reserve the easements for rights-of-way granted by the statutes in favor of the United States and other easements that ~~may~~ have been granted by the board and ~~shall~~ *must* contain the reservations in favor of the state provided for in 77-2-304 relating to coal, oil, and mineral rights in the land.

(2) The certificate ~~shall~~ *must* also contain information ~~in regard to~~ *regarding* the lien of the state on crops and improvements on the land; ~~for~~ installments of principal, ~~and~~ interest, and taxes; and any additional conditions, agreements, and information *that* the board considers necessary in order to carry out the intent of this part."

Section 322. Section 77-2-342, MCA, is amended to read:

"77-2-342. **Execution of patents.** (1) The governor and, in ~~his~~ *the governor's* absence or inability, the lieutenant governor shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made ~~therefor~~ *for the land.*

(2) The deed or patent ~~shall~~ *must* be attested by the secretary of state, *must be* countersigned by the ~~commissioner of state lands~~ *director of the department*, and *must* have the great seal of the state and the seal of the board ~~thereto~~ attached *to the deed or patent* but need not be acknowledged."

Section 323. Section 77-2-401, MCA, is amended to read:

"77-2-401. **Sale or transfer of federal land — when hearing required.** (1) Prior to the sale or transfer of land ~~within~~ *in* the ~~boundaries of the~~ state ~~of Montana~~ that is owned or controlled by an agency of the United States government, the ~~commissioner of state lands must~~ *director of the department shall* determine ~~if~~ *whether* there would be any impact on the management of state lands, on agricultural, wildlife, or recreational resources of the state, or on the cost of government services provided by the state, by any school district, or by any county, city, or other local government unit ~~by reason~~ *because* of ~~such~~ *the* sale or transfer.

(2) If the ~~commissioner~~ *director* determines *under subsection (1) that* there would be an adverse impact ~~under subsection (1)~~ and that ~~no~~ *a* hearing or public meeting has *not* been or will *not* be conducted by a federal agency ~~affording the~~ *to provide an* opportunity for expression of public opinion regarding the proposed sale or transfer and that further public input would be desirable, ~~he~~ *the director* shall hold a public hearing prior to the ~~occurrence of such~~ sale or transfer in order to provide *the* opportunity for the expression of public sentiment regarding the proposed disposition of federal land.

(3) If a hearing will be conducted by a federal agency on the proposed sale or transfer of federal land within the state, the ~~commissioner~~ *director* shall require the attendance of a representative of the department ~~of state lands~~ for the purposes of fulfilling the requirements of 77-2-403.

(4) The sale or transfer of easements by an agency of the United States government and the transfer of land by the United States to the state of Montana in satisfaction of land owed to the state pursuant to The Enabling Act are exempt from the operation of this section."

Section 324. Section 77-5-104, MCA, is amended to read:

"77-5-104. **Firewardens.** (1) The department shall appoint firewardens in the number and localities as *that* it considers necessary.

(2) The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens.

(3) The following are firewardens but may not receive any additional compensation by reason of the duties imposed:

(a) sheriffs;

(b) undersheriffs;

(c) deputy sheriffs;

(d) state fish, wildlife, and parks wardens and park rangers;

(e) the state fish, wildlife, and parks director;

(f) the ~~commissioner~~ *director* and employees of the department designated by the ~~commissioner~~ *director*;

(g) officers of organized forest protection districts;

(h) members of the Montana highway patrol;

(i) officers of the national park service residing in Montana;

(j) officers of the bureau of Indian affairs;

(k) county rural fire chiefs; and

(l) employees of the state fire prevention and investigation program provided for in 2-15-2005.

(4) The firewardens shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders."

Section 325. Section 77-5-302, MCA, is amended te read:

"**77-5-302. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative practices" means forest practices *that are*:

(a) conducted in the streamside management zone *and* that are different from practices required by rules adopted under this part;

(b) ~~that are~~ designed for site-specific conditions encountered during a timber sale; and

(c) ~~that are~~ subject to department approval under 77-5-303.

(2) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in ~~2-15-3201~~ *2-15-3301*.

(3) "Forest practices" means, within a timber sale, the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and management of logging slash. The term does not include activities related to the operation of a Christmas tree farm or nursery that do not involve new road construction.

(4) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

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(5) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

(6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(7) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(8) "Streamside management zone" or "zone" means ~~the~~ *a* stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(9) "Timber sale" means a series of forest practices designed to access, harvest, or regenerate trees on a defined land area for commercial purposes."

Section 326. Section 77-5-402, MCA, is amended to read:

"**77-5-402. Definitions.** As used in this part, the following definitions apply:

(1) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(2) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in ~~2-15-3201~~ *2-15-3301*.

(3) "Local government" means a city, town, county, consolidated city-county, or other political subdivision of tbe state."

Section 327. Section 77-6-306, MCA, is amended to read:

"**77-6-306. Arbitrators to fix value of improvements.** (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed on state lands desires to sell these improvements to the new lessee and they are unable to agree on the value of the improvements pursuant to 77-6-302, the value must be ascertained and fixed by three arbitrators, one of whom is appointed by the owner of the improvements, one by the new lessee, and the third by the two *appointed* arbitrators ~~so appointed~~. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the ~~commissioner~~ *director of the department*, the ~~commissioner~~ *director* may appoint an arbitrator for that party. An arbitrator appointed by the ~~commissioner~~ *director* has the same duties and powers as if appointed by one of the parties. The value of the improvements must be ascertained and fixed pursuant to 77-6-302.

(2) The reasonable compensation that the arbitrators may fix for their services must be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation, the party may within 10 days appeal from the decision to the department~~, which~~. *The department* shall examine the records pertaining to the costs of the improvements, and except as provided in subsection (4), its decision is final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in the proportion as, in its judgment, justice may demand.

(4) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court of Lewis and Clark County for judicial review of the decision."

Section 328. Section 80-8-110, MCA, is amended to read:

"**80-8-110. Cooperation with other agencies.** (1) The department ~~of agriculture~~ may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department ~~of agriculture~~ and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage, industrial wastewater ~~affluents~~ *effluents*, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, slash and forest debris regulated under laws administered by the department of ~~state lands~~ *natural resources and conservation*, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form ~~which~~ *that* may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute te adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to ~~those which~~ *wastes that* are toxic, radioactive, corrosive, flammable, irritants, *or* strong sensitizers~~,~~ or ~~which~~ *that*

generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes."

Section 329. Section 80-8-201, MCA, is amended to read:

"**80-8-201. Registration.** (1) ~~Every~~ *Each* pesticide distrihuted, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or hetween points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chaptor. All registrations of pesticides expire on December 31 following the dato of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement ~~including~~ *that includes*:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is registered, and a statement of all claims te be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement is required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in *80-8-105(3) and in* subsection (8) of this section ~~and 80-8-105(3)~~. The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of $70 for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide, ~~and~~ its labeling, and other material required to be submitted comply with the requirements of 80-8-202, the department shall register the pesticide.

(6) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the pesticide, and its labeling, and other material

required to be submitted do not comply with this chapter, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide endangers humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in the state to another plant in the state by the same person.

(8) (a) The ~~departments~~ *department, the department* of ~~health and~~ environmental ~~sciences~~ *quality*, ~~agriculture,~~ and *the department of* fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of $70 for a special local need or experimental-use permit registration. The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted under the act. The department ~~of agriculture~~ shall provide the departments of ~~health and~~ environmental ~~sciences~~ *quality* and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the ~~department of agriculture's~~ *department's* proposed action on the application. The ~~departments~~ *department, the department* of ~~health and~~ environmental ~~sciences~~ *quality,* and *the department of* fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the ~~departments of health and~~ *department, the department of* environmental ~~sciences~~ *quality*, ~~agriculture,~~ and *the department of* fish, wildlife, and parks are in agreement with the proposed registration, the department ~~of agriculture~~ shall issue the registration.

(b) The department ~~of agriculture~~ shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department ~~of agriculture~~ shall issue the registration.

(c) The registrant applying for registration must be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, ~~health and~~ environmental ~~sciences~~ *quality*, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration must

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he accepted by the departments and implemented by the department of agriculture.

(9) (a) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. Except as provided in subsection (9)(h), if the federal cancellation allows existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years. The department sball provide technical assistance to any person in possession of the products to ensure their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5) may be sold and used according to environmental protection agency labeling requirements or other requirements for a period not to exceed 6 years from the dato that distribution from the registrant, manufacturer, formulator, or distributor is terminated."

Section 330. Section 80-8-305, MCA, is amended to read:

"**80-8-305. General violations — compliance orders.** (1) Consistent with the provisions of Title 80, chapter 15, it is unlawful for any person:

(a) to discard any pesticide or pesticide container in ~~such~~ a manner ~~as to cause~~ *that causes* injury to humans, domestic animals, or wildlife~~,~~ or ~~to pollute~~ *that pollutes* any waterway in a way harmful to any wildlife ~~therein~~ or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in ~~such~~ a manner ~~as to endanger man~~ *that endangers humans* or the environment or ~~to endanger~~ *that endangers* food or any other products that may be transported, stored, displayed, or distributed with ~~such~~ *the* pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which ~~he~~ *the person* does not have an appropriate, complete, or legible label at hand;

(d) to apply or attempt to apply any registered pesticide in a manner *that is* inconsistent with the label, as defined in 80-8-102; or

(e) to use any unregistered chemical or biological agent that is required to be registered as a pesticide hy the Montana Pesticides Act.

(2) It is unlawful for any person to manufacture, formulate, or store any registered pesticide or component or hyproduct ~~thereof~~ *of a pesticide* in such a manner that the pesticide or any component or hyproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection.

(3) The department may issue a compliance order to any person violating the provisions of this section, 80-8-211, or any other requirement established pursuant to this chapter. The compliance order may be issued to any person, including the person's employees, agents, or suhcontractors.

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(4) A compliance order may require the cleanup of any pesticide that a person has accidentally or purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a pesticide if the person can document and prove to the satisfaction of the department that the soil will he beneficially used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the beneficial use of the soil nor degradation of the pesticide in the soil will adversely affect agriculture, human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the department shall consult with the department of ~~health and~~ environmental ~~sciences~~ *quality* to ensure that the provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminatod by a pesticide is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as determined by the department, the department of ~~health and~~ environmental ~~sciences~~ *quality* is responsible for regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or suspended pesticide without the specific approval of the department of ~~health and~~ environmental ~~sciences~~ *quality* or the U.S. environmental protection agency, or hoth, as required on a case-by-case hasis.

(5) When issuing a compliance order, the department may require a person who has violated a provision of this chapter to conduct monitoring to assist in determining the presence or level of concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(6) A compliance order must specify the requirement of this chapter that has been violated and establish a time schedule for compliance. In establishing a time schedule for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

Section 331. Section 80-15-102, MCA, is amended to read:

"**80-15-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department ~~of agriculture~~, in consultation with the Montana state university extension

service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

(4) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(5) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(6) "EPA" means the United States environmental protection agency.

(7) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation.

(8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-15-201(3) or (4).

(9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolato data obtained from studies of animals to humans, including sensitive individuals.

(10) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

(11) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from *human* activities ~~of man~~ over a relatively large area, tbe effects of which must normally be addressed or controlled by a management or conservation practice.

(12) "Nonpromulgated federal standard" means a health advisory or a suggested no adverse response level tbat is published but not promulgatod by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

(13) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

(14) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

(15) "Person" means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.

(16) "Point of standards application" means the specific location in an aquifer where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of ~~health and~~ environmental ~~sciences~~ *quality* to implement the provisions of this chapter.

(17) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

(18) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking water regulation or other EPA regulation based on federal law.

(19) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

(20) "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by a rule of the board as required by 80-15-201.

(21) "Use" means any act of handling or release of an agricultural chemical or exposure of ~~man~~ *humans* or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or transportation."

Section 332. Section 80-15-104, MCA, is amended to read:

"**80-15-104. Administration.** (1) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall administer this chapter.

(2) The department of ~~health and~~ environmental ~~sciences~~ *quality* is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards as authorized by 80-15-201, ground water monitoring as authorized by 80-15-202 and 80-15-203, providing comments to the department during the development of agricultural chemical ground water management plans, promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 75, chapter 5.

(3) The department is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans as authorized by 80-15-211 through 80-15-218, 80-15-401 through 80-15-405, and 80-15-411 through 80-15-414, public education as authorized by 80-15-106, ground water monitoring as authorized by 80-15-202 and 80-15-203, other duties related to promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 80, chapters 8 and 10.

(4) This chapter does not limit the department's responsibility to enforce agricultural chemical label directions and prohibitions.

(5) The administration of this chapter, including rulemaking and hearing functions authorized by this chapter, must be conducted in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4."

Section 333. Section 80-15-105, MCA, is amended to read:

"**80-15-105. Rulemaking.** (1) The board shall adopt rules for the administration of this chapter for which the board and the department of ~~health~~ and environmental ~~sciences~~ *quality* have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures as *that are* authorized by 80-15-107, 80-15-202, and 80-15-203~~, which~~ *and that* may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential hy EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412,

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of ~~health and~~ environmental ~~sciences~~ *quality* on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures ~~as~~ *that are* authorized by 80-15-107, 80-15-202, and 80-15-203~~, which~~ *and that* may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Section 334. Section 80-15-107, MCA, is amended to read:

"80-15-107. Research. The department or the department of ~~health and~~ environmental ~~sciences~~ *quality* shall promoto, for the purposes described in 80-15-103, cooperative ground wator research programs with units of the

university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals."

Section 335. Section 80-15-108, MCA, is amended to read:

"**80-15-108. Confidentiality.** (1) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and information protected from disclosure by federal or state law.

(2) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section."

Section 336. Section 80-15-201, MCA, is amended to read:

"**80-15-201. Ground water standards.** (1) The board shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board must adopt the most recently established nonpromulgated federal standard.

(2) The board is not required to adopt a standard or interim numerical standard for ~~every~~ *each* agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and nonpromulgated federal standards;

(b) the presence of which has been verified in ground water as provided in 80-15-202; or

(c) that the department and the department of ~~health and~~ environmental ~~sciences~~ *quality* predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

(3) If ~~no~~ *a* promulgated federal standard has *not* been adopted or ~~no~~ *a* nonpromulgated federal standard has *not* been published for an agricultural chemical for which the board is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of ~~health and~~ environmental ~~sciences~~ *quality* shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of ~~health and~~ environmental ~~sciences~~ *quality* determines that EPA cannot comply with the request within 15 days, the board shall adopt an interim numerical standard, provided tbat the board shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

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(4) The board may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The board shall review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The board shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the board's responsibility to adopt rules and standards under Title 75, chapter 6."

Section 337. Section 80-15-202, MCA, is amended to read:

"**80-15-202. Monitoring programs.** (1) The department or the department of ~~health and~~ environmental ~~sciences~~ *quality* shall conduct monitoring programs to determine:

(a) whether residues of agricultural chemicals are present in ground water; and

(b) the likelihood of an agricultural chemical to enter ground water, if either department determines that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural chemical in the soil.

(2) ~~Any~~ *A* person who receives a chemical analysis indicating the presence of an agricultural chemical in ground water shall notify the department of ~~health and~~ environmental ~~sciences~~ *quality*.

(3) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall evaluate all information relating to this section that is received from any person, based upon standard procedures, protocols, and confirmatory procedures established by rule. Information found to be insufficient based on the adopted procedures and protocols, including analytical results, may be used only for informational purposes."

Section 338. Section 80-15-203, MCA, is amended te read:

"**80-15-203. Evaluation and use of monitoring results.** (1) When providing preliminary monitoring results or confirmed monitering results to ground water users or the public, the ~~departments~~ *department and the department of environmental quality* shall also provide any applicable standard or interim numerical standard.

(2) When monitoring results reveal the presence of an agricultural chemical in ground water:

(a) the department of ~~health and~~ environmental ~~sciences~~ *quality* is the lead department for determining health risks; and

(b) the department is the lead department for determining compliance with agricultural chemical ground water management plans authorized by 80-15-211 through 80-15-218 and with agricultural chemical registration, use, and labeling requirements and conditions pursuant to Title 80, chapters 8 and 10.

(3) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall cooperatively evaluate the results of monitoring programs authorized by 80-15-202.

(4) Based on the results of monitoring, the department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall implement appropriate actions specified in this chapter to mitigate any existing impacts of an agricultural chemical found in ground water and to prevent future impacts of an agricultural chemical that may be found in ground water, in relation to human health, agriculture, and the environment.

(5) The department may not undertake compliance and enforcement actions authorized by this chapter and the department of ~~health and~~ environmental ~~sciences~~ *quality* may not undertake compliance and enforcement actions authorized by Title 75, chapter 5, unless there is sufficient evidence collected through:

(a) monitoring at a point of standards application that reveals that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5;

(b) other investigations that reveal that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5; or

(c) monitoring that reveals a significant probability for an agricultural chemical to enter ground water."

Section 339. Section 80-15-211, MCA, is amended to read:

"**80-15-211. General agricultural chemical ground water management plan.** The department shall develop and implement a general state agricultural chemical ground water management plan to achieve the policies of 80-15-103. This plan must include general program elements set forth in this chapter and best management plans and best management practices. Prior to publication of the plan, the department shall provide a 30-day period for the department of ~~health and~~ environmental ~~sciences~~ *quality* to prepare and submit comments on the plan."

Section 340. Section 80-15-213, MCA, is amended to read:

"**80-15-213. Beneficial use to be considered in developing management plans — water classification.** (1) *(a)* In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans.

(b) If the ground water has not been classified,:

(i) the department shall consider it to be included in the classification representing the highest quality of ground water until ~~such time as~~ the ground water is classified hy the department of ~~health and~~ environmental ~~sciences~~ *quality*~~;~~; and

(ii) the department may proceed to develop an agricultural chemical ground water management plan as required by 80-15-212(1).

(2) The department may request the department of ~~health and~~ environmental ~~sciences~~ *quality* to classify certain ground water and may collect the data and information required by the department of ~~health and~~ environmental ~~sciences~~ *quality* to classify the ground water. If adequate technical data and financial resources are available as determined hy the department of ~~health and~~ environmental ~~sciences~~ *quality*, the department of ~~health and~~ environmental ~~sciences~~ *quality* shall classify ground water at locations as requested by the department."

Section 341. Section 80-15-216, MCA, is amended to read:

"**80-15-216. Commercial fertilizer ground water management plan.** The department may develop and implement a commercial fertilizer ground water management plan if the department and the department of ~~health and~~ environmental ~~sciences~~ *quality* determine that residues from commercial fertilizer are present in the ground water or when EPA implements a program to protect ground water from fertilizers."

Section 342. Section 80-15-217, MCA, is amended to read:

"**80-15-217. Management plans — rulemaking — review.** (1) The department shall adopt specific agricultural chemical ground water management plans through rulemaking~~, provided that~~*; however,* the department may implement emergency plans as set forth in 80-8-105(4) or as authorized by the Montana Administrative Procedure Act. Prior to rulemaking, the department shall provide to the department of ~~health and~~ environmental ~~sciences~~ *quality* a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of ~~health and~~ environmental ~~sciences~~ *quality* to prepare comments on the plan.

(2) The department shall review agricultural chemical ground water management plans periodically to determine if the requirements contained in the plans need to he modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking."

Section 343. Section 80-15-301, MCA, is amended to read:

"**80-15-301. Agricultural chemical ground water protection accounts — acceptance and expenditure of gifts, grants, and funds.** (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of ~~health and~~ environmental ~~sciences~~ *quality* agricultural chemical ground water protection special revenue account within the state special revenue fund established hy 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* may individually or jointly spend funds received by their respective accounts for the purposes authorized by this chapter."

Section 344. Section 80-15-302, MCA, is amended to read:

"**80-15-302. Special funding.** (1) A fee of $80 is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201(4).

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited $15,000 for purposes of administering or assisting the department in administering this chapter:

(i) department of ~~health and~~ environmental ~~sciences~~ *quality*; and

(ii) Montana state university extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of $10 is assessed for the registration of fertilizers in addition to the fee imposed by 80-10-201(1). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department."

Section 345. Section 80-15-403, MCA, is amended to read:

"**80-15-403. Compliance orders.** (1) In furtherance of 80-15-402, the department may issue a compliance order to ~~any~~ *a* person ~~violating~~ *who violates* a standard, an interim numerical standard, or any other requirement established pursuant to this chapter. The department shall coordinate its proposed actions pursuant to this section with proposed actions of the department of ~~health and~~ environmental ~~sciences~~ *quality* pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) The department may issue a compliance order to ~~any~~ *a* person, including the person's employees, agents, and subcontractors, whether or not the person is subject to a specific management plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely dumped,

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spilled, ~~or~~ misused, or unlawfully used *and* that has a significant probability of entering ground water.

(3) When issuing a compliance order, the department may require a person who has violated a provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

Section 346. Section 80-15-411, MCA, is amended to read:

"**80-15-411. Violators subject to penalties.** (1) A person found to be in violation of this chapter or a rule established pursuant to this chaptor is subject to the penalty provisions of 80-15-412 through 80-15-414.

(2) For the purpose of this section, the term "person" means, in addition to the definition in 80-15-102, any responsible corporate officer.

(3) Nothing in this chapter may be construed as requiring the department or an authorized agent of the department to report minor violations of this chapter for prosecution when the department or ~~a duly~~ *an* authorized agent believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order.

(4) Action under 80-15-412 through 80-15-414 does not bar the department from enforcement of this chapter or of rules or orders issued under this chapter by injunction or other appropriate remedy.

(5) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall coordinate actions when a violator is subject to the penalties authorized by 80-15-412 through 80-15-414 and *to the* penalties authorized by Title 75, chapter 5, for the same violation."

Section 347. Section 80-15-412, MCA, is amended to read:

"**80-15-412. Administrative civil penalty.** (1) A person who commits a violation of this chapter may be assessed an administrative civil penalty by either the department or the department of ~~health and~~ environmental ~~sciences~~ *quality*, consistent with their respective responsibilities, of not more than $1,000 for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more than $500 for the first offense. Assessment of a civil penalty may he made in conjunction with any other warning, order, or administrative action authorized by this chapter or Title 75, chapter 5, that is issued or undertaken by either the department or the department of ~~health and~~ environmental ~~sciences~~ *quality*.

(2) ~~No~~*An* administrative civil penalty may *not* be assessed unless the person charged is given notice and opportunity for a hearing pursuant to Title 2, chaptor 4, part 6, of the Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the responsible department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

(4) If the responsible department is unable to collect the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the responsible department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department or the department of ~~health and~~ environmental ~~sciences~~ *quality* has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure."

Section 348. Section 81-2-106, MCA, is amended te read:

"**81-2-106. Cooperation by public officers.** The department of *public* health ~~and environmental sciences~~, the board of *public* health ~~and environmental sciences~~, and local boards of health of a county, city, or town shall cooperate with and assist the department ~~of livestock~~ in matters ~~which~~ *that* relate to the execution of its sanitary powers regarding livestock and their food products in the manner ~~which~~ *prescribed by* the department ~~of livestock prescribes~~, either by general rule or direct order."

Section 349. Section 81-9-202, MCA, is amended to read:

"**81-9-202. Exceptions of certain producers of meats.** The owners or operators of slaughterhouses, packinghouses, meat depots, or other places of business engaged in the production, storage, or transportation of meats or meat foods are not required to procure a license from the department of *public* health ~~and environmental sciences, insofar as~~ *for* the business of production, storage, or transportation of these food products ~~is concerned~~. This section does not limit *the department of public health in* the supervision or regnlation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale ~~thereat by the department of health and environmental sciences~~ *at those places*, nor does this section limit the duties imposed by law on the department of *public* health ~~and environmental sciences~~ to make sanitary rules for the eradication or control of an epidemic of human disease ~~which~~ *that* may exist in a community."

Section 350. Section 81-9-233, MCA, is amended te read:

"**81-9-233. Cooperation with state and federal authorities.** (1) In carrying out the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the chief shall consult with the department of ~~health and~~ environmental ~~sciences~~ *quality* and any appropriato state laboratory in mattors relating to *the* potability of water, *to* sewage systoms, and *to* other sanitary

conditions of slaughtering and meat processing establishments that might endanger public health. If ~~any~~ *an* official establishment ~~is failing~~ *fails* to meet minimum applicable requirements of the department of ~~health and~~ environmental ~~sciences~~ *quality*, inspection service to the establishment must be suspended as provided in 81-9-235 until the condition is remedied.

(2) The board is designated as the agency responsible for cooperating with the U.S. secretary of agriculture in receiving advisory assistance in developing the state program, technical and laboratory assistance and training, and financial assistance for administration of the program."

Section 351. Section 81-21-103, MCA, is amended to read:

"**81-21-103. Exceptions of certain producers of dairy products.** The owners or operators of dairies, creameries, butter factories, cheese facteries, or other places of business engaged in the production, storage, or transportation of dairy products are not required to procure a license from the department of *public* health and ~~environmental sciences, insofar as~~ *for* the business of production, storage, or transportation of these food products ~~is concerned~~. This section does not limit the *department of public health in the* supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale ~~thereat by the department of health and environmental sciences~~ *at those places*, nor does this section limit the duties imposed by law on the department of *public* health ~~and environmental sciences~~ to make sanitary rules for the eradication or control of an epidemic of human disease ~~which~~ *that* may exist in a community."

Section 352. Section 81-22-208, MCA, is amended to read:

"**81-22-208. Licenses and schedule of license fees.** (1) Licenses and license fees required under this part must be established by the department for the following facilities and activities:

(a) manufactured dairy products plant~~; however~~. *However*, a plant license is not required of a food service establishment licensed by the ~~Montana~~ department of *public* health ~~and environmental sciences~~, as defined in 50-50-102, and ~~no~~ *a* license is *not* required to manufacture nondairy products when only ~~such~~ *nondairy* products are manufactured~~;~~.

(b) cream station~~; however~~. *However*, a license is not required if the cream station is owned and operated by a licensed plant~~;~~ but the milk and cream, equipment, premises, and means of transporting milk or cream is subject to official inspection~~;~~.

(c) dairy producing milk for manufacturing purposes~~; however~~. *However*, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by 81-21-102~~; and~~.

(d) grader-weigher-sampler, tester, and hauler~~; however~~. *However*, a separate grader-weigher-sampler, tester, and bauler license is required whether a person performing these activities owns and operatos the plant, is employed by the plant, or is self-employed.

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(2) A license is valid on the date issued ~~through~~ *and expires on* December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date ~~of December 31~~. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it ~~shall~~ *must* be accompanied by the correct license fee. A license ~~shall~~ *must* be posted in conspicuous view at the place of business. A license is not transferable from place to place or from person to person. A penalty fee in an amount established by a rule of the department may be imposed by it on a person who fails to apply for renewal of ~~his~~ *a* license if under this part that person is required to be licensed.

(3) All license fees collected ~~shall~~ *must* be deposited in the general fund."

Section 353. Section 81-22-209, MCA, is amended to read:

"**81-22-209. License requirements applicable.** The licenses required under tbis part apply only to those licenses issued by the department. This part does not repeal or abrogato the authority of or the issuance of licenses by the department of *public* health ~~and environmental sciences~~."

Section 354. Section 81-22-301, MCA, is amended to read:

"**81-22-301. Tests and analyses — admissibility as evidence.** (1) The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the department of *public* health ~~and environmental sciences~~ or otber laboratory approved by the department to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of these products.

(2) *(a)* ~~Any~~ *The following tests or analyses may be used:*

(i) an appropriate test method listed in Standard Methods for the Examination of Dairy Products, current edition—American Public Health Association, Inc., or *in* Standard Methods for the Examination of Water and Waste Water, current edition—American Public Health Association, Inc.~~, or~~;

(ii) the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, current edition as published by the ~~Association of Official Analytical Chemists~~, *association of official analytical chemists;* or

(iii) any other appropriate tests approved by the department ~~may be used, and the~~.

(b) The results of these tests or analyses are admissible as prima facie evidence of the facts disclosed, in a court, hearing, or proceeding arising under this chapter, when *the tests or analyses are* identified hy the sample numbers and verified by the department representative and analyst handling them. These tests ~~shall~~ *and analyses must* be designated and referred to as "official tests"."

Section 355. Section 81-22-403, MCA, is amended to read:

"**81-22-403. Plans for construction, remodeling, or relocation of manufacturing plant.** (1) Before the construction, extensive remodeling, or relocation of a dairy products manufacturing plant, detailed plans ~~shall~~ *must*

be submitted to the department for review and approval before construction, remodeling, or relocation begins. The plans must show:

(a) size of rooms;

(b) type of building material;

(c) lighting and electrical system;

(d) ventilation;

(e) location of water supply;

(f) sewage disposal;

(g) materials to be used in floors, walls, and ceilings;

(h) location and type of floor drains;

(i) plumbing, plumbing fixtures, equipment; and

(j) the makes, models, and serial numbers of new or used equipment or machinery being added to or replacing existing equipment or machinery.

(2) Replacement equipment ~~shall~~ *must* be of the NSF or 3A standard approved types~~,~~ unless otherwise approved by the department. Construction and materials must conform to rules of the department and of building, electrical, and plumbing codes in effect in the area.

(3) Wastewater, sewage, and air pollutants ~~shall~~ *must* be disposed by means approved by the department of ~~health and~~ environmental ~~sciences~~ *quality*, and evidence ~~shall~~ *must* be submitted that approval has been obtained from the department of ~~health and~~ environmental ~~sciences~~ *quality*."

Section 356. Section 81-22-404, MCA, is amended to read:

"**81-22-404. Removal or destruction of products in case of potential health hazards.** (1) When epidemiological evidence indicates or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale milk or a manufactured dairy product ~~which~~ *that* is adulterated or ~~which~~ *that* may be detrimental to the health or safety of the consumer, the department may request the department of *public* health ~~and environmental sciences~~ to remove the product from the market or to hold, dispose of, destroy, or treat the product so that it no longer constitutes a potential health hazard.

(2) It is unlawful for a person to violate an order ~~which~~ *that* requires the product's removal from the market or its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject to a fine of not less than $25 or more than $250 or to imprisonment in the county jail for not more than 30 days, or both fine and imprisonment."

Section 357. Section 81-22-414, MCA, is amended to read:

"**81-22-414. Pasteurization apparatus and records.** (1) The department may adopt rules ~~which~~ *that* it considers necessary to ~~assure~~ *ensure* proper control and use of all equipment used in the process of pasteurization. The

department may require the operation of devices and apparatus ~~which~~ *that* are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated, including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding 2 months all records pertaining to the pasteurization of any product. These records ~~shall~~ *must* at all times be open to the inspection of the department ~~of livestock~~, the department of *public* health ~~and environmental sciences~~, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(2) Pasteurizing equipment ~~which~~ *that* records temperatures or controls the time of holding ~~shall~~ *must* be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department."

Section 358. Section 81-22-421, MCA, is amended to read:

"**81-22-421. Labeling on manufactured dairy products to conform to requirements.** Labeling on manufactured dairy products ~~shall~~ *must* conform to requirements of the Food, Drug, and Cosmetic Act and to the other requirements ~~which~~ *that* are adopted by the department ~~of livestock~~ or the department of *public* health ~~and environmental sciences~~."

Section 359. Section 81-23-103, MCA, is amended to read:

"**81-23-103. General powers of the department.** (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force, or operation of any provision of public health laws, ~~or~~ *any provision of* the law under which the department of livestock is constituted, ~~together with~~ *or any provision of* the department of livestock rules, county board of health rules, or municipal ordinances for the promotion or protection of the public health. The department may cooperate with the department of *public* health ~~and environmental sciences~~, the board of livesteck, any county or city board of health, or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and *shall* conduct hearings ~~upon~~ *on* any subject pertinent to the administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter ~~and~~. *The department* may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness."

Section 360. Section 82-4-102, MCA, is amended to read:

"**82-4-102. Policy and purpose.** (1) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system

from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the purpose of this part:

(a) to vest in the department the authority to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove such locations and plans and to exercise general administration and enforcement of this part;

(b) to vest in the board the authority to adopt rules~~, to suspend and revoke permits, and to conduct hearings~~;

(c) to satisfy the requirement of Article IX, section 2, of the constitution of this state, that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to insure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(3) This part is deemed to be an exercise of the general police power to provide for the health and welfare of the people."

Section 361. Section 82-4-103, MCA, is amended to read:

"**82-4-103. Definitions.** When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Board" means the board of ~~land commissioners as provided for in Article X, section 4, of the constitution of this state~~ *environmental review provided for in [section 21].*

(2) "Department" means the department of ~~state lands~~ *environmental quality* provided for in ~~Title 2, chapter 15, part 32~~ *[section 20].*

(3) "Mineral" means mineral as defined in 82-4-203.

(4) "New mine" means a strip- or underground-mining operation proposed for an area of land ~~which~~ *that* the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure, aquifers, or vegetation from an existing strip-mine or underground-mine operation, does not constitute an expansion of an existing operation.

(5) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area.

(6) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.

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(7) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(8) "Preparatory work" means all onsite disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.

(9) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method ~~which~~ *that* penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine ~~which~~ *that* enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(10) "Underground mining" means any part of the process *that is* followed in the production of a mineral ~~such that~~ *and that uses* vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata ~~are utilized~~."

Section 362. Section 82-4-111, MCA, is amended to read:

"82-4-111. ~~Orders and rules~~ ***Rules*** **of board — hearings.** The board shall:

~~(1) issue, after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;~~

~~(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;~~

~~(3)~~ adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part *and rules regarding filing of reports, issuance of permits, and other matters of procedure and administration*;

~~(4) conduct hearings under provisions of this part or rules adopted by the board~~."

Section 363. Section 82-4-112, MCA, is amended to read:

"82-4-112. **Administration.** The department shall:

(1) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) issue, after an opportunity for hearing, orders requiring an operator to adopt remedial measures necessary to comply with this part and rules adopted under this part;

~~(2)~~*(3)* order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or permit issued pursuant to this part;

(4) issue, after an opportunity for hearing, a final order revoking a permit when the requirements set forth by the notice of noncompliance, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

~~(3)~~*(5)* order the halting of any operation that is started without first having secured a permit as required hy this part;

(6) conduct hearings under provisions of this part or rules adopted by the board;

~~(4)~~*(7)* make investigations and inspections necessary to insure compliance with this part;

~~(5)~~*(8)* encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work;

~~(6) adopt rules with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration.~~"

Section 364. Section 82-4-123, MCA, is amended te read:

"82-4-123. **Permit fee and surety bond.** A fee of $50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the ~~board on the recommendation of the commissioner~~ *department* of not less than $200 or more than $10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of $5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. In determining the amount of the bond within the above limits, the ~~board~~ *department* shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 365. Section 82-4-129, MCA, is amended to read:

"82-4-129. **Noncompliance — suspension of permits.** (1) If any of the requirements of this part or rules or orders of the department ~~and the board~~ have not been complied with within the time limits set by the department or ~~the board or~~ by this part, the department shall serve a notice of noncompliance on the operator or, ~~where found~~ *when* necessary, the ~~commissioner~~ *director of the department* shall order the suspension of a permit. The notice or order ~~shall~~ *must* be handed to the operator in person or served by certified ~~or registered~~ mail addressed to the permanent address shown on the application for a permit. Tbe notice of noncompliance or order of suspension ~~shall~~ *must* specify in what

respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set ~~therein~~ *in the notice or order*, tho permit may be revoked hy order of the board and the performance hond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked ~~shall~~ *must* be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until ~~he~~ *the operator* has complied with all the requirements of this part ~~in~~ *with* respect to ~~former~~ *previous* permits issued ~~him~~ *to the operator*. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the stato or the operator has paid into the reclamation account a sum together with the value of the bond the ~~board~~ *department* finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part."

Section 366. Section 82-4-141, MCA, is amended to read:

"**82-4-141. Violation — penalty.** (1) A person or operator who violatos any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less tban $100 or more than $1,000 for the violation and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the ~~commissioner~~ *director*, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who willfully violates any of the provisions of this part or any determination or order adopted under this part which has become final is guilty of a misdemeanor and sball be fined not less than $500 and not more than $5,000. Each day on which a violation occurs constitutes a separate offense."

Section 367. Section 82-4-203, MCA, is amended to read:

"**82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation ~~where~~ *in which* no mineral is being produced and ~~where~~ *about which* the department determines that the operation will not continue or resume.

(2) *(a)* "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams wbere water availability is sufficient for subirrigation or flood irrigation agricultural activities~~;~~.

(b) ~~but the~~ *The* term does not include upland areas ~~which~~ *that* are generally overlain ~~by~~ a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits ~~by~~ unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone ~~beneath~~ the earth's surface that contains or stores water and transmits it from one point to another in quantities ~~which~~ *that* permit or have the potential to permit economic development as a water source.

(4) *(a)* "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited ~~and~~.

(b) The term includes*:*

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral~~;~~*;*

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral~~;~~*;*

(iii) processing facilities at or near the mine site or other ~~mine-associated~~ *mine-associated* facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining~~;~~*;* and

(iv) all activities necessary and incident to the reclamation of ~~such~~ *the mining* operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the conteur method of strip mining.

(6) "Board" means the board of ~~land commissioners~~ *environmental review* provided for in ~~Article X, section 4, of the constitution of this state~~ *[section 21].*

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation ~~to include~~ *and includes* plans for the removal and ~~utilization~~ *use* of minable and marketable coal located within the area planned to ~~be~~ mined.

(8) *(a)* "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal te another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, wator treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

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~~(10) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.~~

~~(11)~~*(10)* "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

~~(12)~~*(11)* "Degree" means *a measurement* from the horizontal ~~and in~~. *In* each case, *the measurement* is subject to a tolerance of 5% error.

~~(12)~~*(12)* "Department" means the department of ~~state lands~~ *environmental quality* provided for in ~~Title 2, chapter 15, part 32~~ *[section 20]*.

~~(14)~~*(13)* "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation~~, provided that~~. *However,* the nonremoval or nonutilization of minable and marketable coal ~~in accordance~~ *that occurs because of compliance* with reclamation standards established by the department ~~may~~ *is* not ~~be~~ considered failure to conserve coal.

~~(15)~~*(14)* "Fill bench" means that portion of a bench or table ~~which~~ *that* is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

~~(16)~~*(15)* "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

~~(17)~~*(16)* "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

~~(16)~~*(17)* "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(16)~~*(18)* "Minable coal" means that coal ~~which~~ *that* can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(20)~~*(19)* "Mineral" means coal and uranium.

~~(21)~~*(20)* "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a

designated strip-mine or underground-mine area, including coal preparation plants~~,~~; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(22)~~*(21)* "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden ~~or a person engaged in~~;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location; or ~~a person engaged in~~

(c) operating a coal preparation plant.

~~(23)~~*(22)* "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and ~~also means~~

(b) the earth and other material after removal from their natural state in the process of mining.

~~(24)~~*(23)* "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(25)~~*(24)* "Prime farmland" means ~~that~~ land ~~previously~~ *that:*

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture ~~on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics~~ *in the Federal Register;* and ~~which~~

(b) historically has been used for intensive agricultural purposes ~~and as defined in the Federal Register~~.

~~(26)~~*(25)* "Prospecting" means:

(a) the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(b) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, *or* geophysical~~,~~ or other techniques necessary to determine the quality and quantity of overburden in an area; or

(c) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(27)~~*(26)* "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and

other work to restore an area of land affected by strip mining or underground mining under a plan approved hy the department.

~~(28)~~*(27)* "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

~~(29)~~*(28)(a)* "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(30)~~*(29)* "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(31)~~*(30)* "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land; ~~or~~

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income, if any, from farming or ranching operations; or

(c) the state of Montana ~~where~~ *when* the state owns the surface.

~~(32)~~*(31)* "Topsoil" means the unconsolidated mineral matter *that is* naturally present on the surface of the earth, that has been subjected te and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(33)~~*(32)* "Underground mining" means any part of the process *that is* followed in the production of a mineral ~~such that~~ *and that uses* vertical or horizontal shafts, slopes, drifts, or incline planes connectod with excavations penetrating the mineral stratum or strata ~~are utilized and~~. *The term* includes mining by in situ methods.

~~(34)~~*(33)* "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part ~~due to~~ *because of* indifference, lack of diligence, or lack of reasonable care~~,~~; or

(b) the failure to abate any violation of a permit or *of* this part ~~due to~~ *because of* indifference, lack of diligence, or lack of reasonable care.

~~(35)~~*(34)* "Waiver" means ~~any~~ *a* document that demonstrates the clear intention to release rights in the surface estato for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

~~(35)~~*(35)* "Written consent" means a ~~written~~ statement *that is* executed by the owner of the surface estate~~, upon~~ *and that is written on* a form approved by the department~~, demonstrating~~ *to demonstrate* that the owner consente to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only te strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 368. Section 82-4-204, MCA, is amended to read:

"82-4-204. **Board ~~orders, rules, and hearings~~.** *(1)* The board shall:

~~(1) issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;~~

~~(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;~~

~~(3)~~ adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part;

~~(4) conduct hearings under provisions of this part or rules adopted by the board~~.

(2) The board may adopt rules with respect to filing of reports, issuance of permits, monitoring, and other matters of procedure and administration."

Section 369. Section 82-4-205, MCA, is amended to read:

"82-4-205. **Administration by department ~~of state lands~~.** The department:

(1) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, *and* topsoiling~~,~~ and for tho reclamation of the area of land affected by ~~his~~ *the operator's* operation;

(3) *shall issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;*

(4) shall order the suspension of any permit for failure to comply with this part or ~~any~~ *a* rule adopted under this part;

(5) shall issue, after an opportunity for hearing, a final order revoking a permit when the requirements set forth by notice of noncompliance, order of

suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

~~(4)~~*(6)* shall order the halting of any operation that is started without first having secured a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(7) shall conduct hearings under the provisions of this part or rules adopted by the board;

~~(5)~~*(8)* shall make investigations and inspections necessary to ~~insure~~ *ensure* compliance with this part;

~~(6)~~*(9)* may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

~~(7)~~*(10)* may adopt rules with respect to the filing of reports, the issuance of permits, monitoring, and other matters of procedure and administration;

~~(8)~~*(11)* may conduct hearings under the provisions of this part."

Section 370. Section 82-4-223, MCA, is amended to read:

"**82-4-223. Permit fee and surety bond.** (1) An application fee of $100 shall be paid before the permit required in this part shall be issued.

(2) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the ~~board~~ *department*~~, on the recommendation of the commissioner,~~ of not less than $200 for each acre or fraction thereof of the area of land affected, with a minimum hond of $10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area. The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the ~~board~~ *department*. The ~~board~~ *department* shall adjust the amount of bond required if the cost of reclamation changes.

(3) In determining the amount of the bond, the ~~board~~ *department* shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 371. Section 82-4-226, MCA, is amended to read:

"**82-4-226. Prospecting permit.** (1) Except as provided in subsection (8), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting

permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information as may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application must be accompanied by a fee of $100. This fee must be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(5) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(6) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228 and that is not conducted for the purpose of determining the location, quality, or quantity of a natural mineral deposit is not subject to subsections (1) through (7). However, a person who

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conducts this prospecting shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the ~~department's~~ *board's* rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time."

Section 372. Section 82-4-227, MCA, is amended to read:

"**82-4-227. Refusal of permit.** (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, *in* an onsite inspection, and *in* an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.

(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit ~~where~~ *when* the area of land described in the application includes land ~~having~~ *that has* special, exceptional, critical, or unique characteristics or ~~that~~ *when* mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental charactor of neighboring land ~~having~~ *that has* special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the ~~reasonable~~ *reasonably* foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a ~~system-wide~~ *systemwide* reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. ~~(~~In applying *the provisions of* this subsection *(d)*, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.~~)~~

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department

and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and ~~those lands as to~~ *excluding land about* which the ~~regulatory authority~~ *department* finds that if ~~the~~ *any* farming ~~that~~ will be interrupted, discontinued, or precluded, *it* is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply ~~these~~ *the* valley floors *described* in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the ~~commissioner~~ *director of the department* shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) *(a)* If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:

(i) has the technological capability to restore the mined area, within a reasonable time, to ~~equivalent or higher~~ levels of yield ~~as~~ *equivalent to or higher than* nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) can meet the soil reconstruction standards of 82-4-232(3).

(b) Nothing in this subsection applies to ~~any~~ *a* permit issued prior to August 3, 1977, or to any revisions or renewals ~~thereof~~ *of the permit* or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall deleto that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling ~~house~~, public building, school, church, cemetery, commercial or

institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. ~~In no case may strip~~ *Strip-* or underground-coal-mining *may not* be allowed:

(a) within 300 feet of ~~any~~ *an* occupied dwelling, unless waived by the owner;;

(b) ~~nor~~ within 300 feet of any public building, school, church, community, or institutional building, or public park;

(c) ~~nor~~ within 100 feet of a cemetery;

(d) ~~nor~~ within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) ~~No strip~~ *Strip-* or underground-mining may *not* be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. ~~The~~ *However, the* department shall permit an operater to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards te the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included:

(a) within an area designated unsuitable for strip or underground coal mining; or

(b) within an area under review for this designation under an administrative proceeding, unless in ~~such~~ an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, the operater made substantial legal and financial commitments in relation to the operation for which the operator is applying for a permit.

(10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will not occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that ~~any~~ *a* strip- or underground-coal-mining operation *that is* owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, ~~or~~ any state law required by Public

Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, ~~of a~~ *when the* nature and duration *of the violations* and ~~with~~ resulting irreparable damage to the environment ~~to~~ indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that existed as of August 3, 1977, may be conducted on lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, or national recreation areas designated by act of congress."

Section 373. Section 82-4-231, MCA, is amended to read:

"**82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by ~~his~~ *the* operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, tepsoiling, and a reclamation plan for the area of land affected by ~~his~~ *the* operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which shall contain the reclamation plan, shall be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and

the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items which the application must address. The application shall be presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, ~~he~~ *the applicant* shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant te the proceeding.

(7) The filing of written objections or a request for an informal conference shall not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications te the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish

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the final environmental impact statement within 365 days of the date of notice provided pursuant to subsection (5).

(d) Within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 10 days of the informal conference.

(f) The department shall prepare written findings granting or denying the permit or major revision application in whole or in part no later than 45 days from the date the application is determined acceptable or from the publication of the final environmental impact statement, whichever occurs later. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when such concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing ~~by the board~~. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing shall be held within 30 days of the request. For purposes of a hearing, the ~~board~~ *department* may order site inspections of the area pertinent to the application. The ~~board~~ *department* shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon.

(10) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directod by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the ~~board~~ *department* approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the ~~board~~ *department* may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastos until these wastos can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of wator in surface water and ground water systoms both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as te prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids te streamflow or runoff outside the permit area but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to (ii)(A) of this subsection prior to commencement of strip- or underground-mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) such other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncomhustible matorial in order to prevent drainage except where the department determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

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(q) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as te prevent a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other matorials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials te go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area."

Section 374. Section 82-4-232, MCA, is amended to read:

"**82-4-232. Area mining required — bond — alternative plan.** (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than 20 degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operater's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator shall as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be

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shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil matorial; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in (a) above.

(4) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material which is best able to support vegetation shall be returned as the top layer.

(5) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release application and must contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that ~~he~~ *the permittee* has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of ~~his~~ *the permittee's* intention to seek release from the bond.

(b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution, and the estimated cost of abating such pollution.

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The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if no public hearing is held pursuant te subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days thereafter.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this part according te the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with ~~his~~ *the* approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under tbis subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. No part of the bond or deposit may be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or portion thereof, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the department, it shall notify the municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to such operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication

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of the notice provided for in subsection (6)(a). If written objections are filed and a hearing requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for such hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for such hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve such written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) An operator may propose alternative plans other than backfilling, grading, highwall reduction, tepsoiling, or seeding to a permanent diverse vegetative cover if the restoration will he consistent with the purpose of this part. These plans shall be submitted to the department, and after consultation with the landowner, if the plans are approved by the ~~board~~ *department* and complied with within the time limits as may be determined by the ~~board~~ *department* as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the ~~board~~ *department*. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(k).

(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be utilized and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation as a minimum to:

(a) restore the land affected to a condition capable of supporting the use which it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not deemed to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining."

Section 375. Section 82-4-239, MCA, is amended to read:

"82-4-239. **Reclamation ~~by board~~.** (1) The ~~board~~ *department* may have reclamation work done by ~~its own~~ *its* employees, ~~or~~ by employees of other governmental agencies, *by* soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the ~~board~~ *department* ~~shall~~ *must* be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining *and* that have not been reclaimed and rehabilitated in accordance with the standards of this part. The ~~board~~ *department* shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether ~~such~~ *the* land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the ~~commissioner~~ *director of the department*, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

(4) *(a)* ~~If the~~ *The* department *shall take the actions described in subsection (4)(b) when it* makes a finding of fact that:

~~(a)~~*(i)* land or water resources have been adversely affected by past coal-mining practices; ~~and~~

~~(b)~~*(ii)* the adverse effects are at a stage ~~where~~ *at which,* in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

~~(c)~~*(iii)* the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon ~~such~~ *the* property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices~~; then~~.

(b) ~~agents, employees, or contractors of the department, after~~ *After* giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice ~~upon~~ *on* the premises and advertising in a newspaper of general circulation in the county in which the land lies, *the agents, employees, or contractors of the department* may enter ~~upon~~ *on the* property adversely affected by past coal-mining practices and *on* any other property necessary for access to ~~such~~ *the* mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) ~~This act~~ *Action taken under subsection (4)(b)* is not an act of condemnation of property or of trespass, but rather *is* an exercise of the power granted by sections 1 and 2, Article IX of the Montana constitution.

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(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money ~~so~~ expended and may file a statement ~~thereof~~ *of those expenses* in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money ~~so~~ expended ~~shall result~~ *resulted* in a significant increase in property value. ~~Such~~ *The* statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. ~~No~~ *A* lien *under this subsection* may *not* be filed against the property of ~~any~~ *a* person~~, in accordance with this subsection,~~ who owned the surface prior to May 2, 1977, and who ~~neither consented~~ *did not consent* to, ~~nor participated~~ *participate* in, ~~nor exercised~~ *or exercise* control over the mining operation ~~which~~ *that* necessitatod the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatoment, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and ~~shall~~ *must* be recorded with the statement ~~herein~~ provided *for in this section*. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section ~~shall~~ *must* be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the dato of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The ~~board~~ *department* may acquire the necessary property by gift or purchase ~~or, if~~. *If* the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) *(i)* permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse ~~thereon~~ *on the land* will serve the purposes of this part ~~in that~~ *because* public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 376. Section 82-4-240, MCA, is amended to read:

"82-4-240. **Reclamation of lands after bond forfeited.** In keeping with the provisions of this part, the ~~board~~ *department* may reclaim any affected lands with respect to which a bond has been forfeited."

Section 377. Section 82-4-242, MCA, is amended te read:

"82-4-242. **Funds received by ~~board~~ *department*.** The ~~board~~ *department* may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining or underground mining."

Section 378. Section 82-4-251, MCA, is amended to read:

"82-4-251. **Noncompliance — suspension of permits.** (1) ~~The commissioner or an authorized representative of the department shall, if he determines~~ *If it is determined* on the basis of an inspection that *the permittee is or that* any condition or ~~practices exist or that the permittee is~~ *practice exists* in violation of any requirement of this part or any permit condition required by ~~the~~ *this* part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, *the director of the department or an authorized representative shall* immediately order cessation of the operation or the portion ~~thereof~~ *of the operation* relevant to the condition, practice, or violation. The cessation order remains in effect until the ~~commissioner or his~~ *director or an* authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the ~~commissioner or his~~ *director or an* authorized representative pursuant to subsection (5). If the ~~commissioner or his~~ *director or an* authorized representative finds that the ordered cessation of the operation, or any portion ~~thereof,~~ *of the operation* will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, ~~he~~ *the director or the authorized representative* shall, in addition to the cessation order, impose affirmative obligations requiring ~~whatever~~ *any* steps *that* the ~~commissioner or his~~ *director or the* authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part ~~which~~ *that* does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the ~~commissioner or~~ *director or an* authorized representative shall issue a notice to the permittee or ~~his~~ *the permittee's* agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the ~~commissioner or his~~ *director or an* authorized representative, the ~~commissioner or his~~ *director or an* authorized representative finds that the violation has not been abated, ~~he~~ *the director or an authorized representative* shall immediately order a cessation of the operation or the portion ~~thereof~~ *of the operation* relevant te the violation. ~~Such~~ *The* cessation order remains in effect until the ~~commissioner or his~~ *director or an* authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the ~~commissioner or his~~ *director or an* authorized representative

pursuant to subsection (5). In the order of cessation issued under this subsection, the ~~commissioner~~ *director* shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the ~~commissioner or his~~ *director or an* authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the ~~commissioner or his~~ *director or an* authorized representative also finds that ~~such~~ *the* violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that ~~such~~ *the* violations are willfully caused by the permittee, the ~~commissioner or his~~ *director or an* authorized representative shall ~~forthwith~~ issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the ~~commissioner~~ *director* shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the ~~commissioner or his~~ *director or an* authorized representative shall ~~forthwith~~ suspend or ~~the board shall~~ revoke the permit. When a permit has been revoked, the ~~board~~ *department* may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked ~~shall~~ *must* be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until ~~he~~ *the operator* has complied with all the requirements of this part ~~in~~ *with* respect to former permits issued ~~him~~ *to the operator*. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operater has paid into the reclamation account a sum together with the value of the bond the ~~board~~ *department* finds adequate to reclaim the lands.

(5) Notices and orders issued pursuant to this section ~~shall~~ *must* set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section ~~shall~~ *must* be given promptly to the permittee or his *the permittee's* agent by the department, ~~or~~ *by* the ~~commissioner~~*director,* or ~~his~~ *by the* authorized representative who ~~issues~~ *issued* the notice or order. All ~~such~~ notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the ~~commissioner or his~~ *director or an* authorized representative~~, provided that~~. *However,* any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) A person *who has been* issued a notice or an order of cessation pursuant to this section or ~~any~~ *a* person ~~having~~ *who has* an interest that is or may be adversely affected by an order or by modification, vacation, or termination of an order may apply to the department for review of that order witbin 30 days of its issuance or within 30 days of its modification, vacation, or termination. Upon

receipt of the application, the department shall make an investigation. The investigation ~~shall~~ *must* provide an opportunity for public hearing at the request of the applicant or the person ~~having~~ *who has* an interest who is or may be adversely affected to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by ~~such~~ *the* person for or in connection with ~~his~~ *the person's* participation in ~~such~~ *the* proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the ~~commissioner or his~~ *director or an* authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if ~~he~~ *the director or the authorized agent* finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Section 379. Section 82-4-254, MCA, is amended to read:

"**82-4-254. Violation — penalty — waiver.** (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than $100 or more than $5,000 for the violation and an additional civil penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board ~~or department~~, or order of the ~~commissioner~~ *department* shall be assessed a penalty of not less than $750 for each day, up to 30 days, during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after such 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6).

(2) The department may waivo the civil penalty for a minor violation of this part, a rule or order adopted under this part, or a torm or condition of a permit if the department determines such violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board ~~of land commissioners~~ shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

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(3) The department shall notify the person or operator of the violation. The person or operator shall by filing a written request within 20 days of receipt of the notice of violation be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the ~~board~~ *department* shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, ~~he~~ *the person or operator* shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits ~~his~~ *the* right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(4) The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and hring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violato, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area hy an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to and copying of such records as the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order adopted under this part or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than $500 and not more than $10,000 or imprisoned for not more

than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(9) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both."

Section 380. Section 82-4-303, MCA, is amended to read:

"**82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of ~~land commissioners or a state employee or state agency as may succeed to its powers and duties under this part~~ *environmental review provided for in [section 21].*

~~(4) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.~~

~~(5)~~*(4)* "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~(6)~~*(5)* "Department" means the department of ~~state lands~~ *environmental quality provided for in [section 20].*

~~(7)~~*(6)* "Disturbed land" means ~~that~~ *the* area of land or surface water *that has been* disturbed, beginning at the date of the issuance of the permit~~, and it comprises that~~. *The term includes the* area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or ~~covering resulting~~ *coverings that result* from the operation and ~~which~~ *that* have not been previously reclaimed under the reclamation plan.

~~(8)~~*(7)* "Exploration" means:

(a) all activities *that are* conducted on or beneath the surface of lands ~~resulting~~ *and that result* in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation~~, as well as~~*; and*

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

~~(9)~~*(8)* "Mineral" means any ore, rock, or substance~~,~~ *(*other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium~~,~~*) that is* taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

~~(10)~~*(9)* "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

~~(11)~~*(10)* "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

~~(12)~~*(11)* "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

~~(12)~~*(12)* "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.

~~(14)~~*(13)* "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

~~(15)~~*(14)* "Reclamation plan" means the operator's written proposal, as required and approved by the ~~board~~ *department*, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas ~~where~~ *when* necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents as *that* may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

~~(16)~~*(15)* (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials, that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2), and that conducts:

(i) an operation ~~resulting~~ *that results* in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations ~~which~~ *that* disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods, not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

~~(17)~~*(16)(a)* "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for onsite farming, onsito road construction, or other onsite building construction.

~~(16)~~*(17)* "Underground mining" means all methods of mining other than surface mining.

~~(19)~~*(18)* "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit~~, and it comprises and~~. *The term* includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining

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operations ~~which~~ *that* by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(20)~~*(19)* "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 381. Section 82-4-306, MCA, is amended to read:

"**82-4-306. Confidentiality of application information.** (1) Except as provided in subsections (2) and (3), ~~any~~ *the* information obtained by ~~the board or by the director or his~~ *the department* ~~staff by virtue of~~ *from* applications for exploration licenses and ~~all~~ *the* information obtained from small miners is confidential between the ~~board~~ *department* and the applicant, except ~~as to~~ *for* the name of the applicant and the county of proposed operation~~; provided that~~. *However*, all activities conducted subsequent to exploration and other associated facilities ~~shall be~~ *are* public information and *must be* conducted under an operating permit.

(2) Any information referenced in subsection (1) is properly admissible in any hearing conducted by the ~~director, the board, appeals board,~~ *department* or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of this part or rules adopted under this part has been determined by the department or by judicial order.

(3) The department may disclose information obtained by the ~~board, the commissioner, or~~ department ~~staff~~ from exploration license applications and from small miners ~~for~~ *and that is related to the* exploration or mining on state and federal lands ~~that~~ *when the information* identifies the location of exploration and mining activities and ~~that~~ describes the surface disturbance that is occurring or projected to occur. The department may not disclose a licensee's or small miner's proprietary geological information.

(4) Failure to comply with the secrecy provisions of this part is punishable by a fine of up to $1,000."

Section 382. Section 82-4-308, MCA, is amended to read:

"**82-4-308. Release by waiver.** An applicant may release the ~~board and~~ department from the confidentiality requirements of this part by notarized waiver to that effect on forms to be provided by the department."

Section 383. Section 82-4-311, MCA, is amended to read:

"**82-4-311. Hard-rock mining *and reclamation* account.** All fees, fines, penalties, and other uncleared ~~moneys which have~~ *money that has* been or will be paid to the department ~~of state lands~~ under the provisions of this part ~~shall~~ *must* be placed in the state special revenue fund in the stato treasury and credited to a special account ~~to be~~ *that is* designated as the hard-rock mining and reclamation account. This account ~~shall be~~ *is* available to the department by appropriation and ~~shall~~ *may* be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year ~~shall~~ *does* not lapse but ~~shall~~ *must* be carried

forward for the purposes of this section until expended or until appropriated by subsequent legislative action."

Section 384. Section 82-4-321, MCA, is amended to read:

"82-4-321. **Administration.** The ~~board~~ *department* is charged with the responsibility of administering this part. In order to implement its terms and provisions, the board shall from time to time promulgato such rules as the board shall deem necessary. ~~The board may delegate such powers, duties, and functions to the department as it deems necessary for the performance of its duties as administrator of this part.~~ The ~~board~~ *department* shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors."

Section 385. Section 82-4-322, MCA, is amended to read:

"82-4-322. **Investigations, research, and experiments.** The ~~board~~ *department* shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining."

Section 386. Section 82-4-323, MCA, is amended to read:

"82-4-323. **Interagency cooperation — receipt and expenditure of funds.** The ~~board~~ *department* shall cooperato with other governmental and private agencies in this state and other states and agencies of the federal government and may reasonably compensate them for any services the ~~board~~ *department* requests that they provide. The ~~board~~ *department* may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affectod by mining or exploration and for purposes enumerated in 82-4-336."

Section 387. Section 82-4-331, MCA, is amended to read:

"82-4-331. **Exploration license required — employees included — limitation.** (1) A person may not engage in exploration in the stato without first obtaining an exploration license from the ~~board~~ *department*. A license must be issued for a period of 1 year from date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and he accompanied hy payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

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(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement."

Section 388. Section 82-4-332, MCA, is amended to read:

"82-4-332. **Exploration license.** (1) An exploration license shall be issued to any applicant therefor who shall:

(a) pay a fee of $5 to the ~~board~~ *department*;

(b) agree to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the ~~board~~ *department*;

(c) not be in default of any other reclamation obligation under this law.

(2) An application for an exploration license shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The ~~department~~ *board* shall by rule determine the precise nature of such exploration map or sketch. The applicant must state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan shall be reclaimed witbin 2 years after the completion of exploration or abandonment of the site in a manner acceptable te the department."

Section 389. Section 82-4-334, MCA, is amended to read:

"82-4-334. **Exception — geological phenomena.** Upon proper application by the holder of an exploration license, the ~~board~~ *department* may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made."

Section 390. Section 82-4-335, MCA, is amended to read:

"82-4-335. **Operating permit — limitation — fees.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the ~~board~~ *department*. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent will be used or disposed of.

(3) Prior to receiving an operating permit from the ~~board~~ *department*, a person shall pay the basic permit fee of $25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The ~~department~~ *board* may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(4) The person shall submit an application on a form provided by the ~~board~~ *department*, which must contain the following information and any other pertinent data required by rule:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

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(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the ~~board~~ *department*, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(6) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the ~~board~~ *department* with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the ~~board~~ *department* that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the ~~board~~ *department* shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

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(7) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(8) A person may not be issued an operating permit if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 391. Section 82-4-336, MCA, is amended to read:

"82-4-336. Reclamation plan and specific reclamation requirements. (1) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, shall be conducted simultaneously with the operation and in any case shall be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject te further disturbance. In the absence of an order by the ~~board~~ *department* providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without

previously obtaining from the department written approval of ~~his~~ *the* proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the ~~board~~ *department* for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan shall include provisions which adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the ~~board~~ *department*;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the ~~board~~ *department* before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the ~~board~~ *department*.

(6) Provisions for vegetative cover shall be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover shall meet county standards for noxious weed control.

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation shall provide for the reclamation of disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. In such excepted cases, the ~~board~~ *department* shall require sufficient measures to insure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(8) A reclamation plan shall be approved by the ~~board~~ *department* if it adequately provides for the accomplishment of the activities specified in this section.

(9) The reclamation plan shall provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste

rock dumps. The plan shall also provide measures to prevent objectionable postmining ground water discharges."

Section 392. Section 82-4-337, MCA, is amended to read:

"**82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision.** (1) (a) The ~~board~~ *department* shall cause all applications for operating permits to be reviewed for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The ~~board~~ *department* shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Unless the review period is extended as provided in this section, the ~~board~~ *department* shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the ~~board~~ *department* does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond which will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(6).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) hy not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

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(iii) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(iv) Failure of the ~~board~~ *department* to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to completo the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the ~~board~~ *department* as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the ~~board~~ *department*, upon proper application of the permittee or ~~department~~, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(5) Applications for major amendments must be processed in the same manner as applications for new permits.

(6) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The ~~department~~ *board* may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(7) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for minor amendments and other revisions must be processed within 30 days of receipt of an application."

Section 393. Section 82-4-338, MCA, is amended to read:

"**82-4-338. Performance bond.** (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than

$200 or more than $2,500 for each acre or fraction of an acre of the disturbed area, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the ~~board~~ *department*. Regardless of the limits in this subsection, the bond may not be less than the estimated cost te the state to ensure compliance with this part, the rules, and the permit. A public or governmental agency may not be required te post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(2) The department shall review the amount of each bond at least every 5 years and shall consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which tbe operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.

(3) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(4) A bond filed for an operating permit obtained under 82-4-335 may not be released until the public has been provided an opportunity for a hearing."

Section 394. Section 82-4-339, MCA, is amended to read:

"**82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of $25 and sball file a report of activities completed during the preceding year on a form prescribed by the ~~board~~ *department* which report shall:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or otlier well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient te enable a determination of the permittee's status under 90-6-302(4);

(e) update the information required in 82-4-335(4)(a); and

(f) update any maps previously submitted or specifically requested by the ~~board~~ *department*. Such maps shall show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to he disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

Section 395. Section 82-4-340, MCA, is amended to read:

"**82-4-340. Successor operator.** When one operator succeeds to the interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the ~~board~~ *department* may release the first operater from the duties imposed upon ~~him~~ *the operator* by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the ~~board~~ *department* shall transfer the permit to the successor operator upon approval of the successor operator's hond as required under this part."

Section 396. Section 82-4-341, MCA, is amended to read:

"**82-4-341. Compliance with reclamation plan — reclamation by board.** (1) Following receipt of the permittee's report and at any other reasonable time the board may elect, the ~~board~~ *department* shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules.

(2) The permittee shall proceed with reclamation as scheduled in ~~his~~ *the* approved reclamation plan. Following written notice by the ~~board~~ *department* noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected, provided that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The ~~board~~ *department* may extend performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the ~~board~~ *department*, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the ~~board~~ *department*, reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and ~~his~~ *the* bond on said area shall be released or decreased proportionately to the acreage included within the bond coverage.

(4) If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittoe has not commenced action to rectify deficiencies within 30 days after notification by the ~~board~~ *department* or if reclamation is not properly completod in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or such longer period as may have been authorized hereunder or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the ~~board~~ *department* within the time required therefor, the ~~board~~ *department* may, with the staff, equipment, and material under its control or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The ~~board~~ *department* shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

(5) The ~~board~~ *department* shall notify the permittee and ~~his~~ *the permittee's* surety by order. The order shall state the amount of necessary expenses incurred by the ~~board~~ *department* in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within 30 days after receipt of the notice, the attorney general, upon request of the ~~board~~ *department*, shall bring an action on behalf of the state in district court. The surety shall be liable to the state te the extent of the bond. The permittee shall be liable for the remainder of the cost.

(6) In addition to the other liabilities imposed by this part, failure to commence action to remedy specific deficiencies in reclamation within 30 days after notification by the ~~board~~ *department* or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years, or such longer period as the ~~board~~ *department* may permit on permittoe's application therefor or on the ~~board's~~ *department's* own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effected while an appeal is pending from any ruling requiring the same."

Section 397. Section 82-4-342, MCA, is amended te read:

"**82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued under this part, an operator may apply for an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) The ~~department~~ *board* may by rule establish criteria for the classification of amendments as major or minor. The ~~department~~ *board* shall adopt rules

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establishing requirements for the content of applications for major and minor amendments and the procedures for processing minor amendments.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given stato of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative te the entire operation, provided that the increase is less than 10 acres or 5% of the permitted area, whichever is less; and

(h) changes in an approved operating plan or reclamation plan for an activity that was previously permitted, provided that the impacts of the change will be insignificant relative to the impacts of the entire operation and there is less than 10 acres of additional disturbance."

Section 398. Section 82-4-349, MCA, is amended to read:

"**82-4-349. Limitations of actions.** Legal actions seeking review of a ~~board~~ *department* decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made."

Section 399. Section 82-4-352, MCA, is amended to read:

"**82-4-352. Reapplication with new reclamation plan.** A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the ~~board~~ *department* a new plan for reclamation."

Section 400. Section 82-4-360, MCA, is amended to read:

"82-4-360. **Activity prohibited if bond forfeited — exception.** (1) Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part.

(2) A person described in subsection (1) may apply for an operations permit or an exploration license or may conclude a written agreement under 82-4-305 if that person first pays to the department:

(a) the full amount of the necessary expenses incurred by the ~~board~~ *department* under 82-4-341(5) for reclamation of the area for which the bond was forfeited;

(b) the full amount of any penalties assessed under this part; and

(c) interest on these amounts and penalties incurred at the rate of 6% per year."

Section 401. Section 82-4-362, MCA, is amended to read:

"82-4-362. **Suspension of permits — hearing.** (1) If any of the requirements of this part, the rules adopted under this part, or a license, permit, or reclamation plan has not been complied with, the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the ~~commissioner~~ *director* shall order the suspension of the permit. The ~~commissioner~~ *director* may order immediate suspension of a permit whenever the ~~commissioner~~ *director* makes a finding that a violation of this part, the rules adopted under this part, or a license or permit, including the reclamation plan, is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served by certified mail addressed to the permanent address shown on the application for a license or permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, the permit, or the reclamation plan and must, if the violation has not been abated, order abatement within a specified time period.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set in the notice or order, the permit may be revoked by order of the ~~board~~ *department* and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30

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days of receipt of the notice, the ~~commissioner~~ *director* shall suspend the permit. The ~~commissioner~~ *director* shall reinstate the permit upon compliance."

Section 402. Section 82-4-403, MCA, is amended to read:

"82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut mining operations, including the area from which overburden or mineral is to be or has been removed and upon which the overburden is to be or has been deposited, roads constructed to gain access to the mineral, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, and mineral stockpile areas on or contiguous to the opencut mine.

(2) "Board" means the ~~state~~ board of ~~land commissioners~~ *environmental review provided for in [section 21].*

(3) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.

(4) "Department" means the department of environmental quality provided for in [section 20].

~~(4)~~*(5)* "Final cut" means the last pit created in an opencut-mined area.

~~(5)~~*(6)* "Landowner" means the owner of land directly affected by an opencut-mining operation.

~~(5)~~*(7)* "Minerals" means bentonite, clay, scoria, phosphate rock, sand, or gravel.

~~(7)~~*(8)* "Opencut mining" means the mining of minerals by:

(a) removing the overburden lying upon natural deposits ~~thereof~~ *of minerals* and mining directly from the *exposed* natural deposits ~~thereby exposed~~;

(b) mining directly from natural deposits of ~~such~~ minerals; or

(c) removing overburden for the purpose of determining the location, quality, or quantity of any natural deposit of minerals.

~~(8)~~*(9)* "Operator" means a person engaged in or controlling an opencut-mining operation.

~~(9)~~*(10)* "Overburden" means all of the earth and other materials ~~which~~ *that* lie above a natural deposit of minerals. ~~"Spoil" is the overburden disturbed from its natural state in the process of opencut mining.~~

~~(10)~~*(11)* "Person" means:

(a) a natural person; ~~or~~

(b) a firm, association, partnership, cooperative, or corporation; ~~or any~~

(c) a department, agency, or instrumentality of the state or any governmental subdivision*;* or

(d) any other entity ~~whatever~~.

~~(11)~~*(12)* "Processing facilities" means all crushers, screens, and asphalt or concrete plants.

~~(12)~~*(13)* "Progress report" means a report showing the land ~~which~~ *that* the operator has affected by opencut mining during the year. The report ~~shall~~ *must* show the number of acres of affected land and all reclamation accomplished.

~~(12)~~*(14)* "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. The notice ~~shall~~ *must* be given once a week for 3 successive weeks.

~~(14)~~*(15)* "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

~~(15)~~*(16)* "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, *and* intonded mine areas~~,~~ and an explanation of proposed reclamation of the land, ~~with~~ *including* appropriate maps.

~~(16)~~*(17)* "Refuse" means all waste material directly connected with the opencut-mining operations.

~~(17)~~*(18)* "Soils materials" are those horizons ~~containing~~ *that contain* topsoil or other soils leached free of deleterious salts, ~~and~~ *that are* capable of sustaining plant growth, and *that are* recognized as such by standard authorities.

(19) "Spoil" means the overburden that is disturbed from its natural state in the process of opencut mining."

Section 403. Section 82-4-421, MCA, is amended to read:

"**82-4-421. Administration — delegation of functions.** The ~~board~~ *department* is the administrator of this part, and it has all the power necessary to implement and enforce it. ~~The board may delegate to the commissioner of state lands such powers, duties, and functions under this part as it considers necessary for the performance of its duties.~~"

Section 404. Section 82-4-422, MCA, is amended to read:

"**82-4-422. Powers, duties, and functions ~~of board~~.** *(1)* The ~~board~~ *department* has the following powers, duties, and functions to:

~~(1)~~*(a)* enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the ~~board~~ *department* that the requirements of the part or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the part;

~~(2) prepare and adopt rules pertaining to opencut mining to accomplish the purposes of this part;~~

~~(3)~~*(b)* conduct hearings and, for the purposes of conducting such hearings, administer oaths and affirmations, suhpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any hooks, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry;

~~(4) adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this part;~~

~~(5)~~*(c)* reclaim any affected land with respect to which a bond has been forfeited; and

~~(6)~~*(d)* make investigations or inspections which are considered necessary to insure compliance with any provision of this part.

(2) The board shall adopt rules:

(a) that pertain to opencut mining in order to accomplish the purposes of this part; and

(b) establishing uniform procedures for filing of necessary records, for the issuance of contracts, and for any other matters of administration not specifically enumerated in this part."

Section 405. Section 82-4-423, MCA, is amended to read:

"**82-4-423. Contracts for reclamation.** The ~~board~~ *department* is hereby authorized to enter into contracts with operators in the name of the state of Montana which will provide for the reclamation of lands on which opencut mining of minerals has been or is to be conducted. The ~~board~~ *department* is authorized to sue and be sued in the name of the state of Montana te enforce the provisions of any contract, and the ~~board~~ *department* shall bring such court actions and take such other stops and actions as may be necessary to enforce the provisions of such contracts."

Section 406. Section 82-4-424, MCA, is amended to read:

"**82-4-424. Receipt and expenditure of funds.** (1) The ~~board~~ *department* may receive any federal funds, stato funds, or any other funds for the reclamation of land affected by opencut mining. The ~~board~~ *department* may cause the reclamation work to be done by ~~its own~~ *its* employees, ~~or~~ by employees of other governmental agencies, *by* soil conservation districts, or through contracts with qualified persons.

(2) Any funds ~~or~~ *of* any public works programs available to the ~~board~~ *department* ~~shall~~ *must* be expended and used to reclaim and rehabilitate any lands that have been subject to opencut mining *and* that have not been reclaimed and rehabilitated in accordance with the standards of this part.

(3) There is an opencut mining and reclamation account within the state special revenue fund established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money that have been or will be paid

under the provisions of this part. The money in the account is available to the department ~~of state lands~~ through appropriation and must be spent by the department for the reclamation and revegetation of land, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by opencut mining operations and for administration of this part. Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 407. Section 82-4-425, MCA, is amended to read:

"**82-4-425. Inspection of opencut mining ~~by board~~.** The ~~board~~ *department* or its accredited representatives may enter upon lands subjected to opencut mining at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with."

Section 408. Section 82-4-426, MCA, is amended to read:

"**82-4-426. Reclamation of land on which bond forfeited.** In keeping with the provisions of this part, the ~~board~~ *department* may reclaim any affectod lands with respect to which a bond has been forfeited."

Section 409. Section 82-4-427, MCA, is amended to read:

"**82-4-427. Board hearing.** (1) A person who is aggrieved by a final decision of the ~~commissioner of state lands~~ *department* is entitled to a hearing ~~before the board~~.

(2) The Montana Administrative Procedure Act governs hearings before the ~~board~~ *department* and judicial review of decisions of the board under this part."

Section 410. Section 82-4-431, MCA, is amended to read:

"**82-4-431. Contract for reclamation required.** (1) ~~After March 16, 1973, an~~ *An* operator may not conduct opencut-mining operations that will result in tbe removal of 10,000 cubic yards or more of product or overburden or tbat will result in the disturbance of land that was previously reclaimed pursuant to this part until ~~he~~ *the operator* has entered into a contract with the ~~board~~ *department* for the reclamation of tbe land affected. An operator conducting a number of operations, each of which results in the removal of less tban 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) (a) Except as provided in or conditioned under subsections (2)(b) and (2)(c), an operator who holds a contract for reclamation may operato an opencut mine without first securing an additional contract or an amendment to the existing contract or bond if the mine meets the following criteria:

(i) the total amount of material and overburden removed does not exceed 1,000 cubic yards; and

(ii) the operator notifies the department ~~of state lands~~ prior to beginning ~~such~~ operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate

growing season, replaces all topsoil and reseeds or revegetates as required by the department.

(b) The department may refuse to allow the operator to operate an opencut mine under subsection (2)(a) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part or rules adopted under this part or provisions of a contract for reclamation.

(c) The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2)(a).

(3) Opencut mines described in subsection (2) may not be placed:

(a) in flowing, ephemeral, or intermittent streams;;

(b) in the bottom or head of a confined drainage;;

(c) in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1;; or

(d) in any area where mining would be restricted by other laws.

(4) Sand and gravel opencut mines must meet applicable local zoning regulations adopted under Title 76, chapter 2."

Section 411. Section 82-4-432, MCA, is amended te read:

"82-4-432. **Application for contract — contents — issuance — amendment.** (1) Applications for a contract must be made upon a form furnished by the ~~board~~ *department*. The form must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume which has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands so described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50;

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

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(d) the operator's plan of ~~his~~ operation and the method and manner of reclamation that will be used or followed.

(3) If, prior to applying for a contract, the operator notifies the ~~board~~ *department* of ~~his~~ *the* intention to submit a plan and requests the ~~board~~ *department* to examine the area to be mined, the ~~board~~ *department* shall cause the area to be examined and make recommendations te the operator regarding reclamation.

(4) Upon receipt of the application, bond or security, and fee due from the operator and upon agreement to the terms of the contract by the parties, the ~~board~~ *department* may issue a contract to the applicant which entitles ~~him~~ *the applicant* to continue in or engage in opencut mining on the land therein described.

(5) An operator desiring to have ~~his~~ *a* contract amended to cover additional contiguous or nearby land may file an amended application with the ~~board~~ *department*. Upon receipt of the amended application and such additional bond as may be required and upon agreement to the terms of the amendment by the parties, the ~~board~~ *department* may issue an amendment to the original contract covering the additional land described in the amended application without the payment of any additional fee.

(6) An operater may withdraw any land covered by contract, except affected land, by notifying the ~~board~~ *department* thereof, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part shall be reduced proportionately."

Section 412. Section 82-4-433, MCA, is amended to read:

"**82-4-433. Bond.** (1) A bond required to be filed in this part by the operator shall be in such form as the ~~board~~ *department* prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part and all rules of the board. The bond shall be sigued by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the stste of Montana, as surety. The bond shall be in an amount not to exceed the costs of restoration required by this part as determined by the ~~board~~ *department*. The amount of the bond may not be less than $200 or more than $1,000 per acre unless the department determines, in writing, that the cost of restoration of the land exceeds $1,000 per acre. Upon such a determination, the bond amount must be set by the ~~board~~ *department* at the cost of restoring the land.

(2) In lieu of the bond, the operator may deposit with the board cash, government securities, a letter of credit in a form acceptable to the department ~~of state lands~~, or a bond with property sureties in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the board, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety may be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the affected land has been reclaimed as provided under the contract and the reclamation has been approved and the bond or security has been released by the board. The bond or

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security shall cover only actual affected land and may be increased or reduced to cover only such acreages as remain unreclaimed.

(3) If the license of a surety upon a bond filed with the ~~board~~ *department* pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice thereof from the board, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the board may suspend the contract of the operator to conduct operations upon the land described in the contract until the substitution has been made.

(4) The ~~board~~ *department* shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, ~~he~~ *the operator* shall notify the ~~board~~ *department* thereof. If the board releases the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately."

Section 413. Section 82-4-434, MCA, is amended to read:

"**82-4-434. Reclamation plan part of contract — requirements.** The contract must meet the following requirements:

(1) The operator shall submit a reclamation plan to the ~~board~~ *department* before commencing any opencut mining and may not commence mining before the plan receives approval from the ~~board~~ *department*. The operator may request and receive a meeting with the ~~board~~ *department* prior to submission of the plan. If the ~~board~~ *department* does not notify the operator that it has approved or disapproved a plan within 30 days after the ~~board~~ *department* has received the plan, the ~~board~~ *department* is considered to have approved the plan. The ~~board~~ *department*, however, for sufficient cause, may extend its period of consideration for an additional 30 days if it notifies the operator prior to the end of the original 30-day period. The ~~board~~ *department* shall submit each reclamation plan or amendments to the reclamation plan to the landowner for ~~his~~ recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The ~~board~~ *department* may seek technical help from any state or federal agency. The board shall submit the plan immediately to the director of the university of Montana statewide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The ~~board~~ *department* may approve a reclamation plan only if the ~~board~~ *department* has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed, the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted in writing by the ~~board~~ *department*, it must become a part of the contract but is subject to annual review and modification by the ~~board~~ *department*.

(2) The ~~board~~ *department* may not approve any reclamation plan unless the plan provides:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, and habitat for wildlife, including food, cover, or wator, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of the impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, the matorial will be utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less;

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the ~~board~~ *department*;

(i) that all operations will be conducted to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriato protection;

(k) that except for rock faces, bench faces, and excavations used for water impoundments, each surface area of the mined premises that will be disturbed will be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock, and retardation of erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasible and will be completed within a specified length of time; and

(n) that surface water and ground water will be given appropriato protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the operation.

(3) If reclamation according to the plan has not been completed in the time specified, the ~~board~~ *department* after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, shall institute an

action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation, the operator may for good reason submit to the ~~board~~ *department* a new reclamation plan or amendments to the existing plan, including extensions of time.

(b) The ~~board~~ *department* may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the contract.

(5) The operator shall provide a performance bond or an alternative acceptable to the ~~board~~ *department* in an amount commensurato with the estimated cost of reclamation, but in no case may the bond be less than $200 per acre. The estimated cost of reclamation must be set forth in the reclamation plan.

(6) The contract, reclamation plan, and amendments accepted by the ~~board~~ *department* are a public record and are open to inspection.

(7) The contract is effective when signed by the ~~board~~ *department* and the operator and remains in force until terminated by mutual consent or by the ~~board~~ *department* upon 6 months' notice."

Section 414. Section 82-4-441, MCA, is amended to read:

"**82-4-441. Penalty — enforcement.** (1) A person who violates any of the provisions of this part, ~~or~~ rules adopted ~~thereunder~~ *under this part,* or provisions of a contract for reclamation*:*

(a) shall pay a civil penalty of not less than $100 or more than $1,000 for the violation*;* ~~and~~

(b) shall pay an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation~~,~~*;* and

(c) ~~the person~~ may be enjoined from continuing ~~such~~ *the* violation as provided in this section.

(2) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public healtb, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department ~~of state lands~~ shall notify the person or operator of the violation. The person or operator is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and the amount of penalty warranted, and order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, ~~he~~ *the person or operator* shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits ~~his~~ *the* right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or *in* the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a contract made pursuant to this part in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or *in* the district court of the county in which the opencut mine is locatod."

Section 415. Section 85-1-102, MCA, is amended to read:

"**85-1-102. Definitions.** Unless the contoxt requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

~~(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(3)~~*(2)* "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the wator users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

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~~(4)~~*(3)* "Cost of works" means:

(a) the cost of construction, including any rehabilitation or alteration of the project; the cost of all lands, property, rights, easements, and franchises acquired ~~which~~ *that* are ~~deemed~~ *considered* necessary for the construction;

(b) the cost of all water rights acquired or exercised by the department in connection with those works;

(c) the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction;

(d) the cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident te determining the feasibility or practicability of any project;

(e) administrative expense; and

(f) other expenses as may be necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

~~(5)~~*(4)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(6)~~*(5)* "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporatod companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises te be acquired.

~~(7)~~*(6)(a)* "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity not eligible for loans and grants under 85-1-605.

(b) ~~but~~ *The term* does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency ~~thereof~~ *of the United States*, or any other governmental entity.

~~(8)~~*(7)* "Project" means any one of the works defined in this section or any combination of works ~~which~~ *that* are physically connected or jointly managed and operated as a single unit.

~~(9)~~*(8)* "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

~~(10)~~*(9)* "Renewable resource grant and loan program state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the water development program as set forth in 85-1-604.

~~(11)~~*(10)* "Renewable resource loan debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury, to be used as provided in 85-1-619.

~~(12)~~*(11)* "Renewable resource loan proceeds account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to:

(a) finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, private persons, and any other eligible recipients; and

(b) ~~to~~ purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

~~(13)~~*(12)* "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation of rivers and streams, and providing greater local and state control of Montana water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

~~(14)~~*(13)* "Water development project" means a project as defined in subsection ~~(8)~~ *(7)*, except that water development projects:

(a) are not limited to projects owned or operated by the department; and

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

~~(15)~~*(14)(a)* "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works ~~and~~.

(b) The term includes:

(i) all means of conserving and distributing water, including, without limiting the generality of ~~the foregoing~~ *those means*, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems; and

(ii) ~~includes~~ all works for the conservation, development, storage, distribution, and utilization of water, including without limiting the generality of ~~the foregoing~~ *those works*, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial, or other uses and for fire protection."

Section 416. Section 85-1-201, MCA, is amended to read:

"85-1-201. Rules ~~of board~~. The ~~board~~ *department* may adopt from time to time, as necessary or expedient, suitable rules for the administration of this chapter."

Section 417. Section 85-1-203, MCA, is amended to read:

"85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may conduct studies; adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies; perform research or employ other competent agencies to perform research on a contract basis; and hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and~~, with the approval of the board,~~ adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, and utilization of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(3) The department shall submit to the water policy committee established in 85-2-105 and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(4) The legislature, by joint resolution, may revise the state water plan.

(5) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(6) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(7) In developing and revising the state water plan as provided in this section, the department shall consult with the water policy committee established in 85-2-105 and solicit the advice of the committee in carrying out its duties under this section."

Section 418. Section 85-1-204, MCA, is amended to read:

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"85-1-204. Department powers over state waters. (1) The department, ~~with the approval of the board,~~ may sell, lease, and otherwise dispose of all waters ~~which~~ *that* may be impounded under this chapter, and the water may be sold for the purpose of irrigation, development of power, watering of stock, or any other purpose. The department, ~~with the approval of the board,~~ may also lease water under the state water leasing program established under the provisions of 85-2-141. To the extent that it may be necessary to carry out this chapter and subject to a compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take such steps as may be necessary to appropriate and conserve the ~~same~~ *water* for the use of the people. The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the waters of this state ~~which~~ *that* it may acquire, ~~with the approval of the board,~~ by condemnation, purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of those waters, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction ~~which~~ *that* purport to adjudicate the waters of a stream or its tributaries, and a fair, reasonable, and equitable reconciliation ~~shall~~ *must* be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The department, at its discretion, may hold hearings relating to the rights of respective claimants after first giving ~~such~~ notice ~~as~~ *that* it considers appropriate and make findings of the date and quantity of appropriation and use of all claimants ~~which~~ *that* the department will recognize and observe in diverting the waters ~~which~~ *that* it owns. The department may police and distribute to the owner of the recognized appropriation the waters due ~~him~~ *to the owner* upon request and under terms agreed upon.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the waters owned or administered under agreement with respective owners. The owner of a prior right contending that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the waters of a stream, it may divert or authorize the diversion at any point on the stream or any portion ~~thereof~~ *of the stream* when it is done without injury to a prior appropriator."

Section 419. Section 85-1-206, MCA, is amended to read:

"85-1-206. Construction of works by department. (1) ~~Subject to the approval of the board, the~~ *The* department may construct works, the cost of the

construction to be paid wholly by means of or with the proceeds of revenue bonds ~~hereinafter authorized~~ or of a grant or loan to aid in financing the construction from the United States or any instrumentality or agency ~~thereof~~ *of the United States* and other funds provided for the construction. Before constructing a project, the department shall estimate the cost of the project, the cost of operation and maintenance, and the revenues to be derived ~~therefrom~~ *from the project*. A project may not be constructed unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of operation and maintenance and the principal and interest of loans or revenue bonds ~~which~~ *that* may be issued for the cost of the project~~; however~~. *However*, in connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of those bonds or of the trust indenture, resolution, or other security ~~therefor~~.

(2) ~~Should~~ *If* the bid of the lowest responsible bidder on any capital improvement associated with public works ~~exceed~~ *exceeds* the department estimates of the cost of the improvements by more than 5%, the department shall obtain approval from the water user association, whenever an association is involved, before the bid is accepted~~; however~~. *However*, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require ~~such~~ approval.

(3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation and use of water through the construction and operation of projects designed for those purposes. The projects to be finally constructed ~~shall~~ *must* qualify as parts of the statewide program and ~~shall~~ *must* be approved by the ~~board~~ *department* upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation and maintenance and the principal and interest of loans and revenue bonds issued to finance the construction. The failure of the ~~board~~ *department* to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security ~~therefor~~."

Section 420. Section 85-1-209, MCA, is amended to read:

"**85-1-209. Acquisition of property by department.** (1) The department~~, subject to the approval of the board under 85-1-202,~~ may acquire by purchase or exchange, upon terms and conditions and in a manner it considers proper, and acquire by condemnation, in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises, and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned ~~shall~~ *must* be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court having jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

(2) In *a* condemnation proceeding brought under the powers of eminent domain for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be acquired, as disclosed by the public records, ~~shall~~ *must* be made parties~~,~~ and the court in the action shall partition and distribute the damages awarded, if any, among those persons

as their rights appear. If there is controversy between them, the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

(3) The taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in condemnation.

(4) If water rights are acquired or exercised by the department in connection with two or more works or projects, the department by order shall apportion or allocate to each of the works or projects ~~such~~ *the* part of those water rights as it may determine. Upon the adoption of the order, those water rights ~~shall~~ *must* be considered a part of each of the works or projects to the extent that the water rights have been so apportioned or allocated ~~thereto~~ *to the works or projects* respectively."

Section 421. Section 85-1-210, MCA, is amended to read:

"**85-1-210. Disposal of property by department.** In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the department~~, with the approval of the board,~~ may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department~~, with the approval of the board,~~ may sell or otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the construction or acquisition ~~thereof~~ *of the project*, if any, and of all interest ~~thereon~~ *on the bonds* and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. The department shall make a determination of the market value of the water project prior to its sale or other disposition. The department's determination of market value shall consider all liens, encumbrances, and other limitations on the water project."

Section 422. Section 85-1-211, MCA, is amended to read:

"**85-1-211. Management of property — water contracts.** (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds that will be sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs to the works, and that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of those rates, prices, or charges as established by a contract entered into under this chapter except as provided by the contract.

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(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of property or facilities must provide that, in the event of a failure or default in the payment of money specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit a remedy provided by the contract or by law for the recovery of money due or that may become due under the contract.

(5) ~~Subject to the approval of the board under 85-1-202, the~~ *The* department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights-of-way, easements, properties, or interests or lease or rent the ~~same~~ *property* or otherwise take and receive the income or profit and revenue ~~therefrom~~ *from property* without regard to other laws providing for the disposition of state property. Prior to the department's sale, transfer, or other disposition, a determination must be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value must consider all liens, encumbrances, and other limitations on the project properties or interests.

(6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal projects to be disposed of include the:

(i) Columbus canal;

(ii) Delphia-Melstone canals;

(iii) Hysham pumping canals;

(iv) Lewistown ditch;

(v) Livingston ditch;

(vi) Florence canal;

(vii) Paradise canal;

(viii) Park Branch canal;

(ix) Sidney pumping canals;

(x) South Side canal;

(xi) Vigilante canal; and

(xii) West Bench canal.

(b) The department may dispose of a canal project by sale, transfer to a water users' association, abandonment, or other legal conveyance. If there is an existing water users' association on the canal project, the provisions of 85-6-109(5) must be complied with in the disposal of the canal project. The department shall give preference to existing water users' associations operating and maintaining the canal project.

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(c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995, the water users of the canal project are responsible for the department's administrative costs and the actual costs of operation and maintenance of the canal project.

(7) An employee or agent of the department authorized by the director may enter upon any land to carry out tbe purposes of this section, including but not limited to entry to make an inspection tbe department considers necessary of the canal project, entry to salvage or remove project property, and entry to make physical alterations to canal project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

Section 423. Section 85-1-301, MCA, is amended to read:

"**85-1-301. Water conservation revenue bonds.** (1) The ~~board is hereby authorized to~~ *department may* provide, by resolution, at one time or from time to time, for the issuance of water conservation revenue bonds of the state for the purpose of paying the cost, ~~as hereinabove defined,~~ of any one or more ~~such~~ public works~~, the~~. *The* principal and interest of ~~which~~ *the* bonds ~~shall be~~ *are* payable solely from the special fund ~~herein~~ provided for ~~such~~ payment. ~~Such~~ *The* bonds ~~shall~~ *must* mature at ~~such~~ *the* time or times, not more than 40 years from their date or dates, ~~as~~ *that* may be fixed by ~~such~~ *the* resolution but may be made redeemable before maturity at the option of the state, to be exercised by the ~~board~~ *department*, at ~~such~~ *the* price or prices and under ~~such~~ *the* terms and conditions ~~as~~ *that* may be fixed by the ~~board~~ *department* prior to the issuance of the bonds. Tbe ~~board~~ *department* shall determine the rate of interest ~~such~~ *the* bonds shall bear~~;~~, the time or times of payment of ~~such~~ interest~~;~~, the form of the bonds and tbe interest coupons to be attached ~~thereto~~ *to the bonds*~~;~~, and the manner of executing the bonds and coupons and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest ~~thereof~~, which may be at any bank or trust company within or ~~without~~ *outside of* the state.

(2) Provisions may be made for tbe registration of any of the bonds in the name of the owner as to principal alone or as to both principal and interest. The bonds authorized under the provisions of this section and 85-1-303 may he issued and sold from time to time and in ~~such~~ amounts ~~as~~ *that* may be determined by the ~~board~~ *department*, and the ~~board~~ *department* may sell the bonds in ~~such~~ *a* manner and for ~~such~~ *a* price as it may determine to be for the best interests of the state. The proceeds of ~~such~~ *the* bonds ~~shall~~ *must* be used solely for the payment of the cost of the works and ~~shall~~ *must* be checked out in ~~such~~ *the* manner and under ~~such~~ *the* restrictions, if any, ~~as~~ *that* the ~~board~~ *department* may provide.

(3) Each resolution providing for the issuance of bonds ~~shall~~ *must* set forth the project or projects for which the bonds are te be issued, and the bonds autborized by each ~~such~~ resolution ~~shall~~ constitute a separato series. The bonds of each series ~~shall~~ *must* be identified by a series letter or letters and may be sold and delivered at one time or from time to time."

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Section 424. Section 85-1-303, MCA, is amended to read:

"**85-1-303. Procedure in case of insufficient bond proceeds.** If the proceeds of the bonds, by error of calculation or otherwise, ~~shall be~~ *are* less than the cost of the works, additional bonds may in like manner be issued to provide the amount of ~~such~~ *the* deficit and, unless otherwise provided in the trust indenture ~~hereinafter mentioned~~ or in the resolution authorizing the bonds, ~~shall be deemed~~ *are considered* to be of the same issue and ~~shall be~~ *are* entitled to payment from the same fund, without preference or priority of the bonds first issued for the same works. If the proceeds of bonds issued for ~~any such~~ *the* works ~~shall~~ exceed the cost ~~thereof~~ *of the works*, the surplus ~~shall~~ *must* be paid into the fund ~~hereinafter~~ provided for the payment of principal and interest of ~~such~~ *the* bonds. Prior to the preparation of definitive bonds, the ~~board~~ *department* may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds when ~~such~~ *the* bonds have been executed and are available for delivery. ~~Such~~ *The* bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things ~~which~~ *that* are specified and required by this chapter or by the constitution of the state."

Section 425. Section 85-1-305, MCA, is amended to read:

"**85-1-305. Use of trust indenture to secure bonds.** In the discretion of the ~~board~~ *department*, a series of the bonds may be secured by a trust indenture by and between the ~~board~~ *department* and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart ~~thereof~~ ~~shall~~ *must* be filed in the office of the secretary of state ~~of Montana~~. ~~The~~ filing of a trust indenture or an executed counterpart ~~thereof~~ in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary."

Section 426. Section 85-1-306, MCA, is amended to read:

"**85-1-306. Provisions for protecting bondholders.** Either the resolution providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state~~, the board,~~ and the department in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works and the custody, safeguarding, and application of all ~~moneys~~ *money*. It may provide that the works ~~shall~~ *must* be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the department and satisfactory to the original purchasers of the bonds issued ~~therefor~~ *for the works, or to* their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depositary of the proceeds of the bonds or receipts and ~~revenues~~ *revenue* of the works or other ~~moneys~~ *money* pertaining ~~thereto shall~~ *to the works must* be satisfactory to the purchasers, successors, assigns, or nominees. The resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures

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of corporations. ~~No~~ *The* enumeration of particular powers ~~hereby~~ granted ~~shall~~ *by this section may not* be construed to impair any general grant of power ~~herein~~ contained *in this chapter*. All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the works affected by the indenture."

Section 427. Section 85-1-307, MCA, is amended to read:

"**85-1-307. Provisions to secure payment of bonds.** In connection with the issuance of the bonds for the purpose of paying in whole (or as supplemented by a grant from the United States or any instrumentality or agency ~~thereof~~ *of the United States*) the cost of the works or project or in order to secure the payment of the bonds, the ~~board~~ *department* may:

(1) pledge all or any part of the income, profit, and revenue of the works or project and all ~~moneys~~ *money* received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project and covenant to pay the income, profit, and revenue into the appropriate water fund and debt service fund;

(2) covenant against pledging all or any part of the income, profit, and revenue of the works or project and all ~~moneys~~ *money* received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project;

(3) covenant against mortgaging all or any part of the works or project or against permitting or suffering any lien ~~thereon~~ *on the works or project*;

(4) covenant to fix and establish ~~such~~ prices, rates, and charges for water and other services made available in connection with the works or project ~~so as~~ to provide at all times funds ~~which~~ *that* will be sufficient to:

(a) pay all costs of operation and maintenance of the works or project, together with necessary repairs ~~thereto~~ *to the works or project*;

(b) meet and pay the principal and interest of all the bonds as they severally become due and payable; and

(c) create ~~such~~ reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation and maintenance of the works or project as the ~~board~~ *department* determines;

(5) make ~~such~~ further covenants as to ~~such~~ *the* prices, rates, and charges as the ~~board~~ *department* determines;

(6) create special funds, in addition to those required by this chapter, for ~~moneys~~ *money* reserved for principal and interest on bonds or for the meeting of contingencies in the operation and maintenance of the works or project and determine the manner in which and the depositary or depositaries in which those funds ~~shall~~ *must* be deposited and the manner in which they ~~shall~~ *must* be secured~~, and it~~. *It* is lawful for any bank or trust company incorporated under the laws of the state to act as that depositary and to furnish ~~such~~ indemnifying bonds or to pledge ~~such~~ securities as required by the ~~board~~ *department*;

(7) provide for the replacement of lost, destroyed, or mutilated bonds;

(8) covenant against extending the time for the payment of the principal or interest on any of the bonds, directly or indirectly, by any means or in any manner;

(9) prescribe and covenant as to the events of default and terms and conditions upon which any or all of the bonds ~~shall~~ become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;

(10) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(11) vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds or to foreclose any trust indenture in relation ~~thereto~~ *to the bonds*, provide for the powers and duties of the trustee or trustees, limit the liabilities ~~thereof~~ *of trustees*, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce the covenant or exercise the right of foreclosure;

(12) make ~~such~~ covenants and do any and all ~~such~~ acts and things as may be necessary or convenient or desirable in order to secure the bonds or, in the absolute discretion of the ~~board~~ *department*, to make the bonds more marketable, notwithstanding that the covenants, acts, or things may not be enumerated or expressly authorized ~~herein~~ *in this chapter*;

(13) do all things in the issuance of the bonds and provide for their security not inconsistent with the constitution of Montana."

Section 428. Section 85-1-308, MCA, is amended to read:

"**85-1-308. Provisions for conveyance in trust or mortgage.** In the discretion of the ~~board~~ *department*, any trust indenture executed by it as security for a series of ~~such~~ bonds may contain provisions for conveying in trust or mortgaging the works, the project, or any part of ~~such~~ *the* works or project, including all water rights ~~which~~ *that* are a part ~~thereof~~ *of the works or project*, constructed with the proceeds of ~~such~~ *the* bonds or with ~~such~~ *the* proceeds as supplemented by the proceeds of a grant to aid in financing ~~such~~ *the* construction from the United States ~~of America~~ or any instrumentality or agency ~~thereof~~ *of the United States*. The trust indenture may be in ~~such~~ *a* form and with ~~such~~ rights, remedies, and provisions as is customary in trust indentures, deeds of trust, and mortgages securing bonds ~~and/or~~ *or* debentures of corporations. Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or project shall obtain title to ~~such~~ *the* works or project free from any trust or other obligation of the ~~board~~ *department*, the state of Montana, or the public ~~thereof~~ as to its operation, maintenance, use, or disposition except the obligation to use all water impounded in ~~such~~ *the* works or project for sale, rental, distribution, or other beneficial use."

Section 429. Section 85-1-309, MCA, is amended to read:

"**85-1-309. Actions by trustee and bondholders.** (1) Any holder of any bonds issued under 85-1-301 or 85-1-303 or any of the coupons attached ~~thereto~~

to the bonds and the trustee, if any, except to the extent the rights ~~herein given~~ may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may:

(a) either at law or in equity, by suit, action, mandamus, or other proceeding, including proceedings for the appointment of a receiver, protect and enforce any and all rights granted ~~hereunder~~ *under this chapter* or under the resolution or trust indenture; and

(b) enforce and compel performance of all duties required by this chapter or by the resolution or trust indenture to be performed by the ~~board or the~~ department.

(2) While any bonds issued by the ~~board~~ *department* remain outstanding, the powers, duties, or existence of the ~~board~~ *department* or any official or agency of the state ~~shall~~ *may* not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of the bonds."

Section 430. Section 85-1-310, MCA, is amended to read:

"**85-1-310. Refunding revenue bonds.** The ~~board~~ *department* may issue refunding revenue bonds under the provisions of Title 7, chapter 7, part 46. For this purpose, in Title 7, chapter 7, part 46, references to "governing body" means the ~~"board"~~ *"department"* and references to "municipality" means the ~~"board"~~ *"department"*."

Section 431. Section 85-1-321, MCA, is amended to read:

"**85-1-321. Funds in general.** The ~~board~~ *department* shall create a fund to be known as the "administration fund" and shall also create three separate funds in respect of the bonds of each series, one fund to be known as the "construction fund, series....", another fund to be known as the "water fund, series....", and another fund to be known as the "debt service fund, series....", each fund to be identified by the same series letter or letters as the bonds of the series. The ~~moneys~~ *money* in each fund ~~shall~~ *must* be deposited in ~~such~~ *a* depository or depositories and secured in ~~such~~ *the* manner ~~as~~ determined by the ~~board~~ *department*. It is lawful for any bank or trust company incorporated under the laws of this state to act as the depository and to furnish ~~such~~ indemnifying bonds or to pledge ~~such~~ securities as may be required by the ~~board~~ *department*. A separate account ~~shall~~ *must* be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project ~~shall~~ *must* be charged by the department in ~~such~~ proportions as it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in respect of which the expenditures were incurred."

Section 432. Section 85-1-323, MCA, is amended to read:

"**85-1-323. Debt service funds.** (1) The ~~board~~ *department* shall provide, in the proceedings authorizing the issuance of each series of bonds or in the trust indenture securing the ~~same~~ *bonds*, for the paying into the appropriate debt service fund at stated intervals all ~~moneys~~ *money* then remaining in the water fund after paying all costs of operation, maintenance, and repairs of the works. All ~~moneys~~ *money* in each debt service fund ~~shall~~ *must* be pledged for the payment of and used only for the purpose of paying:

(a) the interest upon the bonds as ~~such~~ interest ~~shall fall~~ *is* due;

(b) the necessary fiscal agency charges for paying bonds and interest;

(c) the principal of the bonds as ~~they fall~~ due; and

(d) any premiums upon bonds retired by call or purchase as ~~herein~~ provided *in this chapter.*

(2) *(a)* Prior to the issuance of the bonds of each series~~,~~*:*

(i) the ~~board~~ *department* may provide by resolution or by ~~such~~ trust indenture for using the debt service fund or any part ~~thereof~~ *of the fund* in the purchase of any of the outstanding bonds payable ~~therefrom~~ *from the fund* at the market price ~~thereof~~ *of the bonds* but not exceeding the price, if any, at which the ~~same shall~~ *bonds,* at the next interest date, ~~be~~ *are* payable or redeemable~~,~~*;*

(ii) ~~and~~ all bonds redeemed or purchased ~~shall forthwith~~ *must* be canceled, and ~~no~~ bonds ~~shall~~ *may not* be issued in place ~~thereof~~ *of the canceled bonds.*

(b) The ~~moneys~~ *money* in each debt service fund, less ~~such~~ *the* reserve ~~as~~ *that* may be provided for in the resolution authorizing the bonds or in the trust indenture for the payment of interest ~~and/or~~ *and* principal, if not used within a reasonable time for the purchase of bonds for cancellation as provided ~~above~~ *in this section*, ~~shall~~ *must* be applied to the redemption of bonds then subject to redemption at the redemption price then applicable."

Section 433. Section 85-1-502, MCA, is amended to read:

"**85-1-502. Notice of availability of lease sites.** (1) If after completion of the feasibility study of a particular project the ~~board~~ *department* determines that hydroelectric power generation at the project would be feasible and in the best interest of the people of the state of Montana, it ~~shall publish~~ notice and make the site available for lease for the purpose of small-scale hydroelectric power generation, pursuant to 85-1-502 through 85-1-508, unless ~~such~~ *that* action would result in the forfeiture of any necessary federal license, permit, or exemption, in which case the department may proceed under 85-1-509.

(2) In issuing a notice of availability of a site for lease under this section, the ~~board~~ *department* shall include in the notice any reasonable conditions it may find necessary in order to protect the interests of the state."

Section 434. Section 85-1-503, MCA, is amended to read:

"**85-1-503. Receipt of applications.** (1) Applications for lease may be submitted by any person qualified to do business in Montana.

(2) The ~~board~~ *department* shall consider only applications received within 180 days after the final publication of the notice.

(3) Applications must include a statement of the capability of the applicant to achieve the annual production output estimated by the department, the estimated time to make the project operational, the bid amount of the royalty, and any other information that the ~~board~~ *department* requests."

Section 435. Section 85-1-504, MCA, is amended to read:

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"85-1-504. **Determinations by ~~the board~~ *department*.** (1) Within a reasonable time following the conclusion of the lease application period, the ~~board~~ *department* shall hold a hearing to examine all applications that have been received for the lease of the project.

(2) Within 180 days following the conclusion of the lease application period, the ~~board must~~ *department shall* reject any or all applications or ~~must~~ *shall* award a lease to the party whose offer, considered in its totality, is the most advantageous to the state.

(3) The decision must include a determination that the potential developer will provide an adequate royalty payment, is capable of carrying out the proposed development, can provide efficient and reliable service, and intends in good faith without unnecessary delay to proceed with the development.

(4) If all lease applications are rejected, the department may negotiate with all applicants on an equal basis in an effort to arrive at an acceptable application."

Section 436. Section 85-1-505, MCA, is amended to read:

"85-1-505. **Lease conditions.** (1) The lessee ~~must~~ *shall* pay a royalty to the state as required in the lease.

(2) The ~~board~~ *department* may authorize provisions in the lease that offer economic incentives for rapid development of the project or impose economic penalties for delays in development, which may include cancellation of the lease."

Section 437. Section 85-1-508, MCA, is amended to read:

"85-1-508. **Duties of the department.** The department has primary responsibility for supervision of any ~~such~~ lease. ~~Any disputes that arise between the department and the lessee may be appealed to the board, upon written petition of either party.~~"

Section 438. Section 85-1-509, MCA, is amended to read:

"85-1-509. **Power generation by department authorized.** (1) If no lease applications are received under 85-1-503 or if the ~~board~~ *department* rejects all lease applications under 85-1-504, the department may proceed to obtain any necessary license, permit, or exemption under federal law and commence construction and operation of a small-scale hydroelectric generation facility pursuant to the provisions of this chapter. Construction may not commence until ~~such time as~~ the department has clear and convincing evidence that construction is economically feasible and is the most practical means by which the facility could be developed.

(2) Financing of construction and operation of the facility ~~shall~~ *must* be accomplished in a manner determined by the ~~board~~ *department* to be most feasible.

(3) The department may not sell power generated at a facility except to a public utility, a rural electric cooperative, or a federal power-marketing agency organized in Montana and selling power to Montana custemers."

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Section 439. Section 85-1-514, MCA, is amended to read:

"**85-1-514. Power generation negotiation process.** (1) A person with federal authorization or, if authorization is not required, a person planning to construct a small-scale hydroelectric generation facility at a stato-owned project shall submit an application to the department for hydroelectric development at the state-owned project site.

(2) Upon receipt of a written application under subsection (1), the department shall make an investigation and prepare a report on the value of the power site, the plans of development submitted by the applicant, and any other matters relating to the proposed development that the department considers necessary for the proper development of hydroelectric generation at the state-owned project.

(3) Upon completion of the report, the department may negotiate with the applicant for the acquisition of the necessary interest in the state-owned project to effectively allow the applicant to operate a hydroelectric facility. The terms, conditions, and compensation agreed to must include but not be limited to the full market value of the interest disposed of by the department. Full market value must be determined by the department in the report completed under subsection (2).

(4) An applicant under subsection (1) shall pay to the department all costs incurred by the department in carrying out its duties under this section. The department and the applicant shall contract for the provision of services and payment of fees required by this section prior to accepting an application under subsection (2).

(5) Nothing in this section requires the department to construct, rehabilitate, reconstruct, operate, or otherwise maintain the state-owned project to accommodate the hydroelectric facility except as negotiated under subsection (3).

~~(6) Department actions under this section are subject to prior approval of the board as provided in 85-1-202.~~"

Section 440. Section 85-2-102, MCA, is amended to read:

"**85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means te:

(a) divert, impound, or withdraw (including by steck for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

~~(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(4)~~*(3)* "Certificate" means a certificate of water right issued by the department.

~~(5)~~*(4)* "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

~~(6)~~*(5)* "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

~~(7)~~*(6)* "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(6)~~*(7)* "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(9)~~*(8)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(10)~~*(9)* "Existing right" means a right to the use of water ~~which~~ *that* would be protected under the law as it existed prior to July 1, 1973.

~~(11)~~*(10)* "Ground water" means any water that is beneath the ground surface.

~~(12)~~*(11)* "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(13)~~*(12)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(14)~~*(13)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

~~(15)~~*(14)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water ~~but not~~. *The term does not mean* a private corporation, association, or group.

~~(16)~~*(15)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(17)~~*(16)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(18)~~*(17)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(19)~~*(18)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(20)~~*(19)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(21)~~*(20)* "Water division" means a drainage basin as defined in 3-7-102.

~~(22)~~*(21)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(23)~~*(22)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(24)~~*(23)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including steck water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued hy the department under 85-2-141.

~~(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(4)~~*(3)* "Certificate" means a certificate of water right issued by the department.

~~(5)~~*(4)* "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

~~(6)~~*(5)* "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(7)~~*(6)* "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(8)~~*(7)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(9)~~*(8)* "Existing right" means a right to the use of water ~~which~~ *that* would be protected under the law as it existed prior to July 1, 1973.

~~(10)~~*(9)* "Ground water" means any water that is beneath the ground surface.

~~(11)~~*(10)* "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(12)~~*(11)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(12)~~*(12)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United Statos or any agency thereof, or any other entity.

~~(14)~~*(13)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water ~~but not~~ *The term does not mean* a private corporation, association, or group.

~~(15)~~*(14)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(15)~~*(15)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(17)~~*(16)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(18)~~*(17)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(19)~~*(18)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(20)~~*(19)* "Water division" means a drainage basin as defined in 3-7-102.

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~~(21)~~*(20)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(22)~~*(21)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(23)~~*(22)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 441. Section 85-2-105, MCA, is amended to read:

"**85-2-105. Water policy committee.** (1) There is a permanent water policy committee of the legislature. The committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The committee shall elect its ~~chairman~~ *presiding officer* and ~~vice-chairman~~ *a vice presiding officer*. The committee shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the committee shall:

(a) advise the legislature on the adequacy of the state's water policy and ~~of~~ *on* important state, regional, national, and international developments ~~which~~ *that* affect Montana's water resources;

(b) oversee the policies and activities of the department ~~of natural resources and conservation~~, other state executive agencies, and other state institutions~~,~~ as ~~they~~ *those policies and activities* affect the water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the committee shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature as provided in 5-11-210.

(4) The environmental quality council shall provide staff assistance to the committee. The committee may contract with experts and consultants, in addition to receiving assistance from the environmental quality council, in carrying out its duties under this section."

Section 442. Section 85-2-112, MCA, is amended to read:

"85-2-112. **Department duties.** The department shall:

(1) enforce and administer this chapter and rules adopted ~~by the board~~ under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) in cooperation with other state agencies, institutions, colleges, and universities, establish and maintain a centralized and efficient water resources data management system sufficient to make available and readily accessible, in a usable format, to state agencies and other interested persons, information on the state's water resources, out-of-state water resources that affect the state, existing and potential uses, and existing and potential demand. All other state agencies, institutions, and colleges and universities shall cooperate with the department in the development and maintenance of this system.

(5) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(6) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with a district court under this chapter;

(7) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319."

Section 443. Section 85-2-113, MCA, is amended to read:

"85-2-113. **~~Board~~ *Department* powers and duties.** (1) The ~~board~~ *department* may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and *for* all change approvals. There ~~shall~~ *may not* be ~~no~~ fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The ~~board~~ *department* may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

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(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the ~~board~~ *department* may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306(1);

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The ~~board~~ *department* shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The ~~board~~ *department* shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that ~~where~~ *when* the ~~board~~ *department* specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recoguized methods of flow measurement, as determined by the ~~board~~ *department*, are in compliance with subsection (4)."

Section 444. Section 85-2-122, MCA, is amended to read:

"**85-2-122. Penalties.** (1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the ~~board~~ *department* is guilty of a misdemeanor.

(2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the ~~board~~ *department* is subject to a civil penalty not to exceed $1,000 per violation. Each day of violation constitutes a separate violation.

(3) Fines collected by the department or a district court under subsection (2) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114."

Section 445. Section 85-2-141, MCA, is amended to read:

"**85-2-141. Water leasing program.** (1) There is a water leasing program administered by the department on behalf of the state of Montana. ~~Water leases issued under this program must be approved by the board.~~

(2) The department may acquire rights to water needed for leasing under this program through appropriation of water in its own name or by agreement with or purchase from another holder of water rights.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

(a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

(b) Fort Peck ~~Reservoir~~ *reservoir*, if an agreement between the department and the federal government concerning the acquisition of water and the sharing of ~~revenues~~ *revenue* with the state is in effect;

(c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail ~~Reservoirs~~ *reservoir* if and ~~for so~~ *as* long as there is an agreement between the department and the federal government concerning the acquisition of water and sharing of ~~revenues~~ *revenue* with the state from one or more of these reservoirs; and

(d) any other existing or future federal reservoir:

(i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered; and

(ii) for which and for so long as there is an agreement between the department and the federal government concerning the acquisition of water and the sharing of ~~revenues~~ *revenue* with the state.

(4) Water may be leased for any beneficial use. The amount of water that can be leased under this program for all beneficial uses ~~shall~~ *may* not exceed 50,000 acre-feet.

(5) The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if the department again determines the desirability of leasing by applying the considerations ~~set forth~~ in subsection (7). In making ~~such~~ a redetermination, the department may require the completion of an environmental impact statement in accordance with subsection (6).

(6) The department shall require the completion of an environmental impact statement under the provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more of water and for any other application for which an environmental impact statement is required by law. The department shall require the completion of an environmental impaet statement whenever the cumulative effect of more than one application for a lease would constitute a probable significant environmental impact.

(7) Upon application by ~~any~~ *a* person to lease water, the department shall make an initial determination of whether it is desirable for the department to lease water to the applicant. ~~Such a~~ *The* determination of desirability ~~shall~~ *must* be made solely on the following considerations:

(a) the content of the environmental impact statement, if required;

(b) whether there is sufficient water available under the water leasing program; and

(c) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

(8) The department shall for any agreement require commercially reasonable terms and conditions, which may include the requirement that up to 25% of the water to be leased be made available to a potential user for any beneficial use upon payment by ~~such~~ *the* user of the costs of tapping into and removing water from the applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the water.

(9) The lease of water or the use of water under a lease does not constitute a permit, as provided in 85-2-102, and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

(10) For purposes of the water leasing program established in this section, it is the intent of the legislature that the state act as a proprietor."

Section 446. Section 85-2-304, MCA, is amended to read:

"**85-2-304. Appropriation by state board of land commissioners.** The state board of land commissioners may, through the department ~~of natural resources and conservation~~, at its discretion, appropriate any available waters for use upon state lands and authorize the construction of irrigation works for these lands. The appropriation ~~shall~~ *must* be made in the same way and under the same laws as those governing the appropriation of water by individuals."

Section 447. Section 85-2-306, MCA, is amended to read:

"**85-2-306. Exceptions to permit requirements.** (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, *with* the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and

complete notice has been filed with the department. The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1), with the department te perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificato of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to ~~such~~ terms, conditions, restrictions, or limitations *that* it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the ~~board~~ *department* under 85-2-113."

Section 448. Section 85-2-311, MCA, is amended to read:

"**85-2-311. Criteria for issuance of permit.** (1) Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) there are unappropriated waters in the source of supply at the proposed point of diversion:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount *that* the applicant seeks to appropriate; and

(iii) during the period in which the applicant seeks to appropriate, *in* the amount requested *and that* is reasonably available;

(h) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonahly with other planned uses or developments for which a permit has been issued or for which water has heen reserved;

(f) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use;

(g) the water quality of a prior appropriator will not be adversely affected;

(h) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(i) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(g) through (1)(i) have been met only if a valid objection is filed. A valid objection must contain substantial credible information estahlishing to the satisfaction of the department that the criteria in subsection (1)(g), (1)(h), or (1)(i), as applicable, may not be met. For the criteria set forth in subsection (1)(h), only the department of ~~health and~~ environmental ~~sciences~~ *quality* or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed appropriation is a reasonable use. A finding must he hased on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

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(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity te maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental te the public welfare of the citizens of Montana.

(c) In determining wbether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whetber the water that is the subject of the application could feasibly be transported to alleviate water shortages witbin the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to witbdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

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(5) To meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. ~~soil~~ *natural resources* conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attemptod appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section."

Section 449. Section 85-2-316, MCA, is amended to read:

"**85-2-316. Reservation of waters.** (1) The state or any political subdivision or agency ~~thereof~~ *of the state* or the United States or any agency ~~thereof~~ *of the United States* may apply to the ~~board~~ *department* to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time ~~as~~ *that* the ~~board~~ *department* designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A water reservation may be made for an existing or future heneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

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(3) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided *for* in 85-2-309, the ~~board~~ *department* shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonablo proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The ~~board~~ *department* may not adopt an order reserving water unless the applicant establishes to the satisfaction of the ~~board~~ *department* by a preponderance of evidence:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the ~~board~~ *department* may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental te the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the ~~board~~ *department* shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana:

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

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(5) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the ~~board~~ *department* by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The ~~board~~ *department* shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of wator that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the ~~board~~ *department*.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may~~, with the approval of the board,~~ issue the permit subject to terms and conditions *that* it considers necessary for the protection of the objectives of the reservation.

(8) (a) ~~Any~~ *A* person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of ~~such~~ *the* applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time *that* the request was made. The ~~board~~ *department* shall extend the time allowed to develop a plan identifying projects for ~~utilizing~~ *using* a district's reservation ~~so~~ *as* long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) Except as provided in 85-2-331, the priority of appropriation of a water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9)~~:~~, *as follows:*

(a) A reservation under this section bas a priority of appropriation dating from the filing with the department of a notice of intention to apply for a water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a reservation.

(b) Upon receiving a notice of intention to apply for a water reservation, the department shall identify all potential water reservation applicants in the basin

specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a reservation with the priority of appropriation as described in subsection (9)(a).

(c) To receive the priority of appropriation described in subsection (9)(a), the applicant sball submit a correct and complete water reservation application within 1 year after tbe filing of the notice of intention to apply. Upon a showing of good cause, tbe ~~board~~ *department* may extend the time for preparing the application.

(d) The ~~board~~ *department* may by order subordinate a water reservation to a permit issued pursuant to this part if:

(i) the permit application was accepted by the department before the date of the ~~board~~ order granting the reservation; and

(ii) tbe effect of subordinating the reservation to one or more permits does not interfere substantially with the purpose of the reservation.

(e) The ~~board~~ *department* shall by order establish the relative priority of reservations approved under this section that bave the same day of priority. A reservation may not adversely affect any rights in existence at that time.

(10) The ~~board~~ *department* shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. ~~Where~~ *When* the objectives of the reservation are not being met, the ~~board~~ *department* may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.

(11) The ~~board~~ *department* may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the ~~board~~ *department* following notice and hearing ~~wherein~~ *if* the ~~board~~ *department* finds that all or part of the reservation is not required for its purpose and tbat the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and tbe reservation ~~shall retain~~ *retains* ite priority date despite reallocation to a different entity for a different use. The ~~board~~ *department* may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, ~~the board, upon notification by~~ the department ~~of its approval,~~ shall give notice and require the reservant to establish that tbe criteria in subsection (4) will be met under the approved change.

(13) A reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right transfer certificate with tbe ~~board~~ *department*, together with an affidavit from the entity

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receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) Nothing in this section vests the ~~board~~ *department* with the authority to alter a water right that is not a reservation.

(15) The department shall undertake a program to educate the puhlic, other state agencies, and political subdivisions of the state as to the benefits of the reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

Section 450. Section 85-2-319, MCA, is amended te read:

"**85-2-319. Permit action in highly appropriated basins or subbasins.** (1) ~~The~~ *With regard to a highly appropriated basin or subbasin, the* legislature may by law preclude permit applications, or the department may by rule reject permit applications or modify or condition permits *already* issued ~~in a highly appropriated basin or subbasin~~.

(2) A rule may he adopted under this section only upon a petition *that is* signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition of the department ~~of health and environmental sciences alleging~~ *of environmental quality that alleges* facts under subsection (2)(d). The petition must be in a form as prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected;

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; or

(d) in the case of a petition filed by the department ~~of health and environmental sciences~~ *of environmental quality*:

(i) the water quality of an appropriator will be adversely affected by the issuance of permits;

(ii) further use will not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); or

(iii) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department ~~must~~ *shall* study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(5) The department may adopt rules to implement the provisions of this section."

Section 451. Section 85-2-330, MCA, is amended to read:

"**85-2-330. Basin closure — exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) *of this section*, the department ~~or the board~~ may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) emergency temporary appropriations as provided for in 85-2-113(3)."

Section 452. Section 85-2-331, MCA, is amended to read:

"**85-2-331. Reservations within Missouri River basin and Little Missouri River basin.** (1) The state or an agency or political subdivision of the state or the United States or an agency of the United States that desires to apply for a reservation of water in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

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(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for reservations within the Missouri River basin and the Little Missouri River basin.

(3) (a) ~~Before July 1, 1992, the board~~ *The department* shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for reservations of water in the Missouri River basin above Fort Peck dam.

(b) ~~Before December 31, 1994, the board~~ *The department* shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) The ~~board~~ *department* shall determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) Water reservations approved by the ~~board~~ *department* under this section have a priority date of July 1, 1985, in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department issues a permit under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the ~~board~~ *department* may subordinate the reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any reservation. The ~~board~~ *department* shall by order establish the relative priority of applications approved under this section."

Section 453. Section 85-2-336, MCA, is amended to read:

"**85-2-336. Basin closure — exception.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin during the period from May 1, 1991, until June 30, 1995.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water or water for domestic use; and

(b) an application for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7. A permit issued to conduct response actions or remedial actions must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action.

(3) Applications for water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. Reservation applicants have no standing to object under 85-2-402 during the period of the basin closure provided *for* in subsection (1) *of this section*.

(4) The ~~board~~ *department* may not process or approve applications for reservations of water, except ground water, in the Upper Clark Fork River basin filed pursuant to 85-2-316 during the period of the basin closure provided *for* in subsection (1) *of this section.*"

Section 454. Section 85-2-341, MCA, is amended to read:

"**85-2-341. Basin closure — exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department ~~or the board~~ may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within tbe Jefferson River basin or Madison River basin.

(2) Tbe provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriato water for domestic, municipal, or stock use;

(d) an application to store water during bigb spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3)."

Section 455. Section 85-2-343, MCA, is amended to read:

"**85-2-343. Basin closure — exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department ~~and the board~~ may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin during the period from April 16, 1993, until the final decrees have been issued in accordance with part 2 of this cbapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3)."

Section 456. Section 85-2-426, MCA, is amended to read:

"**85-2-426. Fee.** (1) The ~~board of natural resources and conservation~~ *department* shall by rule prescribe a fee that will be no higher than necessary to cover the cost to the department and the county clerk and recorder ~~in~~ *of*

processing the transfer certificate. The fee must be paid at the time of filing of the water right transfer certificate.

(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."

Section 457. Section 85-2-436, MCA, is amended to read:

"**85-2-436. (Temporary) Water leasing study.** (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the ~~board~~ *department* pursuant to 85-2-437.

(b) Upon receipt of a correct and complete application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe *that* they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

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(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a wator conservation or storage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by a preponderance of evidence that the appropriator's water right is adversely affectod.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associatod with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the ~~board~~ *department*, commission, and water policy committoe an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

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(b) A final study report must be adopted hy the ~~board~~ *department* and commission and submitted to the water policy committee, which shall complete the final report by December 1, 1998.

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)"

Section 458. Section 85-2-437, MCA, is amended to read:

"**85-2-437. (Temporary) Board designation of eligible stream reaches.** (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the ~~board~~ *department* for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The ~~board~~ *department* may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

(3) The ~~board~~ *department* may designate no more tban 20 stream reaches in the state where water leasing pursuant to 85-2-436 may occur. If the department of fish, wildlife, and parks determines that a water lease cannot be reasonably obtained on a designated stream reach, the ~~board~~ *department* may remove the designation from that stream reach and designate another stream reach pursuant to this section. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)"

Section 459. Section 85-2-502, MCA, is amended to read:

"**85-2-502. Administrative rules.** The ~~board~~ *department* may prescribe and ~~the department shall~~ enforce reasonable rules concerning and providing for inspection and entry ~~for that purpose by the department~~, the circumstances under which the construction of weirs or other measuring devices may be required, and ~~such~~ other similar matters ~~as~~ *that* are required by and consistent with the administration of this part."

Section 460. Section 85-2-506, MCA, is amended te read:

"**85-2-506. Controlled ground water areas — designation or modification.** (1) The ~~board~~ *department* may designate or modify controlled ground water areas as provided in this part.

(2) Designation or modification of an area of controlled ground water use may be proposed to the ~~board by the~~ department on its own motion, by petition of a state or local public health agency for identified public health risks, or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of ground water in a ground water area in which there are alleged to be facts showing:

(a) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground water area;

(b) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;

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(c) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area;

(d) that ground water levels or pressures in the area in question are declining or have declined excessively;

(e) that excessive ground water withdrawals would cause contaminant migration;

(f) that ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or

(g) that water quality within the ground water area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

(3) When a proposal is made, the ~~board~~ *department* shall fix a time and place for a hearing, which time may not be less than 90 days from the making of the proposal. The place for the hearing must be within or as close as practical to the controlled ground wator area.

(4) The department shall publish a notice of the hearing, setting forth:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;

(c) the purpose of the hearing; and

(d) tbe time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) The notice of hearing must be published at least once in each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the ground water area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of ground water in the area in question (claimant or appropriator meaning one who diverts, impounds, or withdraws ground water and not merely one who uses or obtains ground water from another who diverts, impounds, or withdraws ground wator); upon the bureau; and upon the mayor or ~~chairman~~ *presiding officer* of the governing body of each incorporated municipality located in whole or in part within the proposed ground water area. The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area. The petition need not be served on any petitioner. A copy of the notice, together with a copy of the proposal, must be mailed to each person at the person's last-known address, and service is complete upon depositing it in the post office, postage prepaid, addressed to each person on

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whom it is to be served. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons."

Section 461. Section 85-2-507, MCA, is amended to read:

"**85-2-507. Limiting withdrawals — modification of order.** (1) At the time set for the hearing, the ~~board~~ *department* shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled ground water area presented by the bureau, the department, and any other interested party. A full record ~~shall~~ *must* be kept of all evidence taken at the hearing. The procedure ~~shall be such as to~~ *must* secure a full, fair, and orderly proceeding and ~~to~~ permit all relevant evidence to be received. The common-law and statutory rules of evidence ~~shall~~ apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, the ~~board~~ *department* shall make written findings and an order. The ~~board~~ *department* shall by order declare the area in question to be a controlled ground water area if the ~~board~~ *department* finds on the basis of the hearing that:

(a) the public health, safety, or welfare requires a corrective control *to* be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or ground water by others; or

(iii) the facts alleged in the petition, as required by 85-2-506(2), are true.

(3) The order ~~shall~~ *must* define the boundary of the controlled ground water area and ~~shall~~ *must* indicate which of the ground water aquifers locatod within the area in question are included within the controlled ground water area. Any number of ground water aquifers which wholly or partially overlie one another may be included in the same controlled ground water area.

(4) The order may include the following corrective control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water, in which event the department shall ~~thereafter~~ refuse to accept any applications for beneficial water use permits to appropriate ground water located within ~~such~~ *the* controlled area;

(b) a provision determining a permissible total withdrawal of ground water in the controlled area hy day, month, or year and permitting the ~~board~~ *department* to apportion ~~such~~ *the* permissible total withdrawal among the appropriators holding valid rights te the ground water in the controlled area in accordance with the relative dates of priority of ~~such~~ *the* rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of ground water in the controlled area for domestic and livestock purposes first and ~~thereafter~~ *then* to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in ~~such~~ *the* order as *that* the ~~board~~ *department* considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of ground water by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by the appropriator or a provision forbidding the use of one or more ~~such~~ *of the* wells;

(f) a provision requiring and specifying a system of rotation of use of ground water in the controlled area;

(g) provisions making ~~such~~ *any* additional requirements ~~as~~ *that* are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) If at the conclusion of the hearing the ~~board~~ *department* finds that sufficient facts are not available to designate or modify a permanent controlled ground water area, the ~~board~~ *department* may by order designate the area in question to be a temporary controlled ground water area. ~~Such~~ *The* order may include the corrective control provisions contained in subsection (4). A temporary controlled ground water area ~~shall~~ *must* be designated as such for a period not to exceed 2 years from the date of the ~~board's~~ order designating the temporary controlled ground water area. The ~~board~~ *department* may, for sufficient cause, extend the time period for an additional 2 years, and in this case, all ground water appropriators in the controlled ground water area ~~shall~~ *must* be notified of the extension.

(b) During the 2-year period, the department shall commence studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area. Facts gathered during the study period ~~shall~~ *must* be presented at a hearing prior to the designation or modification of a permanent controlled ground water area. All parties appearing at the first hearing ~~shall~~ *must* be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service ~~shall be~~ *is* complete upon deposit of *the* notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, ~~shall be~~ *is* considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing ~~shall~~ *must* be conducted by the ~~board~~ *department* in the manner of the first hearing, and the ~~board~~ *department* shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event *that* the department does not complete the necessary study in the 2-year period or extension ~~thereof~~ *of the period*, the temporary controlled ground water area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the ~~board shall~~ *department must* be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings and order of the ~~board shall~~ *department must* be

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mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, ~~shall~~ *must* be mailed to each petitioner at ~~his~~ *the petitioner's* last-known address. The department shall file a copy of the order with the county clerk of each county within which any part of the controlled ground water area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of ~~such~~ *the* order as prescribed ~~herein~~ *in this section*, the order ~~shall be~~ *is* final and conclusive unless an appeal ~~therefrom~~ *from the order* is taken.

(8) The ~~board~~ *department* may hy order suspend, modify, or revoke any order made as provided in this section upon ~~such~~ *the* notice and in ~~such~~ *the* manner ~~as~~ *that* is reasonable under the circumstances. A copy of each suspension, modification, or revocation ~~shall~~ *must* be served or filed and recorded as provided for orders in subsection (7).

(9) While a matter is pending ~~before the board~~, the department may restrict further development of the subarea."

Section 462. Section 85-2-512, MCA, is amended to read:

"**85-2-512. Investigations.** (1) The department shall compile information for the purpose of enabling it to comply with this part. In compiling this information, the department shall make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the board of oil and gas conservation, the department of ~~health and~~ environmental ~~sciences~~ *quality*, and any other private, state, or governmentsl agency.

(2) ~~In addition to the foregoing, the~~ *The* department may request specific investigations by the ~~preceding~~ public agencies ~~where~~ *listed in subsection (1) whenever* desired information is not otherwise available."

Section 463. Section 85-2-514, MCA, is amended to read:

"**85-2-514. Inspection of wells.** The department, the state bureau of mines and geology, or the department of ~~health and~~ environmental ~~sciences~~ *quality* may enter on the property of any appropriator where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this part."

Section 464. Section 85-2-520, MCA, is amended to read:

"**85-2-520. Penalties.** ~~Any~~ *A* person who violates or refuses or neglects to comply with any provision of this part or of any order or rule promulgated by the department ~~or the board~~ or who commits waste ~~shall be~~ *is* guilty of a misdemeanor and upon conviction shall be fined not less than $25 or more than $250 for each offense."

Section 465. Section 85-2-603, MCA, is amended to read:

"**85-2-603. Suspension of action.** (1) The department may not grant or otherwise take any action on an application until one of the following first occurs:

(a) ~~The~~ *the* ~~board of natural resources and conservation~~ *department* makes a final determination on the applications for reservations of water in the basin filed before January 1, 1977, in accordance with 85-2-316;

(b) A *a* final determination of existing rights has been made in the source of supply in accordance with part 2 of this chapter; or

(c) January 1, 1978~~; however~~. *However*, if a court stays or enjoins the continuance of proceedings on any pending application for reservation of water in the basin filed before January 1, 1977, and ~~such~~ *the* stay or injunction prevents the board from making a final determination on ~~such~~ *the* application before January 1, 1978, the court shall extend this date by the length of delay incurred. The court may not extend this date beyond January 15, 1979.

(2) A reservation established before ~~such~~ *an* application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, ~~shall~~ *must* be issued subject to that preferred use."

Section 466. Section 85-2-701, MCA, is amended to read:

"**85-2-701. Legislative intent.** (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. Therefore, it is the intent of the legislature that the attorney general's petition required in 85-2-211 include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by 85-2-218 its highest priority. *In negotiations, the commission is acting on behalf of the governor.*"

Section 467. Section 85-2-806, MCA, is amended to read:

"**85-2-806. Combined proceeding.** The department, upon petition by the applicant, may consider and act upon any application for diversion of water from the basin filed pursuant to the provisions of this part in conjunction with ~~any board~~ proceedings involving the siting of a facility or associated facilities conducted under the provisions of Title 75, chapter 20, part 4, as amended, or in conjunction with any departmental proceeding involving the issuance of a permit or approval of a change conducted under Title 85, chapter 2, ~~as amended,~~ if in the opinion of the department consideration of both applications in the same proceeding will better enable the ~~board and~~ department to fulfill ~~their~~ *its* functions, duties, and responsibilities under the provisions of Title 75, chapter 20, part 4, or Title 85, chapter 2, and this part. The department's consent to the diversion of Montana water out of the basin for ultimate use in a facility as defined in Title 75, chapter 20, ~~shall~~ *must* be contingent upon the department's

issuance of a certificate for the facility in accordance with Title 75, chapter 20. The department's consent ~~shall terminate~~ *terminates* 10 years after the date of issuance of the consent unless the ~~board~~ *department* issues the certificate for the facility in accordance with Title 75, chapter 20, and approval of North Dakota and Wyoming is secured in accordance with Article X of the compact or unless consent is extended hy the department."

Section 468. Section 85-3-101, MCA, is amended te read:

"85-3-101. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(2)~~*(1)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(3)~~*(2)* "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval, not exceeding 1 year.

~~(4)~~*(3)* "Research and development" means theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

~~(5)~~*(4)* "Weather modification and control" means changing or controlling or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms ~~which~~ *that* occur in the troposphere."

Section 469. Section 85-3-102, MCA, is amended to read:

"85-3-102. **Standards for research in weather modification control.** The ~~board~~ *department* may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it ~~deems~~ *considers* necessary or desirable to minimize danger to healtb, safety, welfare, or property."

Section 470. Section 85-3-104, MCA, is amended to read:

"85-3-104. **Nonliability of state and agents for acts of private persons.** ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* he construed to impose or accept any liability or responsibility on the part of the state, ~~the board,~~ the department, or any state officials or employees for any weather modification and control activities of any private person or group."

Section 471. Section 85-3-201, MCA, is amended to read:

"85-3-201. **License and permit required for weatber modification and control.** No *A* person ~~shall~~ *may not* engage in activities for weather

modification and control except under and in accordance with a license and a permit issued by the ~~board~~ *department* authorizing ~~such~~ *the* activities."

Section 472. Section 85-3-202, MCA, is amended to read:

"**85-3-202. Department to review applications.** (1) The department shall review all applications for weather modification activities. The department shall prepare a report and ~~submit it to the board with~~ an environmental impact statement ~~prepared~~ pursuant to Title 75, chapter 1, part 2. The report must contain information relative to all of the criteria applicable te issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the area affected by the proposed weather modification activity. The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant.

(2) The ~~board~~ *department* may provide by rule for exempting from the license and permit requirements of this chapter:

(a) research, development, and experiments by stato and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;

(b) laboratory research and experiments;

(c) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 473. Section 85-3-203, MCA, is amended to read:

"**85-3-203. Licenses — qualifications of licensees.** The license to engage in activities for weather modification and control ~~shall~~ *must* be issued, in accordance with procedures and subject to conditions the ~~board~~ *department* may by rule establish to effectuate the provisions of this chapter, to applicants who demonstrate competence in the field of meteorology to the satisfaction of the ~~board~~ *department*. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant."

Section 474. Section 85-3-206, MCA, is amended to read:

"**85-3-206. Permits — requirements and hearing.** (1) The permits must be issued in accordance with procedures and subject to conditions *that* the ~~board~~ *department* may by rule establish to effectuate this chaptor.

(2) Within 30 days after ~~submission~~ *completion* of the ~~department's~~ report required under 85-3-202, the ~~board~~ *department* shall hold a hearing under Title 2, chapter 4, part 6, to determine whether to grant, conditionally grant, or deny the application for a permit. The ~~board~~ *department* may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chaptor;

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(b) sufficient notice of intention has been published;

(c) an applicant has furnished proof of financial responsibility in an amount to be determined by the ~~board~~ *department* as required in 85-3-211;

(d) the fee for the permit has been paid as required in 85-3-212 and the department's costs incurred under 85-3-202 have been paid;

(e) the weather modification and control activities to be conducted have been determined by the ~~board~~ *department* to be for the general welfare and the public good. That determination must be based on a finding of whether the operation:

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

(3) The ~~board~~ *department* may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If ~~no~~ *a* hearing is *not* held, the ~~board~~ *department* may grant or conditionally grant a permit based on the information contained in the application and the department's report.

(4) Costs incurred by the ~~board~~ *department* in holding a hearing under subsection (2) must be paid by the applicant."

Section 475. Section 85-3-207, MCA, is amended to read:

"**85-3-207. Separate permit for each operation.** (1) Separate permits ~~shall~~ *must* be issued for each operation.

(2) If a permit is issued, the holder of the permit shall confine ~~his~~ activities to the time and area limits set forth in the notice of intontion, unless modified by the ~~board~~ *department*. ~~His~~ *The permittee's* activities ~~shall~~ *must* conform to any conditions imposed by the ~~board~~ *department*. The permit may not be sold or transferred."

Section 476. Section 85-3-212, MCA, is amended to read:

"**85-3-212. Permit fee.** The fee to be paid by each applicant for a permit ~~shall~~ *must* be equivalent to 1% of the estimated cost of ~~such~~ *the* operation, the estimated cost to be computed by the department from the evidence available to it. The fee is due and payable to the department as of the date of issuance of the permit ~~by the board~~; ~~however~~ *However*, if the applicant is able to give satisfactory security for the payment of the balance, ~~he~~ *the applicant* may be permitted to commence the operation and a permit may be issued ~~therefor~~ upon the payment of not less than 50% of the fee. The balance due ~~shall~~ *must* be paid within 3 months from the date of termination of the operation as prescribed in the permit."

Section 477. Section 85-3-214, MCA, is amended to read:

"85-3-214. **Termination of licenses and permits ~~by board~~.** After notice to the licensee and a reasonable opportunity for a hearing, the ~~board~~ *department* may modify, suspend, revoke, or refuse to renew any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary, ~~or~~ if it appears that the licensee has violated any of the provisions of this chapter, or, in the case of a modification, *if it appears* that it is necessary for the protection of the health or the property of any person."

Section 478. Section 85-6-109, MCA, is amended to read:

"85-6-109. **Operation of projects with water users' association — *definitions*.** (1) As used in this section, "department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33, and "association" means a water users' association.

(2) Whenever the department proposes a program of maintonance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association ~~shall~~ *must* be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to ~~the board of natural resources and conservation as provided for in 85-1-212. The board shall notify the association of its decision. If the board's decision is adverse to the association, the association may file within 30 days of receipt of notice of the board's decision a complaint to review the board's decision in~~ the district court in any county where all or part of the project works is located or *to the district court* in Lewis and Clark County.

(3) If a complaint is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association te develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project ~~which~~ *that* involves a water users' association, the department shall notify the association. Before the department may take further action to abandon, sell, or otherwise dispose of a project ~~which~~ *that* involves a water users' association, the department must receive a petition approving the abandonment, sale, or disposition ~~which is~~. *The petition must be* signed by stockholders of the association ~~representing~~ *who represent* 66 2/3% or more of the issued and outstanding stock of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal, stockholders of the association ~~representing~~ *who represent* 30% or more of the issued and outstanding steck of the association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise disposed of without the consent of the legislature."

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Section 479. Section 85-7-102, MCA, is amended to read:

"**85-7-102. Evidence of title.** (1) The following documents are sufficient evidence of title for the purpose of this chapter:

(a) the certificate of the county clerk and recorder;

(h) the certificate of the department ~~of state lands~~ *natural resources and conservation*; or

(c) records of ownership prepared by licensed title insurance producers.

(2) When lands have been purchased from the state and part or all of the purchase money has been paid but the patents or deeds from the stato to the lands have not been issued, the receipt or receipts held by the purchasers or the certificate of the department ~~of state lands~~ showing the payments on account of purchase is evidence of title to the lands under this chapter."

Section 480. Section 85-9-104, MCA, is amended to read:

"**85-9-104. Limitations.** (1) ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* he construed to grant to the district the power to generate, distribute, or sell electric energy.

(2) The provisions of this chapter do not abrogate or limit in any manner the rights, powers, duties, and functions of the department, conservation districts, *the* department of ~~health and~~ environmental ~~sciences~~ *quality*, or the department of fish, wildlife, and parks, but are supplementary ~~thereto~~ *to* and in aid ~~thereof~~ *of those rights, powers, duties, and functions.*"

Section 481. Section 85-9-202, MCA, is amended to read:

"**85-9-202. Action by department ~~of natural resources~~ upon receipt of request.** (1) ~~Sooner than~~ *Within* 11 days after the request is received, the department shall acknowledge the request.

(2) The department shall itself, through cooperating agencies, or tegether with cooperating agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability, and compatibility with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability, or consistency with the state water plan;

(g) ~~sooner than~~ *within* 1 year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, *the* department of fish, wildlife, and parks, *the* department of ~~health and~~

environmental ~~sciences~~ *quality*, and other affected state and federal resource agencies for their comments."

Section 482. Section 85-9-204, MCA, is amended to read:

"**85-9-204. Feasibility study and report — adjustment of proposed boundaries.** After the hearing, the applicants or any one of them may request the department to prepare a detailed feasibility study of the proposed district. If the department concludes that the proposed district is feasible, desirable, and consistent with the stato water plan, it shall prepare a feasibility report and, ~~sooner than~~ *within* 1 year after receipt of the request, send copies to the applicants, if any, the department of fish, wildlife, and parks, *the* department of ~~health and~~ environmental ~~sciences~~ *quality*, and other affected state and federal water resource agencies. For good cause shown, based upon the actual technical problems in completing the report, the department may use necessary additional time to complete and distribute the report. The detailed feasibility report ~~shall~~ *must* describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The department may adjust the boundaries of the proposed district to improve the feasibility, desirability, and consistency with the state water plan and to exclude land ~~which~~ *that* would receive no direct or indirect benefits from the proposed district."

Section 483. Section 85-20-109, MCA, is amended to read:

"**85-20-109. ~~Board of natural resources and conservation~~ *Department* to make rules.** The ~~board~~ *department* of natural ~~resources and conservation~~ *resources and conservation* shall adopt and ~~the department shall~~ enforce reasonable rules consistent with this part and the Yellowstone River Compact."

Section 484. Section 87-1-223, MCA, is amended to read:

"**87-1-223. Control of state waters for propagation of fish.** The department ~~of fish, wildlife, and parks~~ may control the waters of any lake, pond, or stream ~~which~~ *that* lies wholly within the limits of land owned by the stato so far as the use of that lake, pond, or stream for the breeding and propagation of game fish is concerned. Before the right to control any lake, pond, or stream inures to the department ~~of fish, wildlife, and parks~~, the department ~~of fish, wildlife, and parks~~ shall notify the department of ~~state lands~~ *natural resources and conservation* that the lake, pond, or stream is wanted for that purpose, giving a description of the land by legal subdivision when surveyed or a sufficient general description when not so surveyed. The department of ~~state lands~~ *natural resources and conservation* shall make that entry upon its hooks and maps ~~as may~~ *to* serve as notice te a lessor or purchaser of the right claimed by the state in the lake, pond, or stream. The department of ~~state lands~~ *natural resources and conservation* shall notify a lessor, purchaser, or applicant to lease or purchase of the fact that a right to the use of the lake, pond, or stream is ~~so~~ claimed. This right may not continue for more than 1 year after the land is sold by the state. If the right to the control of a lake, pond, or stream lessens the value of that land or prevents the ready sale of it, the right granted to the department ~~of fish, wildlife, and parks~~ may be terminated upon giving 60 days' notice of the termination to the department ~~of fish, wildlife, and parks~~."

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Section 485. Section 87-1-224, MCA, is amended to read:

"**87-1-224. Destruction of beaver and beaver dams for protection of public health.** (1) When a complaint is made to the department of ~~health and environmental sciences~~ *environmental quality* that beaver are obstructing the free flow of a stream flowing through a settled area and into which *stream* sewage of a town or city is dumped and the obstruction endangers public health, the department of ~~health and environmental sciences~~ *environmental quality* shall immediately investigate the complaint. If it finds that the work of the ~~beavers~~ *beaver* endangers public health, it shall report the facts to the department of ~~fish, wildlife, and parks~~.

(2) The department ~~of fish, wildlife, and parks~~ shall immediatoly issue a permit, free of charge, to the landowner upon whose land the beaver dams are locatod for the removal of the beaver, the number of which ~~shall~~ *must* be designated by the warden making the inspection. The landowner sball remove all beaver and beaver dams as provided by the permit within 10 days after its issuance. If the landowner refuses to remove the beaver or the dams in the 10-day period or if ~~he~~ *the landowner* does not desire to do so and so advises the department, then the department may remove the beaver by trapping or transplanting and remove their dam by blasting or other means.

(3) The department of ~~fish, wildlife, and parks~~ shall furnish all labor needed to blast out or otherwise remove the beaver dams. Necessary explosives ~~shall~~ *must* be furnished by the county in which the beaver dams are located."

Section 486. Section 87-1-303, MCA, is amended to read:

"**87-1-303. Rules for use of lands and waters.** (1) The commission may adopt and enforce rules governing uses of lands *that are* acquired or held under easement by the commission or lands ~~which~~ *that* it operatos under agreement with or in conjunction with a federal or state agency or privato owner. The rules ~~shall~~ *must* be adopted in the interest of public healtb, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements ~~shall~~ *must* itomize uses as listod in 87-1-209.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams ~~which~~ *that* are legally accessible to the public or on reservoirs and lakes ~~which~~ *that* it operatos under agreement with or in conjunction with a federal or state agency or private owner. These rules ~~shall~~ *must* be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fisbing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of tbe reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in tbis section must be areas ~~which~~ *that* are legally accessible to the public. These rules are subject to review and approval by the department of *public* health ~~and environmental sciences as~~ *with regard* to *issues of* public bealth and sanitation before becoming effective. Copies of the rules ~~shall~~ *must* show that endorsement."

Section 487. Section 87-1-601, MCA, is amended to read:

"**87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, ~~or~~ from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source must be turned over to the state treasurer and placed ~~by him~~ in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund te the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) ~~That~~ *The* money *described in subsection (1)* must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. ~~That~~ *The* money *described in subsection (1)* must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsection (7), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, ~~relating~~ *that relates* to violations of state fish and game laws under Title 87 must be deposited by the state treasurer and credited te the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid te the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; *from* exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition must be deposited in an account within the nonexpendahle trust fund of the state treasury. The interest derived from the fund, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

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(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited as follows:

(a) 50% in an account for use by the department for the enforcement of 77-1-801, 77-1-806, and rules adopted under 77-1-804; and

(b) 50% in the state lands recreational use account established by 77-1-808 for use by the department of ~~state lands~~ *natural resources and conservation* in the management of state lands."

Section 488. Section 87-3-106, MCA, is amended to read:

"**87-3-106. Hunting and fishing prohibited in fire-danger areas.** (1) When the fire danger becomes so extreme that the governor, upon the advice and recommendation of the department of ~~state lands~~ *natural resources and conservation*, closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed ~~so long as~~ *while* the fire closure remains in effect.

(2) A board of county commissioners may initiate a request for a closure by submitting the request to the department. However, the department may adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered."

Section 489. Section 90-2-140, MCA, is amended to read:

"**90-2-140. Energy conservation in agriculture.** (1) The department of ~~natural resources and conservation~~ *environmental quality* is authorized to make grants under its state energy conservation program, approved pursuant to 10 CFR 420.5, to conservation districts for projects that promote energy conservation in agriculture.

(2) The department of ~~natural resources and conservation~~ *environmental quality* shall give public notice of opportunity for grants and the criteria to be used for the award of grants. The criteria must include but are not limited to energy savings and consistency with sound water and soil conservation practices."

Section 490. Section 90-2-141, MCA, is amended to read:

"**90-2-141. State-owned building retrofitting.** (1) The department of ~~natural resources and conservation~~ *environmental quality* is authorized, in consultation with the department of administration, to train employees in the operation and maintenance of energy saving equipment and in the implementation of energy conserving practices and to make grants to state agencies for energy efficiency analysis of state-owned buildings. The department of ~~natural resources and conservation~~ *environmental quality* may also make loans to state agencies for retrofitting state-owned buildings.

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(2) The department of ~~natural resources and conservation~~ *environmental quality* shall consider simple payback, type of energy saved, results of similar projects, expected life of the retrofit, and use of the retrofit as a model for other buildings in making grants and loans under subsection (1)."

Section 491. Section 90-4-102, MCA, is amended to read:

"**90-4-102. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, or methane from solid waste, *that is* capable of being converted into forms of energy useful to mankind, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Department" means the ~~Montana~~ department of ~~natural resources and conservation~~ *environmental quality*.

(3) "Energy conservation" means reducing waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production, or distribution.

(4) "Person" means a natural person~~,~~; *a* corporation, partnership, or other business entity~~,~~; *an* association, trust, *or* foundation~~,~~; any educational or scientific institution~~,~~; or any governmental unit.

(5) (a) "State governmental unit" means:

(i) the state;

(ii) the legislature;

(iii) any executive branch department, office, or agency;

(iv) the university system; or

(v) the supreme court or any office ~~thereof~~ *of the supreme court*.

(b) The term does not include:

(i) a county, incorporated city, town, or other local governmental unit or a public corporation or district created pursuant to state law; or

(ii) any other public body of the state not described in subsection (5)(a)."

Section 492. Section 90-4-103, MCA, is amended to read:

"**90-4-103. Alternative energy and energy conservation research development and demonstration account established — allocation of funds.** (1) There is within the state special revenue fund an alternative energy and energy conservation research development and demonstration account. Money is paid into this account from repayments of grants and loans previously awarded from this account ~~by the department of natural resources and conservation~~. The state treasurer shall draw warrants payable from this account upon order of the department.

(2) Each fiscal year the department shall allocate the funds appropriated from the alternative energy and energy conservation research development and demonstration account for the following:

(a) grants under 90-4-104 and 90-4-106;

(b) loans under 90-4-104 and 90-4-106;

(c) grants to state governmental units under 90-4-109;

(d) program administration; and

(e) matching federal energy programs and petroleum violation escrow account money if consistent with the purposes of this chapter.

(3) To assure that the program offers the greatest possible benefits during the fiscal year, the department may reallocate funds among the categories specified in this section based on the availability of funds or the applications it receives and the department's evaluation of the relative merits of each project."

Section 493. Section 90-4-602, MCA, is amended to read:

"**90-4-602. Definitions.** *As used in this part, unless the context requires otherwise, the following definitions apply:*

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the department incurred in the performance of its duties under the energy conservation program.

(3) "Department" means the department of ~~natural resources and conservation~~ *environmental quality* provided for in ~~2-15-3301~~ *[section 20]*.

(4) "Energy conservation program" means a program for the financing, acquisition, construction, and installation of energy saving equipment, systems, and improvements in state-owned buildings, structures, and facilities.

(5) "Energy conservation program bonds" includes all series of bonds issued to finance any portion of the energy conservation program.

(6) "State agency" means:

(a) each executive, legislative, or judicial branch department, office, or agency; and

(b) the university system."

Section 494. Section 90-4-1002, MCA, is amended to read:

"**90-4-1002. Definitions.** As used in 90-4-1003 and 90-4-1004, the following definitions apply:

(1) "Council" means the environmental quality council established in 5-16-101.

(2) "Department" means the department of ~~natural resources and conservation~~ *environmental quality* established in ~~2-15-3301~~ *[section 20]*."

Section 495. Section 90-6-207, MCA, is amended to read:

"**90-6-207. Priorities for impact grants.** (1) The department of commerce shall annually designate:

(a) each county, incorporated city and town, school district, and other governmental unit that has had or expects to have as a result of the impact of coal development a net increase in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of ~~state lands~~ *environmental quality* for a project within the county that will establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce determines will commence production within 2 years;

(ii) the department of commerce has determined that the production of an existing mine will increase by at least 1 million tons a year and that the new or expanded production will commence within 2 years of the designation;

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

(iv) a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of ~~natural resources and conservation~~ *environmental review* for a new steam-generating or other new coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 2 years of the designation;

(c) each local governmental unit located within 100 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i), (1)(b)(ii), or (1)(b)(iv); and

(d) each local governmental unit in which:

(i) a mine that has produced 300,000 tons or more of coal a year and has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) (a) Except as provided in 90-6-205(5)(b), beginning July 1, 1993, and ending June 30, 1995, the coal board may not award more than 20% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1).

(b) Except as provided in 90-6-205(5)(b), beginning July 1, 1995, and thereafter, the coal board may not award more than 10% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1).

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth problems.

(6) All funds placed in the local impact account established under this part are subject to appropriations by the legislature for use related to local impact.

(7) All designations made under this section must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the basis for a designation is contributing sufficient tax revenue to the designated government unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local governmental units continue to be eligible for coal impact grants and loans of not more than 20% and beginning July 1, 1995, not more than 10% of the funds appropriated to the coal board for grants and loans in circumstances in which:

(a) an impact exists in a community or area directly affected by the operation of a coal mine or mines; or

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(b) tax revenue is not available to mitigate tbe impact due to the closure of a mine or facility."

Section 496. Section 90-6-307, MCA, is amended to read:

"**90-6-307. Impact plan to be submitted.** (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit sball submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of ~~such~~ *the* submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties sball publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The mineral developer and the affected local government units shall ensure that the impact plan includes:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services ~~which~~ *that* can be expected as a result of the development;

(d) the financial or other assistance *that* the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, ~~either~~ *whether* from tax prepayments, as provided in 90-6-309, special industrial local government facility impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(3) Upon request of tbe governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county ~~must~~ *shall* contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection ~~shall~~ *must* be credited against future tax liabilities, if any.

(4) Tbe governing body of the county where the fiscal impacts on local government units are forecasted in the impact plan to be most costly sball, within 90 days after receipt of the impact plan from the developer, conduct a public hearing on the impact plan.

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(5) An affected local government unit that has not heen identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services ~~which~~ *that* can be expected as a result of the development may object to the impact plan under the provisions of this section if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development.

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons ~~why the impact plan is objected to~~ *for the objection*. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds *that* there is no reasonable basis for the request. If ~~no~~ *an* objection is *not* received within the 90-day period or any extension ~~thereof~~ *of the period*, the impact plan is approved without any review by the board. An approved plan is binding and may only be altered under the amendment provisions of 90-6-311.

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a hearing on the validity of the objections~~, which shall~~. *The hearing must* be held in the affected county or, if objections are received from local government units in more than one county, ~~shall~~ *must* be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act ~~shall~~ apply to the conduct of the hearing. The impact plan filed by the developer ~~shall carry no~~ *does not carry a* presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan ~~which~~ *that* were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, ~~shall~~ *must* be served by the board upon all parties. ~~Any~~ *A* local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written ~~guarantee~~ *guaranty* that the developer will meet the increased costs of puhlic services and facilities as specified in the approved impact plan and according to the time schedule contained in the approved impact plan.

(10) The developer may make payments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving payments shall deposit the payments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each payment and its intended use in compliance with the impact plan. The board shall deposit payments received

from a developer into the hard-rock mining impact account estahlished hy 90-6-304.

(11) The board shall notify the department of ~~state lands~~ *environmental quality* of its receipt of the written ~~guarantee~~ *guaranty* of payment and of any failure of the developer to comply with this section.

(12) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall, if the hard-rock mining impact account is used to deliver payments to the local government unit, pay to tbat local government unit, in one sum or in parts, the money from the hard-rock mining impact account identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(13) If it is determined tbat an objection filed by an affected local government unit under subsections (5) and (6) or 90-6-311(3) is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit ~~shall~~ *must* be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded ~~shall be~~ *are* in addition to any amounts paid by tbe developer under this part.

(14) Upon a determination by the department of ~~state lands~~ *environmental quality* tbat a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons~~, provided the~~. *However, any* revocation ~~is~~ *must be* requested by an affected local government unit, and notice and opportunity for hearing ~~are~~ *must be* given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(15) When a person wbo holds an operating permit under 82-4-335 and who has filed an impact plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter, tbe board shall certify to tbe board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance."

Section 497. Section 90-6-703, MCA, is amended to read:

"90-6-703. **Types of financial assistance available.** (1) The legislature sball provide for and make available to local governments the following types of financial assistance under this part:

(a) matching grants for local infrastructure projects;

(b) annual debt service subsidies on local infrastructure projects; and

(c) loans from the proceeds of coal severance tax bonds at a subsidized interest rate.

(2) The ~~department of natural resources and conservation and the~~ *department of natural resources and conservation and the* department of commerce:

(a) may adopt rules to commit to interest rate suhsidies for local infrastructure projects and may allow tbe subsidies to be paid over the life of the loan or bonding period; and

(b) may make deferred loans to local governments for preliminary engineering study costs. The applicant shall repay the loans whether or not the applicant succeeds in obtaining financing for the full project. Repayment may be postponed until the overall construction financing is arranged."

Section 498. Section 90-15-102, MCA, is amended to read:

"**90-15-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Committee" means the natural resource data system advisory committee created by 2-15-1514.

(2) "Library" means the state library provided for in 22-1-201.

(3) "Natural be.itage program" means a program of information acquisition, storage, and retrieval for data relating to the flora, fauna, and biological community types of Montana.

(4) "Principal data source agencies" means any of the following state agencies: the department of natural ~~resources and conservation~~ *resources and conservation*; the department of fish, wildlife, and parks; ~~the department of state lands;~~ the department of ~~health and~~ environmental ~~sciences~~ *quality*; the department of agriculture; the department of transportation; the state histerical society; and the Montana university system."

Section 499. Transition. The provisions of 2-15-131 through 2-15-137 apply to [this act].

Section 500. Repealer. Sections 2-15-3201, 2-15-3202, 2-15-3302, 2-15-3306, 75-10-628, 76-11-203, 76-11-204, 80-15-219, 85-1-202, 85-1-212, and 85-2-519, MCA, are repealed.

Section 501. Exccutive orders — code commissioner instructions. (1) In all material enacted by the 54th legislature that assigns duties or functions to the department of state lands, department of health and environmental sciences, or department of natural resources and conservation, the governor shall by executive order designate the department of public health, the department of environmental quality, or the department of natural resources and conservation as tbe agency te perform each duty or function.

(2) The governor sball provide a copy of each executive order to the code commissioner, wbo shall make the changes necessary to reflect the assignment of each duty or function. The code commissioner shall recodify and rearrange material as necessary to reflect the provisions of [tbis act].

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Section 502. Codification instruction. [Sections 20 and 21] are intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [sections 20 and 21].

Section 503. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 504. Effective date. [This act] is effective July 1, 1995.

Approved April 13, 1995

CHAPTER NO. 419

[SB 347]

AN ACT AUTHORIZING THE DEPARTMENT OF STATE LANDS TO NEGOTIATE RECIPROCAL ACCESS TO FACILITATE THE MANAGEMENT OF ISOLATED STATE FOREST LANDS; ALLOWING THE BOARD TO WAIVE SURVEY REQUIREMENTS; AND DEFINING "ANALYSIS REQUIREMENTS".

Be it enacted by the Legislature of the State of Montana:

Section 1. Management of isolated forest lands — access. (1) To facilitate the management of isolated tracts of classified forest lands, the department may negotiate reciprocal access agreements, which may include easements. For an easement granted pursuant to this subsection, the board may waive all or a portion of the survey requirements of 77-2-102, subject to any conditions that the board may impose.

(2) In granting access, the department is not required to analyze or consider the potential impacts of activities that may occur on private or federal lands in conjunction with or as a result of granting access.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 5, and the provisions of Title 77, chapter 5, apply to [section 1].

Approved April 13, 1995

CHAPTER NO. 420

[SB 376]

AN ACT PROVIDING FOR THE REGULATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; PROVIDING FOR EXCEPTIONS FROM REGULATION; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ISSUE AND REVOKE CERTIFICATES OF AUTHORITY; PROVIDING FOR ELIGIBILITY AND APPLICATIONS FOR CERTIFICATES; PROVIDING MINIMUM RESERVE AND FUNDING REQUIREMENTS; REQUIRING CERTAIN REPORTS; PROVIDING PENALTIES; PROVIDING FOR THE APPLICATION OF THE

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MONTANA INSURANCE CODE; REQUIRING CERTAIN DISCLOSURES IN INSURANCE POLICIES ISSUED BY SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AND AMENDING SECTION 33-1-1111, MCA.

STATEMENT OF INTENT

A statement of intent is provided for this bill because [section 8] requires the commissioner of insurance to adopt rules regarding supervision, rehabilitation, and liquidation of self-funded multiple employer welfare arrangements that fail to meet the minimum level of reserves required by [section 8]. The rules adopted by the commissioner to implement [section 8] should be consistent with Title 33, chapter 2, part 13, and should change the application of those provisions only to the extent necessary to be consistent with the purposes of this bill.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short Title. [Sections 1 through 15] may be cited as the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act".

Section 2. Purpose. The purposes of [sections 1 through 15] are to:

(1) provide for the authorization and registration of self-funded multiple employer welfare arrangements;

(2) regulate self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements;

(3) provide reporting requirements for self-funded multiple employer welfare arrangements; and

(4) provide for sanctions against self-funded multiple employer welfare arrangements organized and maintained in Montana that do not comply with [sections 1 through 15].

Section 3. Definitions. As used in [sections 1 through 15], unless a contrary intent appears, the following definitions apply:

(1) "Allowable benefit" means a benefit relating to medical, surgical, or hospital care in the event of sickness, accident, disability, or any combination of sickness, accident, or disability.

(2) (a) "Bona fide association" means an association of employers that has been in existence for a period of not less than 5 years prior to sponsoring a self-funded multiple employer welfare arrangement, during which time the association has engaged in substantial activities relating to the common interests of member employers, and that continues to engage in substantial activities in addition to sponsoring an arrangement.

(b) Notwithstanding subsection (2)(a), an association that was formed and began sponsoring an arrangement prior to [the effective date of sections 1 through 15] is not subject to the requirement that the association be in existence for 5 years prior to sponsoring an arrangement.

(3) "Claims liability" means the total of all incurred and unpaid claims for allowable benefits under a self-funded multiple employer welfare arrangement

that are not reimbursed or reimbursable by excess loss insurance, subrogation, or other sources.

(4) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as defined by 29 U.S.C. 1002. The term does not include an arrangement, plan, program, or interlocal agreement of or between political subdivisions of this state, including school districts, as provided in 33-1-102.

(5) "Reserves" means the excess of the assets of a self-funded multiple employer welfare arrangement minus the liabilities of the arrangement. The liabilities of a self-funded multiple employer welfare arrangement include the claims liability of the arrangement.

(6) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies licensed under this title.

Section 4. Certificate of authority. (1) Except as provided in subsection (3), a person may not establish or maintain a self-funded multiple employer welfare arrangement in Montana unless the arrangement first obtains a certificate of authority from the commissioner.

(2) A self-funded multiple employer welfare arrangement is considered to be established or maintained in Montana if one or more of the employer members participating in the arrangement is either domiciled in or maintains its principal place of business in Montana.

(3) A self-funded multiple employer welfare arrangement established and maintained in Montana prior to January 1, 1995, has until [6 months following the effective date of sections 1 through 15] to file an application for a certificate of authority. An arrangement that files an application for a certificate of authority by that date is considered to have been issued a certificate of authority unless the commissioner finally denies the arrangement's application for a certificate of authority.

Section 5. Eligibility for certificate of authority. The commissioner may not issue a certificate of authority to a self-funded multiple employer welfare arrangement unless the arrangement establishes to the reasonable satisfaction of the commissioner that the following requirements have been satisfied by the arrangement:

(1) the employers participating in the self-funded multiple employer welfare arrangement are either engaged in the same trade, profession, or industry or the employers participating in the arrangement are members of a bona fide association;

(2) the employers participating in the arrangement exercise control over the arrangement, as follows:

(a) Subject to subsection (2)(b), control exists if the employers participating in the arrangement have the right to elect at least 75% of the individuals designated in the arrangement's organizational documents as having control over the operations of the arrangement and the individuals designated in the

arrangement's organizational documents in fact exercise control over the operation of the arrangement.

(b) The use of a third-party administrator to process claims and to assist in the administration of the arrangement is not evidence of the lack of exercise of control over the operation of the arrangement.

(3) the arrangement provides only allowable benefits. However, an arrangement may provide life insurance coverage to its participants if the coverage is provided pursuant to contracts of insurance that comply with Title 33, chapter 20, parts 10 through 12.

(4) the arrangement provides allowable benefits to not less than 2 employers and not less than 75 employees;

(5) the arrangement may not solicit participation in the arrangement from the general public. However, the arrangement may employ or independently contract with a licensed insurance producer who may be paid a commission or other remuneration to enroll employers in the arrangement, and employees of the arrangement, employees of the association sponsoring the arrangement, or employees of affiliates of the association, other than licensed insurance producers, may enroll employers in the arrangement if the employees do not receive a commission or other remuneration in addition to their customary compensation for enrolling employers.

(6) the arrangement is not organized or maintained solely as a conduit for the collection of premiums and the forwarding of premiums to an insurance company. However, it is permissible for a self-funded multiple employer welfare arrangement to act as a conduit for the collection and forwarding of premiums for life insurance coverage pursuant to subsection (3).

Section 6. Requirements applicable only to arrangements organized after [the effective date of sections 1 through 15]. (1) In addition to the requirements of [section 5], self-funded multiple employer welfare arrangements formed after [the effective date of sections 1 through 15] are subject to the following requirements:

(a) arrangements shall maintain a calendar year for operations and reporting purposes unless the commissioner consents to a fiscal year;

(b) arrangements shall satisfy one of the following requirements:

(i) (A) the arrangement shall deposit $200,000 with the commissioner pursuant to Title 33, chapter 2, part 6, to be used for the payment of claims in the event that the arrangement becomes insolvent; and

(B) the arrangement shall submit to the commissioner a written plan of operation that, in the reasonable discretion of the commissioner, ensures the financial integrity of the arrangement; or

(ii) the arrangement demonstrates to the reasonable satisfaction of the commissioner the ability of the arrangement to remain financially solvent, for which purpose the commissioner may consider:

(A) the pro forma financial statements of the self-funded multiple employer welfare arrangement;

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(B) the types and levels of excess loss insurance coverage, including the attachment points of the coverage and whether the points are reflected as annual or monthly levels;

(C) whether a deposit is required for each employee covered under the arrangement equal to at least one month's cost of providing benefits under the arrangement;

(D) the experience of the individuals who will be involved in the management of the arrangement, including employees, independent contractors, and consultants; and

(E) other factors as reasonably determined by the commissioner to be relevant to a determination of whether the arrangement is able to operate in a financially solvent manner.

(2) Financial information relating to the employers is subject to the confidentiality provisions of 33-1-409(6).

(3) The commissioner may require that the articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement provide that employers participating in the arrangement are subject to pro rata assessment for all liabilities of the arrangement.

(4) Arrangements shall maintain excess loss insurance coverage covering 100% of claims in excess of the designated attachment point. The commissioner may waive the requirement of excess loss insurance coverage.

(5) An arrangement shall submit its base contribution rates for participation under the arrangement for its initial year of operations for review and approval by the commissioner.

(6) The commissioner may require continued compliance with respect to the conditions set forth in this section as a condition of granting a certificate of authority to an arrangement. The commissioner may waive continued compliance with respect to the conditions in this section at any time after the commissioner has granted a certificate of authority to an arrangement.

Section 7. Application for certificate of authority. A self-funded multiple employer welfare arrangement shall apply for a certificate of authority on a form prescribed by the commissioner and shall submit the application, together with the following documents, to the commissioner:

(1) a copy of all articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement;

(2) a copy of the summary plan description or summary plan descriptions of the arrangement filed or required to be filed with the United States department of labor, together with any amendments to the description;

(3) evidence of coverage of or letters of intent to participate executed by at least 2 employers providing allowable benefits to at least 75 employees;

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(4) a copy of the arrangement's most recent year's financial statements or, if the arrangement has been in existence for less than 1 year, pro forma financial statements that must include, at a minimum, a balance sheet, an income statement, a statement of changes in financial position, and an actuarial opinion that the unpaid claim liability of the arrangement satisfies the standards of 33-2-514. The commissioner may, in the commissioner's discretion, waive the requirement of an actuarial opinion and require a report by an actuarial firm.

(5) proof that the arrangement maintains or will maintain fidelity bonds required by the United States department of labor pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;

(6) a copy of any excess loss insurance coverage policies maintained or proposed to be maintained by the arrangement;

(7) biographical reports on forms prescribed by the national association of insurance commissioners evidencing the general trustworthiness and competence of each individual who is serving or who will serve as an employee or fiduciary of the arrangement; and

(8) a statement executed by a representative of the arrangement certifying, to the best knowledge and belief of the representative, that:

(a) the arrangement is in compliance with requirements of [section 5];

(b) the arrangement is in compliance with the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., or a statement of any requirements with which the arrangement is not in compliance and a statement of proposed corrective actions; and

(c) the arrangement is in compliance with requirements of [sections 8 and 9].

Section 8. Minimum reserve requirements. Self-funded multiple employer welfare arrangements shall establish by the end of the first year of operations of the arrangement and shall maintain as of the end of each year of operations reserves equal to at least 30% of the unpaid claims liability of the arrangement. The commissioner may adopt rules regarding the supervision, rehabilitation, and liquidation of self-funded multiple employer welfare arrangements that fail to maintain the level of reserves required by this section.

Section 9. Minimum funding levels. A self-funded multiple employer welfare arrangement shall establish and maintain contribution rates for participation under the arrangement that satisfy either of the following requirements:

(1) contribution rates must equal or exceed the sum of projected claims liability for the year, plus all projected costs of operation of the arrangement for the year, plus an amount equal to any deficiency in the reserves of the arrangement for the prior year, minus an amount equal to the reserves of the arrangement in excess of the minimum required level of reserves; or

(2) contribution rates must equal or exceed a funding level established by a report prepared by an actuarial firm.

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Section 10. Issuance of certificate of authority. (1) The commissioner shall grant or deny an application for a certificate of authority within 180 days of the date that a completed application, together with the items designated in [section 7], is submitted te the commissioner.

(2) The commissioner shall grant the application of an arrangement that satisfies the applicable requirements of [sections 5 through 9].

(3) The commissioner shall deny the application of an arrangement that does not satisfy the applicable requirements of [sections 5 through 9]. Denial of an application for a certificate of authority is considered a contested case under the Montana Administrative Procedure Act.

(4) A certificate of authority granted te an arrangement is effective unless revoked by the commissioner under [section 12].

Section 11. Reporting. (1) A self-funded multiple employer welfare arrangement shall comply with the reporting requirements of this section.

(2) Within 3 montbs following the close of the arrangement's year of operations, the arrangement shall file with the commissioner, on forms prescribed by the commissioner:

(a) a statement of financial condition;

(b) a statement of change in financial conditions accompanied by an actuarial opinion that the unpaid claim liability of the arrangement satisfies the standards of 33-2-514. The commissioner may, in the commissioner's discretion, waive the requirement of an actuarial opinion and require a report prepared by an actuarial firm and, upon a showing of good cause, may extend by 30 days the filing date for the report.

(c) a statement of its contribution rates for the ensuing year;

(d) a statement of operations for the previous year;

(e) if the total payments to the arrangement for participation during the prior year of operations exceeded the sum of $2 million, an audit satisfying the requirements of the commissioner's rules governing annual audited reports, certified by an independent certified public accountant. The filing date for the audit must be extended by the commissioner upon a showing of good cause.

(f) additional information as the commissioner reasonably determines to be necessary to determine the financial integrity of the management.

(3) An arrangement shall file with the commissioner a copy of the arrangement's Internal Revenue Service form 5500 together with all attachments to the form, at the time required for filing the form.

Section 12. Failure to comply. (1) Pursuant to 33-1-317 and 33-1-318, the commissioner may impose sanctions against a self-funded multiple employer welfare arrangement that fails to comply with the provisions of [sections 1 through 15]. The maximum fine may not exceed $5,000 for each violation.

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(2) The commissioner may issue a notice of intent to revoke the certificate of authority of a self-funded multiple employer welfare arrangement that fails to comply with the provisions of [section 8, 9, or 11]. If, within 60 days of receiving notice under this subsection, the arrangement fails to file with the commissioner a plan to bring the arrangement into compliance with [section 8, 9, or 11], the commissioner may revoke the arrangement's certificate of authority. A revocation of a certificate of authority is a contestod case under the Montana Administrative Procedure Act.

(3) The commissioner shall adopt rules to provide sanctions for an arrangement that fails to maintain the level of reserves required by [section 8]. The rules must be consistent with the provisions of Title 33, chapter 2, part 13.

Section 13. Violation by arrangement failing to obtain or maintain certificate of authority. A self-funded multiple employer welfare arrangement organized or maintained in Montana without a certificate of authority is in violation of 33-2-101.

Section 14. Application of insurance code to arrangements. (1) In addition to [sections 1 through 15], self-funded multiple employer welfare arrangements are subject to the following provisions of Title 33:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under [sections 1 through 15];

(b) Title 33, chapter 1, part 7;

(c) 33-3-308; and

(d) Title 33, chapter 18, except 33-18-242.

(2) Except as provided in [sections 1 through 15], other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked.

Section 15. Disclosure. Each policy issued by a self-funded multiple employer welfare arrangement must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by a self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement may not be subject to all of the insurance laws and regulations of your stato. State insurance insolvency guaranty funds are not available for a self-funded multiple employer welfare arrangement."

Section 16. Section 33-1-1111, MCA, is amended to read:

"33-1-1111. How to show jurisdiction. A person or entity may show that it is subject to the jurisdiction of another agency of this or another state or any subdivision ~~thereof~~ *of this state or another state* or the federal government by providing the commissioner with the appropriate certificate, license, or other document issued by the other governmental agency that permits or qualifies it to provide those services. *If it is not the practice of the governmental agency to*

issue a certificate, license, or other document establishing that the agency permits the person or entity to provide those services, the person or entity may show that it is subject to the jurisdiction of the agency by other means appropriate under the circumstances."

Section 17. Codification instruction. [Sections 1 through 15] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 15].

Approved April 13, 1995

CHAPTER NO. 421

[SB 387]

AN ACT CLARIFYING APPLICATION OF COMMON-LAW RULES OF ISSUE AND CLAIM PRECLUSION TO THE ADJUDICATION OF EXISTING WATER RIGHTS; EXPANDING THE WATER CLAIM APPEAL PROCESS; CLARIFYING STANDING FOR OBJECTIONS TO WATER CLAIMS; ESTABLISHING A WATER ADJUDICATION ADVISORY COMMITTEE; AMENDING SECTIONS 3-7-103, 85-2-233, AND 85-2-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-7-103, MCA, is amended to read:

"3-7-103. Promulgation of rules and prescription of forms — *advisory committee.* *(1)* As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation with the water judge and the department of natural resources and conservation.

(2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide recommendations to the water court, the Montana supreme court, the department of natural resources and conservation, and the legislature on methods to improve and expedite the water adjudication process.

(b) The committee consists of three nongovernmental attorneys who practice before the water court, one district court judge, and three water users who have filed statements of claim with the department of natural resources and conservation under this chapter.

(c) The chief water judge or the judge's designee shall serve as an ex officio member of the committee. The Montana supreme court may appoint the attorney general or the attorney general's designee, a representative from the department of natural resources and conservation, and a representative of the United States government as ex officio members of the committee.

(d) The committee members shall serve at the pleasure of the water court and shall serve without compensation.

(e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as often as determined by the Montana supreme court."

Section 2. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on temporary preliminary decree or preliminary decree. (1) (a) For good cause shown *and subject to the provisions of subsection (7)*, a hearing ~~shall~~ *must* be held before the water judge on any objection to a temporary preliminary decree or preliminary decree by:

(i) the department;

(ii) a person named in the temporary preliminary decree or preliminary decree;

(iii) any person within the basin entitled to receive notice under 85-2-232(1); or

(iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if ~~his~~ *the* claim or claims were from sources within the decreed basin.

(b) *For the purposes of this subsection (1), "good cause shown" means a written statement showing that a person has an ownership interest in water or its use that has been affected by the decree.*

(c) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree. However, a person may not raise an objection to a matter in a preliminary decree if ~~he~~ *that person* was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not ~~have~~ been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void; or

(v) any other reason justifying relief from the operation of the judgment.

(2) If a hearing is requested, the request must be filed with the water judge within 180 days after entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.

(3) The request for a hearing ~~shall~~ *must* ~~contain a precise statement of the findings and conclusions in the temporary preliminary decree or preliminary decree with which the department or person requesting the hearing disagrees. The request shall~~ specify the paragraphs and pages containing the findings and

conclusions to which objection is made. The request ~~shall~~ *must* state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the temporary preliminary decree or preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing ~~shall~~ *must* be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in ~~M.R.Civ.P.,~~ Rule 53(e), *Montana Rules of Civil Procedure.*

(5) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(6) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact ~~shall be~~ *is* permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall ~~thereafter~~ issue a new preliminary decree in accordance with 85-2-231~~;~~. ~~provided, however~~ *However*, ~~that~~ any party to a compact declared void may appeal from ~~such~~ *that* determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal ~~shall stay~~ *stays* the period for filing a statement of claim as required under this subsection.

(7) Upon petition by a claimant, the water court may grant a motion for dismissal to an objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water right that was previously decreed and if dismissal is consistent with common-law principles of issue and claim preclusion.

(8) The provisions of subsection (7) do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence."

Section 3. Section 85-2-235, MCA, is amended to read:

"85-2-235. **Appeals ~~from final decree~~.** *(1)* A person whose existing rights and priorities are determined in ~~the~~ *a* final decree may appeal the determination only if:

~~(1)~~*(a)* ~~he~~ *the person* requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree; or

~~(2)~~*(b)* ~~his~~ *the person's* rights or priorities as determined in the temporary preliminary decree or the preliminary decree were affected as the result of an objection filed by another person.

(2) An interlocutory ruling by the water judge upon a question of law may be appealed by any party affected by the decision and who participated in the matter in which the ruling was issued."

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Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 422

[SB 395]

AN ACT REVISING THE LAWS GOVERNING THE BOARD OF NURSING; AUTHORIZING THE BOARD OF NURSING TO GIVE TEMPORARY APPROVAL TO PRACTICE IN A FIELD OF ADVANCED PRACTICE REGISTERED NURSING TO A PERSON WHO HAS COMPLETED THE ADVANCED PRACTICE REGISTERED NURSING EDUCATION REQUIRED IN ORDER TO APPLY TO TAKE THE PERSON'S FIRST NATIONAL CERTIFICATION EXAMINATION; PROVIDING RULEMAKING AUTHORITY FOR TEMPORARY APPROVAL TO PRACTICE; AMENDING SECTIONS 37-8-202 AND 37-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to the board of nursing to give temporary approval and to establish requirements for temporary approval to practice in a field of advanced practice registered nursing. The legislature finds that it is in the public interest to give temporary approval to practice to a person who has completed the advanced practice registered nursing education required in order for the person to apply to take a national certification examination. In order to protect the public, the board of nursing is authorized to make rules regarding the procedures for obtaining temporary approval to practice in each field of advanced practice registered nursing and for the supervision of the nurse. Because the practices of nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists are unique, the board may adopt separate requirements for each specialty as necessary and shall consult with practitioners in each field in the development of the rules.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-8-202, MCA, is amended to read:

"**37-8-202. Organization — meetings — powers and duties.** (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep completo minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administor this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chaptor. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing fi om the approved list. It shall cause

the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to *recognition of* advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified *or in the process of being certified* by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse-anesthetists, and clinical nurse specialists.

(b) The board of nursing and the board of medical examiners, acting jointly, shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriato for a nurse specialist who applies to the hoard for authorization, prescriptive authority must he granted.

(6) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance te licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

(7) The board may adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons.

(8) The board may fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 2. Section 37-8-409, MCA, is amended to read:

"37-8-409. ~~Midwifery~~ ***Advanced practice registered nursing*** **— when professional nurse may practice.** (1) A person licensed under 37-8-406 or 37-8-407 who holds a certificate in ~~nurse-midwifery from the American college of nurse-midwives~~ *a field of advanced practice registered nursing* may practice ~~midwifery~~ *in the specified field of advanced practice registered nursing* upon approval by the board of an amendment to ~~her~~ *the person's* license granting a certificate ~~of nurse-midwifery~~ *in a field of advanced practice registered nursing*. The board shall grant a certificato ~~of nurse-midwifery~~ *in a field of advanced practice registered nursing* to a person who submits written verification of certification by ~~the American college of nurse-midwives~~ *a board-approved national certifying body appropriate to the specific field of advanced practice*

registered nursing and who meets ~~such~~ *any* other qualification requirements ~~as~~ *that* the board ~~may prescribe~~ *prescribes*.

(2) The board may give temporary approval to practice ~~nurse-midwifery for up to 4 months~~ *in a specific field of advanced practice registered nursing* to a person who ~~has taken the American college of nurse-midwives~~:

(a) intends to apply for approval under subsection (1); and

(b) has completed the advanced practice registered nursing education required in order for the person to apply to take the first national certification examination *available*~~, pending receipt of official notification of the results of the examination~~ *from a board-approved national certifying body appropriate to the specific field of advanced practice registered nursing.*

(3) If the person fails to obtain certification upon the person's first examination, the temporary approval provided for in subsection (2) expires on receipt of the examination results. The temporary approval may not be extended.

(4) In order to protect the public, the board may, in consultation with persons in the specific field of advanced practice registered nursing, adopt specific rules for each field of advanced practice registered nursing for the granting of temporary approval to practice and for determining the supervision of the licensee with temporary approval."

Section 3. Coordination instruction. If [this act] and House Bill No. 518 are both passed and approved and House Bill No. 518 amends 37-8-409, then section 37-8-409 must read as follows:

"37-8-409. Midwifery *Advanced practice registered nursing* — when professional nurse may practice. (1) A person licensed under ~~37-8-406 or 37-8-407~~ *this chapter* who holds a certificate in ~~nurse-midwifery from the American college of nurse-midwives~~ *a field of advanced practice registered nursing* may practice ~~midwifery~~ *in the specified field of advanced practice registered nursing* upon approval by the board of an amendment to ~~her~~ *the person's* license granting a certificate ~~of nurse-midwifery~~ *in a field of advanced practice registered nursing.* The board shall grant a certificate ~~of nurse-midwifery~~ *in a field of advanced practice registered nursing* to a person who submits written verification of certification by ~~the American college of nurse-midwives~~ *a board-approved national certifying body appropriate to the specific field of advanced practice registered nursing* and who meets ~~such~~ *any* other qualification requirements ~~as~~ *that* the board ~~may prescribe~~ *prescribes*.

(2) The board may give temporary approval to practice ~~nurse-midwifery for up to 4 months~~ *in a specific field of advanced practice registered nursing* to a person who ~~has taken the American college of nurse-midwives~~:

(a) intends to apply for approval under subsection (1); and

(b) has completed the advanced practice registered nursing education required in order for the person to apply to take the first national certification examination *available*~~, pending receipt of official notification of the results of the examination~~ *from a board-approved national certifying body appropriate to the specific field of advanced practice registered nursing.*

(3) If the person fails to obtain certification upon the person's first examination, the temporary approval provided for in subsection (2) expires on receipt of the examination results. The temporary approval may not be extended.

(4) In order to protect the public, the board may, in consultation with persons in the specific field of advanced practice registered nursing, adopt specific rules for each field of advanced practice registered nursing for the granting of temporary approval to practice and for determining the supervision of the licensee with temporary approval."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 423

[HB 420]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE ISSUANCE AND REPAYMENT OF BONDS BY LOCAL GOVERNMENTS AND SCHOOL DISTRICTS; AMENDING SECTIONS 7-6-1103, 7-7-109, 7-7-2210, 7-7-2238, 7-7-2251, 7-7-2252, 7-7-2254, 7-7-2255, 7-7-2256, 7-7-2257, 7-7-2259, 7-7-2262, 7-7-2268, 7-7-2269, 7-7-2301, 7-7-2302, 7-7-2304, 7-7-2407, 7-7-2501, 7-7-4209, 7-7-4236, 7-7-4254, 7-7-4255, 7-7-4257, 7-7-4259, 7-7-4262, 7-7-4268, 7-7-4269, 7-7-4301, 7-7-4302, 7-7-4304, 7-7-4422, 7-7-4424, 7-7-4428, 7-7-4432, 7-7-4433, 7-7-4434, 7-12-2174, 7-12-4206, 7-15-4322, 20-9-408, 20-9-412, 20-9-427, 20-9-429, 20-9-430, 20-9-431, 20-9-432, 20-9-433, 20-9-434, 20-15-404, AND 90-5-103, MCA; REPEALING SECTIONS 7-7-2267, 7-7-2275, 7-7-4267, AND 20-9-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-1103, MCA, is amended to read:

"7-6-1103. Issuance and sale of short-term obligations — procedure. (1) The issuance of short-term obligations must be authorized by an ordinance of the governing body that fixes the maximum amount of the obligations to be issued or, if applicable, the maximum amount ~~which~~ *that* may be outstanding at any time, the maximum term and interest rate or rates to be borne ~~thereby~~ *by the obligations*, the manner of sale, *the* maximum price, *the* form including bearer or registered as provided in Title 17, chapter 5, part 11, *the* terms, *the* conditions, and the covenants of the obligations. Short-term obligations issued under this section ~~shall~~ *must* bear ~~such~~ fixed or variable rate or rates of interest as *that* the governing body considers to be in the best interests of the local government. Variable rates of interest may be fixed in relationship to ~~such~~ *the* standard or index ~~as~~ *that* the governing body designates.

(2) The governing body may sell the short-term obligations at par or at a discount:

(a) at private negotiated sale to the board of investments as provided in Title 17, chapter 5, part 16; or

(b) at public sale to any other person. Any public sale must be noticed as provided in 7-7-4434~~(2)~~."

Section 2. Section 7-7-109, MCA, is amended to read:

"7-7-109. *Definitions — sale* ~~Sale~~ of notes in anticipation of federal or state revenue *or issuance of bonds.* (1) As used in this section, the following definitions apply:

(a) "Bonds" means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific ~~revenues~~ *revenue*, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

~~(b) "Political subdivision" means a county, city, town, school district, irrigation district, rural special improvement district, special improvement district, county water or sewer district, or any other political subdivision of the state, but does not include the state or any board, agency, or commission of the state.~~

~~(c)~~*(b)* "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(c) (i) "Political subdivision" means a county, city, town, school district, irrigation district, rural special improvement district, special improvement district, county water or sewer district, or any other political subdivision of the state.

(ii) The term does not include the state or any board, agency, or commission of the state.

(2) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law and the political subdivision has applied for *and received a commitment for* a grant or loan of state or federal funds *or has received a commitment from a person or entity to purchase bonds* to aid in payment of costs incurred or to be incurred for the authorized purpose, its governing body may by resolution issue and sell notes in anticipation of the receipt of the grant, ~~or~~ loan, *or bonds* in an amount not exceeding the total amount of bonds authorized and maturing within not more than 3 years from the date *on which* ~~such~~ *the* notes are issued. *The outstanding term of the notes issued under this section may not reduce the term of the bonds otherwise permitted by law. Before the notes are issued, the political subdivision must receive a written commitment for a grant, loan, or bond purchase in an amount that is not less than the principal amount of the notes and shall by resolution agree to fulfill any conditions of the commitment.*

(3) The proceeds of the grant, ~~or~~ loan, *or bonds,* when received, ~~shall~~ *must* be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(4) Any amount of the notes ~~which~~ *that* cannot be paid at maturity from the proceeds of the grant, ~~or~~ loan, *or bond sale* or from any other funds appropriated

by the governing body for the purpose ~~shall~~ *must* be paid from the proceeds of bonds to be issued and sold before the maturity date, or if sufficient funds are not available for payment in full of the notes at maturity, ~~those bondholders may, in exchange,~~ *the holders of the notes have the right to* require the issuance of ~~long-term~~ bonds *in exchange for the notes, with the bonds maturing as amortization bonds, bearing interest at a rate, and secured over a term as provided in the resolution authorizing the issuance of the notes. If notes are validly issued under then applicable law, the political subdivision may issue bonds in a principal amount equal to the outstanding principal amount of the notes, regardless of any limitation in the then applicable law concerning the principal amount of the bonds.* ~~The bonds so issued are secured and subject to the terms and conditions provided by the law authorizing their issuance. Notes and bonds may be issued as provided in this section regardless of the amount authorized if the amount which may legally be issued is less than the commitment for which the grant or loan is made. Before the notes or bonds are issued, the political subdivision must receive a written commitment for a grant or loan in an amount equal to the remaining estimated costs and must by resolution provide for the fulfillment of the conditions of the commitment.~~"

Section 3. Section 7-7-2210, MCA, is amended to read:

"**7-7-2210. Amortization bonds.** The term "amortization bonds", as used in this part, ~~is hereby defined as meaning~~ *means* that form of bond on which a part of the principal is required to be paid each time *that* interest becomes due and payable~~;~~. ~~which~~ *The* part payment of principal increases with each following installment in the same amount *that* the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date~~;~~. ~~provided, however, that~~ *However,* the *payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The* final payment may vary in amount from the other payments to the extent resulting from ~~disregarding fractional cents~~ *rounding amounts* in the other payments."

Section 4. Section 7-7-2238, MCA, is amended to read:

"**7-7-2238. Resolution to ~~issue~~ *sell* bonds.** (1) If a sufficient percentage of the qualified electors entitled to vote at an election voted on the question and a sufficient percentage of votes were cast in favor of ~~the~~ issuing ~~of~~ bonds as provided in 7-7-2237, the board of county commissioners shall~~, at a regular or special meeting held within 30 days after the election, pass and~~ adopt a resolution ~~providing for the issuance~~ *calling for the sale* of the bonds.

(2) The resolution *calling for the sale of the bonds* must ~~recite~~ *state*:

(a) the purpose for which the bonds are to be issued;

(b) the amount of *the* bonds to be issued;

(c) the minimum purchase price of the bonds;

~~(c) the maximum rate of interest the bonds may bear;~~

(d) the date ~~they~~ *that the bonds will* bear;

(e) the period of time through which ~~they~~ *the bonds* are payable; ~~and~~

(f) the optional *redemption* provisions, if any~~.~~*; and*

(g) a form of notice of the sale of the bonds.

(3) ~~The resolution must provide for the manner of the execution of the bonds.~~ The resolution must ~~provide that~~, except in a bond issue of citizen bonds, ~~preference must be given to amortization bonds, but it must~~ fix the denomination of serial bonds in case it is found advantageous to issue bonds in that form. The board may in its discretion provide that the bonds may be issued and sold in two or more series or installments.

(4) ~~The resolution must adopt a form of notice of the sale of the bonds.~~ *The board of county commissioners may fix the minimum price for the bonds in an amount less than the principal amount of the bonds, which may not be less than 97% of the principal amount, if the board determines that a sale at that price is in the best interests of the county."*

Section 5. Section 7-7-2251, MCA, is amended to read:

"7-7-2251. Form of notice of sale of bonds. (1) The notice of sale must state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and must be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of.... County, state of Montana, that the board will on the.... day of...., ~~19~~ ...., at the hour of.... ....m., at the office of the board in the courthouse in the (town or city) of.... in the said county, sell to the highest and best bidder for cash~~, either amortization or serial~~ *general obligation* bonds of the county in the principal amount of.... dollars ($....) for the purpose of.....

~~Amortization bonds will be the first choice and serial bonds will be the second choice of the board.~~

~~If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the board may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of.... years from the date of issue.~~

~~If serial~~ *The* bonds ~~are~~ *will be* issued and sold~~, they will be~~ in the *aggregate principal* amount of.... dollars ($....) ~~each~~ and will become payable according to the maturity schedule set forth below (set forth maturity schedule adoptod by the board of county commissioners) *(If the bonds are to be issued as amortization bonds, indicate that here.).*

The bonds~~, whether amortization or serial bonds,~~ will bear *an original issue* date of...., ~~19~~ ...., ~~and~~ will ~~bear~~ *pay* interest ~~at a rate not exceeding....% per annum~~ commencing on the.... day of.... (month), ~~19~~ ...., ~~and~~ *will be* payable semiannually on the.... day of.... (month) and.... (month) in each year thereafter, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than ~~their par value~~ $____, with accrued interest *on the principal amount of the bonds* to date of delivery, and all bidders ~~must~~ *shall* state the lowest rate *or rates* of interest at which they will purchase the bonds at ~~par~~ *the purchase price specified for the bonds. (An interest rate may not exceed ____% a year.)* The board reserves the right to reject any and all bids and to sell the bonds at private sale.

All bids ~~other than by or on behalf of the board of investments of the state of Montana~~ must be accompanied by ~~a certified check~~ *(insert appropriate bid security as permitted by 18-1-202)* in the sum of.... dollars~~,~~ ($....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that the bidder fails or refuses to complete the purchase of the bonds in accordance with the terms of the bid.

All bids must be addressed to the board of county commissioners and delivered to the county clerk.

ATTEST:

. . . . . .
(~~Chairman~~ *Presiding officer*, Board of County Commissioners)
of . . . . . County,
~~State of~~ Montana

. . . . . .
(Clerk of the Board of County Commissioners)
of . . . . . County, Montana
Address . . . . . , Montana

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to 7-7-2212 through 7-7-2215."

Section 6. Section 7-7-2252, MCA, is amended to read:

"7-7-2252. Publication of notice of sale *of bonds*. The board of county commissioners shall ~~cause such~~ *publish* notice *of the bond sale* ~~to be published~~ in the official newspaper of the county as provided in 17-5-106. The board may in its discretion ~~cause such~~ *publish the* notice *or a summary of the notice* ~~to be published~~ in ~~some~~ *any* financial ~~newspaper~~ *newspapers* published in the city of New York or ~~in the city of~~ Chicago ~~or in financial newspapers published in each of said cities~~."

Section 7. Section 7-7-2254, MCA, is amended to read:

"7-7-2254. Procedure for sale of bonds. (1) The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds ~~shall~~ *may not* be sold at ~~not~~ less than ~~par~~ *the minimum bid specified for their sale* with accrued interest to date of delivery, and each bidder shall specify ~~the form of bonds to be issued, whether amortization or serial, and~~ the rate of interest *and the purchase price* at which he *the bidder* will purchase the bonds. ~~A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be~~

~~issued, the board shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the county.~~ The board shall accept the bid ~~which they shall judge~~ *that it judges* most advantageous to the county. The board ~~is authorized to~~ *may* reject any ~~or all~~ bids and ~~to~~ sell the bonds at private sale if ~~they deem~~ *the board considers* it ~~for~~ *in* the best interests of the county~~; provided, however, that such bonds shall not be sold at less than par with accrued interest to date of delivery~~.

(3) ~~Consultants'~~ *Consultant* fees and ~~attorneys'~~ *attorney* fees may be paid to any person or corporation for assisting in the proceedings, ~~in the~~ preparation of the bonds, or ~~in~~ negotiating the sale ~~thereof~~ *of the bonds*."

Section 8. Section 7-7-2255, MCA, is amended to read:

"**7-7-2255. Form and execution of bonds.** (1) At the time of the sale of the bonds or at a meeting held ~~thereafter~~ *after the sale*, the board of county commissioners shall *adopt a resolution providing for the issuance of the bonds,* ~~prescribe~~ *prescribing* the form of the bonds, whether amortization bonds or serial bonds, and ~~of the coupons to be attached thereto~~ *providing the manner of execution of the bonds.*

(2) Each ~~and every~~ county bond and ~~every~~ *each* coupon attached ~~thereto~~ *to the bond* must be signed by *or bear the facsimile signatures of* the ~~chairman~~ *presiding officer* of the board of county commissioners and the county treasurer and *must be* attested by the county clerk, *provided that one signature of a county official or the bond registrar must be a manual signature.* Each bond ~~shall~~ *may* have the county seal *or its facsimile* ~~affixed thereto~~ *imprinted on the bond.*"

Section 9. Section 7-7-2256, MCA, is amended to read:

"**7-7-2256. Printing of bonds.** (1) Except as provided in subsection (2), the county clerk, under the direction of the board, shall ~~cause~~ *have* the bonds~~, with coupons attached thereto, to be~~ printed or lithographed at the expense of the county at lowest commercial rates. *The bonds may be typewritten with the purchaser's consent.*

(2) A purchaser of ~~such~~ *the* bonds may furnish the ~~same~~ *bonds* to the county for execution if the ~~same~~ *execution* is done at ~~his~~ *the purchaser's* own expense and without expense to the county."

Section 10. Section 7-7-2257, MCA, is amended to read:

"**7-7-2257. Registration of bonds.** (1) When ~~duly~~ executed by the officers of the county ~~as herein provided~~, the bonds ~~shall~~ *must* be registered by the county treasurer ~~in a book provided for that purpose~~ before being delivered to the purchaser.

(2) ~~Such~~ *The* registration ~~shall~~ *must* show:

~~(a) the number and amount of each bond;~~

~~(b)~~*(a)* the date of issue, ~~date redeemable~~ *the maturities of the bonds subject to early redemption and the redemption dates,* and *the* date when the ~~same~~ *bonds* ~~becomes~~ *become* due; *and*

~~(c)~~*(b)* the amount of all payments of both principal and interest required ~~to be made~~ on each bond, with the dates when the ~~same~~ *payments* ~~are required to~~ *must* be paid~~; and~~

~~(d) the name and address of the purchaser~~."

Section 11. Section 7-7-2259, MCA, is amended to read:

"**7-7-2259. Delivery of bonds.** ~~(1) If the board of investments is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the department of commerce. The department shall deliver them to the state treasurer, and payment therefor shall be made in the manner provided by law.~~

~~(2) If the bonds are purchased by other investors, the~~ *The* county treasurer shall deliver the bonds to the purchaser upon receiving full payment ~~therefor~~ *for the bonds*."

Section 12. Section 7-7-2262, MCA, is amended to read:

"**7-7-2262. Payment of principal and interest.** The county treasurer shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as ~~such~~ *the* interest and principal become due and at tbe place where ~~said~~ *the* bonds are payable, upon ~~the~~ presentation and surrender of the coupon ~~or coupons~~ or bond ~~or bonds~~ to be paid. ~~If the bonds are held by the state of Montana, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons or bonds and return the same to the county treasurer, together with his receipt.~~"

Section 13. Section 7-7-2268, MCA, is amended to read:

"**7-7-2268. Redemption of bonds.** (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds, or principal installments in the case of amortization bonds, of the issue or series to which the sinking and interest fund belongs, which bonds are not yet due but are then redeemable or will become redeemable on or before the next interest payment date, the county treasurer shall apply the available money in redemption of as many of the bonds, or principal installments in the case of amortization bonds, as tbe available money will pay and redeem to a redemption dato on or before the next interest payment date, as fixed by tbe county treasurer.

(2) The county treasurer shall give notice, *by mail sent at least 30 days before the redemption date,* to the bolder of the bonds, if ownership of the bonds is registered or is otberwise known to the treasurer, to the registered owners at their addresses as they appear in the bond registration books, ~~or~~ *and* to any bank or financial institution at which the bonds are payable~~, by mail sent at least 15 days before the redemption date,~~ that the bonds or principal installments will be paid and redeemed on that date. A defect in or failure to give notice may not affect the validity of the proceedings for the redemption of a bond or principal installment *not affected by the defect or failure.* If the ownership of the bonds is not registered, the county treasurer shall also publish in the official newspaper of the county *or other newspaper designated in the resolution authorizing the issuance of the bonds,* once, ~~a week for 2 consecutive~~

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~~weeks immediately preceding~~ *not less than 30 days prior to* the ~~interest payment~~ *redemption* date, a notice that the bonds or principal installments have been called for redemption and will be paid in full on the redemption date. If actual notice of the call bas been ~~given through a different means for its redemption~~ *received*, the holder of a hond may waive published or mailed notice.

(3) If the bonds or principal installments are payable at ~~some~~ *a* bank or financial institution, the county treasurer shall remit to the bank or financial institution, before the redemption date, an amount sufficient to pay and redeem the bonds or principal installments with interest accrued on the bonds or principal installments. If the bonds are not presented for payment and redemption on the redemption date, interest ceases on that date *if the funds for payment and redemption have been deposited in a bank or financial institution.*"

Section 14. Section 7-7-2269, MCA, is amended to read:

"**7-7-2269. Order of redemption of bonds.** All bonds or principal installments of amortization bonds to be redeemed under the provisions of ~~7-7-2267 or~~ 7-7-2268 may be paid and redeemed in the order *that* the county treasurer selects, consistent with the provisions of the resolution authorizing the issuance of the bonds."

Section 15. Section 7-7-2301, MCA, is amended to read:

"**7-7-2301. Authority to issue refunding general obligation bonds.** (1) The board of county commissioners of ~~every~~ *each* county of tbe state ~~is hereby vested with the power and authority to~~ *may* issue, negotiate, and sell coupon bonds on the credit of the county, as ~~more specifically~~ provided in ~~this part and~~ part 22 *and this part*, for the purpose of refunding, paying, and redeeming optional, redeemable, or maturing bonds when:

(a) there are not sufficient funds available to pay ~~such~~ *the* bonds *or there is a reduction in debt service as a result of issuing refunding bonds pursuant to 7-7-2304*; and

(b) it is ~~deemed~~ *considered* in the best interests of the county to refund ~~such~~ *the* bonds.

(2) (a) The board ~~shall have~~ *has* the ~~power and~~ authority to negotiato with the holders of the bonds of ~~said~~ *the* county for an agreement or agreements whereby ~~said~~ *the* bondholders agree to accept less than the full amount of ~~such~~ *the* bonds and the accrued unpaid interest ~~thereon~~ *on the bonds* ~~in~~ *as* full payment and satisfaction ~~thereof~~ *of the bonds*, to enter into ~~such~~ *the* agreement or agreements, and to issue refunding honds for the amount agreed upon wbenever:

(i) the total indebtedness of a county exceeds 5% of tbe value of the taxable property ~~therein~~ *in the county*; and

(ii) the board of county commissioners of ~~said~~ *the* county ~~finds and~~ determines that the county is unable to pay and discharge ~~such~~ *the* indebtedness in full.

(b) These bonds may be issued in more than one series if tbe circumstances ~~so~~ require, and each series may be either amortization bonds or serial bonds.

The plan agreed upon between the board and the bondholders ~~shall~~ *must* be embodied in full in the resolution providing for the issue of ~~such~~ *the* bonds."

Section 16. Section 7-7-2302, MCA, is amended to read:

"**7-7-2302. Applicability of certain other bond provisions.** *(1)* The provisions of 7-7-2203 through 7-7-2207, 7-7-2209 through 7-7-2211, 7-7-2222, 7-7-2255 through *7-7-2266, 7-7-2268 through* 7-7-2270, and 7-7-2272 through 7-7-2274 apply to refunding bonds issued under this part; however, the board of county commissioners may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-2251, 7-7-2252, and 7-7-2254.

(2) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 7-7-2211."

Section 17. Section 7-7-2304, MCA, is amended to read:

"**7-7-2304. Interest rate on refunding general obligation bonds.** (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the outstanding bonds ~~which~~ *that* are to be refunded.

(2) Refunding bonds may bear interest in excess of the rato on the refunded bonds if the issuance of tbe refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county.

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county."

Section 18. Section 7-7-2407, MCA, is amended to read:

"**7-7-2407. Restriction on use of loan proceeds.** All money borrowed by or on behalf of any county must be used only for tbe purpose specified ~~in the~~ *by* law ~~authorizing the loan~~."

Section 19. Section 7-7-4209, MCA, is amended to read:

"**7-7-4209. Amortization bonds.** The term "amortization bonds", as used in this part, ~~is hereby defined as meaning~~ *means* tbat form of bond on which a part of the principal is required to be paid each time *that* interest becomes due and payable~~;~~. ~~which~~ *The* part payment of principal increases with each following installment in the same amount *that* tbe interest payment decreases, so that the combined amount payable on both principal and interest is the same on each interest payment date~~.; provided, however~~ *However*, ~~that~~ tbe *payment on the initial payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The* final payment may vary in amount from the other payments to the extent resulting from ~~disregarding fractional cents~~ *rounding amounts* in the other payments."

Section 20. Section 7-7-4236, MCA, is amended to read:

"**7-7-4236. Resolution to issue *sell* bonds.** (1) If ~~a sufficient percentage of the qualified electors of the city or town entitled to vote on the question of issuing bonds voted thereon and a sufficient percentage of the votes were cast in favor of the~~ issuing of ~~the~~ bonds *has been approved* as provided in 7-7-4235, the city or town council shall~~, at a regular or special meeting held within 30 days thereafter,~~ pass a resolution ~~providing for the issuance~~ *calling for the sale* of the bonds.

(2) The resolution ~~shall recite~~ *calling for the sale of the bonds must state*:

(a) the purpose for which the bonds are to be issued;

(b) the amount ~~thereof~~ *of the bonds to be issued*;

(c) ~~the maximum rate of interest the bonds may bear~~ *the minimum purchase price of the bonds*;

(d) the date ~~they shall~~ *that the bonds will* bear;

(e) the period of time through which ~~they~~ *the bonds* are payable; ~~and~~

(f) the optional redemption provisions, if any;

~~(f)~~*(g)* that ~~any~~ *a* bond may be redeemed in full, at the option of the city or town, on any interest payment date after expiration of one-half of the term for which the bond was issued~~.~~*; and*

(h) a form of notice of the sale of the bonds.

(3) The resolution ~~shall provide for the manner of execution of the bonds. It shall~~ *must* ~~provide that~~, except in a bond issue of citizen bonds, ~~preference shall be given amortization bonds but shall~~ fix the denomination of serial bonds in case it ~~shall be~~ *is* found advantageous to issue bonds in that form. The council may in its discretion provide that ~~such~~ *the* bonds may be issued and sold in two or more series or installments.

(4) ~~The resolution shall adopt a form of notice of the sale of the bonds.~~ *The city or town council may fix the minimum price for the bonds in an amount not less than 97% of the face value if the city or town council determines that the sale is in the best interests of the city or town.*"

Section 21. Section 7-7-4254, MCA, is amended to read:

"**7-7-4254. Procedure for sale of bonds.** (1) The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds shall *may not* be sold at ~~not~~ less than ~~par~~ *the minimum bid specified for their sale* with accrued interest to date of delivery, and each bidder shall specify ~~the form of bonds to be issued, whether amortization or serial, and~~ the rate of interest *and the purchase price* at which ~~he~~ *the bidder* will purchase the bonds. ~~A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be issued, the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town.~~ The council shall accept the bid *that* it ~~considers~~ *judges* most advantageous to the city or town. The council may reject any ~~and all~~ bids and

sell the bonds at private sale if ~~this is considered to be~~ *the council considers it* in the best interests of the city or town~~; provided, however, that the bonds may not be sold at less than par with accrued interest to date of delivery~~.

(3) ~~Consultants'~~ *Consultant* fees and ~~attorneys'~~ *attorney* fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale ~~thereof~~ *of the bonds*."

Section 22. Section 7-7-4255, MCA, is amended to read:

"**7-7-4255. Form and execution of bonds.** (1) At the time of the sale of the bonds or at a meeting held ~~thereafter~~ *after the sale*, the city or town council shall ~~prescribe~~ *adopt a resolution providing for the issuance of the bonds, prescribing* the form of the bonds, whether amortization or serial bonds, and ~~of the coupons to be attached thereto~~ *providing the manner of execution of the bonds*.

(2) Each ~~and every~~ bond and ~~every~~ *each* coupon attached ~~thereto~~ *to a bond* must be signed by *or bear the facsimile signatures of* the mayor *and the treasurer* of the city or town ~~and by the treasurer thereof~~ and must be attested by the city or town clerk, *provided that one signature of a city or town official or the bond registrar must be a manual signature*. Each bond ~~shall~~ *may* have the city or town seal ~~affixed thereto~~ *or its facsimile imprinted on the bond*."

Section 23. Section 7-7-4257, MCA, is amended to read:

"**7-7-4257. Registration of bonds.** (1) When ~~duly~~ executed by the officers of the city or town ~~as herein provided~~, the bonds ~~shall~~ *must* be registered by the city treasurer or town clerk ~~in a book provided for that purpose~~ before being delivered to the purchaser.

(2) ~~Such~~ *The* registration ~~shall~~ *must* show:

~~(a) the number and amount of each bond;~~

~~(b)~~*(a)* the date of issue, ~~date redeemable~~, *the maturities of the bonds subject to early redemption, the redemption dates,* and ~~date~~ *the dates* when the ~~same~~ *principal and interest on the bonds* will become due; *and*

~~(c)~~*(b)* the amount of all payments of both principal and interest required ~~to be made~~ on each bond, with the dates when the ~~same~~ *payments* ~~are required to~~ *must* be made~~; and~~

~~(d) the name and address of the purchaser~~."

Section 24. Section 7-7-4259, MCA, is amended to read:

"**7-7-4259. Delivery of bonds.** ~~(1) If the board of investments is the purchaser of the bonds, the city treasurer or town clerk shall forward the registered bonds to the department of commerce. The department shall deliver them to the state treasurer, and payment therefor shall be made in the manner provided by law.~~

~~(2) If the bonds are purchased by other investors, the~~ *The* city treasurer or town clerk sball deliver the bonds to the purchaser upon receiving full payment ~~therefor~~ *for the bonds*."

Section 25. Section 7-7-4262, MCA, is amended to read:

"**7-7-4262. Payment of principal and interest.** The city treasurer or town clerk shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as ~~such~~ *the* interest and principal become due and at the place where ~~such~~ *the* bonds are payable, upon presentation and surrender of the coupon ~~or coupons~~ or bond ~~or bonds~~ to be paid. ~~If the bonds are held by the state, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons or bonds and return the same to the city treasurer or town clerk, together with his receipt therefor.~~"

Section 26. Section 7-7-4268, MCA, is amended to read:

"**7-7-4268. Redemption of bonds.** (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more of the outstanding bonds of the issue or series to which the sinking and interest fund belongs, which bonds are not yet due but are then redeemable or will become redeemable on or before the next interest payment date, the city treasurer or town clerk shall apply the available money in redemption of as many of the bonds as the available money will pay and redeem to a redemption date on or before the next interest payment date, as fixed by the city treasurer or town clerk.

(2) The city treasurer or town clerk shall ~~give notice to~~ *notify* the holder of the bond or bonds, if ownership of the bonds is registered or is otherwise known to the treasurer, ~~to~~ the registered owners at their addresses as they appear in the bond registration books, ~~or to~~ *and* any bank or financial institution at which the bonds are payable, by mail sent at least ~~15~~ *30* days before the redemption date, that bonds will be redeemed and paid on that date. A defect in or failure to give notice may not affect the validity of the proceedings for the redemption of a bond *or principal installment not affected by the defect or failure*. If the ownership of the bonds is not registered, the city treasurer or town clerk shall also publish in a newspaper of general circulation printed and published in the city or town and, if there is none, then in a newspaper of general circulation in the city or town printed and published in the county in which the city or town is situated a notice that the bond or bonds have been called for redemption and will be paid in full on the redemption date. The notice must be published once, ~~a week for 2 successive weeks immediately preceding~~ *not less than 30 days prior to* the ~~interest payment~~ *redemption* date. If actual notice of the call has been ~~given through a different means for its redemption~~ *received*, the holder of a hond may waive published or mailed notice.

(3) If the bonds are payable at a bank or financial institution, the city treasurer or town clerk shall remit to the bank or *financial* institution, before the redemption date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for redemption and payment on the redemption dato, interest ceases on that date *if the funds have been deposited in the bank or financial institution*."

Section 27. Section 7-7-4269, MCA, is amended to read:

"**7-7-4269. Order of redemption of bonds.** All bonds to be redeemed under the provisions of ~~7-7-4267 or~~ 7-7-4268 may be redeemed in the order *that*

the city treasurer or city clerk selects, consistent with the provisions of the resolution authorizing the issuance of the bonds."

Section 28. Section 7-7-4301, MCA, is amended to read:

"**7-7-4301. Authorization to issue refunding general obligation bonds.** The city or town council ~~has power to~~ *may* contract an indebtedness on behalf of a city or town, upon the credit ~~thereof~~ *of the city or town*, by issuing bonds for the funding of outstanding warrants and maturing bonds *when there are not sufficient funds available to pay the outstanding warrants or maturing bonds or when there is a reduction in debt service as a result of refunding pursuant to 7-7-4304.*"

Section 29. Section 7-7-4302, MCA, is amended to read:

"**7-7-4302. Applicability of certain other bond provisions.** *(1)* The provisions of 7-7-4201 through 7-7-4206, 7-7-4208 through 7-7-4210, 7-7-4255 through *7-7-4266, 7-7-4268 through* 7-7-4270, and 7-7-4272 through 7-7-4274 apply to refunding bonds issued under this part; however, the city or town council may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-4251, 7-7-4252, and 7-7-4254.

(2) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 7-7-4210."

Section 30. Section 7-7-4304, MCA, is amended to read:

"**7-7-4304. Interest rate on refunding general obligation bonds.** (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rato of at least 1/2 of 1% less than the interest rate of the outstanding bonds to be refunded.

(2) Refunding bonds may bear interest in excess of the rate on the refunded bonds if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the city or town.

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county."

Section 31. Section 7-7-4422, MCA, is amended to read:

"**7-7-4422. Determination of cost.** The governing body of ~~the~~ *a* municipality, in determining cost for purposes of 7-7-4421, may include:

(1) all costs and estimated costs of the issuance of ~~said~~ *revenue* bonds, *including a permissible underwriter's discount, if any*;

(2) all engineering, inspection, fiscal, and legal expenses; and

(3) interest ~~which it is~~ estimatod ~~will~~ *to* accrue during the construction period and for 6 months ~~thereafter~~ *after construction* on money borrowed or ~~which~~ *on money that* it is estimated will be borrowed pursuant to this part."

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Section 32. Section 7-7-4424, MCA, is amended to read:

"7-7-4424. Undertakings to be self-supporting. (1) The governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of ~~such~~ *the* undertaking and shall revise ~~such~~ *the* rates, fees, or charges from time to time whenever necessary so that ~~such~~ *the* undertaking ~~shall be and always remain~~ *is and remains* self-supporting. *The property taxes specifically authorized to be levied for the general purpose served by an undertaking or resort taxes approved, levied, and appropriated to an undertaking in compliance with 7-6-4461 through 7-6-4469 constitute revenue of the undertaking and may not result in an undertaking being considered not self-supporting.*

(2) The rates, fees, or charges prescribed, *along with any appropriated property or resort tax collections,* ~~shall~~ *must* ~~be such as will~~ produce revenue at least sufficient to:

(a) pay when due all bonds and interest ~~thereon~~ *on the bonds,* ~~for~~ the payment of which ~~such~~ *the* revenue ~~is or shall have~~ *has* been pledged, charged, or otherwise encumbered, including reserves ~~therefor~~ *for the bonds*; and

(b) provide for all expenses of operation and maintenance of ~~such~~ *the* undertaking, including reserves ~~therefor~~."

Section 33. Section 7-7-4428, MCA, is amended to read:

"7-7-4428. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this part may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of ~~said~~ *the* bonds may be applied and the ~~use and~~ disposition ~~thereof~~ *of the proceeds*;

(2) the use and disposition of the revenue of the undertaking for which ~~said~~ *the* bonds are to be issued, including the creation and maintenance of reserves *and including the pledge or appropriation of all or a portion of the property and resort tax revenue referred to in 7-7-4424*;

(3) the transfer, from the general fund of the municipality to the account or accounts of the undertaking, of an amount equal to the cost of furnishing ~~such~~ *the* municipality or any of its departments, boards, or agencies with the services, facilities, ~~and/or~~ *or* commodities of ~~said~~ *the* undertaking;

(4) the issuance of other or additional bonds payable from the revenue of ~~said~~ *the* undertaking;

(5) the operation and maintenance of ~~such~~ *the* undertaking;

(6) tbe insurance to be carried ~~thereon~~ *on the undertaking* and the use and disposition of insurance money;

(7) books of account and the inspection and audit ~~thereof~~ *of the books*; and

(8) the terms and conditions upon which the holders *or trustees* of ~~said~~ *the* bonds or any proportion of ~~them or any trustee therefor~~ *the bonds* ~~shall be~~ *are*

entitled to the appointment of a receiver by the district court~~, which court shall have~~ *having* jurisdiction. ~~in such proceedings and which~~ *The* receiver may:

(a) enter and take possession of ~~said~~ *the* undertaking;

(b) operate and maintain the ~~same~~ *undertaking*;

(c) prescribe rates, fees, or charges, subject to the approval of the public service commission ~~of Montana~~; and

(d) collect, receive, and apply all revenue thereafter arising ~~therefrom~~ *from the undertaking* in the same manner as the municipality itself might do."

Section 34. Section 7-7-4432, MCA, is amended to read:

"**7-7-4432. Details relating to revenue bonds.** *(1)* Bonds authorized to be issued under this part: ~~shall~~

(a) must bear interest at ~~such~~ *a* rate or rates not exceeding the limitation of 17-5-102~~, payable semiannually~~;

(b) may be *issued* in one or more series;

(c) may bear ~~such~~ *a* date or dates;

(d) may mature at ~~such~~ *a* time or times not exceeding 40 years from their respective dates *of issue*;

(e) may be payable in ~~such~~ *a* place or places;

(f) may carry ~~such~~ registration privileges;

(g) may be subject to ~~such~~ terms of redemption;

(h) may be executed ~~in such manner~~;

(i) may contain ~~such~~ terms, covenants, and conditions; and

(j) may be in ~~such form, either~~ coupon or registered *form*, as ~~such~~ *provided by the initial* resolution or subsequent resolutions ~~may provide~~.

(2) The governing body may fix the minimum price for the bonds in an amount less than the principal amount of the bonds but not less than 97% of the principal amount if it determines that a sale at that price is in the best interests of the undertaking."

Section 35. Section 7-7-4433, MCA, is amended to read:

"**7-7-4433. Sale of bonds.** (1) Bonds authorized to be issued under this part ~~shall~~ *must* be sold at ~~not less than par~~ *a price not less than that prescribed by the governing body, plus interest to the date of delivery of the bonds.*

(2) (a) ~~Said~~ *The* bonds may be sold at private sale to the Unitod Statos or the state of Montana or any agency, instrumentality, or corporation ~~thereof~~ *of the United States or the state.*

(b) Unless sold to the United States or the state of Montana or an agency, instrumentality, or corporation ~~thereof~~ *of the United States or the state*, ~~said~~ *the* bonds ~~shall~~ *must* be sold at public sale after notice of ~~such~~ *the* sale."

Section 36. Section 7-7-4434, MCA, is amended to read:

"**7-7-4434. Notice of sale of bonds.** ~~(1) Except as provided in subsection (2), the~~ *The* notice of sale of bonds required by 7-7-4433(2)(b) ~~shall~~ *must* be published once at least 5 days prior to ~~such~~ *the* sale:

~~(a)~~ in a newspaper ~~circulating in the municipality;~~ *of general circulation in the state,* and *the governing body may publish the notice or summary of the notice*

~~(b)~~ in a financial newspaper published in the city of New York, ~~New York, or the city of~~ Chicago, ~~Illinois,~~ or ~~the city of~~ San Francisco~~, California~~.

~~(2) In the event the bond issue is in an amount of less than $150,000, the bond issue shall be advertised at least 5 days prior to such sale:~~

~~(a) in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco; and~~

~~(b) also in a newspaper as specified in part 24 of chapter 5 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over.~~"

Section 37. Section 7-12-2174, MCA, is amended to read:

"**7-12-2174. Redemption of bonds and warrants.** (1) The county treasurer shall first pay out of the proper special improvement district fund, on each interest payment date, the interest on all outstanding warrants or bonds on presentation of the coupons belonging ~~thereto~~ *to the warrants or bonds* or otherwise then payable and the principal, if any, then payable on the warrants or bonds. Any funds remaining in the fund ~~shall~~ *must* be applied to the redemption of the warrants or bonds in *the* order ~~of their registration as provided in subsection (2)~~ *specified in the resolution authorizing the issuance of the bonds.*

(2) Special improvement district warrants or bonds ~~shall~~ *must* be redeemed on any interest payment date from the proceeds of the bonds or warrants remaining after payment of all costs of the improvements, as provided in 7-12-2173, or from the prepayment of assessments levied in the district. Special improvement district bonds or warrants are *may otherwise be* subject to redemption and prepayment ~~at the option of the county~~ *as provided in the resolution* on any interest payment date.

(3) The date of redemption ~~shall~~ *must* be fixed by the county treasurer and ~~shall~~ *may* not be less than ~~10~~ *30* days after the date of publication or of mailing of *the* notice. The county treasurer shall give written notice to the holders of the warrants or bonds to be redeemed, if their addresses are known, of the number of warrants or bonds to be redeemed and the date on which payment will be made. If the addresses of the holders of all bonds or warrants to be redeemed are not known, the county treasurer shall publish notice of redemption once in a newspaper ~~published in~~ *of general circulation in* the county. On the date fixed for redemption, interest ~~shall~~ *must* cease."

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Section 38. Section 7-12-4206, MCA, is amended to read:

"7-12-4206. Redemption of bonds and warrants. (1) Special improvement district warrants or bonds ~~shall~~ *must* be redeemed on any interest payment date from the proceeds of the bonds or warrants remaining after payment of all costs of the improvements, as provided in 7-12-4205, or from the prepayment of assessments levied in the district. Special improvement district bonds or warrants ~~are~~ *may be otherwise* subject to redemption and prepayment at the option of the city, ~~in order of registration, on any interest payment date~~ *as provided in the resolution authorizing the issuance of the bonds.*

(2) The date of redemption ~~shall~~ *must* be fixed by the treasurer and may not be less than ~~10~~ *30* days after the date of publication or mailing of *the* notice, and on the date ~~so~~ fixed, interest ceases. The treasurer shall give written notice to the holders of the warrants or bonds to be redeemed, if their addresses are known, of the number of warrants or bonds to be redeemed and the date on which payment will be made. If the addresses of the holders of all bonds or warrants to be redeemed are not known, the treasurer shall publish notice of redemption once in a newspaper published in the city."

Section 39. Section 7-15-4322, MCA, is amended to read:

"7-15-4322. Details relating to urban renewal bonds. (1) Bonds issued under 7-15-4301 may be issued in one or more series and ~~shall~~ *must* bear ~~such~~ *a* date or dates, be payable upon demand or mature at ~~such~~ *a* time or times, bear interest as provided in 17-5-102, be in ~~such~~ denomination or denominations, be in ~~such~~ form (either coupon or registered), carry ~~such~~ conversion or registration privileges, have ~~such~~ rank or priority, be executed in ~~such~~ *a* manner, be payable in ~~such~~ *a* medium of payment at ~~such~~ *a* place or places, be subject to ~~such~~ torms of redemption (with or without premium), be secured in ~~such~~ *a* manner, and have ~~such~~ other characteristics as may be provided by the resolution, ordinance, or trust indenture or *a* mortgage authorized pursuant ~~thereto~~ *to the resolution, ordinance, or trust indsnture.*

(2) (a) The bonds may be sold at not less than ~~98%~~ *97%* of par, at public or private sale, or may be exchanged for other bonds on the basis of par.

(b) The bonds may be sold to the federal government at private sale at not less than par, and if less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold, at public or private sale, at not less than ~~98%~~ *97%* of par at an interest cost to the municipality of not to exceed the interest cost ~~to the municipality~~ of the portion of the bonds sold to the federal government."

Section 40. Section 20-9-408, MCA, is amended to read:

"20-9-408. Definition of forms of bonds. As used in this ~~title,~~ *part* ~~unless the context clearly indicates otherwise~~:

(1) "amortization ~~bonds~~ *bond*" means ~~the~~ *that* form of ~~bonds~~ *bond* on which a part of the principal ~~must~~ *is required to* be paid ~~each~~ time *that* interest becomes *due and* payable. The part payment of principal increases ~~at~~ *with* each *following* installment in the same amount that the interest *payment* decreases~~.~~, *so that the* ~~The~~ combined ~~interest and principal due on each due date remains the same until the bonds are paid~~ *amount payable on principal and interest is the same*

on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in ~~the~~ amount ~~resulting from disregarding fractional cents in~~ *as a result of rounding* prior payments.

(2) "serial bonds" means a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding three times the principal amount of the bonds maturing in the immediately preceding installment."

Section 41. Section 20-9-412, MCA, is amended to read:

"**20-9-412. Issuance of refunding bonds without an election.** (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue refunding bonds, the trustees, at a regular meeting or a special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be redeemed;

(b) the reasons for issuing new bonds; and

(c) the term and details of the new bond issue.

(2) After the adoption of the resolution, the trustees shall:

(a) sell the bonds at a private negotiated sale; or

(b) at their option, give notice of the sale of the new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election and sell the new bonds in open competitive bidding, by written bids or by sealed bids.

(3) Except for bonds refunded by a school district under the provisions of Title 17, chapter 5, part 16, including any variable rate finance program so authorized, bonds may not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least 1/2 of 1% ~~per annum~~ *a year* less than the rate of interest in the bonds to bo refunded or redeemed.

(4) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 20-9-408.

(5) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the district.

~~(4)~~*(6)* Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. Funds

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deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on the dates and bear interest at the rates and payable on the dates required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption, ~~and~~ to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium. The escrow account must be irrevocably appropriated to the payment of the principal of and interest and redemption premium, if any, on the refunded bonds. Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal of or interest on the bonds due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation."

Section 42. Section 20-9-427, MCA, is amended to read:

"**20-9-427. Notice of bond election by separate purpose.** (1) ~~Any~~ *A* school district bond election ~~shall~~ *must* be conducted in accordance with the school election provisions of this title, except that the election notice ~~required therein shall~~ *must* be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No..... of.... County, state of Montana, that pursuant to a certain resolution ~~duly~~ adopted at a meeting of the board of trustees of ~~said~~ *the* school district held on the.... day of...., ~~A.D., 19~~ ...., an election of the registered electors of School District No..... of.... County, state of Montana, will be held on the.... day of...., ~~A.D., 19~~ ...., at.... for the purpose of voting upon the question of whether or not the trustees ~~shall be authorized to~~ *may* issue and sell bonds of ~~said~~ *the* school district in the amount of.... dollars ($....), bearing interest at a rate not more than.... percent (....%) ~~per annum~~ *a year*, payable semiannually, for the purpose of.... (here state purpose). ~~The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees.~~ The bonds to be issued~~, whether amortization or serial bonds,~~ will be payable in installments over a period not exceeding.... (state number) years.

The polls will be open from.... o'clock....m. and until.... o'clock....m. of the ~~said~~ *election* day.

Dated and posted this.... day of...., ~~A.D., 19~~ .....

. . . . . .
~~Chairman~~ *Presiding officer*, School District No. . . . . .
of . . . . . County
Address . . . . . .

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose ~~shall~~ *must* be separately stated in the notice, together with the proposed amount of bonds ~~therefor~~ *for each purpose*."

Section 43. Section 20-9-429, MCA, is amended to read:

"20-9-429. Trustees' resolution to issue school district bonds. ~~Within 60 days~~ *Anytime* after the date of the election certificato ~~or as soon thereafter as is practical in the judgment of the trustees~~, the trustees shall adopt a resolution ~~providing for the issuance~~ *calling for the sale* of bonds of the school district. ~~Such~~ *The* resolution ~~also shall~~ *must* specify:

(1) the number of series or installments in which the bonds are to be issued;

(2) the amount of bonds to be issued;

(3) the ~~maximum rate of interest~~ *minimum purchase price of the bonds*;

(4) the purpose or purposes of the issue;

(5) the date *that* the issue will bear;

(6) the period of time through which the issue will be paid;

(7) the manner of execution of the bonds;

(8) ~~that amortization bonds will be preferred but also~~ *whether bids will be accepted for either serial or amortization bonds and, if so,* ~~fix~~ the denomination of serial *or amortization* bonds; ~~and~~

(9) the date and time that the sale of the bonds ~~shall~~ *must* be conducted*; and*

(10) the minimum price fixed by the board of trustees for the bonds, which may not be less than 97% of the principal amount of the bonds if the board determines that the sale is in the best interests of the district."

Section 44. Section 20-9-430, MCA, is amended to read:

"20-9-430. Notice of sale of school district bonds. The trustees shall ~~cause the~~ *give* notice of the sale of ~~the~~ *school district* bonds ~~to be given~~. The notice ~~shall~~ *must* state the purpose for which the bonds are to be issued and the amount proposed to be issued and ~~shall~~ *must* be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No..... of.... County, state of Montana, that the trustees will on the.... day of...., ~~19~~ ...., at the hour of.... o'clock....m. at...., in the school district, sell te the highest and best bidder for cash ~~either amortization or serial~~ *general obligation* bonds of the school district in the total amount of.... dollars ($....), for the purpose of.....

~~Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.~~

~~If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of.... years from the date of issue.~~

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~~If serial~~ *The* bonds are *will be* issued and sold~~, they will be~~ in the *aggregate principal* amount of.... dollars ($....) each and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the school district) *(If the bonds are to be issued as amortization bonds, indicate that here.).*

The bonds~~, whether amortization or serial bonds,~~ will bear *an original issue* date of...., ~~19~~...., ~~and~~ will ~~bear~~ *pay* interest ~~at a rate not exceeding....% per annum~~ commencing on the.... day of.... (month), ~~19~~...., ~~and~~ *will be* payable semiannually on the.... day of.... (month) and.... (month) in each year thereafter, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

Tbe bonds will be sold for not less than ~~their par value~~ *$____*, with accrued interest *on the principal amount of the bonds to the date of their delivery*, and all bidders ~~must~~ *shall* state the lowest rate of interest at which they will purchase the bonds at ~~par~~ *the price specified for the bonds*. ~~The bonds shall be sold in open competition bidding, by written bids, or by sealed bids.~~ The trustees reserve the right to reject any ~~and all~~ bids and to sell the bonds at private sale.

All bids ~~other than by or on behalf of the state board of land commissioners~~ must be accompanied by ~~money, a certified check, cashier's check, bank money order, or bank draft drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana,~~ *(insert appropriate bid security as permitted by 18-1-202)* in the sum of.... dollars ($....) payable to the order of tbe district, wbich will be forfeited by tbe successful bidder in the event that ~~he~~ *the biddsr* ~~shall refuse~~ *refuses* to purchase the bonds.

All bids sbould be addressed to the undersigned district.

. . . . . .

~~Chairman~~ *Presiding officer*, School District No. . . . . .

of . . . . . County

Address: . . . . . .

ATTEST:

Subscribed and sworn to before me this.... day of....., ~~19~~....; ..... Notary Public for the State Residing at...., Montana. My ~~Commission~~ *commission* expires....."

Section 45. Section 20-9-431, MCA, is amended te read:

"20-9-431. Publication of notice of sale of school district bonds. ~~(1)~~ The trustees shall ~~cause a copy of~~ *publish* the notice of sale of the bonds ~~to be published~~, as provided in 17-5-106, in ~~a newspaper~~ *one or more newspapers* as determined by the trustees.

~~(2) If the bond issue to be sold is $10,000 or more, the trustees may cause a brief notice to be published in some newspaper in the city of New York.~~"

Section 46. Section 20-9-432, MCA, is amended to read:

"20-9-432. Sale of school district bonds. (1) The trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds ~~shall~~ *must* be sold at not less than ~~par~~ *the minimum bid specified for bonds*

with accrued interest to date of delivery, and each bidder shall specify the ~~form of bonds to be issued, whether amortization or serial, and the~~ rate of interest *and purchase price* at which ~~he~~ *the bidder* will purchase the bonds. ~~A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind but also every other known element affecting the total cost of the bonds to the district when paid in full.~~ The trustees shall accept the bid ~~which~~ *that* they ~~shall~~ judge most advantageous ~~te~~ the school district. ~~Consultants'~~ *Consultant* fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, ~~or~~ in the preparation of the bonds, or in negotiating the sale. The trustees are authorized to reject any ~~or all~~ bids and to sell the bonds at private sale if tbey ~~deem~~ *consider* it ~~for~~ *in* the best intoresta of the school district, except that ~~such~~ *the* bonds ~~shall~~ *may* not be sold at less than ~~par~~ *the minimum sale price* with accrued interest to date of delivery.

(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating ~~for~~ *the* sale of bond issues if, in the opinion of the trustees, ~~such~~ *the* cooperation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. ~~Provided, however~~ *However*, ~~that~~ bond issues prepared or negotiated for sale under this section ~~shall~~ *may* not be combined for any other purpose but ~~shall~~ *must* be entered separatoly on the books of the county treasurer and ~~shall~~ *must* be otherwise treated as separate bond issues."

Section 47. Section 20-9-433, MCA, is amended to read:

"**20-9-433. Form and printing *execution* of school district bonds.** (1) ~~It is not necessary for the trustees to prescribe the detailed form of the bonds to be issued, but the bonds must conform to all legal requirements for their payment whether they are issued as amortization or serial bonds. The bonds and coupons shall be issued in the name of the school district and shall be executed by the chairman of the trustees and the school district clerk in accordance with 2-16-114. If the bonds are purchased by the board of investments, all payments of principal or interest shall be made at the office of the state treasurer.~~ *At the time of the sale of the bonds or at a meeting held after the sale, the trustees shall adopt a resolution providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization or serial bonds, and prescribing the manner of execution of the bonde.*

(2) ~~The trustees shall cause the bonds, with the attached coupons, to be printed at the expense of the school district at the lowest commercial rates.~~ *Each bond and coupon attached to a bond must be signed by or bear the facsimile signatures of the presiding officer of the trustees and the school district elerk, provided that one signature of a school official or the bond registrar must be a manual signature.*"

Section 48. Section 20-9-434, MCA, is amended to read:

"**20-9-434. Registration of school district bonds hy county treasurer and copy for preservation.** (1) When the school district bonds have been ~~duly~~ executed by tbe ~~chairman~~ *presiding officer* of the trustees and the school district clerk, ~~all such~~ *the* bonds ~~shall~~ *must* be registered by the county treasurer in ~~his~~

the treasurer's bond registration book before ~~such~~ *the* bonds are delivered to the purchaser. The bond registration ~~shall~~ *must* show:

~~(a) the number and amount of each bond;~~

~~(b)~~*(a)* the date of issue;

~~(c)~~*(b)* the redeemable date of each bond; *and*

~~(d) the name of the purchaser; and~~

~~(e)~~*(c)* the amount and due date of all payments required on the bonds.

(2) The trustees shall provide the county treasurer with an unsigned and canceled printed *specimen* copy of each issue of school district bonds for preservation in the office of the county treasurer."

Section 49. Section 20-15-404, MCA, is amended to read:

"**20-15-404. Trustees to adhere to certain other laws.** Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

(1) the teachers' retirement provisions of Title 19, chapter 20;

(2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;

(3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;

(4) the adult education provisions of 20-7-701 through 20-7-713;

(5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221 through 20-9-224, and 20-9-512;

(6) the school bond provisions of 20-9-401 through *20-9-408, 20-9-410 through* 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465;

(7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;

(8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;

(9) the school elections provisions of Title 20, chapter 20;

(10) the students' rights provisions of 20-25-511 through 20-25-516; and

(11) the health provisions of 50-1-206."

Section 50. Section 90-5-103, MCA, is amended to read:

"**90-5-103. Limited obligation bonds — form and contents — sale — negotiability — filing.** (1) All bonds issued by a municipality or county under the authority of this part ~~shall~~ *must* be limited obligations of the municipality or county. Bonds and interest coupons issued under the authority of this part ~~shall~~ *may* not constitute or give rise to a pecuniary liability of the municipality

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or county or a charge against its general credit or taxing powers. ~~Such~~ *This* limitation ~~shall~~ *must* be plainly stated upon the face of each of ~~such~~ *the* bonds.

(2) The bonds referred to in subsection (1) ~~of this section~~ may be executed and delivered at any time and from time to time, be in ~~such~~ form and denominations, be of ~~such~~ tenor, be in registered or bearer form either as to principal or interest, or both, be payable in ~~such~~ installments and at ~~such~~ *a* time or times not exceeding ~~30~~ *40* years from ~~their~~ *the bonds* date, be payable at ~~such~~ *a* place or places, bear interest at ~~such~~ *a* rate or rates, ~~payable at such place or places, and~~ *be* evidenced in ~~such~~ *a* manner, be redeemable prior to maturity, with or without premium, and contain ~~such~~ provisions not inconsistent ~~herewith~~ *with this part* as ~~shall be deemed for~~ *considered in* the best interest of the municipality or county and provided for in the proceedings of the governing body ~~whereunder~~ *under whose authority* the bonds ~~shall~~ *must* be authorized to be issued.

(3) Any bonds issued under the authority of this part may be sold at public or private sale in ~~such~~ *a* manner, at ~~such~~ *a* time or times, and at ~~such~~ *a* price above or below par as may be agreed upon by the lessee of the project or the borrower of the funds. The municipality or county may pay all expenses, premiums, and commissions ~~which~~ *that* the governing body may ~~deem~~ *consider* necessary or advantageous in connection with the authorization, sale, and issuance ~~thereof~~ *of the bonds* from the proceeds of the sale of ~~said~~ *the* bonds or from the ~~revenues~~ *revenue* of the projects.

(4) All bonds issued under the authority of this part and all interest coupons applicable ~~thereto shall~~ *to the bonds must* be construed to be negotiable instruments despite the fact that they are payable solely from a specified source.

(5) All bonds issued under the authority of this part must be filed with the securities commissioner within 10 days of the date of their issue. The filing must include the name of the issuing authority, the name and address of the person or entity on whose behalf the bonds are issued, the amount of the bond issue, the date of the bond issue, and any other information *that* the securities commissioner may request. Failure to comply with this section does not affect the validity of the bond issue."

Section 51. Section 7-7-2501, MCA, is amended to read:

"**7-7-2501. Authority to issue revenue bonds — refunding revenue bonds.** (1) A county may issue county revenue bonds in the same manner and with the same effect as provided in chapter 7, part 44, of this title for issuance of municipal revenue bonds. County revenue bonds may be issued to finance any project or activity enumerated in chapter 16, part 21, ~~or chapter 34, part 22 or 23,~~ of this title or in Title 75, chapter 10, part 1. ~~Revenues~~ *Revenue* from the project for which the bonds are issued ~~are~~ *is* the only ~~revenues~~ *revenue* upon which a lien under the provisions of 7-7-4431 ~~shall~~ *may* apply. ~~No~~ *A* lien ~~shall~~ *may not* attach to other ~~revenues~~ *revenue* or other property within the county.

(2) A county may refund revenue bonds issued under the authority provided in subsection (1) by the method provided in either part 45 or part 46 of chapter 7.

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(3) In construing, for purposes of this section, the provisions of parts 44, 45, or 46 of chapter 7, "municipal" is considered to refer to the county and "governing body" is considered to refer to the board of county commissioners whenever the board of county commissioners is acting pursuant to subsection (1)."

Section 52. Repealer. Sections 7-7-2267, 7-7-2275, 7-7-4267, and 20-9-409, MCA, are repealed.

Section 53. Applicability. [This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act].

Section 54. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 424

[HB 462]

AN ACT REVISING CERTAIN WORKERS' COMPENSATION LAWS; DEFINING "VOLUNTEER"; INCLUDING CERTAIN VOLUNTEER FIREFIGHTERS AND AMBULANCE SERVICE WORKERS IN THE DEFINITION OF EMPLOYEE; EXEMPTING A VOLUNTEER FROM THE COVERAGE UNDER THE WORKERS' COMPENSATION LAWS UNLESS COVERAGE IS ELECTED; AUTHORIZING THE BOARD OF INVESTMENTS TO INVEST STATE FUND MONEY IN COMMON STOCK UNDER CERTAIN CONDITIONS; AUTHORIZING THE STATE FUND TO USE EXISTING DEBT COLLECTION PROCEDURES AS AN OPTION; AMENDING SECTIONS 39-71-118, 39-71-743, 39-71-2320, AND 39-71-2363, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. **Employee, worker, *volunteer*, and volunteer firefighter defined.** (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or privato corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

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(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at a designated vocational-technical ~~centers~~ *program within a unit of the university system*;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.; *and*

(h) a person who is an enrolled member of a volunteer fire department as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; ~~or~~

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities*; or*

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

~~(3)~~*(4)* The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

~~(4)~~*(5)* (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of an election, the employer ~~must~~ *shall* serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(4)(d)~~ *(5)(d)*. A partner or sole proprietor is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

~~(5)~~*(6)* The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

~~(5)~~*(7)* An employee or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

~~(7)~~*(8)* For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

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(d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ *(8)(b)* and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

~~(8)~~*(9)* An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection ~~(7)(b)~~*(8)(b)* or ~~(7)(d)~~*(8)(d)* as a condition of approving the election under subsection ~~(7)(d)~~*(8)(d)*."

Section 2. Section 39-71-743, MCA, is amended to read:

"**39-71-743. Assignment or attachment of payments.** (1) ~~No payments~~ *Payments* under this chapter ~~shall~~ *may not* be assignable, subject to attachment or garnishment, or ~~be~~ held liable in any way for debts, except:

(a) as provided in 71-3-1118; ~~or~~

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law*; or*

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to chapter 71 or 72 of this title.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of social and rehabilitation services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Diseaso Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 3. Section 39-71-2320, MCA, is amended to read:

"**39-71-2320. Property of the state fund — investment required — *exception for common stock.*** *(1)* All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money

belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808. *Except as provided in subsection (2), state fund money may be invested in common stocks of any corporation.*

(2) State fund money may be invested in common stocks of a corporation if the investment does not cause the book value of state fund common stock investments to exceed 15% of the book value of the state fund total invested assets or does not cause the book value of common stock investments in one corporation to exceed 2% of the book value of the state fund total invested assets on the date of purchase."

Section 4. Section 39-71-2363, MCA, is amended to read:

"39-71-2363. Agency law — submission of budget — annual report. (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. *The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.*

(2) The executive directer shall annually submit to the board for ite approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. The administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year. A copy of the approved budget must be delivered to the governor and the legislature.

(3) The board sball submit an annual financial report to the governor and te the legislature as provided in 5-11-210, indicating the husiness done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary."

Section 5. Coordination instruction. If House Bill No. 463 is not passed and approved by the electorate, tben [section 3 of this act] is void.

Section 6. Effective dates. [Sections 1, 2, 4, 5, and this section] are effective on passage and approval.

(2) [Section 3] is effective July 1, 1997.

Approved April 13, 1995

CHAPTER NO. 425

[HB 464]

AN ACT AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADDRESS INCIDENTS OF DISEASE OR ILLEGAL INTRODUCTION OF FISH; AMENDING SECTION 87-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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WHEREAS, whirling disease was recently discovered in the world famous fishery of the upper Madison River and is the leading suspect for the 90% reduction in the numbers of wild rainbow trout in those waters; and

WHEREAS, Governor Racicot, in a recent communication to concerned parties, stated, "There is genuine reason to believe whirling disease is the worst disease threat our wild trout have ever faced"; and

WHEREAS, Governor Racicot has further stated that it is essential for the Department of Fish, Wildlife, and Parks to mobilize an unprecedented effort to research and combat this disease; and

WHEREAS, the wild trout fisheries in Montana provide in excess of $125 million in annual benefits to the state's economy; and

WHEREAS, the wild trout fisberies provide inestimable recreational pleasures for the citizens of the state; and

WHEREAS, there is significant potential for whirling disease te spread to other blue ribbon trout waters of the state; and

WHEREAS, the Department of Fish, Wildlife, and Parks currently lacks both the authority and the staffing to combat a similar spread of disease; and

WHEREAS, whirling disease primarily results from the introduction of infected hatchery or wild fish; and

WHEREAS, the illegal introduction and movement of fish pose a serious tbreat to Montana's wild fisheries, including native fisheries; and

WHEREAS, many landowners with fish ponds and hatcheries need reassurance that their fish are disease-free.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-603, MCA, is amended to read:

"**87-4-603. Fish pond license for artificial lake or pond — records.** (1) A person who owns or lawfully controls an artificial lake or pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock ~~his~~ *the* fish pond with ~~fry~~ *fish* procured from ~~any~~ *a* lawful source. The department may designate the species of fish ~~which~~ *that* may be released in tbe pond and otnerwise condition the license ~~when~~ *if* there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, ~~he~~ *the license holder* shall furnish a corporate surety bond to the state for $500, conditioned to the effect that ~~he~~ *the license holder* will not sell fish or spawn from any of the puhlic waters of this state or violate the conditions of ~~his~~ *the* license and also conditioned te the effect that he *the license holder* will submit an annual report on transactions te the director.

(2) "Artificial lake or pond", as used in this section, does not include a natural pond or body of water, *including streams and rivers,* created by natural means or any portion of the streambed or lakebed of a natural pond or body of water. It includes only bodies of water created by artificial means or diversion of water ~~which~~ *that* do not exceed 500 acres of surface area.

(3) The department may condition the license to require the construction, implementation, and maintenance of measures or devices to prevent fish in an artificial lake or pond from escaping into adjacent waters.

(4) (a) ~~Each~~ *A* licensee who sells fish or eggs shall keep accurate records of:

(i) the species and quantities of fish or eggs sold or purchased;

(ii) dates of sales or purchases;

(iii) names of purchasers or sellers; and

(iv) locations to or from which fish or eggs are transferred.

(b) On or before January 31 of each year, ~~each~~ *a* licensee who sells fish or eggs shall file a report with the department, on forms made available by the department, summarizing the records required under subsection (4)(a).

(5) A person who owns or controls an artificial lake or pond may request an inspection by the department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the department has reasonable cause to believe that a fish species in the body of water may have been illegally introduced or may have a disease that may affect fish in another body of water, the department shall notify the landowner or landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice has been given to the landowner or agent or after every reasonable effort has been made to notify the landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land under the provisions of this subsection for the purposes of inspecting the pond or the body of water, the species of fish in the pond or the body of water, the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the physical connection of an artificial lake or pond to an adjacent natural lake, pond, or body of water, including a stream or river. The department is responsible for actual damages to any property.

(6) If the department finds an illegal introduction of fish or the presence of disease in fish in a licensed fish pond, an artificial lake or pond, or a natural lake, pond, or body of water, the department shall consult with the landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an emergency situation, the department may order or take appropriate action to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the introduction of fish with a disease, the department may replace the destroyed fish without charge to the private owner. A landowner or agent who has granted permission for the department to enter is not considered responsible for an illegal introduction of fish or disease unless proven otherwise."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

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CHAPTER NO. 426

[HB 478]

AN ACT GENERALLY REVISING THE NATURAL STREAMBED AND LAND PRESERVATION ACT; AMENDING SECTIONS 75-7-103, 75-7-106, 75-7-111, 75-7-112, 75-7-113, 75-7-114, 75-7-117, 75-7-121, 75-7-122, AND 75-7-123, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7-103, MCA, is amended to read:

"75-7-103. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means any person presenting notice of a project to the supervisors.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means:

(a) a conservation district under Title 76, chapter 15, in which the project will take place;

(b) a grass conservation district under Title 76, chapter 16, where ~~no~~ *a* conservation district ~~exists,~~ *does not exist;* or

(c) the board of county commissioners *in a county* where a district does not exist.

(4) "Person" means any ~~natural person~~ *individual*, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.

(5) (a) "Project" means a physical alteration or modification of a stream in the state of Montana ~~which~~ *that* results in a change in the state of the stream ~~in contravention of 75-7-102~~.

(b) Project does not include ~~customary and historic maintenance and repair of existing irrigation facilities:~~

~~(i) that do not significantly alter or modify the stream in contravention of 75-7-102; or~~

~~(ii) for which a plan of annual operation has been submitted to and approved by the district. The plan is subject to future review and approval by the district at its option. Any modification to the plan must have prior approval of the district.~~

(i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.

(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102.

(6) "Stream" means any natural perennial-flowing stream or river, its bed, and *its* immediate banks *except a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102.*

(7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or ~~his~~ *the applicant's* representative.

(9) "Written consent of the supervisors" means a written decision of the supervisors approving a projcct and specifying activities authorized to be performed in completing the project."

Section 2. Section 75-7-106, MCA, is amended to read:

"75-7-106. Junked motor vehicles as reinforcement prohibited — penalty. (1) It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between ~~high-water~~ *the* channel banks of any stream or to reinforce banks of a stream with ~~such~~ junked motor vehicles or the body portion of ~~such~~ junked motor vehicles.

(2) A person who ~~willfully~~ violates subsection (1) is ~~guilty of a misdemeanor and upon conviction shall be fined not to exceed $250, imprisoned in the county jail for a term not to exceed 30 days, or both~~ *subject to penalties as provided in 75-7-123.*

~~(3) A person who violates subsection (1) shall be subject to a civil penalty of not more than $50. Each day upon which a violation occurs is a separate violation.~~"

Section 3. Section 75-7-111, MCA, is amended to read:

"75-7-111. Notice of project. (1) A person planning to engage in a project shall present written notice of the *proposed* project to the supervisors before any portion of the project takes place.

(2) The notice ~~shall~~ *must* include the location, general description, and preliminary plan of the project.

(3) At the time of filing a notice of the proposed project under subsection (1), the applicant shall sign an arbitration agreement as provided in 75-7-117.

(4) The district may authorize a representative to accept notices of proposed projects."

Section 4. Section 75-7-112, MCA, is amended to read:

"75-7-112. Procedure for considering projects — team. (1) *Upon acceptance of a notice of a proposed project, the district or the district's authorized*

representative shall, within 10 working days, notify the department of the project. If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors. ~~The supervisors shall receive all notices of proposed projects within their district. They shall, within 5 days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project. Within the 5 days, they shall send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice, proceed with the proposed activity.~~

~~(2) If the supervisors determine that the proposal is for a project, the~~ *The* department shall, within 5 *working* days of receipt of the ~~determination~~ *notification*, ~~notify~~ *inform* the supervisors whether the department requests an onsite inspection by a team.

~~(3)~~*(2)* The supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 *working* days after notice of the call for an inspection, of ~~his~~ *the team member's* waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified ~~above~~ *in this subsection*, the supervisors may deny, *approve*, or ~~approve~~ *modify* the project ~~or may make recommendations for alternative plans~~.

~~(4)~~*(3)* Each member of the team shall recommend in writing, within ~~50~~ *30* days of the date of ~~application~~ *inspection*, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

~~(5)~~*(4)* The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

~~(5)~~*(5)* When a member of the team disagrees with the supervisors' ~~action, he may ask~~ *decision, the team member shall request*, within 5 *working* days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision ~~thereon~~ *regarding the dispute*.

~~(7)~~*(6)* Upon written ~~notice, with a recommendation or alternative plan, by the supervisors to the applicant, the applicant, within 15 days,~~ *consent of the supervisors, the applicant* shall notify the supervisors in writing *within 15 days* if ~~he~~ *the applicant* wishes to proceed with the project in accordance with the ~~recommendations or alternative plans. No work may be commenced on a project before the end of this 15-day period unless written permission is given by all team members. If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed with the project upon the expiration of 10 days after receipt of the decision~~ *supervisors' decision. Work may not be commenced on a project before the end of the 15-day waiting period unless written permission is given by all team members and the district.*

~~(8)~~*(7)* The supervisors may extend, upon the request of a team member, the time limits provided in subsections ~~(4)~~ *(3)* and ~~(5)~~ *(4)* ~~where~~ *when*, in their determination, the time provided is not sufficient to carry out the purposes of this part. The time extension may not, in total, exceed 1 year from *the* date of application. The applicant ~~shall~~ *must* be notified, within 60 days of *the* date of application, of the initial time extension and ~~shall~~ *must* be notified immediately of any subsequent time extensions.

~~(9)~~*(8)* ~~No work~~ *Work* on a project under this part may *not* take place without the written consent of the supervisors.

(9) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine:

(a) the purpose of the project; and

(b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:

(i) the effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;

(ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;

(iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;

(iv) the effects on stream channel alteration;

(v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and

(vi) the effect on fish and aquatic habitat.

(10) If the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification.

(11) The supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means."

Section 5. Section 75-7-113, MCA, is amended to read:

"75-7-113. Emergencies — procedure. (1) The provisions of this part do not apply to those actions ~~which~~ *that* are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a ~~project~~ *taking action* under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) *The emergency notice given under subsection (1) must contain the following information:*

(a) the location of the action taken;

(b) a general description of the action taken;

(c) the date on which the action was taken; and

(d) an explanation of the emergency causing the need for the action taken.

(3) ~~The~~ *If the supervisors determine that the action taken meets the definition of a project, the* supervisors shall send one copy of the notice, within 5 *working* days of its receipt, to the department.

~~(3)~~*(4)* A team, called together as described in ~~75-7-112(3)~~ *75-7-112(2)*, shall make an onsite inspection ~~and individual written reports to the supervisors within 30 days, giving its observations and opinions on the emergency project~~ *within 20 days of receipt of the emergency notice.*

~~(4) If the same or a similar emergency occurs to the same applicant more than once within a 5-year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to the emergency.~~

~~(5) The supervisors shall determine the feasibility of a more permanent solution and shall, within 30 days, recommend that the person put the solution into effect within a reasonable period of time as determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this part unless a subsequent emergency action results from this failure.~~

~~(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision thereon.~~

(5) Each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, denial, approval, or modification of the project.

(6) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members of their decision within 60 days of receipt of the emergency notice.

(7) A person who has undertaken an emergency action that is denied or modified shall submit written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.

(8) When a member of the team disagrees with the supervisors' decision of an emergency action, the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and to make a final written decision on the dispute.

(9) The failure of a person to perform the following subjects the person to civil and criminal penalties under 75-7-123:

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(a) failure to provide emergency notice under subsection (1);

(b) failure to submit a notice of the project under subsection (7); or

(c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation."

Section 6. Section 75-7-114, MCA, is amended to read:

"75-7-114. Arbitration panel — selection. The arbitration panel shall consist of three members chosen by the senior judge of the judicial district in which the dispute takes place. The members ~~shall~~ *must* be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the *arbitration agreement and the* policy set forth in 75-7-102."

Section 7. Section 75-7-117, MCA, is amended to read:

"75-7-117. Rules — minimum standards — *arbitration agreement.* (1) The board of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may ~~from time to time~~ revise rules setting minimum standards and guidelines for the purposes of this part.

(2) The supervisors of each district shall adopt and may ~~from time to time~~ revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts ~~which~~ *that* meet, exceed, or are not covered by the minimum standards set by the board under subsection (1).

(3) The department of natural resources and conservation, after consultation with the association of conservation districts, shall prepare an arbitration agreement for use by the conservation districts. The arbitration agreement must contain provisions for:

(a) the appointment of arbitrators;

(b) the exercise of power by the arbitrators;

(c) an arbitration hearing process, including time and place for hearing, notification, presentation of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or change of award; and

(d) the fees and expenses of arbitration."

Section 8. Section 75-7-121, MCA, is amended to read:

"75-7-121. Judicial ~~review~~ *Review.* Any *review of* final action ~~under this part may be appealed within 30 days to the district court~~ *by the supervisors under 75-7-112 or 75-7-113 must be by arbitration. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3."*

Section 9. Section 75-7-122, MCA, is amended to read:

"75-7-122. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval *or activities performed outside*

the scope of written consent of the supervisors, as prescribed in this ~~part~~ *chapter,* is declared a public nuisance and subject to proceedings for immediate abatement."

Section 10. Section 75-7-123, MCA, is amended to read:

"**75-7-123. ~~Initiating project without consent — penalties~~ *Penalties* — restoration.** ~~Any~~ *A* person ~~initiating~~ *who initiates* a project without written consent of the supervisors, *performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106* is guilty of a misdemeanor and upon conviction shall be punished by a fine ~~of not less than $25 or more than~~ *not to exceed* $500 or by a civil penalty ~~of not less than $25 or more than~~ *not to exceed* $500 for each day that person continues to physically alter or modify the stream, and in addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended by the ~~team and approved by the~~ supervisors, to as near its prior condition as possible."

Section 11. Effective dates. (1) [Sections 1, 2, 9, and 10 and this section] are effective on passage and approval.

(2) [Sections 3 through 8] are effective October 1, 1995.

Approved April 13, 1995

CHAPTER NO. 427

[HB 488]

AN ACT PROHIBITING INSURERS FROM DENYING, CANCELING, FAILING TO RENEW, OR LIMITING COVERAGE OR BENEFITS ON AUTOMOBILE AND HOMEOWNER INSURANCE POLICIES BASED SOLELY ON AN INDIVIDUAL'S CREDIT HISTORY; AND AMENDING SECTION 33-18-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-210, MCA, is amended to read:

"**33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances.** (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has heen effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other henefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

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(2) An insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) This section may not be construed as prohibiting the payment of commissions or other compensation to duly licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained ~~therein~~ *in the residential property*, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual, but an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired;. ~~however~~ *However*, this subsection does not apply to

accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual based solely on adverse information contained in a driving record that is 3 years old or older.

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault.

(11) (a) For the purposes of this subsection (11), "credit history" means that portion of a credit report or background report that addresses the applicant's or insured's debt payment history or lack of history but does not include public information including convictions, lawsuits, bankruptcies, or similar public information.

(b) An insurer writing automobile or homeowner insurance may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the scope or amount of coverage or benefits available to an individual based solely on the insurer's knowledge of the individual's credit history unless:

(i) the insurer possesses substantial documentation that credit history is significantly correlated with the types of risks insured or to be insured;

(ii) the insurer sends written communication to the individual disclosing that the insurance coverage was declined, not renewed, or limited in scope or amount of coverage or benefits because of credit information relating to the applicant or the insured; and

(iii) upon subsequent request of the individual, mailed within 10 days of receipt of the denial, nonrenewal, or limitation, the insurer provides the individual with a copy of the credit report at issue or the name and address of a third party from whom the individual may obtain a copy of the credit report, within 10 days of receipt of the request.

(c) The provisions of this subsection (11) are not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act applicable to lending institutions, credit bureaus, or other credit service organizations that maintain or distribute credit histories on insurance applicants or policyholders."

Approved April 13, 1995

CHAPTER NO. 428

[HB 512]

AN ACT REQUIRING THAT AT LEAST 50 PERCENT OF FISHING LICENSE FUNDS ALLOCATED FOR OPERATION AND MAINTENANCE OF FISHING ACCESS SITES AND STREAM, RIVER, AND LAKE FRONTAGES BE PRIORITIZED AND EXPENDED FOR WEED CONTROL, STREAMBANK

RESTORATION, AND GENERAL OPERATION AND MAINTENANCE; REQUIRING A REPORT ON PROGRAM SUCCESS TO THE 56TH LEGISLATURE; AMENDING SECTION 87-1-605, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-605, MCA, is amended to read:

"**87-1-605. Fees used to purchase recreational facilities.** (1) One dollar of the fee for Class A resident fishing license, $1 of the fee for Class B-4 nonresident 5-day fishing license, and $5 of the fee for the Class B nonresident fishing license ~~shall~~ *must* be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land ~~deemed~~ *considered* necessary to provide recreational use ~~thereof~~ *of fishing accesses and frontages.*

(2) The amount of funds used for operation~~, development,~~ and maintenance ~~may not exceed 25% of the moneys~~ *must equal at least 50% of the money* set aside each year under this section *and must be expended as provided in subsection (3).* The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses, stream, river, or lake frontages and the land ~~deemed~~ *considered* necessary to provide recreational use ~~thereof~~ *of fishing accesses and frontages* but serve in addition to those funds. The ~~moneys~~ *money* used for operation~~,~~ ~~development,~~ and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974.

(3) Operation and maintenance money set aside each year under this section must be expended based on the following priority:

(a) weed management;

(b) streambank restoration; and

(c) general operation and maintenance."

Section 2. Report to legislature. Because [section 1] terminates July 1, 1999, the department of fish, wildlife, and parks shall report to the 56th legislature by December 1, 1998, regarding the success of the operation and maintenance program required by [section 1] and on the status of weed management and streambank restoration at fishing access sites and frontages.

Section 3. Effective date. [This act] is effective July 1, 1995.

Section 4. Termination. [This act] terminates July 1, 1999.

Approved April 13, 1995

CHAPTER NO. 429

[HB 518]

AN ACT ESTABLISHING UNIFORM PROCEDURES FOR THE LICENSING, DISCIPLINE, AND GENERAL REGULATION OF PROFESSIONS AND

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OCCUPATIONS REGULATED BY LICENSING BOARDS ADMINISTRATIVELY ATTACHED TO THE DEPARTMENT OF COMMERCE; ELIMINATING THE STATE LICENSE REQUIREMENT FOR EMPLOYMENT AGENCIES AND POLYGRAPH EXAMINERS; ELIMINATING THE HERITAGE OF MONTANA ENTERPRISE ACT; AMENDING SECTIONS 17-7-502, 37-1-101, 37-1-121, 37-1-131, 37-3-309, 37-3-313, 37-3-323, 37-3-403, 37-4-307, 37-4-402, 37-4-406, 37-5-307, 37-6-302, 37-6-303, 37-6-304, 37-6-311, 37-7-101, 37-7-302, 37-7-303, 37-7-321, 37-7-606, 37-8-409, 37-8-431, 37-9-101, 37-9-203, 37-9-302, 37-9-304, 37-9-305, 37-10-304, 37-11-303, 37-11-304, 37-11-308, 37-12-201, 37-12-307, 37-12-322, 37-13-306, 37-15-102, 37-15-202, 37-15-308, 37-16-202, 37-16-301, 37-16-407, 37-17-202, 37-17-306, 37-17-307, 37-18-202, 37-18-303, 37-18-305, 37-18-307, 37-19-301, 37-19-306, 37-19-401, 37-19-702, 37-20-302, 37-20-403, 37-22-304, 37-23-103, 37-23-202, 37-23-205, 37-24-202, 37-24-308, 37-25-307, 37-26-201, 37-26-403, 37-27-105, 37-28-201, 37-28-202, 37-28-203, 37-29-201, 37-29-303, 37-29-306, 37-29-403, 37-30-301, 37-30-305, 37-31-322, 37-32-305, 37-34-201, 37-34-305, 37-40-203, 37-40-304, 37-47-307, 37-50-203, 37-50-314, 37-50-317, 37-51-204, 37-51-306, 37-51-311, 37-53-211, 37-53-302, 37-54-105, 37-54-210, 37-54-211, 37-54-302, 37-54-310, 37-54-311, 37-60-202, 37-60-301, 37-60-312, 37-60-411, 37-65-306, 37-66-307, 37-67-202, 37-67-320, 37-68-201, 37-68-310, 37-68-312, 37-71-212, AND 37-71-213, MCA; REPEALING SECTIONS 20-26-1401, 20-26-1402, 20-26-1403, 20-26-1404, 20-26-1407, 20-26-1408, 20-26-1409, 20-26-1410, 20-26-1411, 37-3-322, 37-4-306, 37-4-321, 37-4-323, 37-4-324, 37-4-404, 37-5-303, 37-5-304, 37-5-311, 37-6-310, 37-7-203, 37-7-304, 37-7-305, 37-7-311, 37-7-607, 37-7-608, 37-7-710, 37-8-407, 37-8-417, 37-8-430, 37-8-433, 37-8-441, 37-8-442, 37-9-303, 37-9-311, 37-10-204, 37-10-303, 37-10-308, 37-10-311, 37-11-202, 37-11-307, 37-11-309, 37-11-320, 37-11-321, 37-12-303, 37-12-321, 37-13-305, 37-13-311, 37-13-312, 37-13-313, 37-13-314, 37-14-304, 37-14-321, 37-15-305, 37-15-309, 37-15-321, 37-16-406, 37-16-411, 37-16-414, 37-17-304, 37-17-311, 37-17-318, 37-18-304, 37-18-311, 37-19-305, 37-19-311, 37-19-312, 37-19-316, 37-19-404, 37-20-409, 37-22-306, 37-22-311, 37-22-312, 37-23-204, 37-23-207, 37-23-211, 37-23-212, 37-24-305, 37-24-307, 37-24-309, 37-25-306, 37-26-404, 37-26-408, 37-26-409, 37-26-410, 37-27-213, 37-27-216, 37-28-206, 37-28-210, 37-28-301, 37-29-311, 37-29-312, 37-29-313, 37-29-321, 37-30-306, 37-30-309, 37-30-502, 37-31-306, 37-31-307, 37-31-332, 37-32-303, 37-32-310, 37-34-304, 37-34-306, 37-34-308, 37-40-303, 37-40-311, 37-47-341, 37-47-342, 37-47-343, 37-47-346, 37-50-321, 37-50-322, 37-50-336, 37-51-206, 37-51-321, 37-51-322, 37-51-604, 37-51-606, 37-53-501, 37-53-502, 37-53-503, 37-54-401, 37-54-402, 37-54-406, 37-54-417, 37-60-212, 37-60-307, 37-60-308, 37-60-321, 37-60-322, 37-62-101, 37-62-102, 37-62-201, 37-62-202, 37-62-203, 37-62-204, 37-62-205, 37-62-206, 37-62-207, 37-62-208, 37-62-209, 37-62-212, 37-62-213, 37-62-301, 37-62-302, 37-62-303, 37-62-311, 37-65-305, 37-65-321, 37-66-306, 37-66-321, 37-66-323, 37-67-312, 37-67-313, 37-67-319, 37-67-331, 37-68-306, 37-68-309, 37-68-321, 37-69-309, 37-69-320, 37-69-322, 39-5-101, 39-5-102, 39-5-103, 39-5-104, 39-5-105, 39-5-201, 39-5-202, 39-5-203, 39-5-204, 39-5-205, 39-5-206, 39-5-207, 39-5-208, 39-5-209, 39-5-301, 39-5-302, 39-5-303, 39-5-304, 39-5-305, 39-5-306, 39-5-307, 39-5-308, 39-5-309, 39-5-310, 39-5-311, 39-5-312, 39-5-401, 39-5-402, 39-5-403, 39-5-404, 39-5-405, AND 39-5-406, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

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STATEMENT OF INTENT

A statement of intent is necessary for this bill because, although the bill deletes numerous grants of rulemaking authority in numerous sections of Title 37, the bill contains a single section allowing professional and occupational licensing boards to adopt rules. The purpose of replacing the numerous rulemaking authority grants with a single grant, as is the purpose with the rest of the bill, is to standardize the law in an attempt to reduce the number of rules and reduce variations in the rules from occupation to occupation.

The legislature takes note of the large number of hills proposed by and affecting professional and occupational licensing boards in Montana. A uniform licensing and disciplinary process needs to be established to permit the department of commerce and administratively attached licensing boards to administer the professional and occupational regulatory programs in a manner that is responsive to the public's needs. The public interest will be served by establishing uniform administrative provisions for these regulated professions and occupations that are designed to reduce the number of statutes and rules and variations in statutes and rules between professions or occupations and to promote public awareness of and access to the regulation of professions and occupations. It is the intent of the legislature to strengthen and consolidate disciplinary and licensure procedures for the licensed professions and occupations by providing a uniform disciplinary, licensing, and regulatory act, with standardized procedures for regulation, the purpose of which is to assure the public of the adequacy of competence and conduct in the regulated professions and occupations.

The rules must provide for adequate due process for licensed persons involved in disciplinary proceedings.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 19] is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by [sections 1 through 19].

Section 2. Definitions. As used in [sections 1 through 19], the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of commerce.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

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(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term, such as permit, certificato, recognition, or registration, used for the permission.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

Section 3. Scope. [Sections 1 through 19] govern the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in [section 7(1)(e)], must be used by a board in all disciplinary proceedings involving licensed professionals.

Section 4. Licensure of out-of-state applicants. A board may issue a license to practice without examination to a person licensed in another state if the board determines that the other state's license standards at the time of application to this state are substantially equivalent to the standards in this state and that there is no reason to deny the license under the laws of this state governing the profession or occupation. The license may not be issued until the board receives verification from the stato or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

Section 5. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. The permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

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Section 6. Continuing education. A board may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

Section 7. Board authority. (1) A board may:

(a) hold hearings as provided in [sections 1 through 19];

(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under [sections 1 through 19]. Subpoenas must be relevant to the complaint, issued hy a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under [sections 1 througb 19];

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chaptor.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants.

Section 8. Unprofessional conduct — complaint — investigation — immunity. (1) A person, government, or private entity may submit a writton complaint to the department charging a licensee or license applicant with a violation of [sections 1 through 19] and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of [sections 1 through 19], the department may, with the concurrence of a member of the screening panel established in [section 7], investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation. A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

Section 9. Notice — request for hearing. (1) If a reasonable cause determination is made pursuant to [section 7] that a violation of [sections 1 through 19] has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail

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to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

Section 10. Hearing — adjudicative procedures. The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under [sections 1 through 19]. A board has all the powers and duties granted by Title 2, chapter 4.

Section 11. Findings of fact — order — report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of [sections 1 through 19] occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated [sections 1 through 19], the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public.

Section 12. Sanctions — stay — costs — stipulations. (1) Upon a decision that a licensee or license applicant has violated [sections 1 through 19] or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

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(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not te exceed $1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

Section 13. Appeal. A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

Section 14. Reinstatement. A licensee whose license has been suspended or revoked under [sections 1 through 19] may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in [section 12]. The board may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

Section 15. Enforcement of fine. (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, tbe order is conclusive proof of the validity of the order of payment and the terms of payment.

Section 16. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

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(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territery, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequato precautions, including hut not limited to informed consent, protective gear, or cessation of practice;

(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment

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against or inducement to a person to prevent or attompt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice hy use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territerial, provincial, or Indian tribal government;

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

Section 17. Practice without license — investigation of complaint — injunction — penalties. (1) The department shall investigate complaints concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) A board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title.

Section 18. Violation of injunction — penalty. A person who violates an injunction issued under [section 17] shall pay a civil penalty, as determined by the court, of not more than $5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

Section 19. Rules. A board may adopt rules:

(1) under the guidelines of [section 6], regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education tepics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under [section 5] and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

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(5) defining acts of unprofessional conduct, in addition to those contained in [section 16], that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

Section 20. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to he effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; ~~20-26-1403;~~ 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other ohligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notos have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 21. Section 37-1-101, MCA, is amended to read:

"**37-1-101. Duties of department.** In addition to the provisions of 2-15-121, the department of commerce shall *may*:

(1) provide all the administrative, *legal,* and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing *and denying* licenses granted by the boards, renewing licenses, *disciplining licensees,* registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) ~~at the request of a board,~~ investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on an equitable basis as determined by the department;

(7) adopt rules ~~establishing expiration dates of licenses for barbers, barbershops, professional engineers, professional land surveyors, nursing home administrators, optometrists, plumbers, social workers, speech language pathologists, audiologists, and radiologic technologists~~ *setting expiration, renewal, and termination dates for licenses;*

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's licensing board after a finding of reasonable cause by a screening panel of the board pursuant to [section 7(1)(e)]."

Section 22. Section 37-1-121, MCA, is amended to read:

"**37-1-121. Duties of director.** In addition to ~~his~~ *the* powers and duties under 2-15-112 and 2-15-121, the director of commerce shall:

(1) at the request of a party, appoint *an* impartial ~~legal counsel~~ *hearing examiner* to conduct hearings before each board within the department whenever any board holds a contested case hearing. The ~~legal counsel appointed shall see that~~ *hearing examiner shall conduct* hearings ~~are conducted~~ in a proper and legal manner.

~~(2) whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in 37-1-101(5) and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.~~

~~(3)~~*(2)* hire all personnel to perform the administrative, *legal,* and clerical functions of the department for the boards. Boards within the department *do not* have ~~no~~ authority to hire personnel.

~~(4)~~*(3)* approve all contracts and expenditures by boards within the department. ~~No~~ *A* board within the department may *not* enter inte a contract or expend funds without the approval of the director."

Section 23. Section 37-1-131, MCA, is amended to read:

"**37-1-131. Duties of boards.** Each hoard within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the memhers of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings ~~shall~~ *must* be conducted by ~~legal counsel~~ *a hearing examiner* when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71 or 72;

(4) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the hoard has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the hoard does not have adequate money and appropriation authority availahle."

Section 24. Section 37-3-309, MCA, is amended te read:

"**37-3-309. Application for license.** (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application ~~shall~~ *must* be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the ~~board~~ *department* may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. ~~At the board's request, the~~ *The* applicant shall provide necessary authorizations for the release of records and information pertinent to the ~~board's information~~ *department's inquiry*.

(2) An applicant for a license on the basis of an examination shall file ~~his~~ *the* application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing ~~his~~ *the* application a graduate of but is then in attendance at an approved medical school, ~~he~~ *the applicant* shall suhmit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive ~~his~~ *a* diploma at the end of the then-current school term. The applicant may not be granted a certificate until he *the applicant* has filed with the department ~~his~~ *a*

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diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1) ~~of this section, and no~~. *A* license may *not* be issued ~~to him~~ until ~~he~~ *the applicant* has satisfied the board that ~~he~~ *the applicant* has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter."

Section 25. Section 37-3-313, MCA, is amended to read:

"**37-3-313. Annual registration fees — failure to pay — limiting authority to impose registration fees.** (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department an annual registration fee as prescribed by the board. ~~If a person licensed to practice medicine absents himself from the state for a period of 1 or more years or does not engage in active practice in this state, he may continue his license in good standing by payment each year of a fee prescribed by the board or, at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year of absence or inactive practice.~~

(2) The annual payments for registration ~~shall~~ *must* be made prior to April 1, and a receipt acknowledging payment of the annual registration fee ~~shall~~ *must* be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

(3) In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his *the* underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke ~~his~~ *the* underlying certificate. ~~No~~ *A* certificate may *not* be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.

(4) No *A* registration or license fee may *not* be imposed on a licensee under this chapter by a municipality or any other subdivision of the state."

Section 26. Section 37-3-323, MCA, is amended to read:

"**37-3-323. Revocation or suspension of license ~~— probation — fine — disposition of fine~~.** (1) The ~~board~~ *department* may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate te practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to

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the extent that it incapacitates the person for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine with a suspended or revoked license;

(d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, *upon order of the board,* include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies must be released to the board on written request. ~~If the board has reasonable cause to believe that this probability exists, the department shall mail to the person's last address of record with the department a specification of the charges, together with a written notice of the time and place of the hearing on the charges, advising that the person may be present and may be represented by counsel if the person wants to offer evidence and be heard in the person's own defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.~~

~~(3) A person, including a member of the board, may file a written complaint with the department against a person having a license to practice medicine in this state charging that person with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section. The complaint must set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at the person's last address of record with the department, together with a written citation of the time and place of the hearing on it.~~

~~(4) At the hearing, the board shall adopt a resolution finding the accused guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if the person is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:~~

~~(a) revoke the person's license;~~

~~(b) suspend the person's right to practice for a period not exceeding 1 year;~~

~~(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;~~

~~(d) place the person on probation;~~

~~(e) impose a fine, not to exceed $500 an incident; or~~

~~(f) take any other action in relation to disciplining the person as the board in its discretion considers proper.~~

~~(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.~~

~~(6) On the expiration of the term of suspension, the licensee must be reinstated by the board if the suspended person furnishes the board with evidence that the person is then of good moral character and conduct, is restored to good health, and has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows the person has practiced medicine in this state during the term of suspension, the board shall revoke the license, using the notice and hearing procedure provided in subsection (2). The revocation is final and absolute.~~

~~(7)~~*(3)* If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of addictive substances, the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person's professional competence has been proven te the satisfaction of the board.

~~(8) A fine imposed under this section must be deposited in the general fund.~~

~~(9) The remedies and method of enforcement of this part, as provided for in this section, are concurrent and in addition to the other remedies provided in this part.~~"

Section 27. Section 37-3-403, MCA, is amended to read:

"**37-3-403. Report of prohibition or limitation on practice hy hospital.** Each hospital or health care facility ~~which~~ *that* prohibits or limits the privilege of a physician to practice medicine within that facility shall report ~~such~~ *the* action to the state board of medical examiners within 30 days after the action is taken ~~if the action is based in whole or in part upon the commission of one or more of the offenses or the existence of one or more of the conditions set forth in 37-3-322 or 37-3-323(1)~~. The report ~~shall~~ *must* include the reason or reasons for the prohibition or limitation."

Section 28. Section 37-4-307, MCA, is amended to read:

"**37-4-307. Annual renewal fee — default — ~~active, inactive status — continuing edueation~~ — local fees prohibited.** (1) Every licensed dentist shall pay each year a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the annual renewal fee must be made ~~prior to March 1 of~~ each year *on or before the date set by department rule*, and a license renewal

must be issued by the department. A reasonable late fee ~~is~~ *must be* required *by the department* if the annual renewal fee is not *timely* paid ~~before March 1~~.

~~(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.~~

~~(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dentistry because of physical disability or retirement.~~

~~(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.~~

~~(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued.~~

~~(5) (a)~~*(3) (a)* In case of default in payment of the annual renewal fee by a licensee, ~~his~~ *the* license must be revoked by the board. The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for revocation, the license may not be revoked.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each year they were unpaid, plus a late penalty fee for each year;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

~~(6)~~*(4)* ~~Every~~ *Each* dentist shall give the board notice of any change in name, address, or status within 30 days of the change.

~~(7)~~*(5)* No *A* unit of local government, including those exercising self-government powers, may *not* impose a license fee on a dentist licensed under this chapter."

Section 29. Section 37-4-402, MCA, is amended to read:

"37-4-402. **License — examination.** (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided ~~in 37-4-404~~ *by rules adopted under [section 19],* ~~no~~ *a* person may *not* engage in the practice of dental hygiene or practice as a dental hygienist in this state until ~~he~~ *the person* has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part and a practical or clinical part. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized te make rules governing ~~any such~~ examination procedures.

(5) Applicants for licensure shall submit an application, which ~~shall~~ *must* include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(6) Applications must be submitted no less than 20 days prior to the jurisprudence examination. Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass ~~his~~ *the* first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

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(8) The board is authorized to adopt necessary and reasonable rules governing application procedures."

Section 30. Section 37-4-406, MCA, is amended to read:

"37-4-406. Annual renewal fee — default ~~— active, inactive status — continuing education~~ — revocation of license — local fees prohibited. (1) ~~Every~~ *Each* licensed dental hygienist shall pay each year a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. ~~The renewal must be for either active or inactive status, as defined by rules of the board.~~

(2) Payment of the annual renewal fee must be made ~~prior to March 1 of each year~~ *on or before the date set by department rule*, and a license renewal must be issued by the department. A reasonable late fee ~~is~~ *must be* required if the annual renewal fee is not *timely* paid ~~before March 1~~.

~~(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.~~

~~(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dental hygiene because of physical disability or retirement.~~

~~(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.~~

~~(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued.~~

~~(5)~~*(3)* In case of default in payment of the renewal fee by any licensee, the board must revoke the license.

(a) The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(b) The payment of the renewal fee on or before the time set for revocation, with a reasonable late fee set by the board, excuses the default.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each year they were unpaid, plus a late penalty for each year;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

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(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

~~(6)~~*(4)* ~~Every~~ *Each* dental hygienist shall give the board notice of any change in name, address, or status within 30 days of the change.

~~(7)~~*(5)* The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chaptor.

~~(8)~~*(6)* ~~No~~ *A* unit of local government, including those exercising self-government powers, may *not* impose a license fee on a dental hygienist licensed under this chapter."

Section 31. Section 37-5-307, MCA, is amended to read:

"**37-5-307. Renewal fee.** (1) A person holding a certificato to practice under this chapter and who is in active practice in this state shall, *on or* before ~~April 1 of each year~~ *the date set by department rule,* pay a renewal fee prescribed by the board to the department~~, and a person holding a certificate to practice under this chapter who is not in active practice shall before April 1 of each year pay a renewal fee prescribed by the board to the department~~. ~~The~~ *At least 2 weeks before the renewal date, the* department shall ~~before March 15 of each year~~ send a notice to each person holding a valid certificato to practice under this chapter and from whom a fee is due stating that the fee is due.

(2) The certificate to practice under this chapter automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificato has lapsed on payment of back renewal fees or on payment of a maximum fee prescribed by the board if the lapsed fees exceed the maximum fee."

Section 32. Section 37-6-302, MCA, is amended to read:

"**37-6-302. Qualifications for licensure — exemptions from examination — temporary licenses.** (1) ~~Persons~~ *A person* who ~~wish~~ *wishes* to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry.

(2) ~~No~~ *A* person may *not* be granted a license to practice podiatry in this state unless ~~he~~ *the person*:

(a) is of good moral character as determined by the board;

(b) is a graduate of a school of podiatry approved by the board;

(c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board;

(d) has made a personal appearance before the board;

(e) has passed an examination administered by the national board of podiatry examiners and is a diplomate of the national board of podiatry examiners; and

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(f) has obtained a score of at least 75% on an examination administered by the board.

(3) The board may waive the requirements described in subsections (2)(d) and (2)(f).

~~(4) A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege and by payment of a fee prescribed by the board to the department.~~

~~(5) The board may authorize the department to issue a temporary license to practice podiatry in appropriate cases, but no person may be granted a temporary license unless he:~~

~~(a) is of good moral character as determined by the board;~~

~~(b) is a graduate of a school of podiatry approved by the board;~~

~~(c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board; and~~

~~(d) has made a personal appearance before at least one member of the board.~~

~~(6) The board may authorize the department to issue a temporary or permanent license subject to probation or other conditions or limitations imposed by the board or may refuse to issue a license if the applicant has engaged in unprofessional conduct or is otherwise unqualified.~~"

Section 33. Section 37-6-303, MCA, is amended te read:

"**37-6-303. Examination — subjects — fees — reexamination.** (1) A person *who is* not exempt from examination ~~under 37-6-302~~ and ~~desiring~~ *who desires* a license to practice podiatry ~~shall~~ *must* be examined in the following subjects: anatomy, chemistry, dermatology, physical diagnosis, materia medica, pathology, physiology, therapeutics, orthopedics, histology, bacteriology, pharmacy, neurology, surgery, shoe therapy, physiotherapy, roentgenology, and podiatric medicine. The minimum passing score is 70% for each subject tested and an average of 75% for all subjects tested.

(2) An examination and license fee prescribed by the board ~~shall~~ *must* be paid to the department.

(3) An applicant failing the examination and being refused a license is entitled within 6 months of the refusal to a reexamination, but one reexamination exhausts his *the* privilege under the original examination. An additional fee ~~shall~~ *must* be paid to the department for a reexamination."

Section 34. Section 37-6-304, MCA, is amended to read:

"**37-6-304. Designations on license — recording — renewal — display.** (1) A license issued under this chapter is designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

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(2) Licenses must be recorded hy the department the same as other medical licenses.

(3) Licenses must be renewed annually, on a date set by the ~~board~~ *department*.

(4) A license renewal fee set by the board must be paid annually on a date set by the ~~board~~ *department*.

(5) The department shall mail renewal notices no later than 60 days prior to tbe annual renewal date ~~set by the board under subsection (3)~~.

(6) If the annual renewal fee is not paid on or before the renewal date ~~set by the board under subsection (3)~~, the board may revoke the licensee's certificate after giving 30 days' notice to the licensee. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke tbe certificate. ~~No~~ *A* certificate may *not* be revoked for nonpayment of a renewal fee if the licensee pays the annual renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) A license revoked for nonpayment of the annual renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.

(8) Licenses must be conspicuously displayed by podiatrists at their offices or otber places of practice."

Section 35. Section 37-6-311, MCA, is amended to read:

"**37-6-311. Refusal or revocation of license — investigation — ~~reinstatement~~.** (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct. ~~The department shall notify the applicant of the board's intent to deny, revoke, or refuse to renew a license by mailing a letter to the applicant's last-known address stating the board's intent and setting a time and place for a hearing. If the applicant fails without cause to appear at the hearing or if the board determines that the applicant is not entitled to a license, the board shall deny, revoke, or refuse to renew the applicant's license.~~

(2) The ~~board~~ *department* may investigate whenever it is brought to its attention that a licensed podiatrist:

(a) is mentally or physically unable to engage safely in the practice of podiatry;

(b) has procured ~~his~~ *the* license by fraud, misrepresentation, or through error;

(c) has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent;

(d) has a condition that impairs ~~his~~ *the licensee's* intellect or judgment to the extent that it incapacitates ~~him~~ *the licensee* in the safe performance of ~~his~~ professional duties;

(e) has been found guilty of unprofessional conduct;

(f) has practiced podiatry while ~~his~~ *the* license was suspended or revoked;

(g) has had ~~his~~ *the* license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(h) while under probation has violated its terms.

(3) The investigation ~~shall~~ *must* be for the purpose of determining the probability that the alleged conditions exist or that the alleged offenses were committed. ~~The~~ *Upon order of the board, the* investigation may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interest of the public that this evaluation he secured. The board may examine the hospital records and reports of a licensee as part of the examination, and copies shall be released to the board on written request. ~~If the board has reasonable cause to believe that the alleged conditions exist or that the alleged offenses were committed, the department shall mail to the person at his last known address a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.~~

~~(4) A person, including a member of the board, may file a written complaint with the department against a person having a license to practice podiatry in this state charging him with the commission of any of the offenses set forth in 37-6-310 or with any of the offenses or conditions set forth in subsection (1) or (2) of this section. The complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person complained against, at his last known address, together with a written citation of the time and place of the hearing on the complaint.~~

~~(5) At the hearing the board shall adopt a resolution finding the person complained against guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-6-310 or subsection (1) or (2) of this section do not exist with respect to the person complained against or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-6-310 or in subsection (1) or (2) of this section do exist or the person is found guilty, the board shall:~~

~~(a) revoke his license;~~

~~(b) suspend his right to practice for a period not exceeding 1 year;~~

~~(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;~~

~~(d) place him on probation; or~~

~~(e) take any other action in relation to disciplining him as the board in its discretion considers proper.~~

~~(6) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent measures taken by the board with respect to that action.~~

~~(7) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct or restored to good health and that he has not practiced podiatry in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced podiatry in this state during the term of suspension, the board shall revoke the license at a hearing held in accordance with the notice and procedure provided in subsection (1). The revocation is final.~~

~~(8)~~*(4)* If a person holding a license to practice podiatry under this chapter is by a final order or adjudication of a court of competent jurisdiction determined to be mentally incompetent, seriously mentally ill, or addicted to the use of narcotics, ~~his~~ *the* license may be suspended by the board. The suspension continues until the licensee is found by the court to be restored to reason or cured or until ~~he~~ *the licensee* is discharged as restored to reason or cured and ~~his~~ *the licensee's* professional competence has been proven to the satisfaction of the board."

Section 36. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Board" means the board of pharmacy provided for in 2-15-1843.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

~~(4) "Continuing education" means professional pharmaceutical postgraduate education in the following areas:~~

~~(a) the socioeconomic and legal aspects of health care;~~

~~(b) the properties and actions of drugs and dosage forms; and~~

~~(c) the etiology, characteristics, and therapeutics of the disease state.~~

~~(5)~~*(4)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(6) (a)~~*(5) (a)* "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia/National Formulary or a supplement ~~to them~~;

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(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ *people* or other animals;

(iii) articles, ~~(~~other than food~~)~~, intended to affect the structure or function of the body of ~~man~~ *an individual* or other ~~animals~~ *animal*; and

(iv) articles intended for use as a component of an article specified in subsection (i), (ii), or (iii).

(b) "Drug" does not include devices or their components, parts, or accessories.

~~(7)~~*(6)* "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist.

~~(8)~~*(7)* "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

~~(9)~~*(8)* "Person" includes an individual, partnership, corporation, or association.

~~(10)~~*(9)* "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to ~~his~~ *the person's* name the term "R.Ph.".

~~(11)~~*(10)* "Pharmacy" means an established place registered by the department of commerce in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold.

~~(12)~~*(11)* "Pharmacy technician or auxiliary" means an individual who assists a pharmacist in the practice of pharmacy pursuant to an approved utilization plan.

~~(12)~~*(12)* "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

~~(14)~~*(13)* "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, ~~his~~ *the prescriber's* license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

~~(15)~~*(14)* "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician or auxiliary in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

~~(16)~~*(15)* "Wholesale" means a sale for the purpose of resale."

Section 37. Section 37-7-302, MCA, is amended to read:

"37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination ~~shall~~ *must* be set by the board at a figure commensurate with costs~~, which~~. *The* fee may in the discretion of the board be returned to applicants not taking the examination.

(3) To be entitled to examination as a pharmacist, the applicant ~~shall~~ *must* be of good moral charactor and ~~shall~~ *must* have graduated and received the first professional undergraduate degree from the school of pbarmacy of the university of Montana or from an accredited pharmacy degree program that has been approved by the board. However, ~~no~~ *an* applicant may *not* receive a registered pharmacist's license until ~~he~~ *the applicant* has complied with the internship requirements established by the board.

~~(4) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter. The fee for registration by reciprocity shall be prescribed by the board.~~

~~(5)~~*(4)* ~~Every~~ *Each* person licensed and registered under this chapter ~~shall~~ *must* receive from the department an appropriate certificate attesting the fact, which ~~shall~~ *must* be conspicuously displayed at all times in ~~his~~ *the* place of business."

Section 38. Section 37-7-303, MCA, is amended to read:

"37-7-303. Annual renewal fee. ~~(1)~~ A person licensed and registered by the department shall annually pay to the department *on or* before ~~June 30~~ *the date set by department rule* a renewal of registration fee prescribed by the board. A default in the payment of a renewal fee after tbe date it is due increases the renewal fee as prescribed by tbe board. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this stato. A certificate and renewal expires at the time prescribed, not later than 1 year from its date. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with ~~the continuing education provisions of this chapter~~ *other requirements prescribed by law*.

~~(2) The board may charge an additional fee for such license renewal to be used in administering the continuing education provisions of this chapter.~~"

Section 39. Section 37-7-321, MCA, is amended to read:

"37-7-321. Certified pharmacy license ~~— suspension or revocation~~. (1) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by

the board and on the payment of an original certification fee prescribed by the board, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The annual renewal fee for a pharmacy ~~shall~~ *must* be set by the board. Any default in the payment of ~~such~~ *the* renewal fee after the date the same is due ~~shall increase~~ *increases* the renewal fee as prescribed by the board. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on ~~June 30 following the date of issue~~ *the date set by department rule*. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify ~~his~~ *the* business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may ~~suspend, revoke,~~ *impose discipline or deny* or refuse to renew a pharmacy license~~:~~

~~(a) obtained by false representation or fraud;~~

~~(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;~~

~~(c) when the person to whom the license is granted has been convicted of:~~

~~(i) a violation of parts 1 through 3 of this chapter; or~~

~~(ii) a violation of the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.); chapter 2 or 7 of Title 37, chapter 9 or 10 of Title 45, or chapter 31 or 32 of Title 50, MCA; or rules adopted under such act or chapters;~~

~~(d) when the person to whom the license is granted is a natural person whose pharmacist license has been revoked; or~~

~~(e) when the pharmacy is conducted in violation of parts 1 through 3 of this chapter.~~

~~(3) Before a license can be revoked, the holder is entitled to a hearing by the board~~ *for reasons specified in and subject to conditions specified in Title 37, chapter 1.*"

Section 40. Section 37-7-606, MCA, is amended to read:

"**37-7-606. Issuance of licenses.** The license for wholesale drug distributors is effective ~~from April 1 to March 31 of the following year~~ *during the 12-month period specified by department rule*. An application for renewal of a license must be mailed to each licensee ~~on or before March 1~~ *at least 30 days prior to the renewal date*, and if the renewal application and the fee are not mailed by March ~~31~~ *the renewal date*, the license is void upon its expiration date."

Section 41. Section 37-8-409, MCA, is amended to read:

"**37-8-409. Midwifery — when professional nurse may practice.** ~~(1)~~ A person licensed under ~~37-8-406 or 37-8-407~~ *this chapter* who holds a certificate in nurse-midwifery from the American college of nurse-midwives may practice midwifery upon approval by the board of an amendment to ~~her~~ *the* license granting a certificate of nurse-midwifery. The board shall grant a certificate of

nurse-midwifery to a person who submits written verification of certification by the American college of nurse-midwives and who meets ~~such~~ other qualification requirements as the board may prescribe.

~~(2) The board may give temporary approval to practice nurse-midwifery for up to 4 months to a person who has taken the American college of nurse-midwives national certification examination, pending receipt of official notification of the results of the examination.~~"

Section 42. Section 37-8-431, MCA, is amended to read:

"**37-8-431. Renewal of license.** (1) The license of a person licensed under this chapter must be annually renewed *on the date set by department rule.* ~~Before December 1 of each year~~ *At least 30 days prior to the renewal date,* the department shall mail an application form for renewal of license to ~~every~~ *each* person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee prescribed by the board *on or* before ~~January 1~~ *the renewal date.*

(2) The board may increase or decrease the annual license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of *Title 37, chapter 1, and* this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal ~~for the current year beginning January 1 and expiring December 31 following~~. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows ~~his~~ *the* license to lapse by failing to renew the license may be reinstated hy the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the dato ~~his~~ *the* license has expired is an illegal practitioner and is suhject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by ~~January 1 as required in subsection (1)~~ *the renewal date.*"

Section 43. Section 37-9-101, MCA, is amended to read:

"**37-9-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(3) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license~~

~~has not been revoked or suspended but who is not actively engaged in nursing home administration.~~

~~(4)~~*(3)* "Long-term care facility" means any skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of health and environmental sciences, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

~~(5)~~*(4)* "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether ~~his~~ *the individual's* functions and duties are shared with one or more *other* individuals."

Section 44. Section 37-9-203, MCA, is amended to read:

"**37-9-203. Duties of board.** The board shall:

(1) develop, impose, and enforce standards ~~which~~ *that* must be met by individuals in order to register and receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examination and investigation, for determining whether individuals meet the standards;

(3) authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards;

(4) establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards;

(5) conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators;

~~(6) conduct or cause to be conducted one or more courses of instruction and training sufficient to meet the requirements of this chapter and make provisions for the conduct of these courses and their accessibility to residents of this state, unless it finds that there are a sufficient number of courses conducted by others within this state to meet the needs of the state; instead, the board may approve courses conducted within and outside of this state sufficient to meet the education and training requirements of this chapter;~~

~~(7) prescribe or approve continuing education courses.~~"

Section 45. Section 37-9-302, MCA, is amended to read:

"**37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit.** (1) The department shall register and license nursing home administrators under the rules adopted by the board.

(2) A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation, suspended, or revoked for violation of this chapter or any other laws or rules relating to the proper administration and management of a long-term care facility.

~~(3) If the board determines that preliminary qualifications set forth in 37-9-301 will have been met before the next examination, it may authorize the department to issue a temporary permit for a period of 180 days or until the scores of the next examination are announced. No temporary permit may be issued to an applicant after the date of the first examination for which he is eligible.~~"

Section 46. Section 37-9-304, MCA, is amended to read:

"**37-9-304. Fees.** (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall pay a license fee in an amount fixed by the board. A license ~~shall expire~~ *expires* each year on a date set by *department* rule ~~of the department~~ and ~~shall~~ *must* be renewable annually upon timely payment of the license fee.

~~(3) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount fixed by the board. An inactive registration shall expire each year on a date established by rule of the department and shall be renewable annually upon timely payment of the inactive registration fee.~~

~~(4)~~*(3)* The fee for issuing a duplicate license ~~shall~~ *must* be fixed by the board."

Section 47. Section 37-9-305, MCA, is amended to read:

"**37-9-305. Renewal of registration and license.** ~~Every~~ *Each* holder of a nursing home administrator's registration and license shall renew it annually by payment of the required fee for the next subsequent year prior to the expiration date of ~~his~~ *the* currently valid registration and license. Renewals of registrations or licenses ~~shall~~ *must* be granted as a matter of course~~, providing the holder has completed a continuing education course prescribed or approved by the board;~~ ~~however~~ *However*, if the board finds, after due notice and hearing, that the applicant has acted or failed to act in ~~such~~ a manner or under circumstances ~~as~~ *that* would constitute grounds for ~~suspension or revocation of a registration and license~~ *discipline*, it ~~shall~~ *may* not issue the renewal."

Section 48. Section 37-10-304, MCA, is amended to read:

"**37-10-304. Course in use of diagnostic and therapeutic drugs required.** (1) (a) In addition to the requirements of 37-10-302 ~~or 37-10-303, whichever is applicable~~, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometrista with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

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(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1)(a) and must pass an examination as provided in subsection (1)(d).

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by tbe board.

(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificato to those applicants who pass ~~such~~ *the* examination.

(2)(a) ~~In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable, each~~ *Each* person desiring to commence the practice of optometry shall:

(i) pass an examination, of the international association of boards of examiners in optometry, on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conductod by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course and examination must also be approved by tbe board.

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

(c) The board shall:

(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and

(ii) issue a certificate to an applicant who passes ~~such~~ *the* examination."

Section 49. Section 37-11-303, MCA, is amended to read:

"37-11-303. **Qualifications of applicants for license.** To be eligible for a license as a physical therapist, an applicant must:

(1) be of good moral character and at least 18 years of age;

(2) have graduated from an accredited school of physical therapy approved by the board; *and*

(3) ~~either:~~

~~(a)~~ pass to the satisfaction of the board a written examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist~~; or~~

~~(b) be entitled to a license without examination under 37-11-307~~."

Section 50. Section 37-11-304, MCA, is amended to read:

"37-11-304. Application for examination — fee. (1) ~~Unless entitled to a license under 37-11-307, a~~ *A* person who desires to be licensed as a physical therapist shall apply to the department in writing, on a form furnished by the department. ~~He~~ *and* shall:

(a) embody in that application evidence under oath, satisfactory to the board, of ~~his possessing~~ *having* the qualifications preliminary to the examination required by 37-11-303; and

(b) pay to the department at the time of filing ~~his~~ *the* application a fee as established by the board by rule. The fee must be commensurate with the cost of the examination and its administration and must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) Anyone failing to pass the required examination on ~~his~~ *the* first attempt is entitled to sit for a second examination and, if ~~he fails~~ the second examination *is failed*, to sit for a third examination."

Section 51. Section 37-11-308, MCA, is amended to read:

"37-11-308. Annual renewal of license — fee. A licensed physical therapist shall, ~~during January~~ *on or before the date set by department rule*, apply to the department for a renewal of ~~his~~ *the* license and pay a fee ~~which shall be~~ set by board rule. A license that is not renewed before ~~April every year~~ *the renewal date* automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee."

Section 52. Section 37-12-201, MCA, is amended to read:

"37-12-201. Organization of board — meetings — powers and duties. (1) The board shall elect annually a president, vice president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. A majority of the board constitutes a quorum.

(3) The board shall:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal that must be affixed to licenses issued;

(c) make a scbedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, disciplinary standards for licensees, and the registration of interns and preceptors.

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~~(e) investigate complaints;~~

~~(f)~~*(e)* make determinations of the qualifications of applicants under this chapter;

~~(g)~~*(f)* administer the examination for licensure under this chapter;

~~(h)~~*(g)* establish and collect fees, fines, and charges as provided in this chapter;

~~(i)~~*(h)* issue, suspend, or revoke licenses under the conditions prescribed in this chapter; and

~~(j)~~*(i)* certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

(4) The department shall keep a record of the proceedings of the board, which shall *must* at all times be open to public inspection."

Section 53. Section 37-12-307, MCA, is amended to read:

"37-12-307. Annual renewal of license — fees ~~—continuing education—inactive status.~~ ~~(1)~~ A license expires on ~~September 1 of each year~~ *the date set by department rule* and ~~shall~~ *must* be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee~~, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors approved by the board~~ *qualifies for renewal*. All applicants for renewal who have not paid the renewal fee ~~prior to October 1 of each year~~ *on or before the renewal date* shall pay an additional late fee prescribed by the board.

~~(2) The board shall by rule set standards for inactive status. It shall charge an annual fee for a license placed on inactive status.~~

~~(3) An inactive license may be reinstated to active status upon payment of a fee and completion of the continuing education requirements set by the board.~~"

Section 54. Section 37-12-322, MCA, is amended to read:

"37-12-322. Investigation of complaints ~~—discipline of licensees—revocation or suspension of license.~~ (1) The ~~board~~ *department* may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition such that ~~he~~ *the person* is unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or seriously mentally ill hy a court of competent jurisdiction and thereafter has not been declared competent or released from supervision;

(c) has procured ~~his~~ *the* license througb mistake;

(d) has been guilty of unprofessional conduct;

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(e) has practiced chiropractic while ~~his~~ *the* license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation ~~shall~~ *must* be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, *upon order of the board,* include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these ~~shall~~ *must* be released to the board on written request. ~~If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.~~

~~(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 37-12-321 or subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.~~

~~(4) After the hearing, the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:~~

~~(a) revoke the license;~~

~~(b) suspend the licensee's right to practice for a period not to exceed 1 year;~~

~~(c) suspend its judgment of revocation on terms and conditions determined by the board;~~

~~(d) place the licensee on probation;~~

~~(e) fine the licensee in an amount not to exceed $500 for each incident; or~~

~~(f) take any other disciplinary action which the board in its discretion considers proper.~~

~~(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.~~

~~(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to~~

~~establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.~~

~~(7) Following a final determination resulting in any disciplinary action taken by the board under subsection (4), the board may recover from the disciplined party all reasonable costs of any proceeding, not to exceed $1,000, incurred for the purpose of the disciplinary action. Fines and costs recovered must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).~~"

Section 55. Section 37-13-306, MCA, is amended to read:

"**37-13-306. Annual renewal — fee — military exemption.** (1) The license to practice acupuncture must be renewed annually, on a date set by the ~~board~~ *department*, without examination and upon request of the licensee. The request for renewal must be on forms prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee must be in the hands of the secretary of the board not later than the expiration date of the license.

(2) Immediately following tbe renewal date, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, is in the hands of the secretary within 30 days of the renewal date.

(3) If the licensee fails to renew witbin 30 days following the renewal date, the secretary of the board shall cancel and revoke upon its records all licenses that have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are revoked of the action.

(4) A licensee who allows ~~his~~ *the* license to lapse by failing to renew or reinstate the license as provided in this section may subsequently reinstate the license upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee prescribed by the board for each year following the cancelling of the license.

(5) A person actively engaged in the military service of the United States and licensed to practice acupuncture as provided in this part is not required to pay the annual renewal fee or make application for renewal until the renewal date of the calendar year in which he *the person* returns from military service to civilian or inactive status."

Section 56. Section 37-15-102, MCA, is amended to read:

"**37-15-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "ASHA" means the American speech-language and hearing association.

(2) "Association" means the Montana speech-language and hearing association.

(3) "Audiologist" means a person who practices audiology and who meets tbe qualifications set forth in tbis chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that tbe person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing tberapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

(4) "Audiology aide" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(5) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1849.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Practice of audiology" means rendering or offering to render a service in audiology to individuals or groups of individuals who have or are suspectod of having hearing disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, rehabilitation, instruction, and research;

(b) participating in hearing conservation and hearing aid and assistive listening device evaluation, prescription, preparation, dispensing, and orientation;

(c) fabricating ear molds;

(d) providing auditory training and speech reading;

(e) conducting tests of vestibular function;

(f) evaluating tinnitus;

(g) planning, directing, conducting, or supervising programs that render or offer to render a service in audiology; and

(h) speech or language screening, limited to a pass/fail determination.

(8) "Practice of speech-language pathology" means rendering or offering to render a service in speech-language patbology to individuals or groups of individuals who have or are suspectod of having communication disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, and rehabilitation;

(b) determining the need for augmentative communication systems and providing training in the use of these systems;

(c) planning, directing, conducting, or supervising programs tbat render or offer to render a service in speech-language pathology;

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(d) nondiagnostic pure-tone air conduction, tympanometry, and acoustic reflex screening, limited to a pass/fail determination;

(e) aural rehabilitation, which includes services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairment;

(f) oral motor rehabilitation, which includes services and procedures for evaluating and facilitating face, lip, and tongue mobility and control;

(g) cognitive retraining, which includes services and procedures for evaluating and facilitating memory, attention, reasoning, processing, judgment, and other related areas in individuals with language impairment resulting from head injury, stroke, or other insult; and

(h) dysphagia therapy, which includes services and procedures for evaluating and facilitating swallowing and feeding in those individuals with swallowing disorders.

(9) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

(10) "Speech-language pathology aide" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

~~(11) "Unethical conduct" means:~~

~~(a) the obtaining of a fee by fraud or misrepresentation;~~

~~(b) employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter unless that person assumes the legal status of a supervised aide; or~~

~~(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.~~"

Section 57. Section 37-15-202, MCA, is amended to read:

"**37-15-202. Powers and duties of board and department.** (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

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(b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of ~~such~~ applicants;

~~(c) investigate persons engaging in practices which allegedly violate the provisions of this chapter;~~

~~(d)~~*(c)* conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

~~(e)~~*(d)* adopt rules, including but not limited to those governing ethical standards of practice under this chapter;

~~(f)~~*(e)* make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech-language pathology or audiology which could be beneficial to the citizens of the state of Montana;

~~(g)~~*(f)* cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses therefor;

~~(h)~~*(g)* adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, sigued by the ~~chairman~~ *presiding officer* or secretary of the board and stamped with the seal, ~~shall be~~ *are* prima facie evidence of the validity of ~~such~~ *the* documents.

(3) The board may make rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law."

Section 58. Section 37-15-308, MCA, is amended to read:

"**37-15-308. Renewal.** (1) Each licensed speech-language pathologist or audiologist shall pay to the board the fee for the renewal of ~~his~~ *the* license according to rules adopted by the department.

(2) The department shall notify each person licensed under this chapter relative to the date of expiration of ~~his~~ *the* license and the amount of the renewal fee. This notice must be mailed to each licensed speech-language pathologist or audiologist at least 1 month before the expiration of the license.

(3) Renewal may be made at any time during the 60 days prior to the expiration date by application therefor. ~~A renewal application must be accompanied with documentation satisfactory to the board that the applicant has fulfilled his continuing educational requirements as provided in 37-15-309.~~

(4) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive ~~him~~ *the person* of the right to renew ~~his~~ *the* license, but the fee ~~shall~~ *must* be increased 10% for each month that the payment

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of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal ~~shall~~ *may* not exceed twice the normal renewal fee.

(5) Application for renewal following a lapse of 1 year or more ~~shall be~~ *is* subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) A suspended license is subject te expiration and may be renewed as provided in this section, but ~~such~~ *the* renewal does not entitle the licensee, while the license remains suspended, tu engage in the licensed activity or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(7) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(8) A person who fails to renew ~~his~~ *a* license within 2 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated ~~thereafter;~~. ~~but such a~~ *However, the* person may reapply for and obtain a new license if ~~he~~ *the person* meets the requirements of this chapter."

Section 59. Section 37-16-202, MCA, is amended to read:

"**37-16-202. Powers and duties.** The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

~~(2) establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;~~

~~(3)~~*(2)* suspend or revoke licenses under this chapter;

~~(4)~~*(3)* designate the time and place for examining applicants for license and supervise and administer the examination;

~~(5)~~*(4)* adopt rules necessary to carry out this chapter;

~~(5)~~*(5)* require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

~~(7)~~*(6)* prepare examinations required by the chapter;

~~(8)~~*(7)* initiate legal action to enjoin from operation a person or corporation engaged in the sale, dispensing, or fitting of hearing aids in this state who is not licensed under this chapter;

~~(9)~~*(8)* adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, *and* 37-16-408;

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~~37-16-411, and 37-16-414~~. Rules adopted by the board may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, *and* 37-16-408~~, 37-16-411, and 37-16-414~~."

Section 60. Section 37-16-301, MCA, is amended to read:

"**37-16-301. Permanent place of business in state necessary — records — notice — designation of licensee in charge.** (1) A person who is actively engaged in dispensing hearing aids and relatod devices as a business must have a permanent place of business in this stato that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids and related devices. All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one hearing aid dispenser licensee may work from a permanent place of business.

(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to ~~him~~ *the person* at the address last given ~~by him~~ to the department.

(3) All licensed hearing aid dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.

(4) (a) When licensed hearing aid dispensers and trainees work at the same permanent place of business, the licensed hearing aid dispenser shall designate one licensed dispenser as the person in charge. There must be one licensed dispenser in charge at a permanent place of business.

(b) The licensed hearing aid dispenser in charge of a permanent place of business:

(i) is responsible and accountable under the disciplinary authority of the board for the conduct of trainees using that permanent place of business; and

(ii) has custody and control of the business records of that permanent place of business and is responsible for producing the records during an investigation conducted by the ~~board~~ *department*."

Section 61. Section 37-16-407, MCA, is amended to read:

"**37-16-407. Renewal of license — fee ~~—inactive status~~.** ~~(1)~~ A person who practices the fitting of hearing aids and related devices shall annually pay to the department a fee as set by the board for a renewal of ~~his~~ *the* license. The fee must be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The fee must be increased 10% for each month or major portion ~~thereof~~ *of a month* that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal may not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew

is required to submit to the examinations described in 37-16-403 as a condition of renewal for a 3-year period after suspension.

~~(2) Each applicant for license renewal shall submit evidence showing completion of 4 hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule.~~

~~(3) (a) The board may set standards and fees for issuing licenses that designate inactive status.~~

~~(b) An inactive licensee may be reinstated to active practice if he:~~

~~(i) applies for reinstatement;~~

~~(ii) pays a fee set by the board; and~~

~~(iii) produces proof satisfactory to the board of completion of the continuing education requirements established by the board.~~"

Section 62. Section 37-17-202, MCA, is amended to read:

"**37-17-202. Powers.** (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(2) In addition to the other powers and duties set forth, the board may:

(a) revoke and suspend licenses;

(b) conduct hearings upon complaints concerning persons licensed under this chapter;

(c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses ~~therefor~~ *for the prosecution*; *and*

(d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana;

~~(e) adopt rules for the administration of a continuing education program, including but not limited to accrediting education programs and establishing the number of hours of continuing education required for license renewal.~~"

Section 63. Section 37-17-306, MCA, is amended to read:

"**37-17-306. Annual renewal.** (1) The license expires on ~~January 1 following~~ the date ~~of its issuance or renewal and is invalid thereafter~~ *set by department rule*. The department shall notify each person licensed under this chapter relative to the date of the expiration ~~of his license~~ and the amount of his *the* renewal fee. This notice ~~shall~~ *must* be mailed to each licensed psychologist at his *the licensee's* listed address at least 1 month before the expiration of the license.

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(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay ~~his~~ *the* renewal fee by the expiration date does not deprive ~~him~~ *the person* of the right to renew ~~his license~~, but the fee ~~shall~~ *must* be increased 10% for each month or major portion ~~thereof~~ *of a month* that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

~~(3) The board may charge an additional fee for license renewal to be used for administering the continuing education program established in 33-17-318.~~"

Section 64. Section 37-17-307, MCA, is amended to read:

"**37-17-307. Fees — deposit of fees.** (1) The department shall collect the following fees, none of which is refundable:

(a) application fee;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee;

(d) renewal fee~~, including an amount sufficient to cover the costs of administering the continuing education program.~~

~~(2) Renewal certificates shall be secured annually and dated January 2.~~

~~(3)~~*(2)* Fees received by the department ~~shall~~ *must* be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 65. Section 37-18-202, MCA, is amended to read:

"**37-18-202. Powers of board and department — examinations — ~~prosecutions~~.** (1) The board may adopt rules and orders necessary for the performance of its duties, including but not limited to:

(a) ~~development of continuing professional education requirements and exceptions therefrom;~~

~~(b)~~ prescribing of forms for application for examination and license; and

~~(c)~~*(b)* preparation of examinations.

(2) The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses.

~~(3) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court.~~"

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Section 66. Section 37-18-303, MCA, is amended to read:

"37-18-303. Examination — temporary permit pending examination. (1) Subject to 37-1-101, the board shall by means of examination, either oral, written, or practical or a combination of oral, written, or practical as the board determines, ascertain the professional qualifications for license of applicants under this part. ~~An investigation under reciprocity arrangements may replace examination for licensees from other states under 37-18-304.~~ The department shall issue a license to all who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to he competent *and qualified.*

(2) The examination ~~shall~~ *must* be held when determined necessary by the board, but not less frequently than once each year at a time and place specified by the board. The examination ~~shall~~ *must* cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve them for reference and shall number consecutively licenses issued.

(4) ~~Applicants must~~ *An applicant is required to* achieve a grade of 70% in order to obtain a license. An applicant who has failed an examination may apply to be reexamined at a subsequent examination and shall pay another application fee commensurate with the costs of the examinations and set by the board and shall take another complete examination in all subjects.

~~(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this part. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section.~~"

Section 67. Section 37-18-305, MCA, is amended to read:

"37-18-305. License — issuance and contents. (1) The board shall, at the conclusion of a regular examination or after investigation, ~~under the reciprocity arrangements of 37-18-304~~ if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted ~~shall~~ *must* be issued under seal and ~~shall~~ *must* he signed by the president and secretary-treasurer of the board and ~~shall~~ *must* state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law and that after full examination, ~~or investigation under reciprocity arrangements, he~~ *the licensee* has heen found qualified to practice."

Section 68. Section 37-18-307, MCA, is amended to read:

"37-18-307. **Renewal — fee — continuing education — automatic renewal for military personnel.** (1) A person licensed to practice vetorinary medicine in this state shall procure *a certificate of registration* from the department *annually on or* before ~~November 1 annually his~~ *the date set by department rule* ~~certificate of registration~~. The certificate ~~shall~~ *must* be issued by the department on the payment of a fee fixed by the board and on presentation of evidence satisfactory to the board that the licensee ~~has complied with continuing education requirements established by the board~~ *qualifies for renewal*. ~~The board may waive, relax, or suspend continuing education requirements or particular program requirements for applicants who cannot fulfill those requirements because of individual hardship. New licensees who secure licenses by examination shall be granted a renewal the first year without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued.~~

(2) Failure of a person licensed to procure a certificate of registration *on or* before ~~November 1, annually,~~ *the date set by department rule* constitutes a forfeiture of the license held by the person. A person who has ~~thus~~ forfeited ~~his~~ *the* license may have it restored ~~to him~~ by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires ~~and by presentation of evidence satisfactory to the board that he has fulfilled all continuing education requirements to the date of application for restoration~~. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of ~~his~~ *the* license during the period of ~~his~~ *active* duty with the armed services. However, within 1 year after release or discharge from duty in the armed services he *the person* shall procure a certificate of renewal from the department and pay tbe regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before November 1 of any year, and the same forfeiture and restoration requirements apply.

(4) A person licensed sball at all times have ~~his~~ *the person's* residence and office address on file with the department."

Section 69. Section 37-19-301, MCA, is amended to read:

"37-19-301. **Funeral director's license — renewal — fee.** The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing on June 1, 1963, is entitled to an annual renewal of ~~his~~ *the* license on payment of a renewal fee to the department on ~~July 1 of each year~~ *or before the date set by department rule*. The amount of the annual renewal license fee ~~shall~~ *must* be set by the board. ~~A funeral director's license may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.~~"

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Section 70. Section 37-19-306, MCA, is amended to read:

"37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal. (1) The annual license fee for a mortician's license must be postmarked *on or* before ~~July 1 of the assessment year~~ *the date set by department rule*. The amount of the annual renewal fee ~~shall~~ *must* be set by the board.

(2) Failure to pay the annual renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty prescribed by the board."

Section 71. Section 37-19-401, MCA, is amended to read:

"37-19-401. License required — display of license — renewal — penalty for late renewal. (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

(2) A mortuary license expires on ~~June 30 of each year~~ *the date set by department rule* and may be renewed upon payment of a fee set by the board.

(3) The board may set a penalty for late renewal of a mortuary license."

Section 72. Section 37-19-702, MCA, is amended to read:

"37-19-702. Licenses required — display of licenses — renewal — penalty for late renewal. (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board, beginning July 1, 1993. The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on ~~June 30 of each year~~ *the date set by department rule* and may be renewed upon payment of a fee set by the board, which includes the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of hoth a mortuary facility under 37-19-403 and a crematory facility.

(3) The board may set a penalty fee for late renewal of a license.

(4) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

(5) Crematory operator and crematory technician licenses expire on ~~June 30 of each year~~ *the date set by department rule* and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment."

Section 73. Section 37-20-302, MCA, is amended to read:

"37-20-302. Utilization plan approval fee — renewal of license — renewal fee. (1) A utilization plan approval fee must be paid in an amount set

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by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed annually, on a date set by the ~~board~~ *department*.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) The department shall mail a renewal notice no later than 60 days prior to the renewal date ~~set by the board under subsection (3)~~. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the license.

(6) If the annual renewal fee is not paid on or before the renewal date set ~~by the board under subsection (3)~~, the board may revoke the license after giving 30 days' notice to the licensee. A license may not be revoked for nonpayment of a renewal fee if the licensee pays the annual renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 74. Section 37-20-403, MCA, is amended to read:

"**37-20-403. Physician assistant-certified as agent of supervising physician.** (1) In establishing protocol, a physician assistant-certified must be considered the agent of the supervising physician with regard to all duties delegated to the physician assistant-certified under the utilization plan. A health care provider shall consider the instructions of a physician assistant-certified as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant-certified under the utilization plan.

(2) The supervising physician and the physician assistant-certified are responsible for making available a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis.

~~(3) Nothing in this chapter may be construed to conflict with the provisions of 37-3-322.~~"

Section 75. Section 37-22-304, MCA, is amended to read:

"**37-22-304. Renewal of license.** (1) An application for renewal of an existing license *must be* made ~~within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect~~ *on or before the date set by department rule*.

(2) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee

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set by the board and upon submitting proof of ~~completion of continuing education requirements~~ *qualification for renewal.*

(3) ~~An individual may renew a license in the manner provided in subsection (2) within 1 year of the expiration date of the license. An applicant for renewal shall provide the board with proof that the applicant has satisfied the continuing education requirements of the board for the year for which the license is to be renewed.~~

~~(4)~~ The renewal fee is increased by 10% for each month or part of a month that the renewal is delayed ~~after the 60-day period provided in subsection (1)~~. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

~~(5)~~*(4)* A license not renewed within 1 year following its expiration date terminates automatically."

Section 76. Section 37-23-103, MCA, is amended to read:

"37-23-103. Powers and duties of board. (1) The board shall:

(a) recommend amendments to this chapter to the governor or the legislature, or both;

(b) recommend prosecutions for violations of 37-23-311 to the attorney general or appropriate county attorneys, or both;

(c) annually publish a list of the names and addresses of all persons who are licensed professional counselors;

(d) ~~establish requirements for continuing education that are conditions of license renewal;~~

~~(e)~~ meet to perform the duties described in this section;

~~(f)~~*(e)* adopt rules that set professional and ethical standards for licensed professional counselors ~~which~~ *that* are based on national standards and ~~such~~ other rules as may be reasonably necessary for the administration of this chapter; and

~~(g)~~*(f)* distribute a copy of the professional and ethical standards to each licensed professional counselor.

(2) The board may adopt rules governing the issuance of certificates of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a certificate is issued."

Section 77. Section 37-23-202, MCA, is amended to read:

"37-23-202. (Temporary) Licensure requirements. (1) An applicant for licensure must have satisfactorily completed:

(a) a planned graduate program of 60 semester hours, primarily counseling in nature, 6 semester hours of which were earned in an advanced counseling practicum, which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

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(b) 2,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse the application for licensure, attesting to the number of hours supervised.

(c) and passed an examination prepared and administered by:

(i) the board, based on a national examination approved by the board;

(ii) the national board of certified counselors; or

(iii) the national academy of certified clinical mental health counselors; and

(d) an application form and process prescribed by the board.

(2) The board shall provide by rule for licensure:

~~(a)~~ of a person who possesses a minimum 45 semester hour graduate degree that is primarily related to counseling and that is from an institution accredited to offer a graduate program in counseling, by specifying the additional graduate credit hours necessary to fulfill the requirements of subsection (1)(a) in counseling courses in an approved program within a period of 5 years~~; and~~

~~(b) of a person who possesses a license or certification as a professional counselor from an agency located in another state whose requirements are less than the requirements of this chapter, by:~~

~~(i) crediting past clinical experience in psychotherapy and counseling; and~~

~~(ii) recommending additional education or experience necessary to fulfill the requirements of this chapter.~~

37-23-202. (Effective July 1, 1996) Licensure requirements. (1) An applicant for licensure must have satisfactorily completed:

(a) a planned graduate program of 60 semester hours, primarily counseling in nature, 6 semester hours of which were earned in an advanced counseling practicum, which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) 3,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse the application for licensure, attesting to the number of hours supervised.

(c) and passed an examination prepared and administered by:

(i) the board, based on a national examination approved by the board;

(ii) the national board of certified counselors; or

(iii) the national academy of certified clinical mental health counselors; and

(d) an application form and process prescribed by the board.

(2) The board shall provide by rule for licensure:

~~(a)~~ of a person who possesses a minimum 45 semester hour graduate degree that is primarily related te counseling and that is from an institution accredited to offer a graduate program in counseling, by specifying the additional graduate credit hours necessary to fulfill the requirements of subsection (1)(a) in counseling courses in an approved program within a period of 5 years~~; and~~

~~(b) of a person who possesses a license or certification as a professional counselor from an agency located in another state whose requirements are less than the requirements of this chapter, by:~~

~~(i) crediting past clinical experience in psychotherapy and counseling; and~~

~~(ii) recommending additional education or experience necessary to fulfill the requirements of this chapter.~~"

Section 78. Section 37-23-205, MCA, is amended to read:

"**37-23-205. Renewal of license.** (1) A license may be issued for no longer than 1 year. The ~~board~~ *department* may adopt rules to provide for annual renewal of an existing license.

(2) An application for renewal of an existing license *must be* made ~~within 60 days after~~ *on or before* the expiration ~~of the license is timely, and the rights and privileges of the applicant during that period remain in effect~~ *date set by department rule.*

(3) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of ~~completion of continuing education requirements established by the board~~ *qualification for renewal.*

(4) ~~An individual may renew a license in the manner provided in subsection (3) within 1 year of the expiration date of the license. An applicant for renewal shall provide the board with proof that the applicant has satisfied the continuing education requirements of the board for the year for which the license is to be renewed.~~

~~(5)~~ The renewal fee is increased by 10% for each month or part of a month that the renewal is delayed ~~after the 60-day period provided in subsection (2)~~. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

~~(6)~~*(5)* A license not renewed within 1 year following its expiration date terminates automatically."

Section 79. Section 37-24-202, MCA, is amended to read:

"**37-24-202. Powers and duties of board.** (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of applicants for licensure under this chapter and approve and supervise the examination of ~~such~~ applicants;

(c) ~~investigate persons engaging in practices that allegedly violate the provisions of this chapter;~~

~~(d)~~ adopt rules relating to professional licensure and the establishment of ethical standards of practice under this chapter;

~~(e)~~*(d)* conduct hearings and keep records and minutes as the board considers necessary to carry out its functions; and

~~(f)~~*(e)* adopt a seal by which the board shall authenticate its proceedings.

(2) A copy of the proceedings, records, or acts of the board, signed by the ~~chairman~~ *presiding officer* or secretary of the board and stamped with the seal, is prima facie evidence of the validity of ~~such~~ *the* document.

(3) The department may employ persons it considers necessary to carry out the provisions of this chapter."

Section 80. Section 37-24-308, MCA, is amended to read:

"**37-24-308. Renewal of license ~~—inactive status.~~** ~~(1)~~ Each license issued under this chapter is subject to annual renewal *on the date set by department rule* upon the payment of a renewal fee and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but ~~no~~ *a* late renewal of a license may *not* be granted more than 5 years after its expiration.

~~(2) Upon request, the board may grant inactive status to a licensee who:~~

~~(a) does not practice as an occupational therapist or an occupational therapy assistant; and~~

~~(b) does not hold himself out as an occupational therapist or an occupational therapy assistant.~~"

Section 81. Section 37-25-307, MCA, is amended to read:

"**37-25-307. Renewal of license ~~—continuing education.~~** (1) An application for renewal of license must be made annually on a date set by the ~~board~~ *department*.

(2) A renewal license must be issued when the applicant submits proof that requirements for ~~continuing education~~ *continued licensure* have been met and pays a renewal fee set by the board commensurate with costs.

(3) An additional fee may be imposed on applications for renewal received by the board more than 30 days after the annual renewal date."

Section 82. Section 37-26-201, MCA, is amended to read:

"**37-26-201. Powers and duties of board.** The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

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(3) adopt rules prescribing the time, place, content, and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination;

(4) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(5) adopt rules that set nonrefundable fees, commensurate witb costs, for application, examination, licensure, and other administrative services;

(6) approve naturopathic medical colleges as defined in 37-26-103;

~~(7) adopt rules for the investigation of complaints against naturopathic physicians, for hearings on complaints, and to impose disciplinary action against naturopathic physicians found to be in violation of this chapter;~~

~~(8) investigate individuals falsely claiming to be naturopathic physicians and act in cooperation with county attorneys to enforce the provisions of this chapter;~~

~~(9) adopt rules that establish, approve, and routinely review a continuing education curriculum and accreditation for naturopathic physicians that is required for license renewal;~~

~~(10)~~*(7)* issue certificates of specialty practice; *and*

~~(11) issue temperary licenses as provided for in 37-26-403; and~~

~~(12)~~*(8)* adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery or the legend drugs allowed under 37-26-301."

Section 83. Section 37-26-403, MCA, is amended to read:

"37-26-403. Application for licensure — examination — temporary license. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department in the manner and form prescribed by the board. The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the ~~board~~ *department* may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be basis for licensure denial. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the ~~board's~~ *department's* investigation.

(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. The application for examination must be accompanied by the examination fee. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.

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~~(3) A person who has actively engaged in the practice of naturopathic medicine in Montana prior to April 1, 1991, and who is a graduate of an approved naturopathic medical college may continue to practice naturopathic medicine until the board reviews his qualifications if he applies to and receives from the department a temporary license by October 1, 1991. The department shall issue a temporary license to a qualified applicant. The board shall, within 6 months of October 1, 1991, review the qualifications of each temporary licensee and either authorize the department to issue a license to a person qualified under 37-26-402 or 37-26-404 or extend the temporary license for a term of no more than 1 year to allow the practitioner to pass the prescribed examination. A person who is not a graduate of an approved naturopathic medical college may not be granted a temporary license.~~"

Section 84. Section 37-27-105, MCA, is amended to read:

"**37-27-105. General powers and duties of board — rulemaking authority.** (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board shall have the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;

(b) the issuance of a provisional license to midwives who filed the affidavit required by section 2, Chapter 493, Laws of 1989;

(c) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

(d) the development of eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(e) the development of procedures for the issuance, renewal, suspension, *and* revocation~~, and reciprocity~~ of licenses;

(f) the adoption of disciplinary standards for licensees;

~~(g) the establishment of investigatory and hearing procedures for processing complaints received by the board;~~

~~(h) the establishment of continuing education requirements of at least 14 hours annually for license renewal for direct-entry midwives;~~

~~(i)~~*(g)* the development of standardized informed consent and reporting forms;

~~(j)~~*(h)* the adoption of ethical standards for licensed direct-entry midwives;

~~(k)~~*(i)* the adoption of supporting documentation requirements for primary birth attendants; and

~~(l)~~*(j)* the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201."

Section 85. Section 37-28-201, MCA, is amended to read:

"37-28-201. License required — exceptions — respiratory care not the practice of medicine. (1) Except as otherwise provided in this chapter, a person may not practice respiratory care or represent ~~himself to be~~ *to the public that the person is* a respiratory care practitioner unless ~~he~~ is licensed ~~or granted a temporary permit~~ under the provisions of ~~37-28-201 through 37-28-203 and 37-28-206~~ *this chapter.*

(2) This chapter does not prohibit:

(a) the practice of respiratory care that is an integral part of study hy a student respiratory care practitioner;

(b) self-care by a patient or the gratuitous care by a friend or family member who does not ~~hold himself out~~ *purport* to be a respiratory care practitioner; or

(c) respiratory care rendered in the course of an emergency.

(3) ~~Nothing in this~~ *This* chapter is *not* intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

(4) ~~Nothing in this~~ *This* chapter may *not* be construed to permit the practice of medicine."

Section 86. Section 37-28-202, MCA, is amended to read:

"37-28-202. Licensing requirements — examination — fees. (1) To be eligible for licensure by the board as a respiratory care practitioner, the applicant shall:

(a) submit to the board an application fee in an amount established by the board and a written application on a form provided by the board demonstrating that the applicant has completed:

(i) high school or the equivalent; and

(ii) a respiratory care educational program accredited or provisionally accredited by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education or their successor organizations; and

(b) pass an examination prescribed by the board~~, unless the examination requirement is waived under subsection (2)~~. The board may use the entry-level examination written by the national board for respiratory care or another

examination that satisfies the standards of the national commission for health certifying agencies or the commission's equivalent.

(2) ~~The board may issue a license to practice respiratory care to an applicant without requiring him to pass an examination if the applicant:~~

~~(a) is currently licensed to practice respiratory care under the laws of another state, territory, or country if the board considers the qualifications for licensure to be equivalent to those required in this state; or~~

~~(b) holds credentials, conferred by the national board for respiratory care, as a certified respiratory therapy technician or a registered respiratory therapist and affirms under oath that his credentials have not been suspended or revoked.~~

~~(3)~~ A person holding a license to practice respiratory care in this state may use the title "respiratory care practitioner" and the abbreviation "RCP"."

Section 87. Section 37-28-203, MCA, is amended to read:

"37-28-203. Renewal of license — application and fee. (1) A respiratory care practitioner's license expires ~~annually on May 1~~ *on the date set by department rule.*

(2) A licensee may renew a license by:

(a) filing an application with the board on a form approved by the board; *and*

(b) paying a renewal fee in an amount established by the board~~; and~~

~~(c) documenting the completion of the continuing education requirements prescribed by the board.~~

~~(3) An application for renewal of a license made within 90 days after expiration of the license is timely, and the rights and privileges of the applicant remain in effect during that period.~~"

Section 88. Section 37-29-201, MCA, is amended to read:

"37-29-201. Board powers and duties. The board has the following powers and duties:

(1) determination of the qualifications of applicants for licensure under this chapter;

(2) administration of examinations for licensure under this chapter;

(3) collection of fees and charges prescribed in this chapter;

(4) issuance, suspension, and revocation of licenses for the practice of denturitry under the conditions prescribed in this chapter; and

(5) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of this chapter, including but not limited to ~~license applications,~~ form and display of licenses, license examination format, criteria and grading of examinations, disciplinary standards for licensees, *and*

inspection of denturitry premises and facilities~~, and investigation of complaints~~."

Section 89. Section 37-29-303, MCA, is amended to read:

"37-29-303. Application for license. Upon application and payment of the appropriate fee, the board shall issue a license to practice denturitry to any applicant who meets ~~one of~~ the following criteria and scores a passing grade on the examination for licensure:

~~(1) (a) Applications for persons engaged in the practice of denturitry on December 1, 1984, must be filed prior to April 1, 1985, and must include the following:~~

~~(i) three signed affidavits by persons other than family members that the applicant has been employed in denture technology for at least 5 years prior to application, is able to demonstrate competency in intraoral procedures, and has been a resident of the state of Montana for at least 6 months prior to April 1, 1985; and~~

~~(ii) documentation that the applicant has successfully completed courses approved by the board in head and oral anatomy and physiology, oral pathology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, medical emergencies, and cardiopulmonary resuscitation.~~

~~(b) Subsection (1)(a) must be applied retroactively to permit qualification of license applicants initially qualified and applying prior to the appointment and qualification of the original board under this chapter and section 27 of I.M. No. 97.~~

~~(2) Applications filed on or after April 1, 1985, must include:~~

~~(a)~~*(1)* documentation that the applicant has completed formal training of not less than 2 years at an educational institution accredited hy a national or regional accrediting agency recognized by the Montana state board of regents, the curriculum of which includes courses in head and oral anatomy and physiology, oral pathology, microbiology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, and medical emergencies, including cardiopulmonary resuscitation; and

~~(b)~~*(2)* documentation that the applicant:

~~(i)~~*(a)* has completed 1 year of internship under the direct supervision of a licensed denturist; or

~~(ii)~~*(b)* has 3 years of experience as a denturist under licensure in another state or Canada.

~~(3) A denturist who has been lawfully licensed or certified by initial licensing provisions in any state or territory that maintains a standard of denturitry which is equal to that of Montana must submit a certificate from the examining body of the state or territory in which he is certified or licensed, attesting to 5 years' practice under the certificate of license. However, no applicant may be licensed under the provisions of this subsection unless the state or territory in~~

~~which he is licensed or certified extends a like privilege to denturists licensed by the state of Montana to practice denturitry. The board may enter into reciprocal relations with those states or territories whose laws are compatible with this chapter.~~"

Section 90. Section 37-29-306, MCA, is amended to read:

"**37-29-306. Licensing.** (1) ~~After March 1, 1985, a~~ *A* denturist license is valid for a period of 1 year *and expires on the date set by department rule*. A renewal license must be issued upon *timely* payment of the renewal fee and the submission of proof of ~~the completion of not less than 12 hours of continuing education, which may include programs sponsored by an educational institution, state denturist licensing board, or a recognized denturist organization. Subject matter must be pertinent to denturitry as enumerated in 37-29-305(3). Approval of acceptable hours of continuing education must be made by the board. The board may approve, in one action, all the courses presented by a particular organization if the board is satisfied that the courses presented by that organization meet the requirements of this section. Hours pertain to clock hours actually attended by the licensee~~ *continued qualification for licensure*. In addition, the denturist shall submit proof that ~~he~~ *the denturist* holds a current cardiopulmonary resuscitation card. ~~A license issued effective as of a date other than March 1 will be valid until midnight February 28 next following the date it was issued.~~ The license ~~shall~~ *must* bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentations necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees.

~~(3) After April 1, 1985, the board may by rule alter future renewal dates for licenses under this chapter.~~"

Section 91. Section 37-29-403, MCA, is amended to read:

"**37-29-403. Procedure for making and fitting partial denture.** (1) Prior to making and fitting a partial denture, a denturist shall:

(a) formulate a study model of the intended denture;

(b) refer the patient to a dentist, together with the model for tooth cleaning, mouth preparation, and x-rays, as needed; and

(c) make the partial denture and fit it to the existing teeth after the dentist has completed the procedures listed in subsection (1)(b) and in accordance with the dentist's recommendations.

(2) A denturist may not cut, surgically remove, or surgically reduce any tissue or teeth in the process of fitting a partial denture.

~~(3) A denturist who makes or fits a partial denture in a manner not consistent with this section is subject to the sanctions provided in 37-29-311.~~"

Section 92. Section 37-30-301, MCA, is amended to read:

"37-30-301. **Certificate required.** ~~(1) Except as provided in subsection (2),~~ a *A* person may not practice or attempt to practice harbering unless ~~he~~ *the person* first receives from the department a certificate of registration.

~~(2) The board may authorize the department to grant a temporary certificate to any person qualified to take the examination required by 37-30-305 who pays a temporary certification fee prescribed by the board. A person holding a temporary certificate may engage in the practice of barbering under the supervision of a certified barber for a period of 90 days or until the next examination scheduled by the board, whichever is longer.~~"

Section 93. Section 37-30-305, MCA, is amended to read:

"37-30-305. **Examination.** Except as provided ~~in 37-30-309~~ *by rules adopted under [section 19] to implement [section 4]*, ~~an~~ applicant for a barber's certificate of registration must *shall* apply to the department to take the examination for a barber's certificate of registration."

Section 94. Section 37-31-322, MCA, is amended to read:

"37-31-322. **Renewal —~~continuing education~~ — delinquency fee.** (1) Licenses and certificates may *not* be issued for ~~no~~ longer than 1 year unless otherwise provided by *department* rule. Licenses and certificates expire on ~~December 31 unless otherwise provided by rule or~~ *the date set by department rule and may be* renewed ~~for the next year or renewal period~~. Licenses and certificates may be renewed by application made ~~prior to December 31 of each year, unless otherwise provided,~~ *on or before the renewal date* and by the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. ~~The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category.~~ The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and must be as set by the board.

~~(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of licenses to teach cosmetology must have fulfilled the following additional requirements:~~

~~(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 15 hours' professional teacher training at a school approved by the board.~~

~~(b) A person holding a license to teach cosmetology but not actively engaged either full-time or part-time in teaching cosmetology or manicuring during the preceding year may renew the license by paying the required fee. A person holding a license to teach cosmetology but not actively engaged in teaching cosmetology or manicuring either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology or manicuring must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person who holds a license to teach cosmetology and who is not actively engaged~~

~~either full-time or part-time in teaching cosmetology or manicuring from teaching as a substitute for an active teacher.~~

~~(3)~~*(2)* A fee prescribed by the board must be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline."

Section 95. Section 37-32-305, MCA, is amended to read:

"37-32-305. Fees — renewal — deposit of moneys collected. (1) The fee for an original electrologist license ~~shall~~ *must* be set by the board. The renewal ~~shall be~~ *is* automatic, unless revoked or suspended for cause, and the renewal fee ~~shall~~ *must* be set by the board.

(2) The fee for an original electrologist salon license ~~shall~~ *fee must* be the same as that for cosmetology salons. The renewal fee ~~shall~~ *must* be the same as that for cosmetology salons.

(3) ~~All licenses~~ *A license* issued under this chapter ~~expire~~ *expires* on ~~December 31 and shall~~ *the date set by department rule and may* be renewed annually. Failure to renew ~~on or before December 31 shall cause~~ *subjects the licensee to* a late renewal fee prescribed by the board to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or ~~moneys~~ *money* collected by the department under this chapter ~~shall~~ *must* be deposited in the state special revenue fund for the use of the board in administration of the chapter."

Section 96. Section 37-34-201, MCA, is amended to read:

"37-34-201. Powers and duties of the board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application procedure and acceptable certifications for each category of license;

(b) the establishment of license fees commensurate with actual costs;

(c) the establishment of criteria for educational requirements that, at a minimum, meet the standards set forth in 37-34-303;

(d) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses;

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(e) the adoption of disciplinary standards for licensees;

(f) the establishment of ~~investigatory and~~ hearing procedures ~~for processing complaints received by the board~~; *and*

(g) ~~the establishment of continuing education requirements of at least 14 hours annually for license renewal for clinical laboratory practitioners; and~~

~~(h)~~ a requirement that the supervisor of a clinical laboratory technician be accessible at all times that testing is being performed by the technician in order ~~to~~ provide onsite, telephonic, or electronic consultation."

Section 97. Section 37-34-305, MCA, is amended to read:

"**37-34-305. Licensure application procedures.** (1) An applicant shall submit an application for a license to the board upon the forms prescribed and furnished by the board and shall pay an application fee set by the board.

(2) Upon receipt of the application and fee, the board shall issue a license for a clinical laboratory scientist, a clinical laboratory specialist, or a clinical laboratory technician to any person who meets the qualifications specified by the board as set forth in rules adopted by tbe board pursuant ~~to~~ 37-34-201 and 37-34-303.

(3) A license issued under this chapter must be renewed ~~by May 1 of each year~~ *on or before the date set by department rule.*

(4) Except for the assessment provided in 37-1-101(6), money paid for application, license, and license renewal fees must be deposited in the state special revenue fund for use by the board."

Section 98. Section 37-40-203, MCA, is amended to read:

"**37-40-203. Rulemaking power.** (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board's rulemaking and hearing functions ~~shall~~ *must* be in accordance with the Montana Administrative Procedure Act. The board shall adopt rules:

(a) establisbing standards of professional conduct in order to maintain a high standard of integrity, dignity, and competency in the profession of sanitarian, including competency in specific fields of sanitation;

(b) governing the conduct of matters before the board;

(c) governing educational equivalency requirements, as provided in 37-40-302, for registration of sanitarians; *and*

(d) ~~prescribing requirements for continuing education to be met by registered sanitarians in order to maintain their professional knowledge and competence and as a condition to continuing in the practice of the profession of sanitarian; and~~

~~(e)~~ defining qualifications for sanitarian-in-training status for issuance of the initial annual permit."

Section 99. Section 37-40-304, MCA, is amended to read:

"37-40-304. Fees — renewal. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew ~~his~~ *the* license by paying an annual fee *and meeting qualifications* set by the board ~~and submitting proof of continuing education as prescribed by the board~~.

(3) Renewal fees are due ~~July 1 of~~ *on or before* the renewal ~~year~~ *date set by department rule*. If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board."

Section 100. Section 37-47-307, MCA, is amended to read:

"37-47-307. Investigation of applicant — issuance or denial of license. (1) The ~~board~~ *department* shall investigate each applicant for an outfitter's or professional guide's license. ~~and~~ *The board shall* determine the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this section. In the event that any application for license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses must he made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter and renewal deadlines and fees imposed by rule of the board and completing an application for license renewal on a form provided by the board."

Section 101. Section 37-50-203, MCA, is amended to read:

"37-50-203. Rules of the board. (1) The board may adopt ~~such~~ rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

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(d) ~~rules prescribing requirements for continuing education to be met by certified public accountants and licensed public accountants, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accounting. In issuing rules and individual orders regarding continuing education, the board in its discretion:~~

~~(i) may, among other things, use or rely upon guidelines and pronouncements of recognized educational and professional associations;~~

~~(ii) may prescribe the content, duration, and organization of courses; and~~

~~(iii) shall take into account the accessibility to applicants of such continuing education as it may require and any impediments to interstate practice of public accounting that may result from differences in such requirements in other states;~~

~~(e)~~ rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any ~~such~~ corporation failing to comply with ~~such~~ *the* standards;

~~(f) internal rules considered necessary to initiate and conduct investigations and protect the confidences of the client of any certified public accountant or licensed public accountant subjected to board disciplinary proceedings;~~

~~(g)~~*(e)* rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial annual permit; and

~~(h)~~*(f)* rules to enforce the provisions of this chapter~~,~~. ~~the~~ *The* purpose of ~~which~~ *the* rules ~~shall~~ *must* be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession."

Section 102. Section 37-50-314, MCA, is amended to read:

"37-50-314. Annual permit required — display. (1) ~~No~~ *A* person may *not* engage in the practice of public accounting in this state ~~unless he holds~~ *without* a current annual permit issued by the department. An annual permit to engage in the practice of public accounting in this state ~~shall~~ *must* be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

~~(2) After the expiration of the 3-year period immediately following the effective date of a board rule establishing continuing education requirements, each application for renewal of a permit by a person who has held his certificate or license for 3 years or more must be accompanied or supported by evidence satisfactory to the board of fulfillment of such requirements during the 3-year period immediately preceding the application.~~

~~(3) The board may in its discretion waive the requirement stated in subsection (2) if the applicant agrees to follow a particular program or schedule of continuing education agreeable to the board.~~

~~(4) The board may relax or suspend continuing education requirements for an applicant who certifies that he does not intend to engage in the practice of public accounting and for an applicant who cannot fulfill the requirement due to individual hardship.~~

~~(5) Subject to subsections (3) and (4), the board may revoke, suspend, or refuse to renew the permit of an applicant who fails to furnish evidence of having met the continuing education requirements established by the board.~~

~~(6)~~*(2)* The current annual permit to engage in the practice of public accounting must be prominently displayed for public inspection."

Section 103. Section 37-50-317, MCA, is amended to read:

"**37-50-317. Certificate, license, and permit expiration — renewal fees.** (1) Certificates, licenses, and permits issued by the board expire on ~~December 31 of each year~~ *the date set by department rule.*

(2) Certificates and licenses must be renewed by the department upon payment of the annual renewal fee *and upon compliance with requirements* prescribed by the board.

(3) Permits must be renewed by the department upon payment of the annual renewal fee and upon compliance with the ~~continuing education~~ requirements prescribed by the board."

Section 104. Section 37-51-204, MCA, is amended to read:

"**37-51-204. Educational programs and ~~continuing education~~.** (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) ~~The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees~~ *Except as provided in 37-51-302, the board may not require examinations of licensees.*

~~(3) The board may prescribe by rule continuing education requirements for all licensees, not to exceed 15 classroom or equivalent hours in any 2-year period, including proof of conformance, but except as provided in 37-51-302 the board may not require examination of licensees.~~"

Section 105. Section 37-51-306, MCA, is amended to read:

"**37-51-306. Transactions with nonresidents and with nonlicensed brokers or salesmen ~~— reciprocity~~ — consent to legal process.** (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesman. However, a licensed broker may pay a commission to a licensed broker of another state if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. ~~This subsection does not limit the next subsection.~~

(2) ~~A person who is licensed as a broker or a salesman in another state may obtain a license as a broker or as a salesman in this state by complying with this~~

~~chapter and with the rules of the board. However, this section applies only to licensees of other states that offer the same privileges to the licensees of this state. A nonresident licensee need not maintain a place of business in this state. The board may:~~

~~(a) authorize the department to license a nonresident without examination if he files with the department an authorized or certified copy of the license issued in another state and pays to the department the same license fee as is required for obtaining a license in this state;~~

~~(b) refuse to authorize the department to issue a license to an applicant who is not a resident of this state; and~~

~~(c) enter into reciprocal agreements with other states.~~

~~(3)~~ A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal."

Section 106. Section 37-51-311, MCA, is amended to read:

"37-51-311. Fees — deposit of fees. ~~(1)~~ The fees prescribed by the board ~~shall~~ *must* be charged by the department and paid inte the state special revenue fund for the use of the board, subject to 37-1-101(6).

~~(2) The board shall charge an annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not pay any fee assessed by the board for the purpose of funding the real estate recovery account during the period the licensee remains in inactive status.~~"

Section 107. Section 37-53-211, MCA, is amended to read:

"37-53-211. Approval or disapproval of application or registration. (1) Registration of a timeshare offering is effective upon written notice of approval of the application by the board or upon the passage of 30 calendar days after filing of a completed application if not approved or denied prior to that time.

(2) The board may issue an order~~, subject to 37-53-503,~~ denying, suspending, or revoking any application or registration if the board finds that the order is in the public interest and that:

(a) the application or registration is incomplete or contains a statement that is false or misleading with respect to any matorial fact;

(b) any provision of this chapter or any rule or order lawfully issued under this chapter has been violated;

(c) the activities of the developer include or would include activities that are illegal; or

(d) the timeshare offering has worked or would tend to work a fraud on purchasers.

(3) The board shall promptly notify the applicant or registrant of any order denying, suspending, or revoking registration and of the applicant's or registrant's right to request a hearing within 20 days of receipt of notification. If the applicant or registrant does not request a hearing, the order remains in effect until the board modifies or vacates it."

Section 108. Section 37-53-302, MCA, is amended to read:

"**37-53-302. Denial, suspension, or revocation of license or application.** The board may by an order~~, subject to 37-53-503,~~ deny, suspend, or revoke a timeshare salesperson's or timeshare broker's license or application for license if the board finds that the order is in the public interest and that the applicant or licensee:

(1) has filed an application for licensure and personal disclosure statement as a timeshare salesperson or timeshare broker that is incomplete in any material respect or contains any statement that is, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has violated or failed to comply with any provision of this chapter, rules adopted under this chapter, or Title 37, chapter 51;

(3) has been convicted of a felony involving theft, fraud, or any consumer protection statute or a felony involving moral turpitude and related to the occupation of timeshare salesperson or timeshare broker;

(4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;

(5) has engaged in dishonest or unethical practices in the timeshare business; or

(6) has not complied with any condition imposed by the board or is not qualified on the basis of knowledge of the timeshare industry or this chapter."

Section 109. Section 37-54-105, MCA, is amended to read:

"**37-54-105. Powers and duties of board.** The board shall:

(1) adopt rules to implement and administer the provisions of this chapter;

(2) establish and collect fees commensurate with the costs of licensure and certification and renewal of a license or certificate;

(3) make available application forms for licensure and certification within 15 days of the first meeting of the board;

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(4) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

(5) receive applications for examination from qualified applicants, prescribe and administer examinations to qualified applicants, and determine the acceptable level of performance on examinations;

(6) receive and review applications for licensure and certification and issue licenses and certificates;

(7) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

(8) retain all applications and other records submitted to it;

(9) maintain a registry of the names and addresses of licensees and certificate holders;

(10) establish disciplinary procedures for reprimand, suspension, or revocation of a license and certificate;

(11) adopt by rule standards of professional appraisal practice in this state;

(12) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers; *and*

(13) ~~establish criteria for courses and seminars consistent with the continuing education requirements set out in 37-54-210 and 37-54-310; and~~

~~(14)~~ perform other duties necessary to implement this chapter."

Section 110. Section 37-54-210, MCA, is amended to read:

"**37-54-210. License renewal ~~— continuing education requirements.~~** (1) A real estate appraiser's license expires on ~~March 31 following the date of issuance or renewal and is invalid thereafter~~ *the date set by department rule.*

(2) A licensee may renew a license~~, other than a temporary permit issued under 37-54-406,~~ by filing an application with the board on a form approved by the board, paying a renewal fee prescribed by the board, and meeting all requirements of this ~~section~~ *chapter.*

(3) In renewing a license, the board shall ~~assure~~ *ensure* that the licensee has a working knowledge of:

(a) current real estate appraisal theories; and

(b) practices and techniques that will enable the licensee to provide competent independent appraisal service under the authority of the license.

~~(4) An application for renewal must include evidence satisfactory to the board that within the 3-year period immediately following the date of issuance of the license and within each 3-year period thereafter, the licensee has completed at least 45 classroom hours of instruction in courses or seminars approved by the board, at least 15 hours of which must be related to standards~~

~~of professional appraisal practice. Continuing education hours must be credited to the 3-year period during which the instruction occurred and may not be carried over to a subsequent 3-year period.~~"

Section 111. Section 37-54-211, MCA, is amended to read:

"**37-54-211. Late renewal of license.** (1) A license that is not renewed within 1 year of the most recent renewal date automatically terminates. A licensee may renew the license within the 1-year period from the date of most recent renewal by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the ~~continuing education~~ requirements ~~of 37-54-210~~ *for continued licensure*; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a license if the licensee has continued to perform independent appraisal services as a licensed real estate appraiser following expiration of the license."

Section 112. Section 37-54-302, MCA, is amended to read:

"**37-54-302. Certification process — fees.** (1) An application for examination for certification, original certification, or renewal of certification must be made in writing to the board on forms approved by the board.

(2) A fee established by the board by rule must accompany the application.

(3) When an applicant files an application for original certification or renewal of certification, the applicant shall sign a pledge ~~that he will~~ *to* comply with the standards of professional appraisal practice established for certified real estate appraisers under 37-54-403. ~~He shall also~~ *and* affirm that ~~he~~ *the applicant* understands the types of misconduct for which disciplinary action may be initiated ~~against him~~ under 37-54-402.

(4) To be eligible for original certification as a real estate appraiser, an applicant shall:

(a) specify the class or classes of certification for which the applicant is applying and provide evidence satisfactory to the board that ~~he~~ *the applicant* has the education required for the class or classes of certification for which ~~he is applying~~ *application is made*; and

(b) pass an examination prescribed by the board.

(5) A certificate issued under 37-54-305 must bear the signatures or facsimile signatures of the members of the board and a certificate number assigned by the board."

Section 113. Section 37-54-310, MCA, is amended to read:

"**37-54-310. Renewal of certificate ~~—continuing education requirements~~.** (1) A certificate issued under 37-54-305 expires on ~~March 31~~

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~~following the date of issuance or renewal and is invalid thereafter~~ *the date set by department rule.*

(2) A certificate may be renewed upon payment of a renewal fee *and by meeting all requirements for renewal.*

~~(3)(a) The certificate holder shall produce evidence satisfactory to the board that during the 3-year period immediately following the date of issuance of the certificate, and during each 3-year period thereafter, the certified real estate appraiser has:~~

~~(i) completed at least 45 classroom hours of instruction in courses or seminars approved by the board, at least 15 hours of which must be related to standards of professional appraisal practice;~~

~~(ii) completed an education program determined by the board to be equivalent to the courses and seminars approved under subsection (3)(a)(i); or~~

~~(iii) participated, other than as a student, in an education program approved by the board that relates to the theory and technique of real property appraisal.~~

~~(b) Continuing education hours must be credited to the 3-year period during which the instruction occurred and may not be carried over to a subsequent 3-year period.~~

~~(4)~~*(3)* An applicant for renewal shall state the class of certification previously held and presently sought."

Section 114. Section 37-54-311, MCA, is amended to read:

"**37-54-311. Late renewal of certificate.** (1) A certificate that is not renewed within 1 year of the most recent renewal date automatically terminates. A certificate holder may renew the certificate within the 1-year period from the date of most recent renewal by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the ~~continuing education~~ requirements ~~of 37-54-310~~ *set by law*; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a certificate if the certificate holder has continued to perform independent appraisal services in this state following expiration of the certificate."

Section 115. Section 37-60-202, MCA, is amended to read:

"**37-60-202. Rulemaking power.** The board shall adopt and enforce rules:

(1) specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license or identification card;

(2) fixing the qualifications of resident managers, qualifying agents, licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

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(3) establishing, in accordance with 37-1-134, application and examination fees for original or renewal licenses and identification cards, and providing for refunding of any ~~such~~ fees;

(4) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board, establishing qualification requirements and license fees for those offices;

(5) for tbe certification of private investigator and private security guard training programs, including the certification of firearms training programs and firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file ~~such~~ *an* insurance policy or proof of financial responsibility as the board considers necessary with the board; *and*

~~(9) defining "unprofessional conduct" for the purposes of removal from the board and suspension or revocation of licenses and identification cards;~~

~~(10) establishing the expiration and renewal periods for licenses and identification cards;~~

~~(11) for the temporary employment of persons without the required licenses or identification cards;~~

~~(12) providing for the issuance of probationary and temporary licenses for contract security companies and private investigators;~~

~~(13)~~*(9)* providing for the issuance of probationary identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination~~; and~~

~~(14) providing for the application of administrative fines and penalties for minor infractions of this chapter and supporting rules.~~"

Section 116. Section 37-60-301, MCA, is amended to read:

"**37-60-301. License required.** (1) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary security organization, a private investigator, or a private security guard without having first obtained a license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status and ~~must~~ *shall* renew their licenses on the renewal date as prescribed by the ~~board~~ *department*.

(2) It is unlawful for any unlicensed person to act as, pretend to he, or represent ~~himself~~ *to the public that the person* ~~as being~~ *is* licensed as a privato investigator, a contract security company, a proprietary security organization, or a private security guard.

(3) A person who knowingly engages an unlicensed private investigator, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411."

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Section 117. Section 37-60-312, MCA, is amended to read:

"37-60-312. Annual renewal. (1) Licenses and identification cards issued under this chapter expire at midnight on the dates prescribed by ~~the board~~ *department rule* if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(2) The board may refuse to renew a license or identification card for any reason for which it could refuse to grant an original application or suspend or revoke any license or identification card ~~under 37-60-321~~."

Section 118. Section 37-60-411, MCA, is amended to read:

"37-60-411. Penalties — investigation — enforcement — review. (1) Any person who violates any of the provisions of this chapter or who conspires with another person to violate any of the provisions of this chapter relating to licensure is guilty of a misdemeanor punishable by a fine of not more than $1,000, or by imprisonment of not more than 1 year, or by both ~~such~~ fine and imprisonment.

(2) The board shall:

(a) gather evidence of violations of this chapter, and of any rule established pursuant to this chapter, by persons engaged in a business subject to licensure under this chapter who fail to obtain licenses; and

(b) furnish that evidence to prosecuting officers of any county or city.

(3) The prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within ~~his~~ *the prosecutor's* jurisdiction.

~~(4) (a) If upon investigation the board considers it appropriate, it may issue a citation to a licensee. The citation may contain:~~

~~(i) an order of abatement fixing a reasonable time for abatement of the violation; and~~

~~(ii) assessment of an administrative fine in an amount not to exceed $500 for each violation of this chapter.~~

~~(b) A citation or fine assessment must inform the licensee that if he contests the finding of a violation, a review by the board may be requested in accordance with the Montana Administrative Procedure Act. If a review is not requested pursuant to this section, payment of the fine does not constitute an admission of the violation charged.~~

~~(c) If the licensee neither requests a review nor pays the assessed fine within 20 days of notice of the citation, the board shall suspend the license of such person 30 days after the notice of citation.~~

~~(d) All fines collected pursuant to this section must be deposited in the state special revenue fund for use of the board.~~"

Section 119. Section 37-65-306, MCA, is amended to read:

"**37-65-306. Annual renewal — fee ~~—continuing education.~~** ~~(1)~~ A licensed architect in this state who desires to continue the practice of ~~his~~ *the* profession shall annually, ~~during the month of July, during the time he continues in this practice~~ *on or before the renewal date set by department rule*:

~~(a)~~*(1)* pay to the department a reasonable fee as prescribed by the board; and

~~(b)~~*(2)* present evidence to the board of ~~compliance with any continuing education requirements imposed by the board~~ *continued qualification for licensure.*

~~(2) (a) The board may by rule prescribe continuing education requirements for license renewal. If the board prescribes continuing education requirements, the rules shall provide for the method of compliance, such as:~~

~~(i) attendance at approved classroom or seminar-type instruction programs; or~~

~~(ii) passing an examination.~~

~~(b) If classroom or seminar-type instruction is required, the board shall by rule:~~

~~(i) make determinations as to approved programs; and~~

~~(ii) prescribe the number of hours required for compliance.~~

~~(c) If an examination is required, the board shall by rule prescribe:~~

~~(i) the subjects of the examination; and~~

~~(ii) the grade required to pass the examination.~~"

Section 120. Section 37-66-307, MCA, is amended to read:

"**37-66-307. Annual renewal — withdrawal — deposit of fees.** (1) Certification of licensure or renewal of registration ~~expire~~ *expires* on the ~~last day of June following their issuance or renewal~~ *date set by department rule.* Renewal may be effected ~~during the month of June~~ *on or before the renewal date* by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the annual renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, ~~may suspend his license by giving~~ *shall give* written notice to the board, *and the board shall suspend the license.* ~~Thereafter, he~~ *The person* may resume practice upon payment of the then-current fee and upon approval by tbe board.

(3) All fees received under the provisions of this chapter ~~shall~~ *must* be deposited in the state special revenue fund by the department. The ~~moneys~~ *money* collected ~~shall~~ *must* be used by the department to carry out the purpose, duties, and responsibilities of the chaptor, subject to 37-1-101(6)."

Section 121. Section 37-67-202, MCA, is amended to read:

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"37-67-202. Rulemaking ~~and subpoena power.~~ ~~(1)~~ The board ~~shall have the power to~~ *may* adopt ~~and amend all~~ rules, including rules of procedure, ~~not inconsistent with the constitution and laws of this state, which may be~~ reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

~~(2) In carrying into effect the provisions of this chapter, the board, under the hand of its chairman and the seal of the board, may subpoena witnesses and compel their attendance and also may require the production of books, papers, documents, etc., in a case involving the revocation of registration or practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district court setting forth the facts, and thereupon such court shall, in a proper case, issue its subpoena to such person requiring his attendance before such authority and there to testify or to produce such books, papers, and documents as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said court.~~"

Section 122. Section 37-67-320, MCA, is amended to read:

"37-67-320. Practice by partnerships and corporations. (1) The practice of or offer to practice engineering or land surveying by registered professional engineers or registered professional land surveyors organized as a partnership or incorporated as a professional corporation under the provisions of the professional corporations law of this state or under the provisions of a similar law of any other state is permitted in this state if all the partners of the partnership or each officer and shareholder of the professional corporation are registered under or exempt from this chapter.

(2) The practice of or offer to practice engineering or land surveying by a partnership other than one provided for in subsection (1) or by a corporation, other than a professional corporation, is permitted in this state if:

(a) all officers, employees, and agents of a partnership or corporation who will perform the practice of engineering or land surveying within this state for the partnership or corporation are registered under this chapter;

(b) each person in responsible charge of the activities of a partnership or corporation, which activities constitute the practice of engineering or land surveying, is a professional engineer or professional land surveyor registered in this state or a person authorized to practice engineering or land surveying as provided in this chapter;

(c) the partnership or corporation has been issued a certificate of authorization by the board as provided in subsection (3);

(d) the partnership or corporation is jointly and severally responsible with and for the conduct or acts of its agents, employees, or officers concerning any professional engineering or land surveying services performed or to be executed in this state; an individual practicing engineering or land surveying is not

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relieved of the responsibility for ~~his~~ *the individual's* conduct or acts performed by reason of ~~his~~ *the individual's* employment by or relationship with the partnership or corporation; and

(e) all final drawings, specifications, plans, reports, or other engineering or land surveying papers or documents involving the practice of engineering or land surveying, when issued, are dated and bear the seals and signatures of the professional engineers or professional land surveyors registered under this chapter by whom or under whose responsible charge they were prepared.

(3) A partnership or corporation desiring a certificate of authorization or the renewal ~~thereof~~ *of a certificate* shall file a written application with the board listing the names and addresses of all partners of the partnership or officers and directors of the corporation and the names and addresses of all employees who are registered to practice engineering or land surveying in this state and who are or will be in responsible charge of any engineering or land surveying in this state by the partnership or corporation, together with any other information the board requires. Upon the receipt of an application and of a fee in an amount established by the board for the initial certificate or biennial renewal ~~thereof~~, the board shall issue to the partnership or corporation a certificate of authorization or a renewal ~~thereof, which certificate of authorization~~ *that* may not be transferred. If the board finds an error in an application or that facts exist which would entitle the board to suspend or revoke a certificate if issued to the applicant, the board shall deny the application. If a change occurs in the information submitted on the application of a partnership or corporation within the term of the authorization, the partnership or corporation shall file with the board a written report listing the change within 30 days after the change occurs. The provisions of this chapter concerning issuance, expiration, renewal, and reissuance of certificates of registration of individuals, except for 37-67-315(2), apply to certificates of authorization issued to partnerships and corporations under this subsection. Partnerships or corporations are subject to disciplinary proceedings and penalties and the board may reprimand them or revoke, suspend, or refuse to renew their certificates of authorization for cause in the same manner and to the same extent as provided in ~~37-67-331~~ *Title 37, chapter 1.* "Registrant" ~~and "certificate of registration" in 37-67-331 include~~ *includes* any partnership or corporation holding a certificate of authorization issued under this subsection, and *"certificate of registration" includes* ~~to such~~ *the* certificate of authorization."

Section 123. Section 37-68-201, MCA, is amended to read:

"37-68-201. Organization — meetings — quorum — rulemaking power — seal. (1) Each July, the board shall elect from its membership a president, ~~vice-president~~ *vice president*, and secretary-treasurer.

(2) The board shall meet quarterly and at ~~such~~ other times it considers necessary.

(3) A majority of the members of the board shall constitute a quorum for transaction of business.

(4) The board may:

(a) adopt rules for the administration of this chapter, for the licensing of electrical contractors~~, for continuing education,~~ and for the examination and licensing of master and journeymen electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter."

Section 124. Section 37-68-310, MCA, is amended to read:

"**37-68-310. License renewal every three years.** Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board, must be renewed for a period of 3 years by the department on application for renewal made to the department ~~prior to July 15 of the year in which the prior license expired~~ *on or before the renewal date set by department rule* and on the payment of a renewal fee. If application for renewal is not made ~~prior to July 15~~ *on or before the renewal date*, an additional fee prescribed by ~~the~~ board *rule* must be paid ~~because of the delinquency in renewal. All applications for renewal must be made prior to August 15 of the year in which the pri~~ license expired, ~~otherwise the license is forfeited and the applicant is required to pass the examination and pay the fees required of applicants for original licenses.~~"

Section 125. Section 37-68-312, MCA, is amended to read:

"**37-68-312. Electrical contractor's license — application — issuance — fees — renewal.** Each electrical contractor shall, *on or* before ~~July 1 of the year in which the prior license expired~~ *the date set by department rule*, file with the department an application in writing for each firm operated by the electrical contractor in this stato ~~to obtain a~~ *for renewal of the* license. A license may not be issued *or renewed* until the applicant meets the *licensure* requirements and has paid to the department a license fee set by the board for each firm operated by the electrical contractor. Licenses must bear the dato of ~~issue~~ *issuance or renewal*. ~~Each original license expires on the July 1 that is subsequent to the date of issuance, as determined by the board. An electrical contractor licensed under this chapter is entitled to have a~~ *A* license *must be* renewed for ~~the ensuing~~ *a* 3-year period ~~by~~ *upon* payment to the department of the license fee *on or* before the *renewal* date ~~of expiration of the license and by~~ *and upon* meeting the requirements set by ~~the~~ board *rule*."

Section 126. Section 37-71-212, MCA, is amended to read:

"**37-71-212. Investigation of applicant — issuance of license.** ~~It~~ *The department* shall ~~be the duty of the department to~~ investigato and determine ~~the~~ *a license* applicant's fitness to act in the capacity of public contractor ~~as defined in this chapter,~~ and ~~no~~ *may not issue a* license ~~shall be issued to such applicant~~ until ~~the expiration of~~ 10 days ~~from and~~ after the filing of ~~such~~ *the* application. The license ~~so issued in pursuance of the first application shall entitle the licensee to act as a public contractor within this state, subject to the limitations of such license, until the expiration of the then-current calendar year~~ *must be renewed each year on or before the renewal date set by department rule*."

Section 127. Section 37-71-213, MCA, is amended to read:

"37-71-213. **Renewal — waiting period after cancellation.** (1) Any license issued under the provisions of this chapter may be renewed for each successive calendar year by obtaining from the department a certificate of renewal thereof. For the purpose of obtaining ~~such~~ *a* certificate of renewal, the licensee shall file with the department an application ~~therefor~~, stating the field of contracting and class of license applied for and containing at least the same information as that required in the application for the original license. The application for ~~such certificate of~~ renewal must be made to the department on or before ~~March 1 of each successive calendar year, and such renewal certificate shall be good for the then current calendar year~~ *the renewal date set by department rule.*

(2) At the time of filing the application for a certificate of renewal, the applicant shall pay to the department a license fee equal to 50% of the license fee for the original license, provided that if any applicant for a certificate of renewal shall apply for a renewal under a different field or class from the license ~~theretofore~~ issued to ~~him~~ *the applicant*, ~~such~~ *the* new license ~~shall~~ *may* be issued only upon the same showing and under the same terms and conditions and upon payment of the same fee required for the issuance of an original license.

(3) All certificates of renewal ~~wherein~~ *in which* the applicant does not apply for a change in the field or class of license ~~shall~~ *must* be issued by the department to the applicant ~~forthwith~~ when the application is filed and the license renewal fee *is* paid.

(4) After cancellation of a license, ~~such~~ *the* licensee ~~shall~~ *may* not be relicensed during tbe current calendar year in which tbe offense was committed."

Section 128. Repealer. Sections 20-26-1401, 20-26-1402, 20-26-1403, 20-26-1404, 20-26-1407, 20-26-1408, 20-26-1409, 20-26-1410, 20-26-1411, 37-3-322, 37-4-306, 37-4-321, 37-4-323, 37-4-324, 37-4-404, 37-5-303, 37-5-304, 37-5-311, 37-6-310, 37-7-203, 37-7-304, 37-7-305, 37-7-311, 37-7-607, 37-7-608, 37-7-710, 37-8-407, 37-8-417, 37-8-430, 37-8-433, 37-8-441, 37-8-442, 37-9-303, 37-9-311, 37-10-204, 37-10-303, 37-10-308, 37-10-311, 37-11-202, 37-11-307, 37-11-309, 37-11-320, 37-11-321, 37-12-303, 37-12-321, 37-13-305, 37-13-311, 37-13-312, 37-13-313, 37-13-314, 37-14-304, 37-14-321, 37-15-305, 37-15-309, 37-15-321, 37-16-406, 37-16-411, 37-16-414, 37-17-304, 37-17-311, 37-17-318, 37-18-304, 37-18-311, 37-19-305, 37-19-311, 37-19-312, 37-19-316, 37-19-404, 37-20-409, 37-22-306, 37-22-311, 37-22-312, 37-23-204, 37-23-207, 37-23-211, 37-23-212, 37-24-305, 37-24-307, 37-24-309, 37-25-306, 37-26-404, 37-26-408, 37-26-409, 37-26-410, 37-27-213, 37-27-216, 37-28-206, 37-28-210, 37-28-301, 37-29-311, 37-29-312, 37-29-313, 37-29-321, 37-30-306, 37-30-309, 37-30-502, 37-31-306, 37-31-307, 37-31-332, 37-32-303, 37-32-310, 37-34-304, 37-34-306, 37-34-308, 37-40-303, 37-40-311, 37-47-341, 37-47-342, 37-47-343, 37-47-346, 37-50-321, 37-50-322, 37-50-336, 37-51-206, 37-51-321, 37-51-322, 37-51-604, 37-51-606, 37-53-501, 37-53-502, 37-53-503, 37-54-401, 37-54-402, 37-54-406, 37-54-417, 37-60-212, 37-60-307, 37-60-308, 37-60-321, 37-60-322, 37-62-101, 37-62-102, 37-62-201, 37-62-202, 37-62-203, 37-62-204, 37-62-205, 37-62-206, 37-62-207, 37-62-208, 37-62-209, 37-62-212, 37-62-213, 37-62-301, 37-62-302, 37-62-303, 37-62-311, 37-65-305, 37-65-321, 37-66-306, 37-66-321, 37-66-323, 37-67-312, 37-67-313, 37-67-319, 37-67-331, 37-68-306, 37-68-309, 37-68-321, 37-69-309, 37-69-320, 37-69-322, 39-5-101, 39-5-102, 39-5-103, 39-5-104,

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39-5-105, 39-5-201, 39-5-202, 39-5-203, 39-5-204, 39-5-205, 39-5-206, 39-5-207, 39-5-208, 39-5-209, 39-5-301, 39-5-302, 39-5-303, 39-5-304, 39-5-305, 39-5-306, 39-5-307, 39-5-308, 39-5-309, 39-5-310, 39-5-311, 39-5-312, 39-5-401, 39-5-402, 39-5-403, 39-5-404, 39-5-405, and 39-5-406, MCA, are repealed.

Section 129. Codification instruction. [Sections 1 through 19] are intended to be codified as an integral part of Title 37, chapter 1.

Section 130. Coordination instruction. (1) If Senate Bill No. 95 is passed and approved and if it includes a section that amends 37-16-202 and 37-16-407, then [section 59 of this act], amending 37-16-202, is void and [section 61 of this act], amending 37-16-407, is void.

(2) If Senate Bill No. 95 is passed and approved and if it includes sections that amend 37-16-406 and 37-16-411, then the portion of [section 128] that repeals 37-16-406 and 37-16-411 is void.

(3) If Senate Bill No. 171 is passed and approved and if it includes sections that amend 37-11-307, 37-11-309, 37-11-320, and 37-11-321, then the portion of [section 128] that repeals 37-11-307, 37-11-309, 37-11-320, and 37-11-321 is void.

(4) If House Bill No. 148 is passed and approved and if it includes sections that amend 37-67-312, 37-67-313, and 37-67-331, then the portion of [section 128] that repeals 37-67-312, 37-67-313, and 37-67-331 is void.

(5) If House Bill No. 196 is passed and approved and if it includes sections that amend 37-47-341 and 37-47-343, then the portion of [section 128] that repeals 37-47-341 and 37-47-343 is void.

(6) If Senate Bill No. 224 is passed and approved and if it contains a section that amends 37-51-321, then the portion of [section 128] that repeals 37-51-321 is void.

Section 131. Severability. If a part of [this act] is invalid, all valid parts that severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 132. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this section].

Section 133. Applicability. [This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section].

Section 134. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 1995.

(2) [Sections 19, 21, and this section] are effective on passage and approval for the purpose of drafting rules that will be adopted on or after October 1, 1995, and are effective for all other purposes on October 1, 1995.

Approved April 13, 1995

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CHAPTER NO. 430

[HB 530]

AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY CREATING AN ALTERNATIVE ACCOUNTING METHOD FOR LOCAL GOVERNMENT ENTITIES; AMENDING SECTIONS 2-7-503, 2-7-504, 2-7-513, 7-3-4371, 7-3-4372, 7-6-2111, 7-6-2112, 7-6-2202, 7-6-2203, 7-6-2211, 7-6-2213, 7-6-2302, 7-6-2311, 7-6-2312, 7-6-2314, 7-6-2315, 7-6-2316, 7-6-2317, 7-6-2318, 7-6-2319, 7-6-2320, 7-6-2321, 7-6-2324, 7-6-2325, 7-6-2330, 7-6-2331, 7-6-2525, 7-6-4103, 7-6-4104, 7-6-4105, 7-6-4106, 7-6-4107, 7-6-4108, 7-6-4109, 7-6-4110, 7-6-4111, 7-6-4112, 7-6-4113, 7-6-4119, 7-6-4121, 7-6-4124, 7-6-4131, 7-6-4132, 7-6-4133, 7-6-4203, 7-6-4205, 7-6-4221, 7-6-4223, 7-6-4224, 7-6-4225, 7-6-4226, 7-6-4227, 7-6-4228, 7-6-4229, 7-6-4230, 7-6-4231, 7-6-4232, 7-6-4235, 7-6-4236, 7-6-4240, 7-6-4241, 7-6-4408, AND 15-10-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 4] is to create an accounting method for local governments that provides an alternative to following the detailed bookkeeping rules contained in this title that have been built up over decades and to encourage local governments to adopt generally accepted accounting principles and auditing standards. These principles are more rigorous, comprehensive, and businesslike than those contained elsewhere in this title. It is the intent of the legislature that all local governments eventually follow generally accepted accounting principles and auditing standards.

Section 2. Definition. For the purposes of [sections 1 through 4], "local government entity" means a consolidated city-county or a county or an incorporated city or town.

Section 3. Adoption of alternative accounting method. (1) A local government entity may by resolution adopt the altornative accounting method established in [section 4].

(2) A local government entity that adopts the alternative accounting method is considered to have complied with state accounting and financial reporting standards and requirements.

(3) A local government entity that does not adopt the alternative accounting method is subject to state accounting and financial reporting standards and requirements.

(4) A local government entity may not adopt the alternative accounting method unless it has received an auditor's unqualified opinion on its annual financial statements prepared for its preceding fiscal year.

(5) A local government entity that adopts the alternative accounting method by resolution shall submit a copy of the resolution to the department of commerce.

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Section 4. Alternative accounting method — requirements. A local government entity that adopts the alternative accounting method shall:

(1) prepare its accounting records and financial reports in accordance with generally accepted accounting principles estahlished by the governmental accounting standards board or its generally recognized successor;

(2) adopt a fiscal year that commences on July 1 of each year;

(3) (a) compile an annual financial report covering the preceding fiscal year and submit a copy of the annual financial report or an annual audit, pursuant to subsection (3)(b), to the departnient of commerce within 6 months of the end of that reported fiscal year; or

(b) if the local government entity submits an audit report in lieu of an annual financial report, ensure that the audit report contains, at a minimum, the entity's general purpose financial statements and combining and individual fund and account group statements as defined under the principles described in subsection (1);

(4) cause an annual audit in accordance with the provisions of Title 2, chapter 7, part 5; and

(5) ensure that a budget is made each year that:

(a) shows the complete expenditure program for the local government entity for the coming fiscal year and the sources by which it will be funded;

(b) must be completed by July 1 of the current fiscal year;

(c) must be approved or amended by the governing body in a regularly scheduled meeting;

(d) must be the subject of one or more advertised public hearings, pursuant to the provisions of 7-1-2121 or 7-1-4127, prior to approval or amendment; and

(e) must be submitted to the department of commerce by Septemher 15.

Section 5. Section 2-7-503, MCA, is amended to read:

"2-7-503. Financial reports and audits of local government entities — *exception*. (1) The governing body or managing or executive officer of a local government entity, other tban a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed hy the department, and be completed within 4 months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

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(3) (a) The governing body or managing or executive officer of each local government entity receiving ~~revenues~~ *revenue* or financial assistance in the period covered by the financial report in excess of $200,000 or federal financial assistance in excess of $25,000 shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the state treasurer and deposited in the enterprise fund to the credit of the department.

(7) Subsections (1) through (3) do not apply to a local government entity that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 6. Section 2-7-504, MCA, is amended to read:

"2-7-504. Accounting methods — *exception.* *(1)* Unless otherwise required by law, the department shall prescribe by rule the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish in those offices general methods and details of accounting. All local government entity officers shall conform with the accounting standards prescribed by the department.

(2) This section does not apply to a local government entity that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 7. Section 2-7-513, MCA, is amended to read:

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"2-7-513. Content of audit report and financial report — *exception.* (1) The audit reports ~~shall~~ *must* comply with the reporting requirements of government auditing standards issued by the U.S. comptroller general and federal regulations adopted by department rule.

(2) *(a)* The department shall prescribe general methods and details of accounting for the financial report for local government entities other than schools. The financial report must be submitted in a form required by the department. The superintendent of public instruction shall prescribe the general methods and details of accounting for financial reports for schools.

(b) Subsection (2)(a) does not apply to a local government entity that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 8. Section 7-3-4371, MCA, is amended to read:

"7-3-4371. Estimate of expenditures and revenues — *exception.* (1) The city manager shall submit to the commission an estimate of the expenditures and revenues of the municipal departments for the ensuing year. The estimate shall *must* be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager. The classification of the expenditures ~~shall~~ *must* be as nearly uniform as possible for the main functional divisions of all departments and ~~shall~~ *must* give in parallel columns the following information:

(a) a detailed estimate of the expenses of conducting each department as submitted by the department;

(b) expenditures for corresponding items for the last 2 fiscal years;

(c) expenditures for the corresponding items for the current fiscal year, including adjustments due to transfers between appropriations, plus an estimate of expenditure necessary to complete the current fiscal year;

(d) amount of supplies and materials on hand at the date of the preparation of the invoice;

(e) increase or decrease of requests compared with the corresponding appropriations for the current year;

(f) ~~such~~ other information as *that* is required by the commission or that the city manager may deem *consider* advisable to submit;

(g) the recommendation of the city manager as to the amounts to be appropriated, with reasons ~~therefor~~ *for the recommendation*, in ~~such~~ *the* detail ~~as~~ *that* the commission may direct.

(2) A sufficient number of copies of ~~such~~ *the* estimate ~~shall~~ *must* be prepared and submitted that there ~~may be~~ *are* copies on file in the office of the commission for inspection by the public.

(3) This section does not apply to a local government entity that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 9. Section 7-3-4372, MCA, is amended to read:

"**7-3-4372. Procedure to enact appropriation ordinance — *exception.*** (1) Upon receipt of ~~such~~ *the* estimate, the commission shall prepare an appropriation ordinance in ~~such~~ *the* form ~~as~~ *that* may be prescribed by ordinance or resolution. Before finally acting upon ~~such~~ *the* tentative appropriation, the commission shall fix a time and place for holding public hearing upon the tentative appropriation and shall give public notice of ~~such~~ *the* hearing. Following the public hearings and before its final passage, the appropriation ordinance ~~shall~~ *must* be published with a parallel comparison with the recommendation of the city manager. The commission ~~shall~~ *may* not pass the appropriation ordinance until 10 days after its publication or before the second Monday in August.

(2) If, at the beginning of the term of office of the first commission elected under the provisions of this part and part 44, the appropriations for the expenditures of the municipal government for the current fiscal year have been made, ~~said~~ *the* commission ~~shall have the power~~ *may* by ordinance ~~to~~ revise, repeal, or change ~~said~~ *the* appropriations and ~~to~~ make additional appropriations.

(3) This section does not apply to a local government entity that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 10. Section 7-6-2111, MCA, is amended to read:

"**7-6-2111. Duties of county treasurer.** *(1)* The county treasurer ~~must~~:

~~(1)~~*(a) must* receive all money belonging to the county and all other money directed to be paid to ~~him~~ *the treasurer* by law, safely keep the ~~same~~ *money*, and apply and pay ~~them~~ *the money* out, ~~rendering~~ *and* account ~~thereof~~ *for the money* as required by law;

~~(2)~~*(b) shall* keep an account of the receipt and expenditures of ~~all such~~ *the* money in books provided for the purpose, in which must be entered:

~~(a)~~*(i)* the amount, the time when, from whom, and on what account all money was received ~~by him~~;

~~(b)~~*(ii)* the amount, time when, to whom, and on what account all disbursements were made ~~by him~~;

~~(3)~~*(c)* ~~so~~ *shall* keep ~~his~~ books *so* that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, with the whole receipts and expenditures shown in one general or cash account;

~~(4)~~*(d) may not* enter ~~no~~ money received for the current year on ~~his~~ *the treasurer's* account with the county for the past fiscal year until after ~~his~~ *the treasurer's* annual settlement for the past year has been made with the county clerk;

~~(5)~~*(e) shall* disburse the county money only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law.

(2) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

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Section 11. Section 7-6-2112, MCA, is amended to read:

"**7-6-2112. Treasurer's reports to county commissioners — *exception.*** (1) Each county treasurer ~~must~~ *shall* make a detailed monthly report to the board of county commissioners ~~of his county~~, of all money received ~~by him and the disbursement thereof~~ *and disbursed by the treasurer,* ~~and~~ of all debts due to and from the county, and of all other proceedings in ~~his~~ *the treasurer's* office~~,~~ so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, appear clearly and distinctly.

(2) On the first Monday of January, April, July, and October of each year the county treasurer ~~must~~ *shall* settle with the board of county commissioners for all money collected~~, and on~~. *On* those days the treasurer ~~must~~ *shall* deliver to the board affidavits verifying the reconcilement of the balance on hand in the county treasury. After the approval of the statements and the accompanying affidavits, one copy of the quarterly report ~~shall~~ *must* be filed with the county clerk of the county and one copy ~~shall~~ *must* be retained by the county treasurer.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 12. Section 7-6-2202, MCA, is amended to read:

"**7-6-2202. Duties of county clerk related to finance — *exception.*** (1) The county clerk ~~must~~ *shall* draw warrants on the county treasury in favor of all persons entitled ~~thereto~~ *to the warrants* in payment:

(a) of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the board of county commissioners; *and*

(b) for all debts and demands against the county when the amounts are fixed by law and are not directed to be audited by some other person or tribunal.

(2) The county clerk ~~must~~ *shall* keep accounts current with the treasurer. When any person deposits with the county treasurer any money paid into the treasury, the county clerk ~~shall~~ *must* be furnished hy the treasurer with a duplicate of the receipt issued to the person~~, which~~. *The* duplicate receipt ~~shall~~ *must* be filed in the office of the county clerk, and the county clerk shall charge the treasurer with the amount ~~thereof~~ *of the deposit.*

(3) The county clerk ~~must~~ *shall* make the annual statement as prescribed in 7-6-2203.

(4) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 13. Section 7-6-2203, MCA, is amended to read:

"**7-6-2203. Annual financial statement — *exception.*** (1) Within 120 days after the close of each fiscal year, the county clerk shall ~~make out~~ *compile* and present to the board of county commissioners and the department of commerce a complete statement of the financial condition of the county. The statement must show:

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(a) a detailed description of all of the resources and liabilities of the county and the book value of ~~them~~ *the resources and liabilities*;

(b) the amount of money received, showing the source of that revenue;

(c) the amount of money disbursed, with the purpose of disbursement;

(d) the operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year;

(e) the assessed valuation of the real and personal property of the county;

(f) the rate of taxation and the amount of taxes delinquent for the preceding years; and

(g) such other items as *that* the department of commerce may prescribe.

(2) The statement ~~shall~~ *must* be ~~made out~~ on the form designated by the department.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 14. Section 7-6-2211, MCA, is amended to read:

"**7-6-2211. Authorization to conduct county business on a cash basis.** (1) ~~In case~~ *If* the total indebtedness of a county, lawful when incurred, exceeds the limit of 23% established in 7-7-2101 by reason of great diminution of taxable value, the county may conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the county out of the cash in the county treasury derived from its current revenue and under ~~such~~ *the* restrictions and regulations as *that* may be imposed by the board of county commissioners of the county by a resolution duly adopted and included in the minutes of the board.

(2) ~~Nothing in this~~ *This* section ~~restricts~~ *does not restrict* the right of the board to make the necessary tax levies for interest and sinking fund purposes, and ~~nothing in~~ this section ~~affects~~ *does not affect* the right of any creditor of the county to pursue any remedy now given ~~him~~ by law to obtain payment of ~~his~~ *a* claim.

(3) Subsection (1) does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 15. Section 7-6-2213, MCA, is amended to read:

"**7-6-2213. Report of fees received and money disbursed — *exception.*** *(1)* ~~It is the duty of all~~ *All* county officers, justices of the peace, and constables ~~to make~~ *shall* report in writing, under oath, to the board of county commissioners on the first Monday of March, June, September, and December, showing in detail all fees, emoluments, and compensation received and money disbursed by them in their official capacity during the quarter preceding the making of each report.

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(2) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 16. Section 7-6-2302, MCA, is amended to read:

"**7-6-2302. Role of department of commerce — *exception.*** *(1)* The department of commerce shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part, to define what expenditures are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information.

(2) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 17. Section 7-6-2311, MCA, is amended to read:

"**7-6-2311. Filing of estimate of revenues and expenses with county clerk — *exception.*** (1) Before June 1 each year the county clerk and recorder shall notify in writing each county official in charge of an office, department, service, institution, or county-funded district court program of the county to file with the county clerk and recorder, before June 10, detailed and itemized estimates, both of the probable ~~revenues~~ *revenue* from sources other than taxation and of all expenditures required by the office, department, service, or institution for the next fiscal year.

(2) (a) The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for the board and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, from any special road or bridge fund, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of that construction as computed by the county surveyor or, if for construction in charge of a special engineer, then by that engineer. The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies ~~which~~ *that* are required to be approved at an election to be held.

(b) The county surveyor and any special engineer shall prepare the estimates of cost of road and hridge construction for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(c) The county treasurer shall prepare the estimates for interest and debt reduction.

(d) The county clerk and recorder shall prepare all other estimates ~~which~~ *that* properly fall within the duties of ~~his~~ *the* office.

(3) The estimates required in this section ~~shall~~ *must* be submitted on forms provided by the county clerk and recorder and prescribed by the department of commerce. The forms may only be varied or departed from with permission and approval of that department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

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(4) In thu absence or disability of an official, the duties required by tbis section or 7-6-2312 devolve upon tbe official or employee in charge of the office, department, service, or institution.

(5) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 18. Section 7-6-2312, MCA, is amended to read:

"7-6-2312. Penalty for noncompliance with filing requirements — *exception*. (1) The county clerk shall withhold as a penalty from the salary of each official failing or refusing to file the estimates, $10 for each day of delay. The total penalty against any official may not exceed $50 in 1 year.

(2) The notice provided for in 7-6-2311 ~~shall~~ *must* contain a copy of this penalty clause.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 19. Section 7-6-2314, MCA, is amended to read:

"7-6-2314. Classification of estimates, appropriations, and expenditures — *exception*. (1) In the tabulation required by 7-6-2313, the estimates, appropriations, and expenditures ~~shall~~ *must* be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from hond issues not yet authorized or from the proceeds of a tax levy or levies ~~which~~ *that* are required to be submitted to and approved at an election to be held later.

(2)(a) Within the general class of salaries and wages, each salary ~~shall~~ *must* be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of ~~such~~ *the* special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor ~~shall~~ *must* be set forth.

(b) Expenditures under the general class of maintenance and operation ~~shall~~ *must* be classified according to a standard classification to be established by the department of commerce.

(c) Expenditures for capital outlay ~~shall~~ *must* set forth and describe each object of expenditure separately.

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(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal ~~shall~~ *must* be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements ~~shall~~ *must* be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or ~~which~~ *that* cannot properly be assigned to any of the general classes ~~shall~~ *must* be set forth and itemized in detail.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 20. Section 7-6-2315, MCA, is amended to read:

"**7-6-2315. Consideration of tabulation by county commissioners — *exception.*** (1) The tabulation ~~shall~~ *must* be submitted to the county commissioners by the county clerk and recorder on or before the third Monday of July.

(2) Upon receipt ~~thereof~~, the board of county commissioners shall immediately consider the budget in detail and shall, on or before the fourth Monday of July, make any revisions, reductions, additions, or changes that ~~they consider~~ *the board considers* advisable. The tabulation, with any revisions, reductions, additions, or changes, is the county proposed budget for the fiscal year which it is intended to cover.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 21. Section 7-6-2316, MCA, is amended to read:

"**7-6-2316. Notice of hearing on county proposed budget — *exception.*** (1) The board of county commissioners shall ~~then have~~ *cause* a notice *to be* published stating that:

(a) the board has completed its county proposed budget for the current fiscal year;

(b) the budget is open to inspection in the office of the county clerk and recorder;

(c) the board will meet to fix the final budget and make appropriations, stating the date, time, and place of the meeting; and

(d) any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The notice ~~shall~~ *must* be published two times, once each week, in a newspaper of general circulation in the county.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 22. Section 7-6-2317, MCA, is amended to read:

"**7-6-2317. Hearing on county proposed budget — *exception.*** (1) At least 3 days prior to the adoption of the final budget, the county commissioners

shall meet at the time and place designated in the notice provided for in 7-6-2316, at which time any taxpayer or resident of the county may appear and he heard for or against any part of the budget.

(2) The hearing ~~shall~~ *must* be continued from day to day and ~~shall~~ *must* be concluded and the budget approved and adopted on or before the second Monday in August, before the fixing of the tax levies by the board.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 23. Section 7-6-2318, MCA, is amended to read:

"**7-6-2318. Determination of projected fund cash flow following hearing — *exception.*** (1) Upon the conclusion of the hearing, the board shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources except the taxation of property. In so doing, the board may not include any amount ~~which~~ *that* it is anticipated may be received during the fiscal year from the payment of taxes ~~which~~ *that* became delinquent during a preceding fiscal year.

(2) The board shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn for the expenditures authorized. There may not be added to the amount to be appropriated and authorized to be spent for an item or to the total amount appropriated and authorized to be spent from any fund any amount or percentage because of anticipated loss of revenue by reason of the nonpayment of taxes levied for that fiscal year. The total expenditures authorized to be made from any fund, including the reserve added to them, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year;

(b) the amount of estimated revenues to accrue to the fund; and

(c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 24. Section 7-6-2319, MCA, is amended to read:

"**7-6-2319. Determination of fund requirements to be met by tax levy — *exception.*** (1) Following the determinations required by 7-6-2318, the board shall determine the amount to be raised by tax levy for each fund by adding the cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated ~~revenues~~ *revenue* to accrue to the fund during the current fiscal year. It shall then deduct the total amount ~~so~~ obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for the fund by tax levy during the current fiscal year.

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(2) The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount ~~which~~ *that* may be ~~so~~ added to any fund as the reserve may not exceed one-third of the total amount appropriated and authorized to be spent from tbe fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants.

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

(4) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 25. Section 7-6-2320, MCA, is amended to read:

"**7-6-2320. Final budget — approval, adoption, and amendment — *exception*.** (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation or expenditure is authorized and the fund out of which it is to be paid, ~~shall~~ *must* set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in the fund at the close of tbe preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The board shall then by resolution approve and adopt the budget as finally determined and enter the budget at length in the official minutes of the board.

(3)(a) Subject to compliance with the procedures set forth in subsection (4), the board may approve and adopt a resolution amending a final budget when:

(i) shortfalls in anticipated and budgeted revenues occur that, unless reductions in appropriations are made, will result in expenditures for the year exceeding actual revenues and cash balances available ~~therefor~~ *for the year*; or

(ii) savings result from unanticipated adjustments in projected expenditures.

(b) Amended appropriations must be classified as:

(i) salaries and wages;

(ii) maintenance and operation;

(iii) capital outlay;

(iv) interest and debt redemption; or

(v) miscellaneous.

(4) Prior to amending a final budget, the board shall:

(a) hold a public hearing on the proposed amendments at least 7 days prior to a vote on the resolution amending the budget; and

(b) publish notice, at least once, in a newspaper of general circulation in the county at least 6 but not more than 16 days before the hearing on the hudget amendments. The published notice must specify the date, time, place, and subject of the hearing.

(5) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 26. Section 7-6-2321, MCA, is amended to read:

"**7-6-2321. Fixing of tax levy — *exception*.** (1) On or before the second Monday in August and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year ~~shall~~ *must* be the basis for detormining the amount of the tax levy for each fund. Each tax levy ~~shall~~ *must* be at a rate ~~no~~ *not* higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget, without including any amount for anticipated tax delinquency, ~~as being~~ *that is* the amount to be raised by tax levy.

(2) The tax levy ~~shall~~ *must* be made in the manner provided hy 15-10-201.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 27. Section 7-6-2324, MCA, is amended to read:

"**7-6-2324. Limitations on appropriations after budget adopted — *exception*.** (1) The estimates of expenditures, itemized and classified as required in 7-6-2313 and 7-6-2314 and as finally fixed and adopted and as may be amended as provided in 7-6-2320 by ~~said~~ *the* board of county commissioners, ~~shall constitute~~ *constitutes* the appropriations for the county for the fiscal year intended to be covered ~~thereby~~ *by the estimates.*

(2) Except as provided in 3-5-404, 7-6-2325, and 7-31-2101, the county commissioners and every other county official, including judges of the district court, ~~shall be~~ *is* limited in the making of expenditures or incurring of liabilities to the amount of ~~such~~ *the* detailed appropriations and classifications, respectively.

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(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 28. Section 7-6-2325, MCA, is amended to read:

"**7-6-2325. Transfer of appropriations within and among expenditure classes.** *(1)* Upon a resolution adopted by the board of county commissioners at a regular or special meeting and entered upon its minutes, transfers or revisions in the general budget system within the classifications set forth in 7-6-2314(1)(a) through (1)(c) may be made, provided that ~~no~~ *a* salary ~~shall~~ *may not* be increased above the amount appropriated ~~therefor~~.

(2) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 29. Section 7-6-2330, MCA, is amended to read:

"**7-6-2330. Lapse of appropriation.** (1) Subject to the provisions of subsection (2), all appropriations, other than appropriations for ~~incompleted~~ *uncompleted* improvements in progress of construction, ~~shall~~ lapse at the end of the fiscal year.

(2) *(a)* The appropriation accounts ~~shall~~ *must* remain open for a period of 30 days after the end of the fiscal year for the payment of claims incurred against ~~such~~ *the* appropriations prior to the close of the fiscal year and remaining unpaid. After ~~such~~ *the* period ~~shall have~~ *has* expired, all appropriations, except as ~~hereinbefore~~ *otherwise* provided regarding uncompleted improvements, ~~shall~~ become null and void, and any lawful claim presented ~~thereafter~~ *after expiration* against any ~~such~~ appropriation ~~shall~~ *must* be provided for in the ensuing budget.

(b) Subsection (2)(a) does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 30. Section 7-6-2331, MCA, is amended to read:

"**7-6-2331. Clerk's report concerning expenditures, liabilities, and appropriations — auditor's report — *exception*.** (1) Within 4 working days after receipt of the treasurer's monthly report, the county clerk and recorder shall submit to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the fiscal year to the first day of the month in which ~~such~~ *the* report is made, together with the unexpended balance of each appropriation. ~~He~~ *The clerk and recorder* shall also set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period.

(2) In counties having county auditors, the county auditor, on the last business day of each month, shall furnish the county clerk and recorder with a statement showing the total amount of liabilities incurred against each budget appropriation for which warrants have not been issued up to the close of ~~said~~ *the* business day.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 31. Section 7-6-2525, MCA, is amended to read:

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"**7-6-2525. Distribution of all-purpose levy — *exception.*** (1) The money received from the all-purpose levy must be accounted for in a common fund known as the all-purpose fund.

(2) The all-purpose fund may be used only for purposes that are authorized for revenue derived from the individual levies set forth in 7-6-2523, but the county governing body may allocate tbe revenue from the fund, in accordance with county budget law, to fund any enumerated purpose that it considers appropriate.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 32. Section 7-6-4103, MCA, is amended to read:

"**7-6-4103. Annual appropriation — *exception.*** *(1)* The council ~~must~~ *shall*, during the month of July in each fiscal year, pass an ordinance to be known as the "Annual appropriation for the.... of.... for the fiscal year beginning July 1, 19..", in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for ~~such~~ *the* fiscal year. There must be specified ~~therein~~ *in the ordinance* the amount appropriated for each separate object or fund and the salary or compensation to be paid to each officer of the city or town.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 33. Section 7-6-4104, MCA, is amended to read:

"**7-6-4104. Duties of city treasurer relating to finances — *exception.*** It ~~shall be~~ *is* the duty of the city treasurer:

(1) to receive all money that comes to the city, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law;

(2) to give every person paying money to ~~him, as~~ *the* treasurer a receipt ~~therefor~~, specifying tbe date of payment, the amount, and for what paid;

(3) to pay out, in the order ~~they are~~ registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

(4) This section does not apply to a city that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 34. Section 7-6-4105, MCA, is amended to read:

"**7-6-4105. Financial reports and records to be maintained by city treasurer — *exception.*** *(1)* It ~~shall be~~ *is* the duty of the city treasurer:

~~(1)~~*(a)* to present to the council, on a date set by the council, a full and detailed statement of the amounts of money belonging to the city received by ~~him~~ and disbursed by ~~him~~ *the treasurer* during the preceding month and the state of each particular fund~~, which~~. *The* statement must be verified by ~~his~~ *the treasurer's* oath;.

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~~(2)~~*(b)* to keep the books and accounts of the city in ~~such~~ *a* manner as to correctly present the condition of the finances ~~thereof~~ *of the city*, which must always be open to the inspection of tbe mayor or the council or any member ~~thereof~~ *of the council*;

~~(3)~~*(c)* to render at any time an account to the council, showing the money on hand and the condition of the treasury;

~~(4)~~*(d)* to annually make out and submit to the city council at its last meeting prior to May 1 a detailed account of all receipts and expenditures during the past fiscal year and to file the same with the clerk;

~~(5)~~*(e)* to keep a separate account of each fund or appropriation and the debits and credits ~~thereof~~ *of the account*;

~~(5)~~*(f)* to keep a register of all warrants paid, called "The Registry Book", which must show the date, amount, and number and the person to whom and the fund from which the same was paid; and

~~(7)~~*(g)* to deliver and file with the city clerk all vouchers, warrants, or orders paid by ~~him~~ *the treasurer*.

(2) This section does not apply to a city that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 35. Section 7-6-4106, MCA, is amended to read:

"7-6-4106. Publication or posting of annual statement of city receipts and expenditures — *exception*. *(1)* An abstract of the account of receipts and expenditures required by 7-6-4105~~(4)~~*(1)(e)* must be published in some newspaper in the city, or if none is published, ~~such~~ *the* abstract must be posted in the room or building occupied by the council.

(2) This section does not apply to a city that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 36. Section 7-6-4107, MCA, is amended to read:

"7-6-4107. Duties of the city clerk related to finance — *exception*. *(1)* It is the duty of the clerk to enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the city treasury. ~~Such~~ *The* book is called "The Finance Book".

(2) This section does not apply to a city that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 37. Section 7-6-4108, MCA, is amended to read:

"7-6-4108. Duties of town clerk related to finance — *exception*. (1) It shall ~~be~~ *is* the duty of the town clerk:

(a) to receive all money that comes to the town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law;

(b) to give every person paying money to ~~him as~~ *the* town clerk a receipt ~~therefor~~, specifying the date of payment, the amount, and for what paid;

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(c) to pay out, in the order ~~they are~~ registered, all warrants presented for payment when there are funds in the treasury to pay the ~~same~~ *warrants*.

(2) The statutory functions and duties of a town treasurer provided in this title are transferred to the town clerk. Any reference to a town treasurer means the town clerk.

(3) This section does not apply to a town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 38. Section 7-6-4109, MCA, is amended to read:

"7-6-4109. Financial reports and records to be maintained by town clerk — *exception.* *(1)* It ~~shall be~~ *is* the duty of the town clerk:

~~(1)~~*(a)* to present to the council, on a date set by the council, a full and detailed statement of the amounts of money belonging to the town received by ~~him~~ and disbursed by ~~him~~ *the clerk* during the preceding month and the state of each particular fund, which statement must be verified by ~~his~~ *the clerk's* oath;

~~(2)~~*(b)* to keep the books and accounts of the city or town in ~~such~~ *a* manner as to correctly present the condition of the finances ~~thereof~~ *of the city or town*, which must always be open to the inspection of the mayor, ~~or~~ the council, or any member ~~thereof~~ *of the council*;

~~(3)~~*(c)* to render at any time an account to the council, showing the money on hand and the condition of the treasury;

~~(4)~~*(d)* to annually make out and submit to the town council, at its last meeting prior to May 1, a detailed account of all receipts and expenditures during the past fiscal year;

~~(5)~~*(e)* to keep a separate account of each fund or appropriation and the debits and credits ~~thereof~~ *of the account*; *and*

~~(6)~~*(f)* to keep a register of all warrants paid, which must show the date, amount, and number and the person to whom and the fund from which the ~~same~~ *warrant* was paid and to enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the town treasury.

(2) This section does not apply to a town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 39. Section 7-6-4110, MCA, is amended to read:

"7-6-4110. Publication or posting of annual statement of ~~town~~ receipts and expenditures — *exception.* *(1)* An abstract of the annual account of receipts and expenditures required by 7-6-4109~~(4)~~*(1)(d)* must be published in some newspaper in the city or town, or if none is published, ~~such~~ *the* abstract must be posted in the room or building occupied by the council.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 40. Section 7-6-4111, MCA, is amended to read:

"**7-6-4111. Annual financial statement — *exception.*** (1) Within 120 days after the close of each fiscal year, the city or town clerk of each city and town ~~must make out~~ *shall compile*, in duplicate, a complete statement of the financial condition of the city or town for that fiscal year, showing:

(a) the indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

(b) the amount of money received from taxes upon real and personal property;

(c) the amount of money received from fines, penalties, and forfeitures;

(d) the amount of money received from licenses;

(e) the amount of money received from all other sources, each source and the amount received from it being shown separately;

(f) for each fund, the amount of money, if any, on hand at the beginning of the fiscal year, the amount received, and the amount paid out during the fiscal year;

(g) a concise description of all property owned by the city or town, with an approximate estimate of the value of it;

(h) the rates of taxation and purposes for which taxes were levied during the fiscal year;

(i) other information which *that* may be required by the department of commerce.

(2) The forms on which the statement ~~shall~~ *must* be made ~~shall~~ *must* be prescribed by the department.

(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 41. Section 7-6-4112, MCA, is amended to read:

"**7-6-4112. Funds to be balanced — *exception.*** *(1)* The amount of money paid out from each fund must be deducted from the total of the money on hand at the beginning of the fiscal year and the money received during the year, and a balance must be struck for each fund.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 42. Section 7-6-4113, MCA, is amended to read:

"**7-6-4113. Filing of annual financial statement — *exception.*** (1) The city or town clerk ~~must~~ *shall*, within 120 days following the close of each fiscal year, transmit one copy of the statement to the department of commerce and must *shall* present the other copy to the city or town council or commission.

(2) If a city or town clerk fails to file a copy of the statement with the department within the time specified, the department, without delay, shall

examine the books, records, and accounts of the city or town. The department shall make from its examination a statement of the financial condition of the city or town for tbe preceding fiscal year in the manner it should have been made by the city or town clerk. The examination ~~shall~~ *must* he considered a special audit under the provisions of subsections (5) and (6) of 2-7-503, and all of the provisions of subsections (5) and (6) of 2-7-503 apply to it.

(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 43. Section 7-6-4119, MCA, is amended to read:

"**7-6-4119. Long-short cash account.** *(1)* A governing body of a municipality may create a cash over or short account consistent with accepted accounting practice.

(2) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 44. Section 7-6-4121, MCA, is amended te read:

"**7-6-4121. Authorization to conduct municipal business on a cash basis.** (1) In case the total indebtedness of a city or town has reached 17% of the total taxable value of the property of the city or town subject to taxation, as ascertained by the last assessment for state and county taxes, the city or town may conduct its affairs and business on a cash basis as provided by subsection (2).

(2)(a) Whenever a city or town is conducting its business affairs on a cash basis, the reasonable and necessary current expenses of the city or town may be paid out of the cash in the city or town treasury and derived from its current ~~revenues~~ *revenue*, under ~~such~~ *any* restrictions and regulations as the city or town council may by ordinance prescribe.

(b) In the event that payment is made in advance, the city or town may require a cash deposit as collateral security and indemnity, equal in amount to ~~such~~ *the* payment, and may hold the ~~same~~ *deposit* as a special deposit with the city treasurer or town clerk, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which the advance is made.

(c) Before the payment of the current expenses mentioned above, the city or town council shall first set apart sufficient money te pay the interest upon its legal, valid, and outstanding bonded indebtedness and any sinking funds ~~therein~~ provided for and ~~shall be~~ *is* authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying ~~such~~ *the* claims.

(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 45. Section 7-6-4124, MCA, is amended to read:

"**7-6-4124. Procedure to close inactive accounts.** *(1)* Whenever the council of any city or town having a corporato existence in this state ~~shall deem~~ *considers* it necessary to remove inactive accounts from its records~~, where said~~ *when the* accounts ~~shall~~ *do* not have any further purpose, it ~~shall be~~ *is* lawful

for ~~said~~ *the* council to direct the proper city or town officials to file claims against the respective inactive funds in favor of the general fund of ~~said~~ *the* city or town, after which the council shall allow the ~~same~~ *claims* and cause the inactive funds to he closed and not continued in the record of active funds.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 46. Section 7-6-4131, MCA, is amended to read:

"7-6-4131. Allocation and appropriation of all-purpose levy — *exception.* (1) ~~In the event~~ *When* the all-purpose levy method provided for in 7-6-4452 is followed in municipal financing, any municipality following it shall appropriate the levy to the several departments of the municipality in its annual budget and appropriation ordinance or in other legal manner, as the governing body of ~~such~~ *the* municipality ~~shall deem~~ *considers* best.

(2) Any municipality ~~which~~ *that* has adopted an urban renewal plan may allocate the funds raised by its levy within the urban renewal area in accordance with the provisions of its urban renewal plan.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 47. Section 7-6-4132, MCA, is amended to read:

"7-6-4132. Distribution of all-purpose levy — *exception.* *(1)* The money received from the all-purpose levy ~~shall~~ *must* be accounted for in a common fund known as the all-purpose general fund.

(2) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 48. Section 7-6-4133, MCA, is amended to read:

"7-6-4133. Deposit of revenues from certain sources in all-purpose fund — *exception.* *(1)* Cities and towns making the all-purpose annual mill levy shall deposit into the all-purpose general fund all money received from other sources, including fees, charges, and fines received from the operation of airports, libraries, swimming pools, parking lots, golf courses, and any other operation supported in part or whole from an appropriation of the all-purpose levy and not otherwise provided by law.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 49. Section 7-6-4203, MCA, is amended to read:

"7-6-4203. Scope of part. The provisions of this part ~~shall~~ apply to all cities *or towns* in this state, *except for cities and towns that have adopted the alternative accounting method provided for in [sections 1 through 4]."*

Section 50. Section 7-6-4205, MCA, is amended to read:

"7-6-4205. Role of department of commerce. The department of commerce shall make rules and classifications and prescribe forms necessary to

carry out the provisions of this part. It shall define what expenditures are chargeable to each budget account and shall estahlish accounting and cost systems necessary to provide accurate budget information. *This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4].*"

Section 51. Section 7-6-4221, MCA, is amended to read:

"**7-6-4221. Filing of estimate of revenues and expenses with clerk — *exception.*** (1) Before July 1 of each year, the clerk of each city shall notify in writing each official in charge of an office, department, service, or institution of the municipality to file with the clerk, before July 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation and of all expenditures required by the office, department, service, or institution for the current fiscal year.

(2) (a) The council shall submit te the clerk the estimate of expenditures for all purposes for the council. The council shall also submit to the clerk detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies ~~which~~ *that* are required to be submitted ~~to~~ and approved at an election to be held.

(b) The mayor of the municipality shall submit to the clerk a detailed estimate showing the amount to be appropriated from funds belonging to the municipality to defray the municipality's portion of the cost of making improvements in special improvement districts and maintaining them and of installing lighting systems in special lighting districts and maintaining them.

(c) The city treasurer shall prepare the estimates for interest and debt reduction.

(d) The clerk shall prepare all other estimates ~~which~~ *that* properly fall within the duties of ~~his~~ *the clerk's* office.

(3) The estimates required in this section ~~shall~~ *must* be submitted on forms provided by the clerk and prescribed by the department of commerce. The form may be varied or departed from only with permission and approval of the department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

(4) In the absence or disability of an official, the duties required in this section or 7-6-4223 devolve upon the official or employee in charge of the office, department, service, or institution for the time being.

(5) This section does not apply to a city that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 52. Section 7-6-4223, MCA, is amended te read:

"**7-6-4223. Penalty for noncompliance with filing requirements — *exception.*** (1) The clerk shall deduct and withhold as a penalty from the salary or compensation of each official failing or refusing to file the estimate the sum of $10 for each day of delay. The total penalty against an official may not exceed $50 per year.

(2) The notice provided for in 7-6-4221 ~~shall~~ *must* contain a copy of this penalty clause.

(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 53. Section 7-6-4224, MCA, is amended to read:

"7-6-4224. Preparation of expenditure program and information on sources of revenue — *exception*. (1) From estimates of revenue and disbursements, the clerk shall prepare a tabulation showing the completa expenditure program of the municipality for the current fiscal year and the sources of revenue by which it is to be financed.

(2) The tabulation ~~shall~~ *must* set forth:

(a) the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year;

(b) the actual receipts for the last completed fiscal year;

(c) the surplus or unencumbered treasury balances at the close of that last fiscal year;

(d) the amount necessary to be raised by taxation;

(e) the estimated expenditure for each office, department, service, or institution for the current fiscal year;

(f) the actual expenditures for the last completed fiscal year;

(g) all contracts or other obligations ~~which~~ *that* will affect the current year ~~revenues~~ *revenue*;

(h) the total amount of emergency warrants issued during the preceding fiscal year, with the amount issued for each emergency and the amount issued against each fund.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 54. Section 7-6-4225, MCA, is amended to read:

"7-6-4225. Classification of estimates, appropriations, and expenditures — *exception*. (1) In the tabulation required by 7-6-4224, the estimates, appropriations, and expenditures ~~shall~~ *must* be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies ~~which~~ *that* are required to be submitted ~~to~~ and approved at an election to be held later.

(2) (a) Within the class of salaries and wages, each salary ~~shall~~ *must* be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in an office ~~where~~ *in which* the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor ~~shall~~ *must* be set forth.

(b) Expenditures under the general class of maintenance and operation ~~shall~~ *must* be classified according to a standard classification to be established by the department of commerce.

(c) Expenditures for capital outlay ~~shall~~ *must* set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal ~~shall~~ *must* be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements ~~shall~~ *must* be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or ~~which~~ *that* cannot properly be assigned to any of the general classes ~~shall~~ *must* be set forth and itemized in detail.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 55. Section 7-6-4226, MCA, is amended to read:

"**7-6-4226. Consideration of tabulation by council — preparation of preliminary budget — *exception.*** (1) The tabulation ~~shall~~ *must* be submitted to the council by the clerk on or before July 20.

(2) Upon receipt ~~thereof~~ *of the tabulation*, the council shall immediately consider the ~~same~~ *tabulation* in detail and shall, on or before July 25, make any revisions, reductions, additions, or changes ~~therein~~ that ~~they deem~~ *the council considers* advisable. ~~Such~~ *The* tabulation, with ~~such~~ *any* revisions, reductions, additions, or changes ~~as have been made therein as herein provided~~, ~~shall constitute~~ *constitutes* the preliminary budget of the municipality for the fiscal year which it is intended to cover.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 56. Section 7-6-4227, MCA, is amended to read:

"**7-6-4227. Notice of hearing on preliminary budget — *exeeption.*** (1) The council shall ~~then cause~~ *publish* a notice ~~to be published~~ stating that:

(a) the council has completed its preliminary municipal budget for the current fiscal year;

(b) the budget has been placed on file and is open to inspection in the office of the clerk of the municipality;

(c) the council will meet for the purpose of fixing the final budget and making appropriations, designating the date, time, and place ~~when and where such~~ *that the* meeting will be held; and

(d) any taxpayer or resident may appear at the meeting and be heard for or against any part of the budget.

(2) The notice ~~shall~~ *must* be published at least one time in the official newspaper of the municipality or, if there is none, then in a newspaper of general circulation in the county in which the municipality is situated.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 57. Section 7-6-4228, MCA, is amended to read:

"**7-6-4228. Hearing on preliminary budget — *exception.*** (1) At least 3 days prior to the adoption of the final budget, the council shall meet at the time and place designated in the notice provided in 7-6-4227, at which time any taxpayer or resident may appear and be heard for or against any part of the budget. The council may call in the official in charge of an office, department, service, or institution, at the time the estimates for ~~their~~ *each* respective ~~offices are~~ *office is* under consideration, for examination concerning the estimates. The official ~~shall~~ *must* be called in by the council, upon the request of a taxpayer or resident, for questioning upon the estimates ~~either~~ by tbe council, taxpayer, or resident.

(2) The hearing ~~shall~~ *must* be continued from day to day and ~~shall~~ *must* be concluded and the budget finally approved and adopted on or before the second Monday in Augnst, prior to the fixing of the tax levies by the council.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 58. Section 7-6-4229, MCA, is amended to read:

"**7-6-4229. Determination of projected fund casb flow following bearing — *exception.*** (1) Upon the conclusion of the hearing, the council sball first determine the amount estimated to accrue to each fund during the fiscal year from all sources except the taxation of property. In so doing, the council may not include any amount anticipated from the payment of taxes ~~which~~ *that* became delinquent during a preceding fiscal year.

(2) The council shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund against which warrants are to be drawn for the expenditures ~~so authorized~~. There may not be added to the amount appropriated and authorized to be spent for an item or purpose or to the total amount appropriated and authorized to be spent from any fund, other than a fund for tbe payment of principal or interest on outstanding bonds, any amount because of anticipated loss of revenue by reason of nonpayment of taxes levied for the fiscal year. The expenditures authorized from a fund, including reserve, may not exceed the aggregato of:

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(a) the cash balance in the fund at the close of the preceding fiscal year in excess of outstanding unpaid warrants against tbe fund at the close of tbat fiscal year;

(b) the amount of estimatod ~~revenues~~ *revenue* to accrue to the fund; and

(c) the amount ~~which~~ *that* may be raised for the fund by a lawful tax levy during the fiscal year.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 59. Section 7-6-4230, MCA, is amended to read:

"**7-6-4230. Determination of fund requirements to be met by tax levy — *exception.*** (1) Following the determinations required by 7-6-4229, the council shall determine the amount to be raised for each fund for which a tax levy is to be made by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenues, if any, to accrue to tbe fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by tbe council in tbe budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year.

(2) The council may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during tbe months of July to Novenber of the next fiscal year. The amount added to any fund as a reserve may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency and other outstanding warrants.

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve, ~~must~~ *may* not exceed the total amount ~~which~~ *that* may be raised for the fund by a tax levy ~~which~~ *that* does not exceed the maximum levy permitted by law to be made for the fund.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 60. Section 7-6-4231, MCA, is amended to read:

"**7-6-4231. Final budget — approval, adoption, and amendment — *exception.*** (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation is made or expenditure authorized and the fund out of which it is to be paid, ~~shall~~ *must* set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year;

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(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund hy tax levy during the current fiscal year.

(2) The council shall then by resolution approve and adopt the budget as finally determined, and the clerk shall enter the resolution at length in the official minutes of the council. The clerk shall keep a copy of the budget with the resolution in the official records of the municipality.

(3)(a) Subject to compliance with the procedures set forth in subsection (4), the council may approve and adopt a resolution amending a final budget when:

(i) shortfalls in anticipated and budgeted revenues occur that, unless reductions in appropriations are made, will result in expenditures for the year exceeding actual ~~revenues~~ *revenue* and cash balances available ~~therefor~~; or

(ii) savings result from unanticipated adjustments in projected expenditures.

(b) Amended appropriations must be classified as:

(i) salaries and wages;

(ii) maintenance and operation;

(iii) capital outlay;

(iv) interest and debt redemption; or

(v) miscellaneous.

(4) Prior to amending a final budget, the council shall:

(a) hold a public hearing on the proposed amendments at least 7 days prior to a vote on the resolution amending the budget; and

(b) publish notice at least once in a newspaper of general circulation in the city or town at least 6 but not more than 16 days before the hearing on the budget amendments. The published notice must specify the date, time, place, and subject of the hearing.

(5) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 61. Section 7-6-4232, MCA, is amended to read:

"7-6-4232. Fixing of tax levy — *exception*. (1) On or before the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, ~~which~~ *that* will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The taxable valuation of the city for the current fiscal year ~~shall~~ *must* be the basis for determining the amount of the tax levy for each fund, and each tax

levy ~~shall~~ *must* be at a rate ~~no~~ *not* higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy ~~shall~~ *must* be made in the manner provided by 15-10-201.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 62. Section 7-6-4235, MCA, is amended to read:

"7-6-4235. Limitations on appropriations after budget adopted — *exception.* (1) The estimates of expenditures, itemized and classified as required in 7-6-4224 and 7-6-4225 and as finally fixed and adopted and as may be amended as provided in 7-6-4231 by ~~said~~ *the* council, ~~shall~~ constitute the appropriations for the municipality for the fiscal year intended to be covered ~~thereby~~ *by the estimates.*

(2) Except as provided in 7-6-4236, the council and ~~every~~ *each* other municipal official ~~shall be~~ *is* limited in the making of expenditures or incurring of liabilities to the amount of ~~such~~ *the* detailed appropriations and classifications, respectively.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 63. Section 7-6-4236, MCA, is amended to read:

"7-6-4236. Transfer of appropriations within and among expenditure classes. *(1)* Upon a resolution adopted by the council at a regular or special meeting and entered upon its minutes, transfers or revisions within or among the general class or classes of salaries and wages, maintenance and support, and capital outlay may be made, provided that ~~no~~ *a* salary ~~shall~~ *may not* be increased above the amount appropriated ~~therefor~~.

(2) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 64. Section 7-6-4240, MCA, is amended to read:

"7-6-4240. Lapse of appropriation. (1) Subject to the provisions of subsection (2), all appropriations, other than the appropriations for uncompleted improvements in progress of construction, ~~shall~~ lapse at the end of the fiscal year.

(2) *(a)* The appropriation accounts ~~shall~~ *must* remain open for a period of 30 days after the end of the fiscal year for the payment of claims incurred against ~~such~~ *the* appropriations prior to the close of the fiscal year and remaining unpaid. After ~~such~~ *the 30-day* period ~~shall have~~ *has* expired, all appropriations,

except as ~~hereinbefore~~ *otherwise* provided regarding uncompleted improvements, ~~shall~~ become null and void, and any lawful claim presented ~~thereafter~~ against any ~~such~~ appropriation ~~shall~~ *must* be provided for in the ensuing budget.

(b) Subsection (2)(a) does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 65. Section 7-6-4241, MCA, is amended to read:

"7-6-4241. Clerk's report concerning expenditures, liabilities, and appropriations — *exception.* *(1)* The clerk shall submit te the council, on a date set by tbe council, a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar montb and ~~like~~ *similar* information for the whole of the fiscal year to the first day of the month in which ~~such~~ *the* report is made, together with the unexpended balance of each appropriation. The clerk shall also set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period.

(2) This section does not apply to a municipality that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 66. Section 7-6-4408, MCA, is amended to read:

"7-6-4408. Distribution of tax money. *(1)* The council or commission in each city or town may distribute the tax money collected for general municipal or administrative purposes into the funds prescribed by ordinance.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in [sections 1 through 4]."

Section 67. Section 15-10-203, MCA, is amended to read:

"15-10-203. Increase of tax revenue — advertisement of intention and public hearing required. (1) A local taxing authority may not budget an increased amount of ad valorem tax revenue in excess of the property tax revenue ~~it received~~ *of* the previous fiscal year exclusive of revenue from ad valorem taxation on properties appearing for the first time on the property tax record unless it adopts a resolution to budget additional property tax revenue. Prior to adoption of the resolution, the taxing authority shall hold a public hearing for the purpose of receiving comments on its intention to budget increased property tax revenue. The taxing authority shall advertise notice of the public hearing as specified in subsection (2). The public hearing may be held in conjunction with the tentative budget hearing or any other hudget hearing that may be required by law.

(2) The taxing authority shall advertise its intent to budget an increase in property tax revenue in a newspaper meeting the requirements of 7-1-4127, except that the newspaper may not be primarily in tbe business of publishing legal advertisements. If there is ~~no~~ *not a* newspaper in the county, in addition to being posted as required in 7-1-4127, the advertisement must be published in one or more newspapers of general circulation widely subscribed to by the residents of the county. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The

advertisement must meet the notice requirements of 7-1-4128. The advertisement must be published with at least the following information:

"NOTICE OF BUDGET INCREASE FROM PROPERTY TAXES

The (name of the taxing authority) intends to budget an increase in revenue from property taxation by (percentage of increase in property tax revenue from previous fiscal year) percent.

All concerned persons are invited to attend a public hearing on budgeting the increased property tax revenue to be held on (date and time) at (meeting place).

A decision on budgeting the increased property tax revenue will be made after considering comments made at this hearing.

For further information please contact: (name, address, and phone number of person who can be contacted for further information).""

Section 68. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 through 4].

Section 69. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 431

[HB 544]

AN ACT APPROPRIATING MONEY TO THE BOARD OF REGENTS TO PROVIDE FINANCIAL ASSISTANCE TO RESIDENT NONBENEFICIARY STUDENTS ATTENDING TRIBALLY CONTROLLED COMMUNITY COLLEGES IN MONTANA; PROVIDING REQUIREMENTS FOR RECEIPT OF MONEY; PROVIDING FOR A REVERSION OF UNSPENT FUNDS TO THE GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, seven tribally controlled community colleges exist in the State of Montana; and

WHEREAS, the tribal community colleges provide a quality, low-cost, and accessible college program to Indian and non-Indian students each year; and

WHEREAS, approximately 450 of these students are nonbeneficiary students who do not qualify for financial support through the Bureau of Indian Affairs or under the Tribally Controlled Community College Assistance Act of 1978; and

WHEREAS, the tribal community colleges currently subsidize the costs of providing services to nonbeneficiary students, allowing them to continue their educations at a lower cost to the state; and

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WHEREAS, without support, tribal community colleges will not be able to serve nonbeneficiary students without increasing student fees, which may result in students dropping out of college.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. (1) There is appropriated from the general fund to the board of regents $1.4 million for the biennium ending June 30, 1997, to provide financial assistance to tribally controlled community colleges for enrolled nonbeneficiary students.

(2) Each tribal community college shall apply for this assistance to the board of regents. Except as provided in subsection (6), the money appropriated in subsection (1) must be distributed on a prorated basis according to the resident nonbeneficiary student enrollment in each tribal community college during the previous year. To qualify, a resident nonbeneficiary student must meet the residency requirements as prescribed for the Montana university system by the board of regents. The distribution to any student is limited to a maximum of $1,500 each year per full-time equivalent student. Any remaining balance in this appropriation on June 30, 1997, must revert to the general fund and may not be diverted to other purposes.

(3) An expenditure from this appropriation is contingent upon the tribal community college:

(a) being accredited or being a candidate for accreditation hy the northwest association of schools and colleges;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with tbe board of regents to provide the board with information relating to eligibility of nonbeneficiary students and documentation on the curriculum to ensure that the content and quality of courses offered by the tribal community college are consistent with the standards adopted by the Montana university system; and

(c) filing with the board of regents evidence that the college's enrollment of Indian students is at least 51% as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) It is the intent of the legislature that the appropriation in subsection (1) be considered an amount in addition to the Montana university system budget appropriation for the biennium ending June 30, 1997.

(5) All funds appropriated under subsection (1) that are unspent revert to the general fund.

(6) Prior to receiving money pursuant to subsection (1), each tribal community college shall:

(a) grant to resident nonbeneficiary students who meet the residency requirements, as prescribed for tbe Montana university system by the board of regents, fee waivers in the same percentage as the number of Indian students who are receiving fee waivers te attend a unit of the university system bears to the total enrollment in the university system; and

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(b) subtract the costs of nonbeneficiary fee waivers granted under subsection (6)(a) from the total amount of prorated money to be distributed.

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Notification of tribal governments. The secretary of state shall send a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the presidents of the seven Montana tribally controlled community colleges.

Approved April 13, 1995

CHAPTER NO. 432

[HB 561]

AN ACT INCREASING THE MOTORCYCLE SAFETY TRAINING FEE; AMENDING SECTION 20-7-514, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-514, MCA, is amended to read:

"**20-7-514. Motorcycle registration fee — exemptions.** (1) A motorcycle safety training fee of ~~$2.50~~ *$5* must be assessed on each motorcycle required by 61-3-301 to be registered for licensing.

(2) The county treasurer shall collect the fee and remit the fee to the state treasurer for deposit in the state traffic education account, as provided in 20-7-504.

(3) Exempt from payment of the fee specified in subsection (1) are vehicles:

(a) leased or owned by the state or a county or municipality;

(b) used for transportation by a nonresident or migratory worker temporarily employed in agricultural work in this state; or

(c) displaying dealer or wholesaler plates, as provided in 61-4-103, while owned by a dealer or wholesaler."

Section 2. Effective date. [This act] is effective January 1, 1996.

Approved April 13, 1995

CHAPTER NO. 433

[HB 577]

AN ACT PROVIDING THAT WHEN THE LEGISLATURE IS IN SESSION, IT MAY REVIEW MONEY FROM A NONSTATE OR NONFEDERAL SOURCE THAT WOULD BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND AND THAT IS RESTRICTED BY LAW OR BY THE TERMS OF A CONTRACT,

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A TRUST AGREEMENT, OR A DONATION OF $5,000 OR MORE THAT IS ACCOMPANIED BY A WRITTEN AGREEMENT; AMENDING SECTION 17-7-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-114, MCA, is amended to read:

"**17-7-114. Criteria for acceptance and expenditure of certain nonstate and nonfederal money.** (1) Before an agency may expend money from a nonstate or nonfederal source that would be deposited in the state special revenue fund *and* that is restricted by law or by the terms of a contract, a trust agreement, or a donation of $5,000 or more that is accompanied by a written agreement, the approving authority for the agency shall submit to the legislative finance committee *or the legislature if it is in session* a copy of the agreement and a certification containing:

(a) the specific service that will be provided;

(b) the proposed duration of the agreement; and

(c) a statement concerning the degree to which the agreement may result in an ascertainable present or future commitment for general fund support.

(2) The legislative fiscal analyst shall review the agreement and certification to ensure that:

(a) the proposed use of the money has not been specifically disapproved by the legislature;

(b) the terms of the agreement are not contrary to state law; and

(c) the agreement will not result in an ascertainable present or future commitment for general fund support.

(3) *(a)* The legislative fiscal analyst shall present a written report of each review that is conducted to the legislative finance committee *or the legislature if it is in session.*

(b) Within 10 days after the meeting of the legislative finance committee that considered the proposed agreement and certification, the legislative fiscal analyst shall submit the committee's written report to the approving authority.

(c) A written report from a legislative committee is not required if the proposed agreement and certification are considered by the legislature.

(4) Upon receipt of the legislative finance committee's report, the approving authority may approve or deny the proposed agreement, taking into consideration the legislative finance committee's report.

(5) If an emergency occurs that poses a serious threat to the life, health, or safety of the public or if the legislative fiscal analyst determines that a review is not necessary, the legislative fiscal analyst may waive the written review and the legislative finance committee's written report provided for by this section. Upon receipt of the waiver, the approving authority may approve or deny the proposed agreement upon completion of the certification. The waiver, however,

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affects only the legislative fiscal analyst's written review and the legislative finance committee's written report. All other requirements and standards remain in effect. After the waiver, the legislative fiscal analyst may complete the written review.

(6) Nothing in this section confers any authority on the legislative finance committee to approve or deny the proposed agreement."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 13, 1995

CHAPTER NO. 434

[HB 41]

AN ACT PROVIDING A PROCEDURE BY WHICH MEDICATION MAY BE INVOLUNTARILY ADMINISTERED TO A PATIENT AT A MENTAL HEALTH FACILITY; PROVIDING PROTECTIONS FOR THE PATIENT; PROVIDING FOR AN ANNUAL REPORT TO THE GOVERNOR; AND AMENDING SECTIONS 53-21-104 AND 53-21-127, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-104, MCA, is amended to read:

"**53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. An experimental research project involving persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed te a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

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(5) The board may assist any patient at a mental health facility in resolving any grievance the patient may have concerning the patient's commitment or course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from the professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs which it has inspected*; and*

(b) medications involuntarily administered to patients in mental health facilities and the effectiveness of the review procedure required by 53-21-127(2) in protecting patients from unnecessary or excessive medication."

Section 2. Section 53-21-127, MCA, is amended to read:

"**53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not mentally ill or seriously mentally ill within the meaning of this part, ~~he shall~~ *the respondent must* be discharged and the petition dismissed.

(2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of ~~his~~ *a* relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. *The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of corrections and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.* The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill *and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.*

(3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill within the meaning of this part, the court shall order that he *the respondent* receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court must make a separate finding, setting forth the reason therefor if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless he *respondent* is financially able.

(4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3), the court shall make findings of fact that treatment appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. No person may use physical force to administer medication. A court may use any legal means to enforce an order to take medication, including immediato detontion not to exceed 72 hours, until the mentally ill person can be returned to the court. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

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53-21-127. (Effective July 1, 1997) Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not seriously mentally ill within the meaning of this part, ~~he shall~~ *the respondent must* be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of ~~his~~ *a* relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. *The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of corrections and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.* The court shall entor into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill *and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.*"

Approved April 14, 1995

CHAPTER NO. 435

[HB 209]

AN ACT REVISING THE MONTANA STATE INCOME TAX BY PROVIDING A MINIMUM STANDARD DEDUCTION, ADJUSTED TO THE 1980 INFLATION FACTOR, AND BY INCREASING THE MINIMUM INCOME FILING REQUIREMENT; AMENDING SECTIONS 15-30-122 AND 15-30-142, MCA; AND PROVIDING AN APPLICABILITY DATE AND A COORDINATION PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-122, MCA, is amended to read:

"15-30-122. **Standard deduction.** (1) A standard deduction equal to 20% of adjusted gross income ~~shall be~~ *is* allowed if elected by the taxpayer on ~~his~~ *a* return. The standard deduction ~~shall be~~ *is* in lieu of all deductions allowed under 15-30-121. The *minimum standard deduction is $665, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a* maximum standard deduction ~~shall be~~ *of* $1,500, as adjusted under the provisions of subsection (2)~~, except that~~. *However,* in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on ~~his~~ *the* federal income tax return, the *minimum standard deduction is $1,330, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a* maximum standard deduction ~~shall be~~ *of* $3,000, as adjusted under the provisions of subsection (2). The standard deduction ~~shall~~ *may* not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married ~~shall~~ *must* be made as of the last day of the ~~taxable~~ *tax* year~~; provided, however, if~~ *unless* one of the spouses dies during the ~~taxable~~ *tax* year, *in which case* the determination ~~shall~~ *must* be made as of the date of death.

(2) By November 1 of each year, the department shall multiply *both the minimum and* the maximum standard deduction for single returns by the inflation factor for that ~~taxable~~ *tax* year and round the product to the nearest $10. The *minimum and maximum* standard deduction for joint returns and qualified head of household returns ~~shall~~ *must* he twice the amount *of the minimum and maximum standard deduction* for single returns. The resulting adjusted deductions are effective for that ~~taxable~~ *tax* year and ~~shall~~ *must* be used in calculating the tax imposed in 15-30-103."

Section 2. Section 15-30-142, MCA, is amended to read:

"15-30-142. **Returns and payment of tax — penalty and interest — refunds — credits.** (1) ~~Every~~ *Each* single individual and ~~every~~ *each* married individual not filing a joint return with ~~his or her~~ *a* spouse and having a gross income for the ~~taxable~~ *tax* year of more than ~~$1,000~~ *$1,500*, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the ~~taxable~~ *tax* year of more than ~~$2,000~~ *$3,000*, as adjusted under the provisions of subsection (7), ~~shall be~~ *are* liable for a return to be filed on ~~such~~ forms and according to ~~such~~ rules ~~as~~ *that* the department may prescribe. The gross income amounts referred to in

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the preceding sentence ~~shall~~ *must* be increased by $800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance *that* the taxpayer is entitled to claim for ~~himself~~ *the taxpayer* and ~~his~~ *the taxpayer's* spouse under 15-30-112(3) and (4). A nonresident shall ~~be required to~~ file a return ~~if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4)~~ *if the taxpayer's gross income for the tax year derived from sources within Montana exceeds the amount of the personal exemption that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under the provisions of 15-30-112(2) through (4).*

(2) In accordance with instructions set forth by the department, ~~every~~ *each* taxpayer who is married and living with husband or wife and is required to file a return may, at ~~his or her~~ *the taxpayer's* option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax ~~shall~~ *must* be computed on the aggregate taxable income and the liability with respect to the tax ~~shall be~~ *is* joint and several. If a joint return has been filed for a ~~taxable~~ *tax* year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department ~~so~~ consents.

(3) If ~~any such~~ *a* taxpayer is unable to make ~~his~~ *the taxpayer's* own return, the return ~~shall~~ *must* be made by ~~a duly~~ *an* authorized agent or by a guardian or other person charged with the care of the person or property of ~~such~~ *the* taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, ~~and/or~~ *and* any payment made by reason of an estimated tax return provided for in 15-30-241~~;~~. ~~provided, however~~ *However*, the tax ~~so~~ computed ~~is~~ *must be* greater by $1 than the amount withheld ~~and/or~~ *and* paid by estimated return as provided in this chapter. If the amount of tax withheld ~~and/or~~ *and the* payment of estimated tax ~~exceeds~~ *exceed* by more than $1 the amount of income tax as computed, the taxpayer ~~shall be~~ *is* entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount ~~theretofore~~ paid, the excess ~~shall~~ *must* be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% ~~per annum~~ *a year* or fraction ~~thereof~~ *of a year* on the additional tax. In ~~such~~ *that* case, there ~~shall~~ *may not* be ~~no~~ *a* penalty because of ~~such~~ *the* understatement~~, provided~~ *if* the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the ~~taxable~~ *tax* year. These adjusted amounts are effective for that ~~taxable~~

tax year, and persons ~~having~~ *who have* gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each ~~taxable~~ *tax* year must contain instructions and tables based on the adjusted base year structure for that ~~taxable~~ *tax* year."

Section 3. Coordination. If House Bill No. 35 is passed and approved, then [this act] is void.

Section 4. Applicability. [Section 1] applies to tax years beginning after December 31, 1995.

Approved April 14, 1995

CHAPTER NO. 436

[HB 240]

AN ACT ESTABLISHING THE JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION; PROVIDING FOR APPOINTMENTS TO THE COMMISSION; DIRECTING THE COMMISSION TO CONDUCT A COMPREHENSIVE REVIEW AND ASSESSMENT OF THE MONTANA JUVENILE JUSTICE SYSTEM AND JUVENILE MENTAL HEALTH SYSTEM; APPROPRIATING FUNDS FOR THE OPERATION OF THE COMMISSION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Montana Youth Court Act is now 20 years old and has been both amended and litigated numerous times; and

WHEREAS, juvenile court and probation philosophy and practice have changed; and

WHEREAS, national attention has been focused on the issue of youth violence; and

WHEREAS, a performance audit report issued by the Legislative Auditor in June 1993 concluded that Montana's juvenile justice system suffers from a lack of coordination and that current reforms are occurring without a formal planning process; and

WHEREAS, the 54th Legislature will be asked to consider amending several major provisions of the Montana Youth Court Act; and

WHEREAS, it is important to strike a balance that protects the community from delinquent youth, imposes accountability for offenses, and equips juvenile offenders with the competencies to live productively in the community; and

WHEREAS, it is important to consider issues such as initiation of proceedings, jurisdiction and transfer, rights of youth, procedure before the youth courts, disposition, confidentiality, and mental health considerations in order to achieve a balance; and

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WHEREAS, it is important that all services to youth in the juvenile justice system and mental health services delivery system be coordinated in a single, seamless continuum of care and treatment.

THEREFORE, the Legislature finds it appropriate that an interim commission be established and assigned to complete a comprehensive review and assessment of the Montana juvenile justice system and the mental health services delivery system for youth and develop a plan to ensure the effective and efficient delivery of services to all youth in those systems.

Be it enacted by the Legislature of the State of Montana:

Section 1. Juvenile justice study commission — composition — vacancies. (1) There is a juvenile justice study commission.

(2) The commission is composed of the following members:

(a) two members of the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members of the senate, one from each party, appointed by the president of the senate;

(c) a citizen representing the public at large, appointed by the governor;

(d) a youth court judge, appointed by the governor;

(e) a justice of the peace, appointed by the governor from three candidates nominated by the Montana magistratos' association;

(f) a member of the youth justice advisory council, appointed by the governor from three candidatos nominated by the board of crime control;

(g) a parent or guardian of a youth being treated or supervised, appointed by the governor;

(h) a juvenile probation officer appointed by the governor from three candidates nominated by the Montana juvenile probation officers association;

(i) a county attorney, appointed by the governor from three candidates nominated by the county attorneys association;

(j) a victim of a violent crime committed by a youth, appointed by the governor;

(k) a member of a private agency that provides treatment services to youth, appointed by the governor;

(l) a young adult who was formerly adjudicated to be a juvenile delinquent or youth in need of supervision, appointed by the governor; and

(m) one employee each of the department of family services, the board of crime control, and the department of corrections and human services, who shall serve as nonvoting members.

(3) The members of the commission shall elect a presiding officer from among the members.

(4) A vacancy occurring on the commission must be filled in the same manner as the original appointment.

Section 2. Meetings. (1) The presiding officer shall schedule meetings of the commission as considered necessary and shall give notice of the time and place of each meeting to the members of the commission. At least one meeting must be held in each mental health region.

(2) The commission may adopt rules of procedure for the conduct of its meetings.

Section 3. Reimbursement of expenses — compensation. (1) Each member of the commission, except the legislative members appointed under [section 1], is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

(2) A legislative member appointed under [section 1] is entitled to compensation and expenses as provided in 5-2-302.

Section 4. Powers and duties — staff support — recommendations — report. (1) The commission shall make a thorough study of the juvenile justice system and youth mental health services delivery system. The study must include:

(a) a comprehensive review of past and present programs used to successfully rehabilitate youth and reduce juvenile crime;

(b) a review of methods and programs in other states and nations that have been documented as a success in treating and rehabilitating youth;

(c) the development of a juvenile justice and mental health treatment continuum that provides for community protection, youth accountability, youth competency, meaningful restitution, and successful reintegration of youth into the community;

(d) a definition and delineation of the roles and responsibilities of the department of family services and other state and local government agencies working with youth;

(e) a definition and delineation of the roles and responsibilities of the juvenile justice system and the youth mental health services delivery system; and

(f) a review of the effectiveness and efficiency of each state youth correctional facility and of each detention facility operated by the state, including the feasibility of privatizing each facility.

(2) The legislative council shall supply staff support to the commission.

(3) The commission is authorized to secure information of any type from any agency, board, or commission or from any independent organization. Any state agency, board, or commission shall supply information upon the request of the commission.

(4) On or before December 1, 1996, the commission shall submit te the 55th legislature a report of its findings and conclusions. The report must contain recommendations for legislation, including a draft of the proposed legislation.

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The report must also contain a discussion related to any area of study for which the commission does not recommend legislation and an explanation of why legislation is not recommended.

Section 5. Authority to accept funding — appropriation of federal funds. (1) The legislative council is authorized to accept funds appropriated from the board of crime control for the purpose of conducting the study identified in [section 4].

(2) There is allocated to the legislative council from the youth justice advisory council $20,000 in funds granted to the state board of crime control for the youth justice council by the federal office of juvenile justice and delinquency prevention. The funds may be used only for fulfilling the duties of the commission, including:

(a) reimbursing or compensating the members as provided in [section 3];

(b) contracting for services to execute the study to be conducted by the commission; and

(c) paying other expenses incurred by the commission or the legislative council in completing the study.

(3) Funds allocated to the legislative council on behalf of the commission but not expended prior to the termination date specified in [section 7] must be returned to the youth justice advisory council within 60 days of the termination date.

(4) The funds identified in this section must be deposited in quarterly installments that are sufficient te meet the commission's costs for each quarter in an account in the state special revenue fund to the credit of the legislative council. The first installment must be deposited on or before July 1, 1995. The legislative council staff may not begin work on the study until the first installment has been deposited.

Section 6. Effective date. [This act] is effective July 1, 1995.

Section 7. Termination. [This act] terminates June 30, 1997.

Approved April 14, 1995

CHAPTER NO. 437

[HB 279]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT BY THE ISSUANCE OF GENERAL OBLIGATION RENEWABLE RESOURCE BONDS; REPEALING SECTION 85-1-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization of bonds. The board of examiners is authorized te issue and sell general obligation renewable resource bonds for the renewable resource grant and loan program created under Title 85, chapter 1, part 6, in

accordance with the terms and conditions and in the manner provided in 85-1-617 from time to time and in amounts that, taking into consideration the principal amount of any renewable resource bonds then outstanding, will not cause the total aggregate principal amount of renewable resource bonds outstanding at any time to exceed $10 million.

Section 2. Two-thirds vote required. Because [section 1] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Repealer. Section 85-1-623, MCA, is repealed.

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 1, part 6, and the provisions of Title 85, chapter 1, part 6, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 438

[HB 380]

AN ACT ESTABLISHING THE EXTENDED JURISDICTION PROSECUTION ACT; PROVIDING THAT A YOUTH COURT MAY IMPOSE AN ADULT CRIMINAL SENTENCE THAT IS STAYED ON CERTAIN CONDITIONS; PROVIDING THAT A YOUTH COURT JUDGE MAY SENTENCE A YOUTH TO A STATE YOUTH CORRECTIONAL FACILITY; PROVIDING THAT A YOUTH COURT JUDGE MAY RETAIN JURISDICTION IN CERTAIN DISPOSITIONS; PROVIDING FOR THE TRANSFER OF A YOUTH COURT CASE TO DISTRICT COURT AFTER DISPOSITION IN YOUTH COURT; AMENDING SECTIONS 41-5-206 AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Extended Jurisdiction Prosecution Act".

Section 2. Extended jurisdiction prosecution defined — jurisdiction extended. (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult is an extended jurisdiction prosecution if:

(a) the youth was at least 14 years of age at the time of the alleged offense, the prosecutor requests that the case be designated an extended jurisdiction prosecution, a hearing is held under [section 3], and the court designates the case as an extended jurisdiction prosecution; or

(b) the alleged offense is transferable under 41-5-206 or the youth was at least 12 years of age at the time of the alleged offense and allegedly used a weapon.

(2) To enforce the court's disposition in an extended jurisdiction prosecution, the court shall retain jurisdiction until the case is transferred to district court under [sections 1 through 5] or jurisdiction is terminated under the provisions of 41-5-205.

Section 3. Hearing — court designation. (1) When a prosecutor requests that a case be designated as an extended jurisdiction prosecution under [section 2(1)(a)], the court shall hold a hearing to consider the request.

(2) The hearing must be held within 30 days of the filing of the request unless good cause is shown by the prosecutor or the youth that the hearing should be held later, in which case the hearing must be held within 90 days of the request.

(3) If the prosecutor shows by clear and convincing evidence that designating the case as an extended jurisdiction prosecution serves public safety, the court may, within 15 days after the hearing, designate the case as an extended jurisdiction prosecution.

(4) An order designating a case as an extended jurisdiction prosecution is not appealable until after disposition under [section 4].

Section 4. Disposition in extended jurisdiction prosecutions. (1) If a youth in an extended jurisdiction prosecution pleads guilty to or is found guilty of an offense described in [section 2(1)(b)], the court shall:

(a) impose one or more juvenile dispositions under 41-5-523; and

(b) impose an adult criminal sentence, the execution of which must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense. If the youth violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed as provided in [section 5].

(2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is convicted of an offense not described in [section 2(1)(b)], the court shall adjudicato the youth delinquent and order a disposition under 41-5-523.

(3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in [section 2(1)(b)], the court may impose, with the youth's consent, a disposition provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(h), the court shall impose a disposition as provided under subsection (2).

Section 5. Execution of adult sentence — exception — transfer to district court. (1) If a court has imposed on a youth an adult criminal sentence stayed under [section 4(1)(b)] and the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may, without notice, direct that the youth be taken into immediate custody and revoke the stay. The court shall notify the youth in writing of the reasons for the revocation.

(2) (a) If the youth challenges the reasons for the revocation, the court shall hold a summary hearing at which the youth is entitled to be heard and represented by counsel.

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(b) After the hearing, if the court finds by a preponderance of the evidence presented that the conditions of the stay have been violated, the court shall:

(i) order execution of the sentence imposed under [section 4(1)(b)]; or

(ii) continue the stay and make written findings regarding the mitigating factors that justify continuing the stay.

(3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred to district court for execution of the sentence, subject to 41-5-206(8) and (9).

Section 6. Transfer to district court after prosecution — disposition in district court — limitation on jurisdiction. (1) To ensure continued compliance with the court's disposition under 41-5-523, at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age, the youth court judge may transfer jurisdiction to district court and order the department to transfer supervisory responsibility and the youth's case files to the department of corrections and human services.

(2) If a youth whose case has been transferred to district court under this section violates a disposition imposed under 41-5-523, the district court may impose conditions as provided under 46-18-201 through 46-18-203.

(3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

(a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

(b) be supervised by the department of corrections and human services.

(4) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age.

Section 7. Section 41-5-206, MCA, is amended to read:

"**41-5-206. Transfer to criminal court *prior to prosecution*.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his *the youth's* counsel, and ~~his~~ *the youth's* parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberato homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not he prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section. *A case may be transferred to district court after prosecution as provided in [section 5] or [section 6].*

(6) Upon order of the youth court transferring the case to the district court *under subsection (5)*, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, the commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 52-5-111; ~~however~~ *However*, ~~no~~ *a* youth under 16 years of age may *not* be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of ~~his~~ *the* case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

Section 8. Section 41-5-523, MCA, is amended to read:

"**41-5-523. Disposition — *sentence to correctional facility* — commitment to department — placement and evaluation of youth — restrictions.** (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making ~~any~~ *one or more* of the following dispositions:

(a) *retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);*

(b) place the youth on probation;

~~(b)~~*(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth*

may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and 46-23-506;

(e) place the youth in an in-state residence that ensures that the youth is accountable, provides for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that resources are available for placement of the youth at that residence.

(f) commit the youth to the department. ~~if the court determines that the youth is in need of placement in other than the youth's own home, provided that~~ *In an order committing a youth to the department:*

(i) the court shall determine whether continuation in the *youth's own* home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.; ~~The court shall include a determination in the order committing the youth to the department.~~

(ii) in the case of a delinquent youth who is determined hy the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of tbe public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

~~(e)~~*(g)* order restitution by the youth or the youth's parents;

~~(d)~~*(h)* impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

~~(e)~~*(i)* require the performance of community service;

~~(f)~~*(j)* require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

~~(g)~~*(k)* require the medical and psychological evaluation of tbe youth, the youth's parents or guardians, or the persons having legal custody of the youth;

~~(h)~~*(l)* require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

~~(i)~~*(m)* order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department *for services outside the state of Montana* without the department's approval, except that a youth may not he placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the

department may, pursuant to subsection ~~(1)(b)~~*(1)(f)*, place a youth in a residential treatment facility.

~~(j)~~*(n)* commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed *or sentenced* to a state youth correctional facility.

(ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement ~~by the department~~ in *or sentencing to* a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

~~(k)~~*(o)* place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed ~~by the department~~ in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

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(b) securing approval for payment of special education costs from the youth's school district of residence or the office of puhlic instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsihle for the cost of the evaluation, except as provided in suhsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to he a delinquent youth or is alleged to have committed an offense that is transferahle to criminal court under 41-5-206.

(7) An evaluation of a youth may not he performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, *[section 5], or [section 6].*

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contrihution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

*(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is

nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the ~~child~~ *youth*; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by tbe court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 9. Codification instruction. (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to [sections 1 through 5].

(2) [Section 6] is intended to be codified as an integral part of Title 41, chapter 5, part 2, and tbe provisions of Title 41, chapter 5, part 2, apply to [section 6].

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 439

[HB 539]

AN ACT AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; ASSESSING TOBACCO EDUCATION FEES; REQUIRING LICENSE SUSPENSIONS FOR PERSONS FAILING TO COMPLY WITH THE LAW; PROVIDING FOR THE DISPLAY OF WARNING SIGNS; PROHIBITING THE SALE OF SINGLE CIGARETTES; PROVIDING STATUTORY APPROPRIATIONS; AND AMENDING SECTIONS 16-11-144, 16-11-304, 16-11-307, 16-11-308, AND 17-7-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-144, MCA, is amended to read:

"**16-11-144. Revocation or suspension of license.** (1) The department may revoke or suspend the license of any wholesaler, subjobber, retailer, ~~or~~ cigarette vendor, *or person licensed under 16-11-303* for failure to comply with any provision of this part ~~or of~~, The Montana Cigarette Sales Act (Title 16, chapter 10), *the Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3),* ~~and~~ *or* with any lawful rule of the department made pursuant to ~~said~~ *those* laws.

(2) ~~Any~~ *A* person aggrieved by ~~such~~ *a* revocation or suspension may apply to the department for a hearing, which ~~shall~~ *must* be open to the puhlic, and may further appeal to the court.

(3) When a license has been ~~duly~~ revoked, ~~no~~ *a* license ~~shall~~ *may not* again ~~issue~~ *be issued* to ~~such~~ *the* licensee for a period of 1 year ~~thereafter~~ *after revocation*. When a license has been ~~duly~~ suspended, the suspension may be for any period not to exceed 1 year.

(4) ~~Any~~ *A* person who ~~shall sell~~ *sells* cigarettes after ~~his~~ *the person's* license has been revoked or suspended is guilty of a misdemeanor and ~~shall~~ *must* be punished as ~~hereinafter~~ provided *in this part*, and all cigarettes in ~~his~~ *the person's* possession ~~shall~~ *must* be seized and forfeited te the state."

Section 2. Section 16-11-304, MCA, is amended to read:

"**16-11-304. Signs.** A retail seller of tobacco products shall conspicuously display, at each place on the premises at which tobacco products are *displayed and* sold, a sign that is to be provided without charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products to persons under 18 years of age.""

Section 3. Section 16-11-307, MCA, is amended to read:

"**16-11-307. Distribution of tobacco products in other than sealed packages prohibited.** A person may not distribute a tohacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law. *Single cigarettes may not be sold.*"

Section 4. Section 16-11-308, MCA, is amended to read:

"16-11-308. ~~Penalties~~ *Tobacco education fee.* (1) Failure to obtain a license as required hy 16-11-303 or to post signs as provided in 16-11-304 is punishable by a civil penalty of $100. *The department may collect the penalty in the manner provided for the collection of other debts.*

(2) A person who violates 16-11-305(1) *or 16-11-307* ~~may be punished by a civil penalty of $100. A subsequent violation within 1 year is punishable by a civil penalty of $200. A third violation is punishable by a civil penalty of $300 if two violations occurred within the 2-year period prior to that violation. A fourth violation is punishable by a civil penalty of $500 if three or more violations occurred within the 2-year period prior to that violation.~~ *at any one location within a 3-year period shall be punished as follows:*

(a) A first through third offense is punishable by a verbal notification of violation.

(b) A fourth offense is punishable by a written notice of violation to be sent by the department of corrections and human services to the owner of the establishment.

(c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco education fee of $500. The employee or other person who sold the tobacco product, the establishment manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the tobacco education material.

(d) A sixth offense is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.

(e) A seventh and subsequent offense is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 1 year.

(3) After 2 years from the first violation, if a person has not received notice of any further violations, a second violation is considered a first violation for the purposes of subsection (2).

(4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless tobacco education fees are paid in full.

~~(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction is liable for a civil penalty of not more than $100 for the first violation. A subsequent violation is punishable by a civil penalty of not more than $200. A third or subsequent violation is punishable by a civil penalty of not more than $500.~~

~~(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his employee or agent if the sale was without the knowledge of the license holder and the license holder shows that the license holder had in place a system to prevent violations of 16-11-305(1).~~

~~(5) The county attorney of the county in which a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of the penalty~~

(5) Tobacco education fees must be assessed and collected by the department of corrections and human services. Notice of an assessment pursuant to

subsection (2) and this subsection must be made by the department of corrections and human services within 30 days of the alleged violation by certified letter addressed to the establishment owner or manager. The notice of assessment against the owner of the establishment must provide an opportunity for a hearing pursuant to the provisions of the Montana Administrative Procedure Act. Within 30 days from the date the notice of assessment was mailed, the owner or manager shall notify the department of corrections and human services that the owner or manager objects to the assessment and request a hearing pursuant to this subsection.

(6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-11-305(1) or 16-11-307 is punishable by an assessment of a tobacco education fee of $25 against the employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco education fee must be assessed and collected by the department of corrections and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made by the department of corrections and human services by certified letter addressed to the employee. The notice of assessment must provide an opportunity for a hearing pursuant to the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall notify the department of corrections and human services that the employee objects to the assessment and requests a hearing pursuant to this subsection.

(7) The tobacco education material referred to in this section must be provided by the department of corrections and human services in the form of written and video self-teaching materials. The education materials may be used only for the purposes provided in this section. Upon completion of the self-teaching materials, the establishment owner or manager shall execute a written statement on a form provided by the department of corrections and human services verifying that the employee, owner, or manager, as appropriate, has read and viewed the self-teaching material and shall return the statement and the self-teaching video to the department of corrections and human services.

(8) Upon the sixth and subsequent violation of this section, the department of corrections and human services shall notify the department of revenue in writing to initiate suspension of the licenses required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-11-144 and this section. The department of revenue shall review the record of violations and may initiate license suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the department of revenue declines to initiate suspension proceedings, the violation may not be charged against the licensee for the purposes of this section.

(9) Fees assessed pursuant to this section must be deposited in an account in the state special revenue fund. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections and human services to defray the costs of the tobacco education program. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the department of revenue to defray the department's costs of implementing its duties pursuant to 16-11-144 and this section."

Section 5. Inspection and notification of violation required. (1) The department of corrections and human services shall conduct inspections of persons selling or distributing tobacco products to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-306, and 16-11-307. Inspections may be conducted directly by the department of corrections and human services or may be provided for by contract let by the department of corrections and human services. Persons found to bo in violation of the requirements of this part or the rules of the department of corrections and human services a fourth and subsequent time must be notified in writing by the department of corrections and human services of the facts of the violation and the penalties provided by this part.

(2) The department of corrections and human services shall provide documentation of alleged violations of 16-11-303, 16-11-305, and 16-11-307 to the department of revenue.

Section 6. Minors not liable for possession. An individual under 18 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for the possession of a tobacco product possessed for the purposes of enforcing this part.

Section 7. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; *16-11-308;* 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

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(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 8. Codification instruction. [Sections 5 and 6] are intended to be codified as an integral part of Title 16, chapter 11, part 3, and the provisions of Title 16, chapter 11, part 3, apply to [sections 5 and 6].

Approved April 14, 1995

CHAPTER NO. 440

[HB 588]

AN ACT CLARIFYING THE PROPERTY TAX REFUND PROVISIONS RELATED TO ERRORS IN THE DESCRIPTION OR LOCATION OF REAL PROPERTY OR IMPROVEMENTS; AMENDING SECTION 15-16-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-603, MCA, is amended to read:

"**15-16-603. Refund of taxes — limitations on refunds.** (1) Subject to the provisions in subsections (2) and (3), a board of county commissioners shall order a refund:

(a) on a tax, penalty, interest, or cost paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(b) on a tax paid for which a refund is allowed under 15-16-612 or 15-16-613;

(c) on a tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for duplicate taxes paid as determined by the department of revenue;

(d) on net or gross proceeds tax, centrally assessed property tax, or local government severance tax, penalty, or interest when the department of revenue notifies the board of county commissioners of an assessment revision completed pursuant to 15-8-601; or

(e) upon entry of a decision either by the district court or by the state tax appeal board under 15-2-306 that has not been appealed to a higher court.

(2) The taxpayer shall prove that a refund is due under subsection (1)(a) or (1)(b).

(3) *(a)* A refund may not be granted under subsection (1)(a) or (1)(b) unless the taxpayer or a representative of tbe taxpayer files a written claim with the board of county commissioners within 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(b) The refund required under subsection (1)(c) must be made for 5 tax years or for the duration of the error, whichever period is shorter.

(c) A refund may not be made under subsection (1)(c) unless the taxpayer allowed the department of revenue access to the taxpayer's property for the purposes of appraising the property."

Section 2. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to errors in the description or location of real property or improvements that existed after December 31, 1992.

Approved April 14, 1995

CHAPTER NO. 441

[SB 13]

AN ACT REVISING THE MANNER IN WHICH A PERSON IS GIVEN NOTICE THAT THE PERSON'S DRIVER'S LICENSE OR DRIVING PRIVILEGES WILL BE SUSPENDED IF THE PERSON FAILS TO APPEAR IN COURT OR PAY ASSESSED FINES, COSTS, OR RESTITUTION AFTER BEING CITED FOR OR CONVICTED OF A MOTOR VEHICLE VIOLATION; AND AMENDING SECTION 61-5-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-214, MCA, is amended to read:

"**61-5-214. Mandatory suspension for failure to appear or pay fine — *notice.*** *(1)* The department shall suspend the license or driving privilege of ~~an operator~~ *a person* immediately upon receipt of a certified copy of a docket page or other sufficient evidence from the court that the ~~operator~~ *person*:

~~(1)~~*(a)* is charged with *or convicted of* a violation of ~~61-5-302 through 61-5-306, 61-5-309, or~~ chapters ~~3, 6, 7, 8, 9, or~~ *through* 10 of this title ~~or is guilty of a criminal offense and was driving or was in actual physical control of a motor vehicle when the offense occurred~~; and

~~(2)(a)~~ *(b)(i)* failed to post the set bond amount or appear ~~as ordered by the court or appear~~ upon issued *complaint,* summons, *or court order*; or

~~(b)~~ *(ii)* ~~failed to forfeit the posted bond amount or,~~ when assessed a fine, costs, or restitution of $100 or more, failed to pay the fine, costs, or restitution; and

~~(3)~~ *(c)* received *prior written* notice~~, evidenced by a signed receipt for a certified letter or by a statement signed before the court of the provisions of this section, including the reinstatement fee~~ *that the driver's license or driving privileges of the person will be suspended upon a failure to post bond or appear*

on an issued complaint, summons, or court order or upon a failure to pay assessed fines, costs, or restitution.

(2) The suspension continues in effect until the court notifies the department that the person has paid the reinstatement fee and either appeared in court or paid the assessed fines, costs, or restitution.

(3) The notice required under this section may be included on the summons or complaint and notice to appear form given to the person when charges are initially filed or may be contained in a court order, either hand-delivered to the person while in court or sent by first-class mail, postage prepaid, to the most current address for that person received by or on record with the court. The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days."

Approved April 14, 1995

CHAPTER NO. 442

[SB 27]

AN ACT CLARIFYING CERTAIN REVENUE ALLOCATIONS; AMENDING SECTIONS 15-35-108, 15-65-121, 17-5-704, 17-7-502, 60-3-201, AND 85-1-603, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"**15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections *must be allocated.* The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) ~~Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:~~

~~(a) 17 1/2% to~~ *To* the credit of the local impact account, *6.65% must be allocated.* Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

~~(b)~~*(4)* ~~30% to~~ *To* the state special revenue fund for state equalization aid to public schools of the state, *11.4% must be allocated*~~;~~.

~~(e)~~*(5)* ~~1% to~~ *To* the state special revenue fund to the credit of the county land planning account, *0.38% must be allocated*~~;~~.

~~(d)~~*(6)* ~~1 1/4% to~~ *To* the credit of the renewable resource development bond fund, *0.475% must be allocated*~~;~~.

~~(e)~~*(7)* ~~0% to~~ *To* a nonexpendable trust fund for the purpose of parks acquisition or management, *0% must be allocated.* Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

~~(f)~~*(8)* ~~1% to~~ *To* the state special revenue fund te the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, *0.38% must be allocated*~~;~~.

~~(g)~~*(9)* ~~1/2 of 1% to~~ *To* the state special revenue fund for conservation districts, *0.19% must be allocated*~~;~~.

~~(h)~~*(10)* ~~1 1/4% to~~ *To* the debt service fund type te the credit of the renewable resource loan debt service fund, *0.475% must be allocated*~~;~~.

~~(i)~~*(11)* ~~2% to~~ *To* the state special revenue fund for the Montana Growth Through Agriculture Act, *0.76% must be allocated*~~;~~.

~~(j)~~*(12)* ~~1 2/3% to~~ *To* a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects, *0.63% must be allocated.* Income from this trust fund ~~shall~~ *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

~~(k)~~*(13)* ~~beginning~~ *Beginning* July 1, 1993, and ending June 30, 1995, ~~3 1/3%~~ *1.27% must be allocated* to a special revenue account to be used by the department of fish, wildlife, and parks for the stabilization and preservation of historic and cultural sites within the state park system~~;~~.

~~(l)~~*(14)* ~~all~~ *All* other ~~revenues~~ *revenue* from severance taxes collected under the provisions of this chapter ~~to the credit of~~ *must be credited to* the general fund of the state. (Terminates June 30, 1995—sec. 4, Ch. 536, L. 1993.)

15-35-108. (Effective July 1, 1995) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections *must be allocated.* The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) ~~Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:~~

~~(a) 17 1/2% to~~ *To* the credit of the local impact account, *6.65% must be allocated.* Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

~~(b)~~*(4)* ~~30% to~~ *To* the state special revenue fund for state equalization aid to public schools of the state, *11.4% must be allocated*~~;~~.

~~(c)~~*(5)* ~~1% to~~ *To* the state special revenue fund to the credit of the county land planning account, *0.38% must be allocated*~~;~~.

~~(d) 1 1/4% to the credit of the renewable resource development bond fund;~~

~~(e)~~*(6)* ~~3 1/3% to~~ *To* a nonexpendable trust fund for the purpose of parks acquisition or management, *1.27% must be allocated.* Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

~~(f)~~*(7)* ~~1% to~~ *To* the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, *0.38% must be allocated*~~;~~.

~~(g)~~*(8)* ~~1/2 of 1% to~~ *To* the state special revenue fund for conservation districts, *0.19% must be allocated*~~;~~.

~~(h)~~*(9)* ~~1 1/4% to~~ *To* the debt service fund type to the credit of the renewable resource loan debt service fund, *0.95% must be allocated*~~;~~.

~~(i)~~*(10)* ~~2% to~~ *To* the state special revenue fund for the Montana Growth Through Agriculture Act, *0.76% must be allocated*~~;~~.

~~(j)~~*(11)* ~~1 2/3% to~~ *To* a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects, *0.63% must be allocated.* Income from this trust fund ~~shall~~ *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

~~(k)~~*(12)* ~~all~~ *All* other ~~revenues~~ *revenue* from severance taxes collected under the provisions of this chapter ~~to the credit of~~ *must be credited to* the general fund of the state. (Terminates July 1, 2003—sec. 4, Ch. 191, L. 1991.)

15-35-108. (Effective July 1, 2003) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocatod as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections *must be allocated.* The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) ~~Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:~~

~~(a) 17 1/2% to~~ *To* the credit of the local impact account, *6.65% must be allocated.* Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

~~(b)~~*(3)* ~~30% to~~ *To* the state special revenue fund for state equalization aid to public schools of the state, *11.4% must be allocated*;

~~(c)~~*(4)* ~~1% to~~ *To* the state special revenue fund to the credit of the county land planning account, *0.38% must be allocated*;

~~(d) 1 1/4% to the credit of the renewable resource development bond fund;~~

~~(e)~~*(5)* ~~3 1/3% to~~ *To* a nonexpendable trust fund for the purpose of parks acquisition or management, *1.27% must be allocated.* Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

~~(f)~~*(6)* ~~1% to~~ *To* the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, *0.38% must be allocated*;

~~(g)~~*(7)* ~~1/2 of 1% to~~ *To* the state special revenue fund for conservation districts, *0.19% must be allocated*;

~~(h)~~*(8)* ~~1 1/4% to~~ *To* the debt service fund type to the credit of the renewable resource loan debt service fund, *0.95% must be allocated*;

~~(i)~~*(9)* ~~2% to~~ *To* the state special revenue fund for the Montana Growth Through Agriculture Act, *0.76% must be allocated*;

~~(j)~~*(10)* ~~1 2/3% to~~ *To* a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects, *0.63% must be allocated.* Income from this trust fund ~~shall~~ *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

~~(k)~~*(11)* ~~all~~ *All* other ~~revenues~~ *revenue* from severance taxes collected under the provisions of this chapter ~~to the credit of~~ *must be credited to* the general fund of the state."

Section 2. Section 15-65-121, MCA, is amended to read:

"15-65-121. Distribution of tax proceeds — general fund loan authority. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501(6), be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501(6) and as provided in subsections (1)(a) through ~~(1)(d)~~*(1)(e)*, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the general fund. The balance of the tax proceeds

received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the general fund is statutorily appropriated, as provided in 17-7-502, and must he transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use, subject to 23-1-131; ~~and~~

(d) ~~the balance of the proceeds as follows:~~

~~(i) 75%~~ *67.5%* to be used directly by the department of commerce; *and*

~~(ii)~~*(e) (i)* except as provided in subsection ~~(1)(d)(iii)~~ *(1)(e)(ii)*, ~~25%~~ *22.5%* to be distributed by the department to regional nonprofit tourism corporations in the ratio of tbe proceeds collected in each tourism region to the total proceeds collected statewide; and

~~(iii)~~*(ii)* if ~~25%~~ *22.5%* of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located ~~is~~, to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

~~(4) The department of commerce may use general fund loans for efficient implementation of this section.~~"

Section 3. Section 17-5-704, MCA, is amended to read:

"**17-5-704. Investment of funds.** Money in the coal severance tax bond fund, the coal severance tax permanent fund, the coal severance tax income fund, and the coal severance tax school bond contingency loan fund must be invested in accordance with the investment standards for coal severance tax

funds. Income and earnings from all funds are ~~statutorily appropriated, as provided in 17-7-502, as follows:~~

~~(1) 15% to the state equalization aid account; and~~

~~(2) 85% to~~ *deposited in* the state general fund."

Section 4. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; ~~17-5-704;~~ 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 5. Section 60-3-201, MCA, is amended to read:

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"60-3-201. **Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. ~~Subject to that provision~~ *After deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder is allocated as follows*:

(a) 9/10 of 1% ~~of all money must be deposited in~~ *to* the state park account;

(b) 23/64 of 1% ~~of all money must be deposited in~~ *to* a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% ~~of all money must be deposited in~~ *to* an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% ~~of all money must be deposited in~~ *to* the aeronautics revenue fund of the department of transportation under the provisions of 67-1-301.

(e) The remainder of tbe money must be used:

(i) by the depa tment of transportation on the highways in this state selected and designated by tbe commission;

(ii) for collection of the license taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed~~, except for the payment of refunds under 15-70-221 through 15-70-226~~. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, *except fuel for which refunds have been made,* not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety, and 10% of the amount deposited in the snowmobile account must be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines,

except fuel for which refunds have been made, not less than 23/64 of 1% is used for propelling snowmohiles on public lands of this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open te the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this stato for consumption in internal combustion engines, *except fuel for which refunds have been made,* not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds tbat of all tbe fuel sold in this state for consumption in internal combustion engines, *except fuel for which refunds have been made,* not less than 1/25 of 1% is used for propelling aircraft in this state."

Section 6. Section 85-1-603, MCA, is amended to read:

"85-1-603. **Renewable resource loan debt service fund created — coal severance tax allocated — renewable resource loan loss reserve fund created.** (1) (a) There is created a renewable resource loan debt service fund within the debt service fund type establisbed in 17-2-102.

(b) The state pledges and allocates and directs to be credited to tbe renewable resource loan debt service fund, as received:

(i) ~~2 1/2%~~ *0.95%* of all money from time to time received from the coal severance tax collected under Title 15, chapter 35~~, and remaining after allocation of the tax under 15-35-108(1) and (2)~~;

(ii) any principal and accrued interest under 85-1-613(4)(a) received in repayment of a loan made from tbe proceeds of bonds issued under 85-1-617;

(iii) all interest income earned on proceeds of renewable resource grant and loan program bonds;

(iv) revenue or money otherwise required to be paid into the renewable resource grant and loan program state special revenue account pursuant to 85-1-604, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the renewable resource loan loss reserve fund as the result of a loan loss.

(2) (a) There is a renewable resource loan loss reserve fund within the debt service fund type establisbed in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan loss reserve fund all accrued interest under

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85-1-613(4)(b) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department determines that a loan loss bas occurred on a loan made pursuant to tbis part, funds from the renewable resource loan loss reserve fund must be transferred to the renewable resource loan debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss."

Section 7. Coordination. If Senate Bill No. 83, House Bill No. 19, House Bill No. 422, House Bill No. 526, or House Bill No. 528 is passed and approved in a form that amends 15-35-108, percentages in that section must be expressed as percentages of total tax collections consistent with [this act].

Section 8. Effective dates. (1) [Section 7 and this section] are effective on passage and approval.

(2) [Sections 1 through 6] are effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 443

[SB 55]

AN ACT CLARIFYING THE RESPONSIBILITY OF THE DEPARTMENT OF FAMILY SERVICES FOR PAYMENT OF ADMINISTRATIVE COSTS ASSOCIATED WITH THE PROVISION OF PROTECTIVE SERVICES; AMENDING SECTIONS 52-1-110 AND 53-2-322, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-1-110, MCA, is amended to read:

"**52-1-110. County contribution for salaries and travel of protective services employees.** (1) ~~Upon transfer of certain functions of the county welfare department to the department of family services as provided in section 12, Chapter 609, Laws of 1987, the~~ *The* salaries and travel expenses, as provided in 2-18-501 through 2-18-503, of protective services employees must be paid by the department ~~of family services~~. The board of county commissioners *of a county that has not become state-assumed pursuant to 53-2-811* shall reimburse the department ~~of family services~~ from county poor funds in an amount equal to that county's expenditures for salaries, travel expenses, and indirect costs of protective services employees in fiscal year 1987, adjusted for annual inflation.

(2) A county that was state-assumed prior to 1987~~,~~ but at a later date reassumes responsibility pursuant to 53-2-811~~,~~ is responsible for reimbursement of salaries, travel expenses, and indirect costs up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

(3) On or before the 20th day of the month following the month for which payments were made for protective services employees' salaries, travel, and

indirect costs, the department ~~of family services~~ shall present to the board of county commissioners a claim for the required reimbursement. The board of county commissioners shall make the reimbursement within 20 days after the presentation of the claim.

(4) The department is responsible for administrative costs associated with the department's provision of protective services, including costs for rent, telephones, postage, and equipment."

Section 2. Section 53-2-322, MCA, is amended to read:

"**53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities.** (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much of that amount as may be necessary. The board may levy up to an additional 12 mills if approved by the voters in the county. A county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. The department shall notify the counties of the number of mills required to be levied. Once an additional levy has been approved, the amount of the approved levy may continue to be levied without voter approval.

(2) The board shall budget and expend so much of the funds in the county poor fund for:

(a) public assistance ~~and protective services purposes~~ as necessary to reimburse the department ~~and the department of family services~~ for the county's proportionate share of the administrative costs and of all public assistance ~~and~~ *costs;*

(b) salaries, travel expenses, and indirect costs, as provided in 52-1-110, of protective services *employees of the department of family services;* and ~~its~~

(c) the county's proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department and the department of family services must be sufficient to make all of these reimbursements in full. The budget must make separate provision for each ~~one of these~~ public assistance *activity* and *for salaries, travel expenses, and indirect costs for* protective services activities~~, and proper~~ *of the department of family services. Proper* accounts must be established for the funds for all the activities.

(4) The department shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy must be mailed to the department, and at any time before the final adoption of the budget, the department shall make recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the

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department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) The county poor fund, irrespective of the source of any part of the fund, may not be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for paying the county's proportionate share of public assistance and protective services, *as described in 52-1-110,* or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of money in the county poor fund, whether the money was produced by the mill levy provided for in subsection (1) or from any additional levy authorized by law. The expenditure may be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for the building by the department of health and environmental sciences and when the expenditure bas been approved by the department of social and rehabilitation services and the department of family services.

(8) Money in the county poor fund may be used as matching funds for the receipt of federal money."

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 444

[SB 189]

AN ACT REQUIRING NOTICE AT THE TIME OF SEIZURE OF A DRIVER'S LICENSE BY A PEACE OFFICER OF A RIGHT TO A HEARING UPON SUSPENSION OR REVOCATION OF THE LICENSE; EXTENDING THE EFFECTIVE PERIOD FOR A TEMPORARY DRIVING PERMIT FROM 72 HOURS TO 5 DAYS; AUTHORIZING A DISTRICT COURT TO STAY SUSPENSION OR REVOCATION ACTION PENDING THE HEARING; AUTHORIZING THE DEPARTMENT OF JUSTICE TO SUSPEND OR REVOKE A DRIVER'S LICENSE OF A TRIBAL MEMBER THAT IS SEIZED UNDER AUTHORITY OF A TRIBAL GOVERNMENT OR BY A TRIBAL PEACE OFFICER; AUTHORIZING THE DEPARTMENT TO RECOGNIZE A TRIBAL COURT ORDER SUSPENDING, REVOKING, OR REINSTATING THE DRIVER'S LICENSE OF A TRIBAL MEMBER PURSUANT TO TRIBAL LAW OR REGULATION REQUIRING ALCOHOL OR DRUG TESTING OF MOTOR VEHICLE OPERATORS; AMENDING SECTIONS 61-8-402 AND 61-8-403, MCA; AND PROVIDING EFFECTIVE DATES.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-402, MCA, is amended to read:

"**61-8-402. Blood, breath, or urine tests.** (1) ~~Any~~ *A* person who operates or is in actual physical control of a vehicle upon ways of this state open to the puhlic is considered to have given consent, suhject to the provisions of 61-8-401, to a test or tests of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two. The test or tests must be administered at the direction of a peace officer ~~having~~ *who has* reasonable grounds to believe *that* the person ~~to have~~ *has* been driving or *has been* in actual physical control of a vehicle upon ways of this state open to the public~~,~~ while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which test or tests are administered. A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an alcohol concentration of 0.10 or more, a test for drugs may not be given.

(2) ~~Any~~ *A* person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to bave withdrawn the consent provided by subsection (1) ~~of this section~~.

(3) If a driver under arrest refuses upon the request of a peace officer to submit to a test or tests designated by the arresting officer as provided in subsection (1), a test may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall *immediately* forward the license to the department, along with a sworn report *noting* tbat the peace officer had reasonable grounds to believe *that* the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public~~,~~ while under the influence of alcohol, drugs, or a combination of the two~~,~~ and *noting* that the person ~~had~~ refused to submit to the test or tests upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a driver's license, the peace officer sball issue, on behalf of tbe department, a temporary driving permit, which is valid for ~~72 hours after the time of~~ *5 days following the date of* issuance *and shall provide the driver with written notice of the license suspension or revocation and the right to a hearing provided in 61-8-403.*

(5) The following suspension and revocation periods are applicable upon refusal to submit to a test or tests:

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of tbe department, a revocation of 1 year with no provision for a restricted probationary license.

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(6) A nonresident driver's license seized under this section must he sent by the department te the licensing authority of the nonresident's home state with a report of tbe nonresident's refusal to submit to a test or tests.

(7) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

~~(7)~~ *(8)* All suspensions are subject to review as provided in this part."

Section 2. Section 61-8-403, MCA, is amended te read:

"**61-8-403. Right of appeal to court.** *(1)* ~~The department shall immediately notify in writing any person whose license or privilege to drive has been suspended or revoked, and the person may file a petition within~~ *Within* 30 days after notice ~~for~~ *of the right to* a hearing ~~on the matter~~ *has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation* in the district court in the county ~~in which~~ *where* the person resides or ~~in the district court~~ in the county ~~in which this~~ *where the* arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give *at least* 10 days' written notice of the hearing to the county attorney of the county ~~in which~~ *where* the appeal is filed and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court~~, and the~~. *The* county atterney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county atterney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized liccnse or issue a stay of the suspension or revocation action pending the hearing.

(4) (a) The court shall take testimony and examine the facts of the case, except that the issues are limited to whether:

(i) a peace officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two~~; whether~~

(ii) the person was placed under arrest~~;~~; and ~~whether~~

(iii) the person refused to submit to the test or tests.

(b) The court shall determine wbether the petitioner is entitled to a license or *whether the petitioner's license* is subject to suspension or revocation.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators."

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Section 3. Notification of tribal governments. The secretary of state shall send a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal chairperson of the Little Shell tribe.

Section 4. Effective dates. (1) [Section 1(7), section 3, and this section] are effective on passage and approval.

(2) [Section 1(1) through (6) and (8) and section 2] are effective October 1, 1995.

Approved April 14, 1995

CHAPTER NO. 445

[SB 201]

AN ACT AUTHORIZING DRUG OR ALCOHOL TESTING AS A CONDITION OF CONTINUED EMPLOYMENT WHEN THE EMPLOYER HAS REASON TO BELIEVE THAT AN EMPLOYEE MAY HAVE CONTRIBUTED TO A WORK-RELATED ACCIDENT THAT CAUSES DEATH OR PERSONAL INJURY OR PROPERTY DAMAGE IN EXCESS OF $1,500; PROVIDING FOR REMOVAL OF REQUIRED TEST FROM EMPLOYEE'S WORK RECORD; AMENDING SECTION 39-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-2-304, MCA, is amended to read:

"**39-2-304. Lie detector tests prohibited — regulation of blood and urine testing.** (1) A person, firm, corporation, or other business entity or representative thereof may not require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, any person to submit to a blood or urine test, except for employment in:

(i) hazardous work environments;

(ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or

(iii) jobs involving the intrastate commercial transportation of persons or commodities by a commercial motor carrier or an employee subject to driver qualification requirements; and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test, *except when:*

(i) ~~unless~~ the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use~~,~~*;*

(ii) the employer has reason to believe that an employee may have contributed to a work-related accident that causes death or personal injury or property damage in excess of $1,500; or

(iii) ~~except that~~ drug testing ~~may be~~ *is being* conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities.

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available te all persons subject to testing.

(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide ~~him~~ *the person with* the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests. *In the case of an accident referred to in subsection (1)(c)(ii), the tests may not be delayed, but the person, firm, corporation, or other business entity or its representative shall, as soon as possible, make a written finding as to whether the act or failure to act is believed to be a direct or proximate cause of the accident and shall provide the tested employee with a copy of the finding. The written record of a blood or urine test of an employee who is required to submit to testing pursuant to subsection (1)(c)(ii) and whose acts or failure to act is subsequently found not to be the direct or proximate cause of a work-related accident must be removed from the employee's work record and be destroyed.*

(4) Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.

(5) A person who violates this section is guilty of a misdemeanor.

(6) As used in this section:

(a) "commercial motor carrier" has the meaning provided in 69-12-101; and

(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 446

[SB 219]

AN ACT PROVIDING FOR A MANDATORY FINE FOR THE POSSESSION AND STORAGE OF DANGEROUS DRUGS; PROVIDING THAT THE REVENUE FROM THE FINE BE DEPOSITED IN THE STATE GENERAL

FUND; AMENDING SECTION 17-7-502, MCA; REPEALING SECTIONS 15-25-101, 15-25-102, 15-25-111, 15-25-112, 15-25-113, 15-25-114, 15-25-115, 15-25-121, 15-25-122, AND 15-25-123, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Mandatory fine for possession and storage of dangerous drugs — disposition of proceeds. (1) In addition to the punishments and fines set forth in Title 45, chapter 9, part 1, the court shall fine each person found to have possessed or stored dangerous drugs 35% of the market value of the drugs as detormined by the court.

(2) The fines collected pursuant to subsection (1) during each calendar year must be transmitted by the clerk of court to the state treasurer no later than 10 days following the end of the calendar year. The state treasurer shall deposit the fines in the state general fund.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without tbe need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing tbe statutory authority must be listed in subsection (3).

(b) Tbe law or portion of the law making a statutory appropriation must specifically stato that a statutory appropriation is made as provided in this section.

(3) Tho following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; ~~15-25-123;~~ 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notos, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws

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of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant te sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply te [section 1].

Section 4. Repealer. Sections 15-25-101, 15-25-102, 15-25-111, 15-25-112, 15-25-113, 15-25-114, 15-25-115, 15-25-121, 15-25-122, and 15-25-123, MCA, are repealed.

Section 5. Effective date — applicability. [This act] is effective January 1, 1996, and applies to all persons found to have possessed or stored dangerous drugs after December 31, 1995.

Approved April 14, 1995

CHAPTER NO. 447

[SB 316]

AN ACT PROVIDING FOR THE USE OF A PRELIMINARY ALCOHOL SCREENING TEST FOR A PERSON SUSPECTED OF DRIVING UNDER THE INFLUENCE; ESTABLISHING THAT IT IS UNLAWFUL FOR A PERSON UNDER AGE 21 TO DRIVE WITH AN ALCOHOL CONCENTRATION OF 0.02 OR MORE; PROHIBITING THE TRANSFER OF AN OWNER'S INTEREST IN A VEHICLE THAT IS SUBJECT TO TEMPORARY SEIZURE OR RENDERED INOPERABLE BECAUSE OF THE OWNER'S DRINKING AND DRIVING OFFENSE; REQUIRING A SENTENCING COURT TO TEMPORARILY SEIZE OR RENDER INOPERABLE THE VEHICLE OF A PERSON CONVICTED OF DRIVING WITH A SUSPENDED OR REVOKED LICENSE WHEN THE SUSPENSION OR REVOCATION IS BECAUSE OF THE PERSON'S DRINKING AND DRIVING OFFENSE; INCREASING TO 6 MONTHS THE SUSPENSION AND REVOCATION TIME PERIOD FOR A FIRST REFUSAL TO SUBMIT TO A BLOOD, BREATH, OR URINE TEST; PROVIDING THAT A FOURTH DRIVING WHILE UNDER THE INFLUENCE OFFENSE OR EXCESSIVE ALCOHOL CONCENTRATION OFFENSE CONSTITUTES A FELONY; PROVIDING THAT RECORDS OF CONVICTIONS FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; PROHIBITING DEFERRED PROSECUTIONS OR SENTENCING FOR DRIVING UNDER THE INFLUENCE OFFENSES OR FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES; AND AMENDING SECTIONS 46-16-130, 61-5-212, 61-8-402, 61-8-421, 61-8-714, AND 61-8-722, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of [section 2].

(2) The results of a screening test may be used for determining whether probable cause exists to believe a person has violated 61-8-401, 61-8-406, or [section 2].

(3) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(4) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1 year of that person's driver's license.

(5) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

(6) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of [section 2] and whether the person refused to submit to the test.

(7) The provisions of 61-8-402(2) through (7) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension or revocation under 61-8-402.

(8) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(6).

Section 2. Operation of vehicle by person under twenty-one with alcohol concentration of 0.02 or more. (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state open to the public.

(2) A person convicted of a violation of this section must be sentenced under the provisions of 45-5-624.

(3) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

Section 3. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture — penalty. (1) It is unlawful for the owner of a vehicle subject to actions under 61-5-212(3) or (6) or forfeiture under 61-8-714 or 61-8-722 to transfer, sell, or encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise terminated.

(2) The prohibition against transfer of title may not be stayed pending the determination of an appeal from the conviction on the underlying charge.

(3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned in the county jail for not more than 2 years, fined an amount not more than $20,000, or both.

Section 4. Section 46-16-130, MCA, is amended to read:

"**46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is torminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court.

(3) A prosecution for a violation of 61-8-401, 61-8-406, or [section 2] may not be deferred."

Section 5. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked — penalty — *seizure of vehicle or rendering vehicle inoperable.* (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when tbe person's privilege to do so is suspended or revoked in this state or any other stato is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and nıay be fined not more tban $500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the period of suspension or revocation for an additional like period.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402(5), 61-8-406, [section 1], or [section 2] must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardehip on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penaltics provided by this section."

Section 6. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood, breath, or urine tests. (1) ~~Any~~ *A* person who operates or is in actual physical control of a vehicle upon ways of this stato open to the public is considered to have given consent, subject to the provisions of 61-8-401, to a test or teste of the person's blood, breath, or urine for the purpose of detormining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two. Tbe test or tosts must be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this stato open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which test or tosts are administored. A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an alcohol concentration of 0.10 or more, a test for drugs may not be given.

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(2) ~~Any~~ *A* person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1) ~~of this section~~.

(3) If a driver under arrest refuses upon the request of a peace officer to submit te a test or tests designated hy the arresting officer as provided in suhsection (1), a test may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall forward the license to the department, along with a sworn report that the peace officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, and that the person had refused te submit to the test or tests upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicahle upon refusal to submit to a test or tests:

(a) upon a first refusal, a suspension of ~~90 days~~ *6 months* with no provision for a restrictod prohationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(6) A nonresident driver's license seized under this section must be sent hy the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to suhmit to a test or tosts.

(7) All suspensions are subject to review as provided in this part."

Section 7. Section 61-8-421, MCA, is amended to read:

"**61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under *61-5-212,* 61-8-714 or 61-8-722 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply te the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rehut the presumption hy proving a defense under 61-8-714(3)(b)(ii) or 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a *second or subsequent offense under 61-5-212 or of a* third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder te the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the moter vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the righte of innocent persons include return of the motor vehicle without a sale to an owner who is unable te present an adequate defense under this section but is found by the court to be without fault."

Section 8. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in subsections ~~(7)~~ *(8)* and ~~(8)~~ *(9)*, a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection ~~(7)~~ *(8)*, on a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection ~~(7)~~ *(8)*, 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection ~~(7)~~ *(8)*, on the third ~~or subsequent~~ conviction, the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000. Except as provided in subsection ~~(7)~~ *(8)*, notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third ~~or subsequent~~ offense that occurred within 5 years of the first offense may not be ~~deferred or~~ suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operatod by the person at the time of the offense to bo seized and subjectod to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or

omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than tbe owner in violation of the criminal laws of this stato or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

~~(4)~~*(5)* In addition to the punishment provided in this section, regardless of disposition, the defendant sball complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, whicb may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall completo an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant bas been enrolled in a course or treatment program. If the defendant fails to attond the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcobol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriato to the defendant's alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

~~(5)~~*(6)* For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this stato, conviction for a violation of a similar statute in another stato, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this stato or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, *unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.* If there has *not* been ~~no~~ *an* additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public

access to the information may only be obtained by district court order upon good cause shown.

~~(6)~~*(7)* For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

~~(7)~~*(8)* The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

~~(8)~~*(9)* Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(10) A court may not defer imposition of sentence under this section."

Section 9. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in subsection ~~(7)~~ *(9)*, a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall he punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection ~~(7)~~ *(9)*, on a second conviction of a violation of 61-8-406, ~~he~~ *the person* shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and hy a fine of not less than $300 or more than $500.

(3) (a) Except as provided in suhsection ~~(7)~~ *(9)*, on a third ~~or subsequent~~ conviction of a violation of 61-8-406, ~~he~~ *the person* shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of husiness as a common carrier is not subject to forfeiture unless it appears that the owner or otber person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

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(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (9), notwithstanding any other provision providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

~~(4)~~*(5)* The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

~~(5)~~*(6)* In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

~~(6)~~*(7)* For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, *unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.* If there has *not* been ~~no~~ *an* additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then ~~the prior offense must be expunged from the defendant's record~~ *all records and data relating to the prior conviction are confidential criminal justice information, as defined in 45-5-103, and public access to the information may only be obtained by district court order upon good cause shown.*

(8) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

~~(7)~~*(9)* The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203.

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The prerelease center may accept or reject a defendant referred by the sentencing court.

~~(8)~~*(10)* Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(11) A court may not defer imposition of sentence under this section."

Section 10. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [sections 1 through 3].

Approved April 14, 1995

CHAPTER NO. 448

[SB 339]

AN ACT REVISING INSURANCE COVERAGE FOR MENTAL ILLNESS, ALCOHOLISM, AND DRUG ADDICTION; REVISING THE DEFINITION OF MENTAL ILLNESS; DEFINING PARTIAL HOSPITALIZATION BENEFITS; ALLOWING USE OF PARTIAL HOSPITALIZATION BENEFITS IN LIEU OF INPATIENT BENEFITS; REDUCING THE LIMIT OF CALENDAR DAYS A YEAR FOR INPATIENT BENEFITS; ALLOWING APPLICATION OF SEPARATE COINSURANCE FACTORS FOR MENTAL ILLNESS AND FOR ALCOHOLISM AND DRUG ADDICTION AND RAISING THE LIMIT FOR MENTAL ILLNESS; AMENDING SECTIONS 33-22-702 AND 33-22-703, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-702, MCA, is amended te read:

"33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Chemical dependency treatment center" means a treatment facility ~~which~~ *that*:

(a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state; and

(b) is licensed or approved as a treatment center by the department of corrections and human services under 53-24-208.

(2) "Inpatient benefits" are as set forth in 33-22-705.

(3) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and ~~which~~ *a treatment* facility *that* is ~~also~~:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(4) *(a)* "Mental illness" means ~~neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder~~ *a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and that is associated with:*

(i) present distress or a painful symptom;

(ii) a disability or impairment in one or more areas of functioning; or

(iii) a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

(b) Mental illness must be considered as a manifestation of a behavioral, psychological, or biological dysfunction in a person.

(c) Mental illness does not include:

(i) a developmental disorder;

(ii) a speech disorder;

(iii) a psychoactive substance use disorder;

(iv) an eating disorder, except for bulimia and anorexia nervosa; or

(v) an impulse control disorder, except for intermittent explosive disorder and trichotillomania.

(5) "Outpatient benefits" are as set forth in 33-22-705."

Section 2. Section 33-22-703, MCA, is amended to read:

"**33-22-703. Coverage for mental illness, alcoholism, and drug addiction.** Insurers, health service corporations, or any employees' health and welfare fund that provides accident and health insurance benefits to residents of this state under group health insurance or group health plans shall provide, for Montana residents covered under hospital and medical expenses incurred insurance group policies and under hospital and medical service plan group contracts, the level of benefits specified in this section for the necessary care and treatment of mental illness, alcoholism, and drug addiction, subject to the right of the applicant to select any alternative level of benefits above the minimum level of benefits described in subsections ~~(1)(b)~~ *(1)(c)*, (2)(a), ~~(2)(b), and~~ *(2)(c)*, (2)(d), *and (2)(e)* as may be offered by the insurer or health service corporation:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

~~(a) benefits may be limited to not less than 30 calendar days per year as defined in the policy or contract;~~

~~(b) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:~~

~~(i) $4,000 in any 24-month period; and~~

~~(ii) $8,000 in lifetime benefits~~

(a) inpatient treatment for mental illness, alcoholism, and drug addiction is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital; and

(c) inpatient treatment for alcoholism and drug addiction is subject to a maximum benefit of $4,000 in any 24-month period and a maximum lifetime benefit of $8,000;

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

~~(a) inpatient benefits may be limited to no less than 30 calendar days per year as defined in the policy or contract. If inpatient benefits are provided beyond 30 calendar days per year, the durational limits, dollar limits, deductibles, and coinsurance factors applicable thereto need not be the same as applicable to physical illness generally.~~

~~(b) for outpatient benefits, the coinsurance factor may not exceed 50% or the coinsurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for mental illness, alcoholism, and drug addiction in the aggregate during any applicable benefit period may be limited to not less than $1,000;~~

~~(c) maximum lifetime benefits shall, for mental illness in the aggregate, be no less than those applicable to physical illness generally;~~

~~(d) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:~~

~~(i) $4,000 in any 24-month period; and~~

~~(ii) $8,000 in lifetime benefits.~~

(a) inpatient treatment for mental illness, alcoholism, and drug addiction is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(c) inpatient treatment for alcoholism and drug addiction may be subject to a maximum benefit of $4,000 in any 24-month period and a maximum lifetime benefit of $8,000;

(d) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000; and

(e) outpatient treatment for alcoholism and drug addiction is subject to a maximum yearly benefit of $1,000."

Section 3. Applicability. [This act] applies to a policy or certificate of disability insurance and health service membership contract entered into or renewed on or after [the effective date of this act].

Approved April 14, 1995

CHAPTER NO. 449

[SB 340]

AN ACT PROVIDING FOR THE FORMATION, REGISTRATION, AND REGULATION OF LIMITED LIABILITY PARTNERSHIPS; AND AMENDING SECTIONS 30-13-201, 30-13-202, 30-13-206, 30-13-209, 30-13-213, 30-13-217, 35-10-102, 35-10-116, 35-10-307, 35-10-308, 35-10-312, 35-10-401, 35-10-621, 35-10-628, 35-10-629, 35-10-635, AND 35-10-636, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-201, MCA, is amended to read:

"30-13-201. Definitions. As used in this part, the following definitions apply:

(1) "Assumed business name" means*:*

(a) any business name other than the full, true, and correct name of a person*; or*

(b) the full, true, and correct name of a limited liability partnership.

(2) "Person" means any individual, partnership, corporation, or other association."

Section 2. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name — when prohibited. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or ~~deceptively similar to~~ *not distinguishable on the record*

from an assumed business name already registered or ~~to~~ *from* any corporate name, limited partnership name, limited liability company name, *limited liability partnership name,* trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is other than a corporation, limited partnership, ~~or~~ limited liability company, *or limited liability partnership,* the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of the words."

Section 3. Section 30-13-206, MCA, is amended to read:

"**30-13-206. Term and renewal of assumed business name registration.** (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the last-known address of ~~such~~ *the* applicant.

(3) *(a)* ~~If~~ *Subject to subsection (3)(b), if* the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of ~~such~~ *the* registration, the secretary of state shall cancel the registration.

(b) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall again notify the limited liability partnership of the pending expiration and give the limited liability partnership an additional 90 days within which to renew its registration. If the limited liability partnership fails to renew its registration within the second 90-day period, the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership."

Section 4. Section 30-13-209, MCA, is amended to read:

"**30-13-209. Amendment.** An amendment to registration of an assumed business name ~~shall~~ *must* be filed with the secretary of state within ~~60 days~~ *1 year* after any one of the following events occurs:

(1) there is a change in the name or identity of the person or persons transacting or having interest in the business for which the name is registered;

(2) there is a change in the identity of the county or counties in which the name is or is intended to be used;

(3) a person having an interest in the business with a registered assumed business name withdraws from the business or dies; or

(4) the registrant wishes to change the name of a registered assumed business name."

Section 5. Section 30-13-213, MCA, is amended to read:

"**30-13-213. Voluntary cancellation of registration of assumed business name.** (1) When the registrant of record of a registered assumed business name wishes to cancel ~~such~~ *the* registration, ~~he~~ *the registrant* shall deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of an assumed business name, which ~~shall~~ *must* include but not be limited to the following information:

(a) *the* complete name of the registered assumed business name to be canceled; and

(b) *the* name and address, including the street name and number, if any, of the registrant of record.

(2) If the secretary of state finds the affidavit complies with the provisions of this section, ~~he~~ *the secretary of state* shall file it ~~in his office~~ and mail a letter ~~of acknowledgment~~ *acknowledging cancellation* of ~~such~~ *the* filing to the registrant of record."

Section 6. Section 30-13-217, MCA, is amended to read:

"**30-13-217. Fees and charges to be established and collected by secretary of state.** (1) The secretary of state shall by administrative rule establish, charge, and collect in accordance with the provisions of this part and commensurate with costs:

(a) fees for filing documents and issuing certificates; and

(b) miscellaneous charges.

(2) The secretary of stato shall maintain records sufficient to support the fees and miscellaneous charges established under this section.

(3) In addition to the fees and charges in subsection (1), the secretary of state shall charge and collect from each limited liability partnership a license fee of:

(a) $50 at the time of registration under 30-13-203; and

(b) $50 at the time of each renewal of registration under 30-13-206 through 30-13-208."

Section 7. Section 35-10-102, MCA, is amended to read:

"**35-10-102. Definitions.** In this chapter, the following definitions apply:

(1) "Business" includes every trade, occupation, or profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statuto of general application; or

(b) a comparable order under state law governing insolvency.

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(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Limited liability partnership" means a partnership registered under [section 18] and includes both domestic and foreign limited liability partnerships.

(5) (a) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under 35-10-202, a predecessor law, or a comparable law of another jurisdiction.

(b) The term includes but is not limited to a limited liability partnership for all purposes of the laws of this state and all licensing laws, whether for professionals or otherwise.

~~(4)~~*(6)* "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

~~(5)~~*(7)* "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definito term or the completion of a particular undertaking.

~~(6)~~*(8)* "Person" means:

(a) an individual;

(b) a corporation;

(c) a business trust;

(d) an estate;

(e) a trust;

(f) a partnership;

(g) an association;

(h) a joint venture;

(i) a government;

(j) a governmental subdivision, agency, or instrumentality; or

(k) any other legal or commercial entity.

~~(7)~~*(9)* "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

~~(8)~~*(10)* "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

~~(9)~~*(11)* "Statement" means a statement of partnership authority under 35-10-310, a statoment of denial under 35-10-311, a statement of dissociation under 35-10-622, a statement of dissolution under 35-10-627, a statement of merger under 35-10-643, *an application for registration of assumed business*

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name or a renewal of registration under [section 18], or an amendment, ~~or~~ cancellation, *or withdrawal* of the foregoing.

~~(10)~~*(12)* "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance."

Section 8. Section 35-10-116, MCA, is amended to read:

"35-10-116. **Law governing internal affairs.** ~~The~~ *Except as provided in [section 21], the* law of the state in which a partnership has its chief executive office governs the partnership's internal affairs."

Section 9. Section 35-10-307, MCA, is amended to read:

"35-10-307. **Partner's liability.** *(1)* ~~All~~ *Except as provided in subsection (2), all* partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(2) Except as provided in subsections (3) and (4), a partner of a limited liability partnership is not liable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for:

(a) any debts, obligations, or liabilities of or chargeable to the limited liability partnership or another partner of the limited liability partnership, whether arising in tort, contract, or otherwise; or

(b) the acts or omissions of any other partner or agents, contractors, or employees of the limited liability partnership if the debts, obligations, or liabilities arise or are incurred while the limited liability partnership is registered under [section 18].

(3) Subsection (2) does not affect the liability of a partner in a limited liability partnership for the partner's own negligence, wrongful act, or misconduct, including without limitation an act under 35-10-628(2), or that of any person under the partner's direct supervision and control.

(4) Subsection (2) does not affect or impair the ability of a partner of a limited liability partnership to act as a guarantor or surety for, provide collateral for, or otherwise agree to be primarily or contingently liable for the debts, obligations, or liabilities of a limited liability partnership.

(5) Subsection (2) does not affect the liability of a limited liability partnership for partnership debts, obligations, or liabilities to the extent of partnership assets.

(6) Unless the partner is personally liable under this section, a partner in a limited liability partnership is not a proper party to a proceeding by or against a limited liability partnership to recover any debts, obligations, or liabilities of or chargeable to the limited liability partnership."

Section 10. Section 35-10-308, MCA, is amended to read:

"35-10-308. **Purported partner.** (1) If a person, by words or conduct, purports to be a partner or consents to being represented by another as a partner in a partnership or with one or more persons *who are* not partners, the purported partner is liable to a person to whom the representation is made:

(a) if that person, relying on the representation, enters into a transaction with the actual or purported partnership*; and*

(b) the purported partner would have been personally liable for obligations of the partnership under 35-10-307 or 35-10-629 if the purported partner had been a partner.

(2) ~~If~~ *Subject to subsection (1), if* the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported partner were a partner. If no partnership liability results, tho purported partner is liable jointly and severally with any other person consenting to the representation.

~~(2)~~*(3)* ~~If~~ *Subject to subsection (1), if* a person is ~~thus~~ represented to be a partner in an existing partnership or with one or more persons *who are* not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. ~~If~~ *Subject to subsection (1), if* fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable *as if the person had actually been a partner.*

~~(2)~~*(4)* A person is not a partner in a partnership merely because the person is named by another in a statement of partnership authority.

~~(4)~~*(5)* A person does not continue to be a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership."

Section 11. Section 35-10-312, MCA, is amended to read:

"35-10-312. Action by and against partnership and partners. (1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and any or all of the partners *who are personally liable for obligations of the partnership under 35-10-307 or 35-10-629* in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(a) the partner is personally liable for the liability of the partnership under 35-10-307 or 35-10-629; and

(b) one of the following conditions is satisfied:

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~~(a)~~*(i)* a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

~~(b)(i)~~ *(ii)(A)* an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed; and

~~(ii)~~*(B)* Title 11 of the United States Code permits a judgment creditor of a partner to levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership;

~~(c)~~*(iii)* the partner has agreed that the creditor need not exhaust partnership assets;

~~(d)~~*(iv)* a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution within this state are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

~~(e)~~*(v)* liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under 35-10-308(1), ~~or~~ (2), *or (3)*."

Section 12. Section 35-10-401, MCA, is amended to read:

"**35-10-401. Partner's rights and duties.** (1) A partnership shall establish an account for each partner. The partnership shall credit the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that the partner contributes to the partnership and the partner's share of the partnership profits. The partnership shall charge the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses. *However, the partner is personally liable for the charges only as provided in 35-10-307 and 35-10-629.*

(2) A partnership shall credit each partner's account with an equal share of the partnership profits. A partnership shall charge each partner with a share of the partnership losses, whether capital or operating, in proportion to the partner's share of the profits. *However, a partner is personally liable for the charges as provided in 35-10-307 and 35-10-629.*

(3) A partnership shall indemnify each partner for payments reasonably made and liabilities reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership or for the preservation of its business or property. *However, a partner is not personally liable for the indemnification obligation of the partnership, except to the extent that the partner*

would be personally liable under 35-10-307 or 35-10-629 for the liabilities incurred by the indemnified partner.

(4) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance beyond the amount of capital the partner agreed to contribute.

(5) A payment made by a partner that gives rise to a partnership obligation under subsection (3) or (4) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(9) A person may become a partner only with the consent of all the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all the partners.

(11) This section does not affect the obligations of a partnership to other persons under 35-10-301."

Section 13. Section 35-10-621, MCA, is amended to read:

"**35-10-621. Dissociated partner's liability to other persons.** (1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is *personally* liable as a partner to the other party ~~in~~ *as the result of a partnership obligation incurred in connection with* a transaction entered inte by the partnership or a surviving partnership under 35-10-635 through 35-10-637 and 35-10-641 through 35-10-644 within 2 years after the partner's dissociation only if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at tbat time;

(b) did not have notice of the partner's dissociation; ~~and~~

(c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622*; and*

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(d) the obligation is one for which the partner would be personally liable under 35-10-307 or 35-10-629 if the partner had not dissociated.

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a matorial alteration in the nature or time of payment of a partnership obligation."

Section 14. Section 35-10-628, MCA, is amended to read:

"**35-10-628. Partner's liability to other partners after dissolution.** (1) Except as provided in 35-10-625(3)(b) and subsection (2) of this section, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under 35-10-626 *for which the partner is personally liable under 35-10-307 or 35-10-621.*

(2) A partner who, with knowledge of the winding up, incurs a partnership liability under 35-10-626(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any loss caused to the partnership arising from the liability."

Section 15. Section 35-10-629, MCA, is amended to read:

"**35-10-629. Settlement of accounts among partners.** (1) In winding up a partnership's business, the assets of the partnership must be applied to discharge its obligations to creditors, including partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions pursuant to subsection (2).

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive account balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance *but only to the extent that the negative balance is attributable to debts, obligations, or liabilities for which the partner is personally liable under 35-10-307.*

(3) To the extent not taken into account in settling the accounts among partners pursuant to subsection (2), each partner shall contributo, in the proportion in which the partner shares partnership losses *and to the extent the partner is personally liable under 35-10-307*, the amount necessary to satisfy partnership obligations. If a partner fails *or is not obligated* to contribute, the other partners shall contribute, in the proportions in which the partners sbare partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or a partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations *but only to the extent the contributions are made because of obligations for which the other partners are personally liable under 35-10-307.*

(4) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership *under subsections (2) and (3).*

(5) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership *under subsections (2) and (3).*"

Section 16. Section 35-10-635, MCA, is amended to read:

"**35-10-635. Conversion of partnership to limited partnership.** (1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership that satisfies the requirements of 35-12-601 and includes:

(a) a statement that the partnership was converted to a limited partnership from a partnership;

(b) its former name; and

(c) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(5) A partner who becomes a limited partner as a result of the conversion remains liable as a partner for an obligation, incurred by the partnership before the conversion takes effect, *for which the partner is personally liable under 35-10-307 and 35-10-629.* If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect *but only to the extent that the limited partner would have been personally liable for the partnership under 35-10-307 or 35-10-629 immediately prior to the conversion.* The partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in Title 35, chapter 12."

Section 17. Section 35-10-636, MCA, is amended to read:

"**35-10-636. Conversion of limited partnership to partnership.** (1) A limited partnership may be converted to a partnership pursuant to this section.

(2) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all the partners.

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(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limitsd partnership pursuant to 35-12-603.

(4) The conversion takes effect when the certificate of limitsd partnership is canceled.

(5) A limited partner who becomes a partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The limited partner is liable as a partner for an obligation of the partnership *for which the partner is personally liable under 35-10-307 or 35-10-629 and which arises or is* incurred after the conversion takes effect."

Section 18. Registration of limited liability partnerships. (1) To become a limited liability partnership, a partnership shall file with the secretary of state an application for registration of an assumed business name, on a form furnished by the secretary of state, that indicates an intention to registsr as a limited liability partnership under this section. The registration of a limited liability partnership under this section is subject to all of the terms and conditions otherwise applicable te the registration of an assumed business name pursuant to Title 30, chapter 13, part 2.

(2) The application for registration of an assumed business name must be executed by one or more partners authorized to execute the application and registration.

(3) The secretary of state shall register as a limited liability partnership any partnership that substantially complies with Title 30, chapter 13, part 2, and this section.

(4) A partnership's registration under this section is effective when the secretary of state files the partnership's application for registration of an assumed business name under subsection (1) and remains in effect until it is canceled by the secretary of state pursuant te Title 30, chapter 13, part 2.

(5) The fact that an application for registration of an assumed business name under this section or any renewals of the assumed business name is on file with the office of the secretary of state is notice that the partnership is a limited liability partnership and is notice of all other facts set forth in the application.

(6) The secretary of state shall provide necessary forms for the registration of a limited liability partnership under subsection (1) or any renewals of registration.

Section 19. Effect of registration — entity unchanged. (1) A partnership that has registered under [section 18] is for all purposes of the laws of this state, including but not limited to all licensing laws, whether for professionals or otherwise, the same entity that existed before the registration.

(2) When registration of a partnership under [section 18] takes effect:

(a) all tangible and intangible property, whether real or personal, owned by the partnership remains vested in the partnership;

(b) all debts, obligations, or liabilities of and chargeable to the partnership continue as debts, obligations, or liabilities of the partnership; and

(c) any actions or proceedings pending by or against the partnership may be continued as if the registration under [section 18] had not occurred.

(3) If a partnership dissolves and its business continues without liquidation of the partnership affairs, the registration of the limited liability partnership must be considered continued and must continue to he applicable to the partnership continuing the business. The partnership continuing the business is considered to have filed any documents required or permitted under this section that were filed by the dissolved partnership. The partnership continuing the business shall renew its registration at the time the dissolved partnership would have been required to file an application for renewal pursuant to Title 30, chapter 13, part 2.

(4) If a partnersbip dissolves, winds up its affairs, and liquidates, the registration of the limited liability partnership must be considered continued and must remain in effect as to the partnership and the partners during the period of dissolution, winding up, and liquidation and as to the partners subsequent to dissolution, winding up, and liquidation as to debts, obligations, or liabilities for which a partner was not personally liahle under 35-10-307 or 35-10-629.

Section 20. Name of limited liability partnersbips. The name of a limited liability partnership must contain the words "limited liability partnership", the abbreviation "l.l.p." or "llp", or other words or abbreviations that may be required or authorized by the laws of the state in which the partnership is formed, including without limitation "professional limited liability partnership" or the abbreviation "p.l.l.p." or "pllp".

Section 21. Applicability to foreign or interstate commerce. (1) A partnership formed pursuant to an agreement governed by this chapter may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any stato, territory, district, or possession of the United States or in any foreign country.

(2) It is the intent of the legislature that the legal existence of partnerships formed pursuant to an agreement governed by this chapter must be recognized outside the boundaries of this state and that the laws of this stato governing a partnership transacting business outside this state be granted the protection of full faith and credit under the United States constitution.

(3) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant te an agreement governed by this chapter, including the personal liability of partners for debts, obligations, and liabilities of or chargeable te the partnership or another partner, are subject to and governed by the laws of this state.

(4) Before transacting business in this state as a limited liability partnership, a partnership formed pursuant to an agreement governed by the laws of any state or jurisdiction other than this state shall:

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(a) comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged; and

(b) register under [section 18]. If registered, the partnership appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in this stato.

(5) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an agreement governed by the laws of any stato or jurisdiction other than this state, including the liability of partners for debts, obligations, and liabilities of or chargeable to the partnership or another partner, are subject to and governed by the laws of the jurisdiction in which the partnership is formed.

Section 22. Codification instruction. [Sections 18 through 21] are intended to be codified as an integral part of Title 35, chapter 10, and the provisions of Title 35, chapter 10, apply to [sections 18 through 21].

Approved April 14, 1995

CHAPTER NO. 450

[SB 372]

AN ACT REQUIRING PAYMENT OF COMPENSATION TO STATE EMPLOYEES FOR TIME SPENT IN ANSWERING SUBPOENAS IN CIVIL ACTIONS; ALLOWING STATE OFFICES TO REQUIRE REIMBURSEMENT FROM THE PARTY ISSUING THE SUBPOENA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State employees — compensation for time spent answering subpoena. An employee of the state must receive all regular pay and benefits for time spent answering a subpoena when called to testify in connection with the employee's official duties in a civil action in which the state or one of its agencies is not a party. The person requesting issuance of the subpoena shall, if requested by the affected state agency, reimburse the agency for the compensation, including regular pay and benefits, paid te the employee for time spent answering the subpoena. As used in this section, "employee" means an employee of the executive, legislative, or judicial branch of state government.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 26, chapter 2, part 5, and the provisions of Title 26, chapter 2, part 5, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 451

[SB 412]

AN ACT GENERALLY REVISING THE TAXATION OF OIL AND NATURAL GAS; ELIMINATING THE OIL AND NATURAL GAS NET PROCEEDS TAX, THE LOCAL GOVERNMENT SEVERANCE TAX, THE STATE OIL AND GAS SEVERANCE TAX, AND THE OIL AND GAS PRIVILEGE AND LICENSE TAX; IMPOSING OIL AND NATURAL GAS PRODUCTION TAXES BASED ON THE TYPE OF WELL AND TYPE OF PRODUCTION; PROVIDING FOR THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES; PROVIDING A DISBURSEMENT TO SCHOOL DISTRICTS AND LOCAL GOVERNMENTS TO REPLACE NET PROCEEDS AND LOCAL GOVERNMENT SEVERANCE TAX REVENUE; EXEMPTING OIL AND NATURAL GAS PRODUCTION FROM THE RESOURCE INDEMNITY TRUST TAX; PROVIDING AN ALLOCATION OF OIL AND NATURAL GAS PRODUCTION TAX REVENUE FOR THE PURPOSES OF THE MONTANA RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT ACT; PROVIDING FOR THE ACCELERATED PAYMENT OF LOCAL GOVERNMENT SEVERANCE TAXES FOR PRODUCTION YEAR 1995; AUTHORIZING COUNTIES TO ESTABLISH AN OIL AND NATURAL GAS ACCELERATED TAX FUND; ALLOWING SCHOOL DISTRICTS TO USE ACCELERATED LOCAL GOVERNMENT SEVERANCE TAX PAYMENTS FOR ANY BUDGET PURPOSE; AMENDING SECTIONS 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-1-501, 15-6-208, 15-16-102, 15-23-103, 15-23-104, 15-23-106, 15-23-115, 15-38-105, 15-38-121, 15-38-202, 17-7-502, 20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, 20-10-146, 82-11-118, 82-11-135, AND 82-11-162, MCA; REPEALING SECTIONS 15-16-121, 15-23-601, 15-23-602, 15-23-603, 15-23-605, 15-23-606, 15-23-607, 15-23-608, 15-23-609, 15-23-610, 15-23-611, 15-23-612, 15-23-613, 15-23-614, 15-23-621, 15-23-631, 15-36-101, 15-36-102, 15-36-103, 15-36-104, 15-36-105, 15-36-106, 15-36-107, 15-36-108, 15-36-109, 15-36-110, 15-36-112, 15-36-113, 15-36-114, 15-36-120, 15-36-121, 15-36-122, 15-36-126, 82-11-131, 82-11-132, AND 82-11-133, MCA, AND CHAPTER 33, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY PROVISIONS.

STATEMENT OF INTENT

(1) A statement of intent is required for this bill because [section 16] grants the department of revenue authority to adopt rules for the implementation and administration of the new production taxes imposed on oil and natural gas.

(2) The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(a) the forms and other documents required for the reporting and payment of the oil and natural gas production tax;

(b) the definition and clarification of the categories of oil and natural gas subject to taxation;

(c) the requirements for the maintenance of records and other documents required to ensure proper payment of oil and natural gas production taxes;

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(d) the process for the estimation and collection of delinquent or unpaid taxes; and

(e) the procedures for the efficient collection of the oil and natural gas production tax.

(3) [This act] takes effect before taxes on the oil and gas net proceeds tax, the local government severance tax, the state oil and gas severance tax, the resource indemnity and ground water assessment tax, and the oil and gas privilege and license tax for certain production periods will have been paid. The legislature intends that the department establish procedures to ensure that all tax liabilities for production occurring before January 1, 1996, are satisfied. The legislature also intends that the department establish procedures for the proper distribution of this tax revenue to all affected governmental entities and funds.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 20] may be cited as the "Montana Oil and Natural Gas Production Tax Act".

Section 2. Legislative findings and declaration of purpose. (1)(a) The legislature finds that the extraction taxes imposed on the production of oil and natural gas have been exceedingly complex and confusing. Oil and natural gas producers have been required to file several tax forms and to pay taxes at different times on the same production.

(b) The legislature further finds that it is in the best interest of the state and in the best interest of oil and gas producers to simplify the taxation of oil and natural gas production.

(2) The legislature declares that the purposes of [sections 1 through 20] are:

(a) to replace all net proceeds taxes, severance taxes, privilege and license taxes, and other extraction taxes on oil and natural gas production with a single production tax based on the type of well and type of production;

(b) to ensure that the distribution of tax revenue to the state, counties, and school districts from the new production taxes is consistent with the distribution of tax revenue from the former extraction taxes;

(c) to simplify the procedures for compliance with and the administration of the taxation of oil and natural gas production;

(d) to provide an incentive for oil and natural gas producers to pay 1995 local government severance taxes on an accelerated basis; and

(e) to provide discretionary authority to counties and school districts for the use of the accelerated payments of the local government severance tax.

Section 3. Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means department of revenue provided for in 2-15-1301;

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993, and before January 1, 2002.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in [section 5].

(7) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; and

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) the commencement of the recompletion of a well as a horizontally completed well;

(ii) expansion of the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

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(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) "Post-1985 well" means an oil or natural gas well drilled after June 30, 1985, other than horizontally completed or recompleted oil wells drilled after December 31, 1993, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1985 well.

(16) "Pre-1985 well" means an oil or natural gas well that was drilled before July 1, 1985.

(17) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(18) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must he used to determine the volume of incremental production that qualifies for the tax rate imposed under [section 4(4)(d)].

(19) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and before January 1, 2002, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of [sections 1 through 20], secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing well bore; or

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(ii) any other method approved by the board as a secondary recovery method.

(20) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and hy dividing the resulting quotient by 365.

(21) "Stripper oil" means the oil produced from any well that produces less than 10 barrels a day for the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(22) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of [sections 1 through 20], tertiary recovery methods include but are not limited te:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; or

(x) any other method approved by the board as a tertiary recovery method.

(23) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

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(24) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells.

Section 4. Production tax rates imposed on oil and natural gas. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in [section 18].

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) pre-1985 wells	18.75%	15%
(b) post-1985 wells		
(i) first 12 months of qualifying production	3.35%	15%
(ii) after 12 months	15.35%	15%
(c) stripper natural gas pre-1985 and post-1985 wells	11.2%	15%

(3) The reduced tax rate under subsection (2)(b)(i) on natural gas production for the first 12 months of natural gas production from a post-1985 well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production		
(i) pre-1985 wells	14.1%	17.1%
(ii) post-1985 wells		
(A) first 12 months of qualifying production	5.7%	15%

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(B) after 12 months	12.7%	15%
(b) stripper oil production		
(i) pre-1985 wells	10.7%	17.1%
(ii) post-1985 wells	10.7%	15%
(c) horizontally completed well production		
(i) first 18 months of qualifying production	5.7%	5.7%
(ii) after 18 months	12.7%	12.7%
(d) incremental production		
(i) new or expanded secondary recovery production		
(A) pre-1985 well	8.7%	16.2%
(B) post-1985 well	8.7%	10.7%
(ii) new or expanded tertiary production		
(A) pre-1985 well	6%	15.2%
(B) post-1985 well	6%	9.7%
(e) horizontally recompleted well		
(i) first 18 months	5.7%	5.7%
(ii) after 18 months	12.7%	12.7%

(5) (a) The reduced tax rate under subsection (4)(a)(ii)(A) on oil production for the first 12 months of oil production from a post-1985 well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) The reduced tax rate under subsection (4)(c)(i) on oil production from a horizontally completed well and the reduced tax rate under subsection (4)(e)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally completed well or as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (4)(d) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter

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as determined in subsection (5)(d), incremental production is taxed at the rate imposed on primary recovery production under subsection (4)(a)(i) for production occurring in that quarter.

(d) For the purposes of subsection (5)(c), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

Section 5. Determination of gross value of product. The total gross value of all oil or natural gas produced and sold each quarter must be detormined by taking the total number of barrels or cubic feet of oil or natural gas produced and sold each month at the average value at the mouth of the well during the month that the oil or natural gas is produced and sold, as determined by the department. However, in computing the total number of barrels of oil or cubic feet of gas produced and sold, there must be deducted the amount of oil or gas used by the person in connection with the operation of the well from which the oil or gas is produced or for pumping the oil or gas from the well to a tank or pipeline.

Section 6. Certain royalties exempt. Exempt from taxation are royalties received by:

(1) an Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a-396g;

(2) the United States as trustee for individual Indians; and

(3) the United States, the state of Montana, or a county or municipal government in Montana.

Section 7. Operator responsible for payment — deduction of taxes from royalty payments. (1) Each operator required to pay the oil and natural gas production tax under [sections 1 through 20] shall pay the tax in full for the operator's own account and for the account of each of the other owners of the gross value of product or in kind of all the marketable oil or natural gas produced and sold. Other owners include an owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, production payments, and all other interest or interests owned or carved out of the total gross value of product or in kind of the extracted marketable oil or natural gas.

(2) Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners must be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

Section 8. Quarterly payment of tax — statement — failure to pay penalty. (1) The oil and natural gas production tax must be paid in quarterly installments for the quarterly periods ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of the tax for each quarterly period must be paid to the department within 60 days after the end of each quarterly period.

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(2) The operator sball complete on forms prescribed by the department a statement showing the total number of barrels of merchantable or marketable oil or cubic feet of natural gas produced and sold by the person in the state during each month of the quarter and during the whole quarter, the average value of the production sold during each month, and the total value of the production sold for the whole quarter, together with the total amount due as taxes for the quarter. The statement must be filed within the time provided in subsection (1). The statement must be accompanied by the tax due. The statement must be signed by the individual or the president, vice president, treasurer, assistant treasurer, or authorized agent of the association, corporation, joint-stock company, or syndicate making the statement. A person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all operations in one statement.

(3) If the tax is not paid on or before the due date, there must be assessed a penalty of 10% of the amount of the tax not paid. If the tax is not paid when due, interest also must be added at tbe rate of 1% a month or fraction of a month, computed on the total amount of the tax from tbe due date until paid. The department may waive the 10% penalty if reasonable cause for the failure to pay is provided to the department.

Section 9. Record of product — carriers to furnish data — penalty. (1) Each person who purchases oil or natural gas shall keep a record of all oil or natural gas purchased by the person in this state. The records are subject to inspection by the department on reasonable notice at any time during normal business hours.

(2) Each railroad, pipeline, purchasing, and transportation company that carries or purchases oil or natural gas shall furnish to the department, whenever requested to do so, all data related to tbe shipment of oil or natural gas that may be required to properly enforce tbe provisions of [sections 1 through 20]. A railroad, pipeline, purchasing, or transportation company that fails to comply with the provisions of this section is subject to a penalty of $100 for each day that it fails to furnish the statement.

Section 10. Procedure to compute tax in absence of statement — estimation of tax — failure to file penalty and interest. (1) If the operator fails to file any statement required by [section 8] within the time required, the department shall, immediately after the time has expired, ascertain the number of barrels of oil or cubic feet of gas produced and sold by the person in this state during the quarter and during each month of the quarter. The department also shall determine the average value of the barrels of oil produced and sold during each month or the average value of cubic feet of gas produced and sold during each month and fix the amount of the taxes due from the person for the quarter.

(2) The department shall impose a penalty of 10% of the tax due plus interest at the rate of 1% a month or fraction of a month, computed on the total amount of the tax. Interest must be computed from the date on which the oil and natural gas production taxes were due to tbe date of payment. The department shall mail to the taxpayer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The department

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may waive the 10% penalty if reasonable cause for the failure to file the statement required by [section 8] is provided to the department.

Section 11. Deficiency assessment — review — interest. (1) When the department determines that the amount of the tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) A deficiency assessment must bear interest until paid at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

Section 12. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any taxable period is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as is charged on deficiency assessments provided in [section 11] beginning from the due date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves refunding or crediting of the overpayment.

(3) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

Section 13. Warrant for distraint. If all or part of the tax imposed by [sections 1 through 20] is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed and recorded after the warrant is issued.

Section 14. Exemption from resource indemnity and ground water assessment tax. A person who has paid the tax on oil and natural gas under the provisions of [sections 1 through 20] is exempt from the resource indemnity and ground water assessment tax.

Section 15. Statute of limitations. (1) Except as otherwise provided in this section, a deficiency may not be assessed with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is

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mailed within 5 years from the date on which the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period is later, unless before the expiration of the period, the taxpayer files a claim or the department of revenue has determined the existence of the overpayment and bas approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if a claim is not filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

Section 16. Rulemaking authority. The department shall adopt rules tbat are necessary to implement and administer [sections 1 through 20].

Section 17. Calculation of unit value. For the purposes of distribution of oil and natural gas production taxes to county and school taxing units for production from pre-1985 wells, the department shall determine the unit value of oil and natural gas for each taxing unit as follows:

(1) The unit value for oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on oil produced and sold in that taxing unit in calendar year 1988 by tbe number of barrels of oil produced in that taxing unit during 1988, excluding post-1985 wells.

(2) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced and sold in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding post-1985 wells.

Section 18. Distribution of taxes. (1) For each calendar quarter, tbe department of revenue shall determine the amount of tax, late payment interest, and penalty collected under [sections 1 through 20]. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and horizontally drilled wells located in the taxing unit.

(2) Except as provided in subsections (3) and (4), oil production taxes must be distributed as follows:

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(a) The amount equal to 41.6% of the oil production taxes, including late payment interest and penalty, collected under [sections 1 through 20] must be distributed as provided in subsection (7).

(b) The remaining 58.4% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (8).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (7).

(4) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under [sections 1 through 20] on production from horizontally drilled wells and on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (7).

(5) Except as provided in subsection (6), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14.6% of the natural gas production taxes, including late payment interest and penalty, collected under [sections 1 through 20] must be distributed as provided in subsection (7).

(b) The remaining 85.4% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (8).

(6) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under [sections 1 through 20] on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (7).

(7) The department shall, in accordance with the provisions of 15-1-501(6), distribute the state portion of oil and natural gas production taxes, including late payment interest and penalty collected, as follows:

(a) 85% to the state general fund;

(b) 4.3% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 10.7% to be distributed as provided by 15-38-106(2).

(8) (a) For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under [section 17] according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to

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the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:

(i) By the dates referred to in subsection (9), the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection (8)(a), by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsection (8)(a) must be calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(B) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(b) Except as provided in subsection (8)(c), the county treasurer shall distribute the money received under subsection (9) from pre-1985 wells to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (8)(b), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (8)(c)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

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(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (8)(d)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drilled wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(h) and (5)(b) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection (8)(e) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection (8)(e) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection (8)(b) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural gas production taxes distributed under subsection (8)(e) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (8)(h) and (8)(i) is for the exclusive use and benefit of the county and school taxing units.

(9) The department shall remit the amounts to be distributed in subsection (8) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

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(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(10) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under [section 4] for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

Section 19. Local government severance tax payments for calendar year 1995 production — distribution of payments — not subject to I-105 limitations. (1) The local government severance tax imposed under 15-36-101, as that section read before [the effective date of this act], for calendar year 1995 production is due as follows:

(a) for oil and natural gas production occurring in the first calendar quarter of 1995, the tax is due May 31, 1996;

(b) for oil and natural gas production occurring in the second calendar quarter of 1995, the tax is due May 31, 1997;

(c) for oil and natural gas production occurring in the third calendar quarter of 1995, the tax is due May 31, 1998; and

(d) for oil and natural gas production occurring in the fourth calendar quarter of 1995, the tax is due May 31, 1999.

(2) (a) If the taxpayer pays the entire local government severance tax liability for calendar year 1995 on or before June 30, 1996, the taxpayer must receive a 6% reduction in the total local government severance tax liability.

(b) Any payment of local government severance taxes for calendar year 1995 made on or before June 30, 1997, does not accrue interest. Any payment of local government severance taxes for calendar year 1995 made after June 30, 1997, must accrue interest at the rate of 1% a month or fraction of a month from July 1, 1997, to the date of payment. Any payment for the third quarter of 1995 received after May 31, 1998, and any payment for the fourth quarter of 1995 received after May 31, 1999, is subject to the late payment penalty provisions in [section 8].

(c) In the case of the dissolution of the operator or a change in the operator of any lease or unit, any unpaid local government severance tax for calendar year 1995 becomes due on the date of dissolution or on the date of the change in operator. The operator is subject to the provisions of subsection (2)(a) regarding the 6% tax liability reduction or the provisions of subsection (2)(b) regarding interest and penalties.

(3) The department shall determine the amount of tax collected under subsections (1) and (2) from within each taxing unit.

(4) For purposes of the distribution of local government severance taxes collected under this section, the department shall use the unit value of oil and gas for each taxing unit as determined in [section 17].

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(5) The local government severance tax must be deposited in the agency fund in the state treasury and transferred to the county for distribution as provided in subsection (6).

(6) For the purpose of the distribution of the local government severance tax for calendar year 1995 production, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters for which the distribution occurs plus penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters for which the distribution occurs. The taxes must be calculated and distributed as follows:

(a) By July 31 of each of the years 1996, 1997, 1998, and 1999, the department shall calculate and distribute to each eligible county the amount of local government severance tax for calendar year 1995 production, determined by multiplying the unit value, as adjusted in this subsection (6), by the units of production on which the local government severance tax was owed during calendar year 1995 production.

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsection (6)(a) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(7) (a) The county treasurer shall distribute the money received under subsection (6) between the county and school taxing units. The distribution between county and school taxing units is the ratio of the number of mills levied for fiscal year 1990 against 1988 production in each taxing unit for the county and schools, including the county equalization levies that were in effect under 20-9-331 and 20-9-333 as those sections read on July 1, 1989, and the university 6-mill levy imposed under 20-25-423, except that a distribution may not be made to a municipal taxing unit or the state equalization aid levy imposed under 20-9-360. Distribution of money for the county equalization levies and the university levy must be remitted to the state by the county treasurer. The amounts distributed under subsections (7)(b) and (7)(c) are for the exclusive use of county and school taxing units.

(b) The county treasurer shall deposit the money from subsection (7)(a) allocated to county levies to the oil and gas tax accelerated fund.

(c) The trustees of a school district may allocate any payment received under subsection (7)(a) to any budget fund of the district or to the miscellaneous programs fund established in 20-9-507. The trustees shall direct the county treasurer to deposit the local government severance tax payments under this

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section to the funds of the district in accordance with the allocations determined by the trustees.

(8) Local government severance tax payments to a county pursuant to this section are not subject to the limitations of Title 15, chapter 10, part 4. Payments of local government severance tax pursuant to this section may not be used for county classification purposes under 7-1-2111 and may not be considered in the determination of bonding limits under 7-7-2101, 7-7-2203, 7-14-2524, and 7-16-2327.

Section 20. Oil and natural gas accelerated tax fund. (1) The county commissioners of a county that receives tax distributions under [section 19] shall establish an oil and natural gas accelerated tax fund for the deposit of the distributions. The county commissioners may retain the money in the fund for any time period considered appropriate by the commissioners. Money retained in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose allowed by law.

(3) Money in the fund must be invested as provided by law. Interest and income earned on the investment of money in the fund must be credited to the fund.

(4) The oil and natural gas accelerated tax fund must be financially administered as a nonbudgeted fund under the provisions of Title 7, chaptor 6, part 23.

Section 21. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. **Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this stato must be classified according to ~~that percentage of the true and full~~ *the taxable* valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504(2), as follows:

(a) first class—all counties having a taxable valuation of $50 million or over;

(b) second class—all counties having a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having a taxable valuation of more than $10 million and less than $15 million;

(f) sixth class—all counties having a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

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(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) ~~the amount of taxes levied on new production, production from horizontally completed wells, and incremental production, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%~~ *the value provided by the department of revenue under [section 18(10)]; and*

(d) ~~the amount of value represented by new production or production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%; and~~

~~(e)~~ 6% of the taxable value of the county on January 1 of each tax year."

Section 22. Section 7-7-2101, MCA, is amended to read:

"**7-7-2101. Limitation on amount of county indebtedness.** (1) A county may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation, plus the ~~amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%~~ *value provided by the department of revenue in [section 18(10)]*, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 23. Section 7-7-2203, MCA, is amended to read:

"**7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the ~~amount of~~

~~taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%~~ *value provided by the department of revenue under [section 18(10)]*, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the ~~amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%~~ *value provided by the department of revenue under [section 18(10)]*, when necessary to do so, ~~plus the value of any other production occurring after December 31, 1988, multiplied by 60%~~ for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings on the site and furnishing and equipping the buildings for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail that will not exceed 12.5% of the taxable value of the property in the county subject to taxation.

(4) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 24. Section 7-14-2524, MCA, is amended to read:

"**7-14-2524. Limitation on amount of bonds issued — excess void.** (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the ~~amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%~~ *value provided by the department of revenue under [section 18(10)]*. The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

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(2) A county may issue bonds that, with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of the property, plus the ~~amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%~~ *value provided by the department of revenue under [section 18(10)]* when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, may not exceed 22.5% of the total of the taxable value of the property within the county, plus the ~~amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%~~ *value provided by the department of revenue under [section 18(10)]*, as ascertained by the last preceding general assessment."

Section 25. Section 7-14-2525, MCA, is amended to read:

"**7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property therein, plus the ~~amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%~~ *value provided by the department of revenue under [section 18(10)]*, and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds."

Section 26. Section 7-16-2327, MCA, is amended to read:

"**7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, bas the power and duty to contract an indebtedness in behalf of a county, upon the credit of the county, for the purposes of 7-16-2321(1) and (2).

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county, plus the ~~amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612, plus the value of any other production occurring after December 31, 1988, multiplied by 60%~~ *value provided by the department of revenue under [section 18(10)]*, ascertained by the last assessment for stato and county taxes previous to the incurring of tbe indebtedness.

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds."

Section 27. Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (6) all money received from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

~~(c) severance taxes allocated to the general fund under chapter 36;~~

~~(d)~~*(c)* liquor license taxes under Title 16;

~~(e)~~*(d)* telephone company license taxes under chapter 53; and

~~(f)~~*(e)* inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 91.3% of the taxes to tbe credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

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(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 89.5% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(4) The department of revenue shall also deposit to the credit of the state general fund all money received from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) ~~After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections~~ *Oil and natural gas production taxes allocated under [section 18(7)(a)]* must be deposited in the general fund.

(6) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally accepted accounting principles.

(7) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 28. Section 15-6-208, MCA, is amended to read:

"**15-6-208. Mineral exemptions.** (1) One-half of the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal in a calendar year is exempt from taxation.

(2) Metal mines producing less than 20,000 tons of ore in a taxable year are exempt from property taxation on one-half of the merchantable value.

~~(3)(a) New production, as defined in 15-23-601, is exempt from taxation for the first 12 months of production as provided in 15-23-612.~~

~~(b) Production from horizontally completed wells, as defined in 15-23-601, is exempt from taxation for the first 18 months of production as provided in 15-23-612.~~

~~(4)~~*(3)* The first 1,000 tons of travertine and building stone extracted from a mine in a tax year are exempt from property taxation."

Section 29. Section 15-16-102, MCA, is amended to read:

"**15-16-102. Time for payment — penalty for delinquency.** Except as provided in 15-16-802 and 15-16-803 and unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, all taxes levied and assessed in

the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 ~~and assessments made on interim production and new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121~~, ~~shall be~~ *are* payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half *are payable* on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, ~~then~~ the amount ~~so~~ payable ~~shall become~~ *is* delinquent and ~~shall draw~~ *draws* interest at the rate of 5/6 of 1% ~~per~~ *a* month from and after the delinquency until paid and 2% ~~shall~~ *must* be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year ~~shall be~~ *are* delinquent and ~~shall~~ draw interest at the rate of 5/6 of 1% ~~per~~ *a* month from and after the delinquency until paid and 2% ~~shall~~ *must* be added to the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(5) A taxpayer may pay ~~his~~ current year taxes without paying delinquent taxes. The county treasurer ~~must~~ *shall* accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of *taxes for* delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer."

Section 30. Section 15-23-103, MCA, is amended to read:

"**15-23-103. Due date of reports and returns — extensions.** (1) Except as provided in subsection (2) ~~and 15-23-602~~, each report or return described in 15-23-301, 15-23-402, 15-23-502, 15-23-701, or 15-23-517 must be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-201, 15-23-212, 15-23-515, or 15-23-516 must be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days."

Section 31. Section 15-23-104, MCA, is amended to read:

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"**15-23-104. Failure to file — estimate by department — penalty.** (1) If any person fails to file a report or return within the time established in 15-23-103 or by a later date approved by the department, the department shall estimate the value of the property that should have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303. In estimating value under this section, the department may subpoena a person or the person's agent as specified in 15-1-302. An assessment pursuant to parts 5, ~~through~~ 7, *and* 8 of this chapter based on estimated value or imputed value is subject to review under 15-1-211. For each month or part of a month that a report is delinquent, the department shall impose and collect a $25 penalty, with the total not to exceed $200, and shall deposit the penalty to the credit of the general fund. The department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent. The department shall notify the county treasurer of each affected county of the amount of the penalty, and the treasurer shall collect the penalty in the same manner as the taxes to which the penalty applies.

(2) For a delinquency in reporting under 15-23-212, the department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent."

Section 32. Section 15-23-106, MCA, is amended to read:

"**15-23-106. Report to the counties.** (1) On or before July 1, the department shall prepare for each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of the property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to the county, including the length or other description of the property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county must be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines ~~and oil and gas wells~~ in the county, as determined under 15-23-503, 15-23-505, 15-23-515, 15-23-516, *and* 15-23-517~~, 15-23-603, and 15-23-605~~; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The department shall enter the reported assessed values in the property tax record for the county."

Section 33. Section 15-23-115, MCA, is amended to read:

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"15-23-115. **Interest.** If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, 15-23-515, 15-23-516, 15-23-517, ~~15-23-602,~~ 15-23-701, or 15-23-802 and if an additional tax is due, there must be added to the tax until paid in full interest at the rate of 1% a month or fraction of a month from the date the original tax was due and payable. A taxpayer subject to imposition of interest pursuant te this section is not subject to the penalty and interest provisions contained in 15-16-102."

Section 34. Section 15-38-105, MCA, is amended to read:

"15-38-105. **Report of gross yield from mines.** A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or tailings, or other place or source shall file an annual statement of gross yield of the mineral from each mine owned or worked by that person during the calendar year. This statement must be in the form prescribed by the department and ~~shall~~ *must* be signed hy the person or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any. Metal producers shall deliver the statement to the department on or before March 31 following the end of the calendar year. Mineral producers~~, including oil and gas producers,~~ shall deliver the statement to the department on or before the 60th day following the end of the calendar year. The statement ~~shall~~ *must* show the following:

(1) the name and address of the owner or lessee or operater of the mine;

(2) the description and location of the mine;

(3) the quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, ~~barrels of petroleum or other crude or mineral oil, cubic feet of natural gas,~~ or other commercially valuable constituents of the ores or mineral products or deposits yielded to the person engaged in mining measured by standard units of measurement;

(5) the gross yield or value in dollars and cents."

Section 35. Section 15-38-121, MCA, is amended to read:

"15-38-121. **Certain royalties exempt.** Exempt from taxation are royalties received by:

(1) an Indian tribe with respect te ~~on-reservation oil and gas~~ *mineral* production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938 (,25 U.S.C. 396a-396g ~~(1983)~~);

(2) the United States as trustee for individual Indians; and

(3) the United States, the state of Montana, or a county or municipal government."

Section 36. Section 15-38-202, MCA, is amended to read:

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"15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2)(a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) beginning in fiscal year 1995, $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at northern Montana college to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of tbe facilities related to the programs;

(iv) $1,025,000 to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(v) $2,200,000 to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(vi) ~~beginning in fiscal year 1994,~~ $250,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(b) The remainder of the interest income is allocated as follows:

(i) Thirty-eight percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Fifteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty-one and one-half percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Five and one-half percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

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(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

15-38-202. (Effective July 1, 1995) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117 *and [section 18]*, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2)(a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) ~~beginning in fiscal year 1995,~~ $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at northern Montana college to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;

(iv) beginning in fiscal year 1996, $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(v) beginning in fiscal year 1996, $3 million to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(vi) beginning in fiscal year 1996, $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(b) The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

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(ii) Eighteen percent of the interest income of the resource indemnity trust fund must he allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protoction fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify tbe amount of money from each allocation that is proposed to be diverted and tbe proposed use of the diverted funds. A formal budget document includes a printed and puhlicly distributed hudget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 37. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; ~~15-36-112;~~ 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

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(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient te pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant te sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 38. Section 20-9-104, MCA, is amended to read:

"**20-9-104. General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353, except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, balance to the impact aid fund established in 20-9-514.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) For fiscal year 1994 and subsequent fiscal years, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount received:

(a) in settlement of tax payments protested in a prior school fiscal year;

(b) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(c) in delinquent taxes from a prior school fiscal year; *and*

(d) as a local government severance tax payment for calendar year 1995 production as provided in [section 19].

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less."

Section 39. Section 20-9-141, MCA, is amended to read:

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"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund hudget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) general fund balance reappropriated, as estahlished under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323;

(B) revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(C) ~~net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601~~ *oil and natural gas production taxes*;

(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(E) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax hase aid; and

(iii) ~~(A) pursuant to subsection (4), anticipated revenue from local government severance taxes as provided in 15-36-112; and~~

~~(B)~~ pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.

(c) Notwithstanding the provisions of subsection (2), suhtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE hudget amount, to determine the general fund BASE budget levy requirement.

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(d) Suhtract any amount remaining after the determination in suhsection (1)(c) from any additional funding requirement to he met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to he levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from ~~local government severance taxes, as provided in 15-36-112, and from~~ revenue from coal gross proceeds under 15-23-703."

Section 40. Section 20-9-161, MCA, is amended to read:

"**20-9-161. Definition of budget amendment for budgeting purposes.** As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district's hudget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year; ~~or~~

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(h) taxes from a prior school fiscal year as the result of a tax audit hy the department of revenue or its agents; ~~or~~

(c) delinquent taxes from a prior school fiscal year; ~~and~~ *or*

(d) *local government severance tax payments for calendar year 1995 production as provided in [section 19(7)]; and*

(e) a determination hy the trustees that it is necessary to expend all or a portion of the taxes received under suhsection (5)(a), (5)(b), ~~or~~ (5)(c)*,or (5)(d)* for a project or projects that were deferred from a previous hudget of the district as a result of the protested taxes; or

(6) any other unforeseen need of the district that cannot he postponed until the next school year without dire consequences affecting the safety of the students and district employees or the educational functions of the district."

Section 41. Section 20-9-331, MCA, is amended to read:

"**20-9-331. Basic county tax and other revenues for county equalization of the elementary district BASE funding program.** (1) The county commissioners of each county shall levy an annual basic tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned te the support of the elementary BASE funding programs of the school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised hy this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(h) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed te a county and designated for the common school fund under the provisions of 17-3-222;

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(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) ~~net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1985~~ *oil and natural gas production taxes*; ~~and~~

(h) *anticipated local government severance tax payments for calendar year 1995 production as provided in [section 19]; and*

(i) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204."

Section 42. Section 20-9-333, MCA, is amended to read:

"**20-9-333. Basic special levy and other revenues for county equalization of high school district BASE funding program.** (1) The county commissioners of each county shall levy an annual basic special tax for high schools of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required te repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

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(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) ~~net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988~~ *oil and natural gas production taxes*; ~~and~~

(e) anticipated local government severance tax payments for calendar year 1995 production as provided in [section 19]; and

~~(e)~~*(f)* anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204."

Section 43. Section 20-9-501, MCA, is amended to read:

"**20-9-501. Retirement fund.** (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

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(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) ~~net proceeds taxes and local government severance taxes on any other oil and gas production occurring after December 31, 1988~~ *oil and natural gas production taxes*;

(iii) *anticipated local government severance tax payments for calendar year 1995 production as provided in [section 19];*

(iv) coal gross proceeds taxes under 15-23-703;

~~(iv)~~*(v)* any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for tbe ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget; and

~~(v)~~*(vi)* any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in tbe final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

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(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000."

Section 44. Section 20-9-507, MCA, is amended to read:

"**20-9-507. Miscellaneous programs fund.** (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-324 other than money under the provisions of Title I of Puhlic Law 81-874 or federal money designated for deposit in a specific fund of the district shall estahlish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district, *a payment received as a local government severance tax payment for calendar year 1995 production as provided in [section 19],* or ~~may be~~ a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement *or a local government severance tax payment*, the money may he expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall cause a separate accounting to be maintained for each federal grant program and for the aggregate of all reimbursement money.

(2) The financial administration of the miscellaneous programs fund must he in accordance with the financial administration provisions of this title for a nonbudgeted fund."

Scction 45. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintondent shall compute the revenue available to finance the transportation fund hudget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (te determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing scbool fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scbeduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under tbe provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after tlie application of any district money under subsection (2)(b), must be prorated to each county incorporated by tbe joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

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(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated ~~net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988~~ *oil and natural gas production taxes*;

(h) anticipated local government severance tax payments for calendar year 1995 production;

~~(h)~~*(i)* anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

~~(i)~~*(j)* any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

~~(j)~~*(k)* any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

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(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 46. Section 20-10-146, MCA, is amended to read:

"**20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) ~~net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988~~ *oil and natural gas production taxes*;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

~~(iii)~~*(iv)* coal gross proceeds taxes under 15-23-703;

~~(iv)~~*(v)* any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

~~(v)~~*(vi)* federal forest reserve funds allocated under the provisions of 17-3-213; and

~~(vi)~~*(vii)* other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available as determined in subsection (2)(b) to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 47. Section 82-11-118, MCA, is amended to read:

"**82-11-118. Fees for processing applications.** (1) The board shall establish a fee schedule to defray the expenses incurred for processing an application from an operator or producer of oil seeking approval of a new or expanded enhanced recovery project, as defined in ~~15-23-601 or 15-36-101~~ *[section 3]*. The fee must be paid by the owner or operator seeking approval of the project.

(2) The board shall, by rule, determine the amount of the fee based on the complexity of processing the application."

Section 48. Section 82-11-135, MCA, is amended to read:

"**82-11-135. Money earmarked for board expenses.** ~~All~~ *The state treasurer shall deposit all* money collected under this chapter *and under [section 18(7)(b)]* ~~shall be deposited~~ in the state special revenue fund ~~by the state treasurer and shall~~. *The money must* be used for the purpose of paying all expenses of the board and for no other purpose. ~~All these moneys shall be used by the board~~ *The board shall use the money* subject to biennial appropriations by the legislature. Income and interest from investment of the board's moneys in the state special revenue fund ~~shall~~ *must* be credited to the board."

Section 49. Section 82-11-162, MCA, is amended to read:

"**82-11-162. Release of producing oil or gas well from drilling bond — fee.** Upon receipt of notification by the owner on a form prescribed by the board, payment by the owner of $125, and proof from the owner that a well completed after June 30, 1989, is producing oil or gas in commercial quantities and is subject to the tax under ~~15-38-104~~ *[sections 1 through 20]*, the board shall release ~~and absolve~~ the owner of the well from the bond required under 82-11-123."

Section 50. Repealer. Sections 15-16-121, 15-23-601, 15-23-602, 15-23-603, 15-23-605, 15-23-606, 15-23-607, 15-23-608, 15-23-609, 15-23-610,

15-23-611, 15-23-612, 15-23-613, 15-23-614, 15-23-621, 15-23-631, 15-36-101, 15-36-102, 15-36-103, 15-36-104, 15-36-105, 15-36-106, 15-36-107, 15-36-108, 15-36-109, 15-36-110, 15-36-112, 15-36-113, 15-36-114, 15-36-120, 15-36-121, 15-36-122, 15-36-126, 82-11-131, 82-11-132, and 82-11-133, MCA, and Chapter 33, Laws of 1995, are repealed.

Section 51. Codification instruction. [Sections 1 through 20] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 20].

Section 52. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 53. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 54. Effective dates — rulemaking. (1) Except for the purposes of subsection (2), [this act] is effective January 1, 1996.

(2) For the purposes of promulgating administrative rules, [section 16 and this section] are effective on passage and approval.

Section 55. Applicability. (1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2)(a) [Sections 21 through 26] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] apply to school fiscal years beginning after June 30, 1996.

(3)(a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996.

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred.

Approved April 14, 1995

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CHAPTER NO. 452

[SB 415]

AN ACT CLARIFYING THAT THE ENVIRONMENTAL QUALITY PROTECTION FUND ALLOWS FOR PRIVATE FUNDS TO BE DONATED TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REMEDIATE A SPECIFIC RELEASE AT A SPECIFIC FACILITY; AMENDING SECTION 75-10-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-704, MCA, is amended to read:

"**75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund an environmental quality protoction fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) *except as provided in subsection (7),* estahlish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to acbieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant te 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant te 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of tbis part and additional money remains in the fund, the department shall seek additional authority te spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

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(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account estahlished pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to interfere with or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state. Subsections (7) and (8) do not pertain to facilities where the department has initiated actions under this part.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person that donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatcned release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

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(d) This subsection does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 453

[SB 424]

AN ACT REVISING THE CALCULATION OF UNIT VALUE FOR LOCAL GOVERNMENT SEVERANCE TAX PURPOSES; EXCLUDING FROM THE UNIT VALUE CALCULATION NET PROCEEDS TAXES ON OIL AND NATURAL GAS THAT ARE ATTRIBUTABLE TO AN EMERGENCY LEVY IMPOSED IN FISCAL YEAR 1990 ON 1988 PRODUCTION; AMENDING SECTION 15-36-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-112, MCA, is amended to read:

"15-36-112. Disposition of oil and gas state and local government severance taxes — calculation of unit value for local government severance tax. (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each taxing unit.

(2) For purposes of the distribution of local government severance taxes collected under this chapter, the department shall determine the unit value of oil and gas for each taxing unit as follows:

(a) ~~The~~ *Subject to the conditions of subsection (2)(c), the* unit value for petroleum and other mineral or crude oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that taxing unit during 1988, excluding new and interim production.

(b) ~~The~~ *Subject to the conditions of subsection (2)(c), the* unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding new and interim production.

(c) The amount of net proceeds taxes calculated under subsections (2)(a) and (2)(b) may not include the amount of taxes that are attributable to a financial

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emergency, as described in 15-10-412(10), for which additional mills were levied in fiscal year 1990.

(3) The state and local government severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4).

(b) The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute te each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) Except as provided in ~~subsection~~ *subsection* (6), the county treasurer shall distribute the money received under suhsection (4) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal

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year 1990 in tbe taxing unit, except that a distribution may not be made to a municipal taxing unit.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of local government severance tax money that would have gone to a taxing unit, as provided in subsection (5), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocato the local government severance taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distrihuted in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total hudget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the local government severance taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the local government severance taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocato the excess to any budgeted fund of the school district."

Section 2. Coordination instruction. If Senate Bill No. 412 is passed and approved, then [section 17], [section 18], and [section 19] of Senate Bill No. 412 are amended as provided in subsections (1), (2), and (3), respectively.

(1) The section relating to the calculation of unit value, [section 17] of Senate Bill No. 412, is amended to read:

"NEW SECTION. **Section 17. Calculation of unit value.** For the purposes of distribution of oil and natural gas production taxes to county and school taxing units for production from pre-1985 wells, the department shall determine the unit value of oil and natural gas for each taxing unit as follows:

(1) *Subject to the conditions of subsection (3), the* unit value for oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculatod on oil produced and sold in that taxing unit in calendar year 1988 by the number of barrels of oil produced in that taxing unit during 1988, excluding post-1985 wells.

(2) *Subject to the conditions of subsection (3), the* unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculatod on natural gas produced and sold in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding post-1985 wells.

(3) The amount of net proceeds taxes calculated under subsections (1) and (2) may not include the amount of taxes that are attributable to a financial

emergency, as described in 15-10-412(10), for which additional mills were levied in fiscal year 1990."

(2) The section relating to the distribution of oil and natural gas production taxes, [section 18] of Senate Bill No. 412, is amended to read:

"NEW SECTION. **Section 18. Distribution of taxes.** (1) For each calendar quarter, the department of revenue shall determine the amount of tax, late payment interest, and penalty collected under [sections 1 through 20]. For purposes of distribution of the taxes to county and school taxing units, the department sball determine the amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and horizontally drilled wells located in the taxing unit.

(2) Except as provided in subsections (3) and (4), oil production taxes must be distributed as follows:

(a) The amount equal to 41.6% of the oil production taxes, including late payment interest and penalty, collected under [sections 1 through 20] must be distrihuted as provided in suhsection (7).

(h) The remaining 58.4% of tbe oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the agency fund in the state treasury and transferred to the county and scbool taxing units for distribution as provided in subsection (8).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 montbs of production must be distributed as provided in subsection (7).

(4) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under [sections 1 through 20] on production from horizontally drilled wells and on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distrihuted as provided in subsection (7).

(5) Except as provided in subsection (6), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14.6% of the natural gas production taxes, including late payment interest and penalty, collected under [sections 1 through 20] must be distributed as provided in subsection (7).

(b) The remaining 85.4% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (8).

(6) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under [sections 1 through 20] on production from post-1985 wells occurring during tbe first 12 months of production must he distributed as provided in subsection (7).

(7) The department shall, in accordance with the provisions of 15-1-501(6), distribute the state portion of oil and natural gas production taxes, including late payment interest and penalty collected, as follows:

(a) 85% to the state general fund;

(b) 4.3% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 10.7% to be distributed as provided by 15-38-106(2).

(8) (a) For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under *[section 17]* according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distribution occurs. The amount of oil and production taxes distributions must be calculated and distributed as follows:

(i) By the dates referred to in subsection (9), the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection (8)(a), by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsection (8)(a) must be calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by the tetal distribution determined for that period to obtain an excess or shortage percentage.

(B) The excess percentage must be multiplied by the distribution te each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(b) Except as provided in subsection (8)(c), the county treasurer shall distribute the money received under subsection (9) from pre-1985 wells te the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (8)(b), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

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(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (8)(c)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocato the excess to any taxing unit within the county.

(d) The board of trustees of an elementsry or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (8)(d)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drilled wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b) and (5)(b) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection (8)(e) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection (8)(e) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection (8)(b) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural gas production taxes distributod under subsection (8)(e) tbat are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (8)(h) and (8)(i) is for the exclusive use and benefit of the county and school taxing units.

(9) The department shall remit the amounts to be distributed in subsection (8) to the county treasurer by the following dates:

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(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(10) The department shall provide to each county by May 31 of each year the amount of gross taxable value representod by all types of production taxed under [section 4] for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes."

(3) The section relating to the distribution of local government severance tax payments, [section 19] of Senate Bill No. 412, is amended to read:

"NEW SECTION. Section 19. **Local government severance tax payments for calendar year 1995 production — distribution of payments — not subject to I-105 limitations.** (1) The local government severance tax imposed under 15-36-101, as that section read before [the effective date of this act], for calendar year 1995 production is due as follows:

(a) for oil and natural gas production occurring in the first calendar quarter of 1995, the tax is due May 31, 1996;

(b) for oil and natural gas production occurring in the second calendar quarter of 1995, the tax is due May 31, 1997;

(c) for oil and natural gas production occurring in the third calendar quarter of 1995, the tax is due May 31, 1998; and

(d) for oil and natural gas production occurring in the fourth calendar quarter of 1995, the tax is due May 31, 1999.

(2) (a) If the taxpayer pays the entire local government severance tax liability for calendar year 1995 on or before June 30, 1996, the taxpayer must receive a 6% reduction in the total local government severance tax liability.

(b) Any payment of local government severance taxes for calendar year 1995 made on or before June 30, 1997, does not accrue interest. Any payment of local government severance taxes for calendar year 1995 made after June 30, 1997, must accrue interest at the rate of 1% a month or fraction of a month from July 1, 1997, to the date of payment. Any payment for the third quarter of 1995 received after May 31, 1998, and any payment for the fourth quarter of 1995 received after May 31, 1999, is subject to the late payment penalty provisions in [section 8].

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(c) In the case of the dissolution of the operator or a change in the operator of any lease or unit, any unpaid local government severance tax for calendar year 1995 becomes due on the date of dissolution or on the date of the change in operator. The operator is subject to the provisions of subsection (2)(a) regarding the 6% tax liability reduction or the provisions of subsection (2)(b) regarding interest and penalties.

(3) Tbe department sball determine the amount of tax collectod under subsections (1) and (2) from within each taxing unit.

(4) For purposes of the distribution of local government severance taxes collectod under this section, the department shall use the unit value of oil and gas for each taxing unit as determined in [section 17].

(5) Tbe local government severance tax must be deposited in the agency fund in the state treasury and transferred to the county for distribution as provided in subsection (6).

(6) For the purpose of the distribution of the local government severance tax for calendar year 1995 production, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters for which the distribution occurs plus penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters for which the distribution occurs. The taxes must be calculated and distributed as follows:

(a) By July 31 of each of the years 1996, 1997, 1998, and 1999, the department shall calculate and distributo to each eligible county the amount of local government severance tax for calendar year 1995 production, determined by multiplying the unit value, as adjusted in this subsection (6), by the units of production on which the local government severance tax was owed during calendar year 1995 production.

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsection (6)(a) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(7) (a) The county treasurer shall distribute the money received under subsection (6) between the county and school taxing units. The distribution between county and school taxing units is the ratio of the number of mills levied for fiscal year 1990 against 1988 production in each taxing unit for the county and schools, including the county equalization levies that were in effect under 20-9-331 and 20-9-333 as those sections read on July 1, 1989, and tho university

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6-mill levy imposed under 20-25-423, except that a distribution may not be made to a municipal taxing unit or the state equalization aid levy imposed under 20-9-360. Distribution of money for the county equalization levies and the university levy must be remitted to the state by the county treasurer. The amounts distributed under subsections (7)(b) and (7)(c) are for the exclusive use of county and school taxing units.

(b) The county treasurer shall deposit the money from subsection (7)(a) allocated to county levies to the oil and gas tax accelerated fund.

(c) The trustees of a school district may allocate any payment received under subsection (7)(a) to any budget fund of the district or to the miscellaneous programs fund established in 20-9-507. The trustees shall direct the county treasurer to deposit the local government severance tax payments under this section to the funds of the district in accordance with the allocations determined by the trustees.

(8) Local government severance tax payments to *a county* pursuant to this section are not subject to the limitations of Title 15, chapter 10, part 4. Payments of local government severance tax pursuant to this section may not be used for county classification purposes under 7-1-2111 and may not be considered in the determination of bonding limits under 7-7-2101, 7-7-2203, 7-14-2524, and 7-16-2327."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to oil and natural gas produced and sold after December 31, 1994.

Approved April 14, 1995

CHAPTER NO. 454

[HB 7]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations for reclamation and development grants. (1) The amounts listed in [section 2] are appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account from funds allocated for appropriation from the interest income of the resource indemnity trust fund set forth in Title 15, chapter 38, with the exception of those allocations made in 15-38-202 and 75-1-1101.

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(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4].

Section 2. Approved grant projects. (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated witbin the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by bigber-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation reclamation and development grants program report to the 54th legislature for the 1997 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF *	
Abandoned Mine Reclamation Project	$300,000
MONTANA BOARD OF OIL AND GAS CONSERVATION *	
Devil's Basin: Plug, Abandonment, and Restoration	300,000
MONTANA BOARD OF OIL AND GAS CONSERVATION *	
South Cut Bank Field - A: Plug, Abandonment, and Restoration	300,000
MONTANA BOARD OF OIL AND GAS CONSERVATION *	
South Cut Bank Field - B: Plug, Abandonment, and Restoration	300,000
STATE LANDS, DEPARTMENT OF *	
Oil Well Abandonment	183,260
LEWIS & CLARK COUNTY/CITY OF HELENA *	
Ten Mile Mine Site Reclamation Project	75,000
MONTANA STATE UNIVERSITY *	
Clean Tailings Reclamation	100,000
CASCADE COUNTY CONSERVATION DISTRICT *	
Muddy Creek Water Quality Improvement	300,000
HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF *	
Nonpoint Pollution Control	300,000
BUTTE-SILVER BOW LOCAL GOVERNMENT	
Upper Clark Fork Basin: Superfund Tech. Assist.	93,622
MONTANA STATE UNIVERSITY EXTENSION SERVICE *	
Pollution Prevention Program	59,625
GLACIER COUNTY CONSERVATION DISTRICT *	
Water Quality Demonstration and Reclamation, Red River Drainage	150,000
TOOLE COUNTY *	
North Toole County Reclamation Project	295,246

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STATE LANDS, DEPARTMENT OF *	
Scobey Reclamation Site	11,000
PETROLEUM COUNTY CONSERVATION DISTRICT *	
Petroleum County Artesian Basin	
Ground Water Project	300,000

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 1997 biennium pursuant to 17-7-302.

(4) The funding provided to the grant projects in this section and identified by an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of health and environmental sciences.

Section 3. Coordination of fund sources for grants program projects. A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicative funding.

Section 4. Condition of grants. Disbursement of grant funds under [sections 1 through 6] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendations section of the project narrative of the reclamation and development grants program report for the 1997 biennium.

(4) An agreement between the department and the grant applicant must be executed in a timely manner, taking inte consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. Other appropriations. There is appropriated to any entity of state government that receives a grant under [sections 1 through 6] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

Section 6. Reversion of funds. All funds appropriated from the reclamation and development grants special revenue account under [sections 1 through 6] tbat are unspent and unencumbered on June 30, 1997, revert to that account.

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Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 455

[HB 17]

AN ACT PROVIDING PAY ADJUSTMENTS FOR STATE EMPLOYEES IN THE STATEWIDE, TEACHERS', LIQUOR STORE OCCUPATIONS, AND BLUE-COLLAR PAY PLANS; PROVIDING PAY ADJUSTMENTS FOR JUDGES AND ELECTED STATE OFFICIALS; PROVIDING EXPENSE PAYMENT ADJUSTMENTS FOR LEGISLATORS; PROVIDING THAT THE SALARY FOR THE POSITION IN THE DEPARTMENT OF JUSTICE OF TRAINING COORDINATOR FOR COUNTY ATTORNEYS IS THE SAME AS THAT ESTABLISHED FOR A FULL-TIME COUNTY ATTORNEY IN A COUNTY WITH A POPULATION IN EXCESS OF 30,000; GENERALLY REVISING THE LAWS RELATING TO STATE EMPLOYEE COMPENSATION AND THE STATEWIDE CLASSIFICATION PLAN; PROVIDING AN APPROPRIATION TO FUND PAY ADJUSTMENTS; REQUIRING THAT EMPLOYEES IN COLLECTIVE BARGAINING UNITS RATIFY COLLECTIVE BARGAINING AGREEMENTS PRIOR TO RECEIVING PAY ADJUSTMENTS; PROVIDING PAY ADJUSTMENTS FOR MEMBERS OF THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 2-16-405, 2-18-101, 2-18-103, 2-18-203, 2-18-301, 2-18-303, 2-18-304, 2-18-312, 2-18-313, 2-18-314, 2-18-315, 2-18-703, 3-2-104, 3-5-211, 5-2-301, 15-2-102, 19-5-101, AND 44-4-101, MCA; REPEALING SECTIONS 2-16-404 AND 2-18-305, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-405, MCA, is amended to read:

"**2-16-405. Salaries of certain elected state officials.** *(1)* ~~The~~ *Subject to subsection (2), the* salaries paid to certain elected officials of the state of Montana ~~for fiscal year 1992 and following years~~ are:

	~~Fiscal Year 1992~~	~~Following June 30, 1992~~
(a) Governor:	~~$54,254~~	
(i) $55,502;		
(ii) $57,084 beginning July 1, 1995;		
(iii) $59,310 beginning January 1, 1996.		
(b) Lieutenant governor:	~~$39,218~~	

(i) $40,466;

(ii) $41,619 beginning July 1, 1995;

(iii) $43,242 beginning January 1, 1996.

(c) Attorney general: ~~$49,593~~

(i) $50,841;

(ii) $52,290 beginning July 1, 1995;

(iii) $54,329 beginning January 1, 1996.

(d) State auditor: ~~$36,278~~

(i) $37,526;

(ii) $38,595 beginning July 1, 1995;

(iii) $40,101 beginning January 1, 1996.

(e) Superintendent of public instruction: ~~$42,929~~

(i) $44,177;

(ii) $45,436 beginning July 1, 1995;

(iii) $47,208 beginning January 1, 1996.

(f) Public service commission ~~chairman~~ *presiding officer:* ~~$40,502~~

(i) $41,750;

(ii) $42,940 beginning July 1, 1995;

(iii) $44,615 beginning January 1, 1996.

(g) Public service commissioners, other than ~~chairman~~ *presiding officer:* ~~$39,218~~

(i) $40,466;

(ii) $41,619 beginning July 1, 1995;

(iii) $43,242 beginning January 1, 1996.

(h) Secretary of state: ~~$36,278~~

(i) $37,526;

(ii) $38,595 beginning July 1, 1995;

(iii) $40,101 beginning January 1, 1996.

(i) Clerk of the supreme court: ~~$35,289~~

(i) $36,537;

(ii) $37,578 beginning July 1, 1995;

(iii) $39,044 beginning January 1, 1996.

(2) Prior to June 30, 1996, and prior to June 30 of each even-numbered year thereafter, the department of administration shall conduct a salary survey of executive branch officials similar to the Montana officials listed in subsection (1) for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the salary for the Montana official in determining the average salary for the similar position. If the average salary is greater than the salary for the similar position in Montana, then beginning July 1, 1997, the average is the new salary for that position. In each year following the year in which a survey is conducted, the average salary is the new salary for the position."

Section 2. Section 2-18-101, MCA, is amended to read:

"**2-18-101. Definitions.** As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

~~(2)~~*(3)* "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

~~(3)~~*(4)* "Board" means the board of personnel appeals established in 2-15-1705.

~~(4)~~*(5)* "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

(6) "Class series benchmark" means a reprcsentative position within a class series that is uscd to illustrate the application of the job evaluation factors that are used to classify positions in the elassification plan. A benehmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.

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~~(5)~~*(7)* "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

~~(6)~~*(8)* "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under *the* provisions of 2-18-703.

~~(7)~~*(9)* "Department" means the department of administration created in 2-15-1001.

~~(8)~~*(10)* Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

~~(9)~~*(11)* "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

~~(10)~~*(12)* "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

~~(11)~~*(13)* "Job sharing" means the sharing by two or more persons of a position that is considered an aggregate or permanent position.

(14) "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.

~~(12)~~*(15)* "Market salary" means the *midpoint in a pay grade provided in 2-18-312, based on the* average base salary that other employers pay to employees in *comparable* occupations ~~comparable to occupations in a grade provided in 2-18-312,~~ as determined by the department's salary survey of the relevant labor market.

~~(13)~~*(16)* "Permanent position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

~~(14)~~*(17)* "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position.

~~(15)~~*(18)* "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

~~(16)~~*(19)* "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

~~(17)~~*(20)* "Program" means a combination of planned efforts to provide a service.

~~(18)~~*(21)* "Seasonal position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and ~~which~~

that is a permanent position but ~~which~~ *that* is interrupted by the seasonal nature of the position.

~~(19)~~*(22)* "Temporary position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months."

Section 3. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of corrections and human services or family services;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation;

(13) assistant director for security of the Montana state lottery;

(14) executive director and senior investment officer of the Montana board of science and technology development;

(15) executive director and employees of the state compensation insurance fund;

(16) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(17) executive director of the Montana wheat and barley committee; ~~and~~

(18) commissioner of banking and financial institutions*; and*

(19) training coordinator for county attorneys."

Section 4. Section 2-18-203, MCA, is amended to read:

"2-18-203. Review of positions — change in classification. (1) The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities. In the event *that* adjustments are to be made to ~~the classification~~ *class* specifications, *class series benchmarks,* or criteria ~~utilized~~ *used* for allocating positions ~~in the classification specifications~~ *to classes* affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for blue-collar, ~~teachers~~ *teachers'*, and liquor store ~~clerks~~ *clerks'* classification plans, which ~~shall~~ *plans must* remain mandatory negotiable items under ~~the Collective Bargaining Act~~ *Title 39, chapter 31.*

(2) Employees and employee organizations ~~will~~ *must* be given the opportunity to appeal the allocation or reallocation of a position to a class. The grade assigned to a class ~~is~~ *and factors assigned to class series benchmarks are* not an appealable ~~subject~~ *subjects* under 2-18-1011 through 2-18-1013.

(3) The period of time for which retroactive pay for a classification appeal may be awarded under ~~parts 1 through 3 of this chapter or under~~ 2-18-1011 through 2-18-1013 *or under parts 1 through 3 of this chapter* may not extend beyond 30 days prior to the date *on which* the appeal was filed. ~~This provision shall not affect a classification or position appeal already in process on April 26, 1977.~~"

Section 5. Section 2-18-301, MCA, is amended to read:

"2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services *that* the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and excluding employees compensated under 2-18-313~~, 2-18-314, and~~ *through* 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, ~~and 2-18-305(4),~~ pay *adjustments and pay* schedules provided for in *2-18-303 and in* 2-18-312 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the ~~53rd~~ *54th* legislature.

(4) Pay levels provided for in 2-18-312 through 2-18-315 may not he increased through collective hargaining after adjournment of the ~~53rd~~ *54th* legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312 through 2-18-315 for any employee group or bargaining unit may not

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be increased through collective bargaining over the amount appropriated hy the ~~53rd~~ *54th* legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 6. Section 2-18-303, MCA, is amended to read:

"**2-18-303. Procedures for utilizing *using* pay schedules.** (1) The pay schedules provided in 2-18-312 must be implemented as follows:

(a) The pay schedules provided in 2-18-312 indicate the entry salary and market salary ~~for the fiscal years ending June 30, 1994, and June 30, 1995,~~ for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections ~~(6)~~ *(7)* and ~~(7)~~ *(8)*.

(c) ~~Except as provided in subsection (1)(e), on~~ *On* the first day of the first complete pay period in fiscal year ~~1994~~ *1996*, each employee hired before July 1, ~~1993~~ *1995*, is entitled to the amount of the employee's base salary as it was on June 30, ~~1993~~ *1995, plus, on the employee's anniversary date that occurs on or after September 30, 1995, the increases provided in subsection (1)(d), if applicable.*

(d) (i) Effective on the first day of the pay period that includes an employee's anniversary date during the fiscal years ending June 30, 1996, and June 30, 1997, an employee's market ratio must be compared to the target market ratio in the matrix in subsection (1)(d)(ii) that corresponds to the employee's grade level and completed years of uninterrupted state service. For employees hired on or before September 30, 1994, the anniversary date is October 1.

(ii) As provided in subsection (1)(d)(i), the following matrix must be used to compare an employee's market ratio to the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service:

TARGET MARKET RATIOS

Grade	Years										
	0	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*
4	*0.844*	*0.874*	*0.904*	*0.935*	*0.967*	*0.999*	*1.000*	*1.000*	*1.000*	*1.000*	*1.000*
5	*0.842*	*0.871*	*0.900*	*0.930*	*0.961*	*0.992*	*1.000*	*1.000*	*1.000*	*1.000*	*1.000*
6	*0.840*	*0.868*	*0.896*	*0.925*	*0.955*	*0.985*	*1.000*	*1.000*	*1.000*	*1.000*	*1.000*
7	*0.838*	*0.865*	*0.892*	*0.920*	*0.949*	*0.978*	*1.000*	*1.000*	*1.000*	*1.000*	*1.000*

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8	*0.836*	*0.862*	*0.889*	*0.916*	*0.944*	*0.972*	*1.000*	*1.000*	*1.000*	*1.000*	*1.000*
9	*0.834*	*0.859*	*0.885*	*0.911*	*0.938*	*0.965*	*0.993*	*1.000*	*1.000*	*1.000*	*1.000*
10	*0.832*	*0.857*	*0.882*	*0.908*	*0.934*	*0.961*	*0.988*	*1.000*	*1.000*	*1.000*	*1.000*
11	*0.830*	*0.854*	*0.878*	*0.903*	*0.928*	*0.954*	*0.980*	*1.000*	*1.000*	*1.000*	*1.000*
12	*0.828*	*0.851*	*0.875*	*0.899*	*0.924*	*0.949*	*0.975*	*1.000*	*1.000*	*1.000*	*1.000*
13	*0.826*	*0.849*	*0.872*	*0.896*	*0.920*	*0.945*	*0.970*	*0.996*	*1.000*	*1.000*	*1.000*
14	*0.824*	*0.846*	*0.869*	*0.892*	*0.915*	*0.939*	*0.963*	*0.988*	*1.000*	*1.000*	*1.000*
15	*0.822*	*0.844*	*0.866*	*0.888*	*0.911*	*0.934*	*0.958*	*0.982*	*1.000*	*1.000*	*1.000*
16	*0.820*	*0.841*	*0.863*	*0.885*	*0.907*	*0.930*	*0.953*	*0.977*	*1.000*	*1.000*	*1.000*
17	*0.818*	*0.839*	*0.860*	*0.882*	*0.904*	*0.926*	*0.949*	*0.972*	*0.996*	*1.000*	*1.000*
18	*0.816*	*0.836*	*0.857*	*0.878*	*0.899*	*0.921*	*0.943*	*0.966*	*0.989*	*1.000*	*1.000*
19	*0.814*	*0.834*	*0.854*	*0.875*	*0.896*	*0.917*	*0.939*	*0.961*	*0.984*	*1.000*	*1.000*
20	*0.812*	*0.831*	*0.851*	*0.871*	*0.892*	*0.913*	*0.935*	*0.957*	*0.979*	*1.000*	*1.000*
21	*0.810*	*0.829*	*0.849*	*0.869*	*0.889*	*0.910*	*0.931*	*0.953*	*0.975*	*0.997*	*1.000*
22	*0.808*	*0.827*	*0.846*	*0.866*	*0.886*	*0.906*	*0.927*	*0.948*	*0.970*	*0.992*	*1.000*
23	*0.806*	*0.825*	*0.844*	*0.863*	*0.883*	*0.903*	*0.923*	*0.944*	*0.965*	*0.987*	*1.000*
24	*0.804*	*0.822*	*0.841*	*0.860*	*0.879*	*0.899*	*0.919*	*0.940*	*0.961*	*0.982*	*1.000*
25	*0.802*	*0.820*	*0.838*	*0.857*	*0.876*	*0.895*	*0.915*	*0.935*	*0.956*	*0.977*	*0.999*

(iii) If, on the first day of the pay period that includes an employee's anniversary date during the fiscal year ending June 30, 1996, the employee's market ratio is less than the target market ratio that corresponds to the employee's grade level and completed years of unintcrrupted state service, the employee's base salary must be increased to the lesser of:

(A) the market salary for the employec's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service; or

(B) the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1995, plus 5%.

(iv) If, on the first day of the pay period that includes an employee's anniversary date during the fiscal year ending June 30, 1997, the employee's market ratio is less than the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service, the employee's base salary must be increased to the lesser of:

(A) the market salary for the employee's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service; or

(B) the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1996, plus 6%.

~~(d) Except as provided in subsection (1)(e), on the first day of the first complete pay period in January 1995, each employee hired before January 1, 1995, is entitled to the amount of the employee's base salary as it was on December 31, 1994, plus 1.5%.~~

(e) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

(f) An employee's base salary may not exceed the maximum salary for the employee's grade. The salary of an employee may not be reduced because of this provision.

(g) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

(h) An employee's market ratio, as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1996, may not be reduced as a result of the adjustment of the pay ranges provided in 2-18-312(2).

(2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) *of this section* do not apply to those teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313 through 2-18-315.

(3) The pay schedules provided in 2-18-313 through 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for ~~the contracted school term for~~ teachers employed under the authority of the department of corrections and human services or the department of family services for fiscal years ~~1994~~ *1996* and ~~1995~~ *1997*.

(ii) The compensation of each teacher ~~on the first day of the first pay period in July 1993~~ *on July 1, 1995,* is ~~determined by the teacher's level of academic achievement and years of experience~~ *the same as it was on June 30, 1995.*

~~(iii) On the first day of the first complete pay period of each fiscal year, each teacher shall advance one step on the appropriate pay schedule adopted in 2-18-313.~~

~~(iv) On the first day of the first complete pay period of each fiscal year, each teacher employed by the Montana school for the deaf and blind shall advance one step on the teacher pay matrix used by the school.~~

(iii) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed under the authority of the department of family services prior to October 1, 1994, shall advance one step on the appropriate pay schedule adopted in 2-18-313. A teacher hired after October 1, 1994, shall advance on the teacher's actual anniversary date.

(iv) On the first day of the first full pay period during the month that includes the teacher's anniversary date, a teacher employed under the authority of the

department of corrections and human services shall advance one step on the appropriate pay schedule adopted in 2-18-313.

(v) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed by the Montana school for the deaf and blind shall advance one step on the teacher pay matrix used by the school.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, ~~1994~~ *1996*, and Juno 30, ~~1995~~ *1997*, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year ~~1994~~ *1996* or ~~1995~~ *1997* is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, ~~1994~~ *1996*, and June 30, ~~1995~~ *1997*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively hargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year ~~1994~~ *1996* or ~~1995~~ *1997* is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) A member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement covering the biennium ending June 30, 1997.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, 1995, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, 1995, members of the bargaining unit must continue to receive the compensation that they were reeeiving as of June 30, 1995, until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312 through 2-18-315 and this section may be provided for in collective bargaining agreements.

~~(4)~~*(5)* The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312 through 2-18-315.

~~(5)~~*(6)* The department may authorize a separate pay schedule for medical docters if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

~~(6)~~*(7)* The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to

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employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

~~(7)~~*(8)* The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. Insofar as these adjustments may apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

Section 7. Section 2-18-304, MCA, is amended to read:

"**2-18-304. Longevity allowance.** (1) (a) *(i)* ~~In~~ *Effective July 1, 1995, through the last day of the pay period immediately preceding the pay period that includes October 1, 1995, in* addition to the compensation provided for in *2-18-303,* 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service ~~shall~~ *must* receive ~~the greater of:~~

~~(i) $10 a month; or~~

~~(ii)~~ 9/10 of 1% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(ii) Effective on the first day of the pay period that includes October 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following ~~his~~ *the employee's* date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he *the employee* is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following his *the employee's* date of employment in which ~~he~~ *the employee* was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any ~~one~~ month. An employee of a school at a state institution or the university system must be credited with 1 year of service if ~~he~~ *the employee* is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section."

Section 8. Section 2-18-312, MCA, is amended to read:

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"**2-18-312. Statewide pay schedules for fiscal years ~~1994~~ *1996* and ~~1995~~ *1997*.** (1) The statewide classification pay schedule for *the period* ~~fiscal year 1994~~ *from July 1, 1995, until the first day of the pay period that includes October 1, 1996,* is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — State Matrix Type — Annual

Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
1	8,679	10,210
2	9,349	11,025
3	10,070	11,903
4	10,852	12,858
5	11,727	13,927
6	12,672	15,086
7	13,688	16,334
8	14,836	17,747
9	16,064	19,262
10	17,424	20,942
11	18,904	22,775
12	20,545	24,812
13	22,325	27,027
14	24,295	29,485
15	26,465	32,196
16	28,885	35,226
17	31,585	38,613
18	34,562	42,355
19	37,897	46,557
20	41,618	51,254
21	45,754	56,487

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22	50,373	62,343
23	55,584	68,963
24	61,434	76,410
25	67,907	84,673

(2) ~~The~~ *Effective on the first day of the pay period that includes October 1, 1996, the* statewide classification pay schedule ~~for fiscal year 1995~~ is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — State Matrix Type — Annual

Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
~~1~~	~~8,679~~	~~10,210~~
~~2~~	~~9,349~~	~~11,025~~
~~3~~	~~10,070~~	~~11,903~~
~~4~~	~~10,852~~	~~12,858~~
~~5~~	~~11,727~~	~~13,927~~
~~6~~	~~12,672~~	~~15,086~~
~~7~~	~~13,688~~	~~16,334~~
~~8~~	~~14,836~~	~~17,747~~
~~9~~	~~16,064~~	~~19,262~~
~~10~~	~~17,424~~	~~20,942~~
~~11~~	~~18,904~~	~~22,775~~
~~12~~	~~20,545~~	~~24,812~~
~~13~~	~~22,325~~	~~27,027~~
~~14~~	~~24,295~~	~~29,485~~
~~15~~	~~26,465~~	~~32,196~~
~~16~~	~~28,885~~	~~35,226~~
~~17~~	~~31,585~~	~~38,613~~
~~18~~	~~34,562~~	~~42,355~~

~~19~~	~~37,897~~	~~46,567~~
~~20~~	~~41,618~~	~~51,254~~
~~21~~	~~45,754~~	~~56,487~~
~~22~~	~~50,373~~	~~62,343~~
~~23~~	~~55,584~~	~~68,963~~
~~24~~	~~61,434~~	~~76,410~~
~~25~~	~~67,907~~	~~84,673~~
1	*8,897*	*10,466*
2	*9,583*	*11,300*
3	*10,321*	*12,201*
4	*11,123*	*13,180*
5	*12,020*	*14,276*
6	*12,988*	*15,463*
7	*14,031*	*16,743*
8	*15,208*	*18,190*
9	*16,465*	*19,744*
10	*17,860*	*21,465*
11	*19,376*	*23,345*
12	*21,058*	*25,433*
13	*22,883*	*27,703*
14	*24,902*	*30,221*
15	*27,128*	*33,001*
16	*29,607*	*36,108*
17	*32,374*	*39,578*
18	*35,425*	*43,414*
19	*38,845*	*47,721*

20	*42,659*	*52,535*
21	*46,898*	*57,899*
22	*51,633*	*63,902*
23	*56,973*	*70,686*
24	*62,971*	*78,321*
25	*69,606*	*86,789"*

Section 9. Section 2-18-313, MCA, is amended to read:

"2-18-313. Teachers' pay schedules. (1) ~~(a)~~ The ~~12-month~~ pay schedule for teachers for ~~fiscal year 1994 and for the first 6 months of fiscal year 1995~~ *the period that includes October 1, 1995, until the first day of the pay period that includes October 1, 1996,* is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Term — Twelve Months Matrix Type — Annual

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
~~1~~	~~22,412~~	~~23,071~~	~~23,713~~	~~24,034~~	~~24,357~~	~~25,016~~
~~2~~	~~23,167~~	~~23,883~~	~~24,600~~	~~24,959~~	~~25,322~~	~~26,065~~
~~3~~	~~23,922~~	~~24,713~~	~~25,495~~	~~25,909~~	~~26,323~~	~~27,138~~
~~4~~	~~24,678~~	~~25,556~~	~~26,421~~	~~26,878~~	~~27,334~~	~~28,208~~
~~5~~	~~25,438~~	~~26,421~~	~~27,353~~	~~27,848~~	~~28,346~~	~~29,280~~
~~6~~	~~26,226~~	~~27,297~~	~~28,288~~	~~28,822~~	~~29,358~~	~~30,352~~
~~7~~	~~27,016~~	~~28,166~~	~~29,217~~	~~29,793~~	~~30,367~~	~~31,420~~
~~8~~	~~27,810~~	~~29,039~~	~~30,153~~	~~30,767~~	~~31,381~~	~~32,490~~
~~9~~	~~28,603~~	~~29,910~~	~~31,085~~	~~31,737~~	~~32,394~~	~~33,561~~
~~10~~	~~29,396~~	~~30,786~~	~~32,016~~	~~32,709~~	~~33,403~~	~~34,633~~
~~11~~	~~30,191~~	~~31,628~~	~~32,945~~	~~33,680~~	~~34,415~~	~~35,702~~
~~12~~	~~30,191~~	~~31,628~~	~~32,945~~	~~33,680~~	~~34,415~~	~~35,702~~
~~13~~	~~30,191~~	~~31,628~~	~~32,945~~	~~33,680~~	~~34,415~~	~~35,702~~
1	*23,150*	*23,763*	*24,393*	*25,040*	*25,703*	*26,384*
2	*23,752*	*24,381*	*25,027*	*25,691*	*26,371*	*27,070*

3	*24,369*	*25,015*	*25,678*	*26,359*	*27,057*	*27,774*
4	*25,003*	*25,666*	*26,346*	*27,044*	*27,761*	*28,496*
5	*25,653*	*26,333*	*27,031*	*27,747*	*28,482*	*29,237*
6	*26,320*	*27,018*	*27,734*	*28,469*	*29,223*	*29,997*
7	*27,004*	*27,720*	*28,455*	*29,209*	*29,983*	*30,777*
8	*27,707*	*28,441*	*29,194*	*29,968*	*30,762*	*31,577*
9	*28,427*	*29,180*	*29,954*	*30,747*	*31,562*	*32,398*
10	*29,166*	*29,939*	*30,732*	*31,547*	*32,383*	*33,241*
11	*29,924*	*30,717*	*31,531*	*32,367*	*33,225*	*34,105*
12	*30,702*	*31,516*	*32,351*	*33,208*	*34,088*	*34,992*

~~(b) The 9-month pay schedule for teachers for fiscal year 1994 and for the first 6 months of fiscal year 1995 is as follows:~~

~~Annual Hours 1560 Note: Does Not Include Insurance~~
~~Term Nine Months Matrix Type Annual~~

~~Education Level~~

~~STEP~~	~~BA~~	~~BA+1~~	~~BA+2~~	~~BA+3~~	~~MA~~	~~MA+1~~
~~1~~	~~17,924~~	~~18,432~~	~~18,953~~	~~19,207~~	~~19,462~~	~~19,983~~
~~2~~	~~18,521~~	~~19,087~~	~~19,654~~	~~19,937~~	~~20,222~~	~~20,788~~
~~3~~	~~19,117~~	~~19,742~~	~~20,355~~	~~20,670~~	~~20,982~~	~~21,594~~
~~4~~	~~19,716~~	~~20,401~~	~~21,056~~	~~21,400~~	~~21,743~~	~~22,400~~
~~5~~	~~20,311~~	~~21,056~~	~~21,757~~	~~22,130~~	~~22,504~~	~~23,207~~
~~6~~	~~20,909~~	~~21,715~~	~~22,461~~	~~22,862~~	~~23,265~~	~~24,013~~
~~7~~	~~21,503~~	~~22,368~~	~~23,160~~	~~23,593~~	~~24,025~~	~~24,817~~
~~8~~	~~22,101~~	~~23,026~~	~~23,864~~	~~24,325~~	~~24,788~~	~~25,622~~
~~9~~	~~22,698~~	~~23,681~~	~~24,565~~	~~25,056~~	~~25,549~~	~~26,443~~
~~10~~	~~23,295~~	~~24,339~~	~~25,266~~	~~25,786~~	~~26,321~~	~~27,292~~
~~11~~	~~23,892~~	~~24,974~~	~~25,968~~	~~26,537~~	~~27,119~~	~~28,135~~
~~12~~	~~23,892~~	~~24,974~~	~~25,968~~	~~26,537~~	~~27,119~~	~~28,135~~

~~13 23,892 24,974 25,968 26,537 27,119 28,135~~

(2) ~~(a) The 12-month~~ *Effective on the first day of the pay period that includes October 1, 1996, the* pay schedule for teachers ~~for the last 6 months of fiscal year 1995~~ is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Term — Twelve Months Matrix Type — Annual

	Education Level					
STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
~~1~~	~~22,748~~	~~23,417~~	~~24,069~~	~~24,395~~	~~24,722~~	~~25,391~~
~~2~~	~~23,515~~	~~24,241~~	~~24,969~~	~~25,333~~	~~25,702~~	~~26,456~~
~~3~~	~~24,281~~	~~25,084~~	~~25,877~~	~~26,298~~	~~26,718~~	~~27,545~~
~~4~~	~~25,048~~	~~25,939~~	~~26,817~~	~~27,281~~	~~27,744~~	~~28,631~~
~~5~~	~~25,820~~	~~26,817~~	~~27,763~~	~~28,266~~	~~28,771~~	~~29,719~~
~~6~~	~~26,619~~	~~27,706~~	~~28,712~~	~~29,254~~	~~29,798~~	~~30,807~~
~~7~~	~~27,421~~	~~28,588~~	~~29,655~~	~~30,240~~	~~30,823~~	~~31,891~~
~~8~~	~~28,227~~	~~29,475~~	~~30,605~~	~~31,229~~	~~31,852~~	~~32,977~~
~~9~~	~~29,032~~	~~30,359~~	~~31,551~~	~~32,213~~	~~32,880~~	~~34,064~~
~~10~~	~~29,837~~	~~31,248~~	~~32,496~~	~~33,200~~	~~33,904~~	~~35,152~~
~~11~~	~~30,644~~	~~32,102~~	~~33,439~~	~~34,185~~	~~34,931~~	~~36,238~~
~~12~~	~~30,644~~	~~32,102~~	~~33,439~~	~~34,185~~	~~34,931~~	~~36,238~~
~~13~~	~~30,644~~	~~32,102~~	~~33,439~~	~~34,185~~	~~34,931~~	~~36,238~~
1	*23,642*	*24,351*	*25,082*	*25,834*	*26,609*	*27,407*
2	*24,351*	*25,082*	*25,834*	*26,609*	*27,407*	*28,230*
3	*25,082*	*25,834*	*26,609*	*27,407*	*28,230*	*29,077*
4	*25,834*	*26,609*	*27,407*	*28,230*	*29,077*	*29,949*
5	*26,609*	*27,407*	*28,230*	*29,077*	*29,949*	*30,847*
6	*27,407*	*28,230*	*29,077*	*29,949*	*30,847*	*31,773*
7	*28,230*	*29,077*	*29,949*	*30,847*	*31,773*	*32,726*
8	*29,077*	*29,949*	*30,847*	*31,773*	*32,726*	*33,708*

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9	*29,949*	*30,847*	*31,773*	*32,726*	*33,708*	*34,719*
10	*30,847*	*31,773*	*32,726*	*33,708*	*34,719*	*35,761*
11	*31,773*	*32,726*	*33,708*	*34,719*	*35,761*	*36,833*
12	*32,726*	*33,708*	*34,719*	*35,761*	*36,833*	*37,938*

~~(b) The 9-month pay schedule for teachers for the last 6 months of fiscal year 1995 is as follows:~~

~~Annual Hours 1560 Note: Does Not Include Insurance~~
~~Term Nine Months Matrix Type Annual~~

~~Education Level~~

~~STEP~~	~~BA~~	~~BA+1~~	~~BA+2~~	~~BA+3~~	~~MA~~	~~MA+1~~
~~1~~	~~18,193~~	~~18,708~~	~~19,237~~	~~19,495~~	~~19,754~~	~~20,283~~
~~2~~	~~18,799~~	~~19,373~~	~~19,949~~	~~20,236~~	~~20,525~~	~~21,100~~
~~3~~	~~19,404~~	~~20,038~~	~~20,660~~	~~20,980~~	~~21,297~~	~~21,918~~
~~4~~	~~20,012~~	~~20,707~~	~~21,372~~	~~21,721~~	~~22,069~~	~~22,736~~
~~5~~	~~20,616~~	~~21,372~~	~~22,083~~	~~22,462~~	~~22,842~~	~~23,555~~
~~6~~	~~21,223~~	~~22,041~~	~~22,798~~	~~23,205~~	~~23,614~~	~~24,373~~
~~7~~	~~21,826~~	~~22,704~~	~~23,507~~	~~23,947~~	~~24,385~~	~~25,189~~
~~8~~	~~22,433~~	~~23,371~~	~~24,192~~	~~24,690~~	~~25,160~~	~~26,006~~
~~9~~	~~23,038~~	~~24,036~~	~~24,933~~	~~25,432~~	~~25,932~~	~~26,840~~
~~10~~	~~23,644~~	~~24,704~~	~~25,645~~	~~26,173~~	~~26,716~~	~~27,701~~
~~11~~	~~24,250~~	~~25,349~~	~~26,358~~	~~26,935~~	~~27,526~~	~~28,557~~
~~12~~	~~24,250~~	~~25,349~~	~~26,358~~	~~26,935~~	~~27,526~~	~~28,557~~
~~13~~	~~24,250~~	~~25,349~~	~~26,358~~	~~26,935~~	~~27,526~~	~~28,557~~"

Section 10. Section 2-18-314, MCA, is amended to read:

"**2-18-314. Liquor store occupations pay schedules.** (1) The pay schedule for liquor store occupations for ~~fiscal year 1994 and for the first 6 months of fiscal year 1995~~ *the period from July 1, 1995, through September 29, 1995,* is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — ~~Retail Clerk~~ Matrix Type — Hourly
Liquor Store Occupations

Grade	$/Hour
~~L1~~	~~0.000~~
~~L2~~	~~8.609~~
~~L3~~	~~9.109~~
~~L4~~	~~9.389~~
~~L5~~	~~9.679~~
~~L6~~	~~10.289~~
~~L7~~	~~10.949~~
~~L8~~	~~11.699~~
L1	*0.000*
L2	*8.754*
L3	*9.254*
L4	*9.534*
L5	*9.824*
L6	*10.434*
L7	*11.094*
L8	*11.844*

(2) ~~The~~ *Effective September 30, 1995, until the first day of the pay period that includes October 1, 1996, the* pay schedule for liquor store occupations ~~for the last 6 months of fiscal year 1995~~ is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — ~~Retail Clerk~~ Matrix Type — Hourly
Liquor Store Occupations

Grade	$/Hour
~~L1~~	~~0.000~~
~~L2~~	~~8.754~~
~~L3~~	~~9.254~~

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~~L4 9.534~~

~~L5 9.824~~

~~L6 10.434~~

~~L7 11.094~~

~~L8 11.844~~

L1 0.000

L2 8.985

L3 9.485

L4 9.765

L5 10.055

L6 10.665

L7 11.325

L8 12.075

(3) Effective on the first day of the pay period that includes October 1, 1996, the pay schedule for liquor store occupations is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — Liquor Store Occupations Matrix Type — Hourly

Grade	*$/Hour*
L1	*0.000*
L2	*9.326*
L3	*9.826*
L4	*10.106*
L5	*10.396*
L6	*11.006*
L7	*11.666*
L8	*12.416*"

Section 11. Section 2-18-315, MCA, is amended to read:

"**2-18-315. Blue-collar pay schedules.** (1) The pay schedule for blue-collar workers for ~~fiscal year 1994 and for the first 6 months of fiscal year 1995~~ *the period from July 1, 1995, through September 29, 1995,* is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/Hour
~~B1~~	~~9.084~~
~~B2~~	~~9.484~~
~~B3~~	~~9.884~~
~~B4~~	~~10.284~~
~~B5~~	~~10.684~~
~~B6~~	~~11.084~~
~~B7~~	~~11.484~~
~~B8~~	~~11.884~~
~~B9~~	~~12.284~~
~~B10~~	~~12.684~~
~~B11~~	~~13.084~~
~~B12~~	~~13.484~~
~~B00~~	~~13.884~~
B1	*9.266*
B2	*9.666*
B3	*10.066*
B4	*10.466*
B5	*10.866*
B6	*11.266*
B7	*11.666*
B8	*12.066*
B9	*12.466*
B10	*12.866*
B11	*13.266*

B12	*13.666*
B00	*14.066*

(2) ~~The~~ *Effective September 30, 1995, until the first day of the pay period that includes October, 1996, the* pay schedule for blue-collar workers ~~for the last 6 months of fiscal year 1995~~ is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/Hour
~~B1~~	~~9.266~~
~~B2~~	~~9.666~~
~~B3~~	~~10.066~~
~~B4~~	~~10.466~~
~~B5~~	~~10.866~~
~~B6~~	~~11.266~~
~~B7~~	~~11.666~~
~~B8~~	~~12.066~~
~~B9~~	~~12.466~~
~~B10~~	~~12.866~~
~~B11~~	~~13.266~~
~~B12~~	~~13.666~~
~~B00~~	~~14.066~~
B1	*9.561*
B2	*9.961*
B3	*10.361*
B4	*10.761*
B5	*11.161*
B6	*11.561*
B7	*11.961*
B8	*12.361*

B9	*12.761*
B10	*13.161*
B11	*13.561*
B12	*13.961*
B00	*14.361*

(3) Effective on the first day of the pay period that includes October 1, 1996, the pay schedule for blue-collar workers is as follows:

Annual Hours — 2080 *Note: Does Not Include Insurance*
Pay Matrix — Blue-Collar *Matrix Type — Hourly*

Grade	*$/Hour*
B1	*9.995*
B2	*10.395*
B3	*10.795*
B4	*11.195*
B5	*11.595*
B6	*11.995*
B7	*12.395*
B8	*12.795*
B9	*13.195*
B10	*13.595*
B11	*13.995*
B12	*14.395*
B00	*14.795*"

Section 12. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701~~, other than members of collective bargaining units,~~ and for members of the legislature, the employer contribution for group benefits is ~~$210~~ *$220* per month for the fiscal year ending June 30, ~~1994~~ *1996*, and ~~$230 per~~ *$225 a* month for the fiscal year ending June 30, ~~1995~~ *1997*, and for each fiscal year thereafter. When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group

benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scbeduled to work less than 20 hours a week are not eligihle for the group henefit contribution. An employee who elects not to he covered by a state-sponsored group benefit plan may not receive the state contribution ~~as wages~~. A portion of tbe employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, tbe employer's premium contributions may exceed hut may not be less than $10 ~~per~~ *a* month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of wbich the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used te offset losses occurring to tbe group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on tbe basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits te employees with dependents than to employees without dependents or with fewer dependents."

Section 13. Section 3-2-104, MCA, is amended to read:

"**3-2-104. Salaries — expenses.** (1) The salaries of justices of the supreme court are provided for in ~~2-16-404~~ *[section 16]*.

(2) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties."

Section 14. Section 3-5-211, MCA, is amended to read:

"**3-5-211. Salaries and expenses of district judges.** (1) ~~The~~ *Subject to subsection (2), the* annual salary of each district judge is as follows:

(a) ~~$57,178 beginning July 1, 1991;~~

~~(b) $59,178 beginning January 1, 1992;~~

~~(c) $61,178 beginning July 1, 1992;~~

~~(d)~~ $63,178 ~~beginning January 1, 1993, and each fiscal year thereafter~~*;*

(b) $64,979 beginning July 1, 1995;

(c) $67,513 beginning January 1, 1996.

(2) Prior to June 30, 1996, and prior to June 30 of each even-numbered year thereafter, the department of administration shall conduct a salary survey of judges of courts of general jurisdiction similar to the Montana district courts for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the salary for a Montana district court judge in determining the average salary. If the average salary is greater than the salary for a district court judge in Montana, then beginning July 1, 1997, the average is the new salary for that position. In each year following the year in which a survey is conducted, the average salary is the new salary for the position. A district court judge's salary may not be reduced.

~~(2)~~*(3)* Actual and necessary expenses for each district judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties."

Section 15. Section 5-2-301, MCA, is amended to read:

"**5-2-301. Compensation and expenses for members while in session.** (1) Except as provided in subsection ~~(7)~~ *(8)*, legislators are entitled to a salary commensurate to that of the daily rate of an entry grade 8 classified state employee in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) ~~Legislators~~ *Subject to subsection (4), legislators* are entitled to $50 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(4) After November 15, 1996, and prior to December 15, 1996, and prior to December 15 of each even-numbered year thereafter, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. If the average daily rate is greater than the daily rate for legislators in Montana, the average is the new daily rate for legislators for those days during which the legislature is in session. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

~~(4)~~*(5)* Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

~~(5)~~*(6)* In addition to the mileage allowance provided for in subsection ~~(4)~~ *(5)*, legislators, upon submittal of an appropriate claim for such mileage reimbursement to the office of the legislative council, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) such additional round trips as are authorized by the legislature during special session.

~~(6)~~*(7)* Legislators are not entitled to any additional mileage allowance under subsection ~~(4)~~ *(5)* for a special session if it is convened within 7 days of a regular session.

~~(7)~~*(8)* In lieu of the salary provided for in subsection (1) and the expense allowance provided for in subsection ~~(3)~~ *(4)*, a legislator may receive remuneration for services performed during a legislative session. A legislator choosing to receive remuneration for services performed shall file a request to receive payment under this subsection with the accounting office of the legislative council. A legislator exercising the option to receive remuneration for services performed may not receive more remuneration than legislators paid pursuant to subsections (1) and ~~(3)~~ *(4)*. Remuneration for services performed must be reduced $50 a day when the legislature recesses for more than 3 days."

Section 16. Salaries of supreme court justices. (1) Subject to subsection (3), the salary of the chief justice of the supreme court is as follows:

(a) $67,595 beginning July 1, 1995;

(b) $70,231 beginning January 1, 1996.

(2) Subject to subsection (3), the salary of a justice of the supreme court is as follows:

(a) $66,289 beginning July 1, 1995;

(b) $68,874 beginning January 1, 1996.

(3) Prior to June 30, 1996, and prior to June 30 of each even-numbered year thereafter, the department of administration shall conduct a salary survey of justices and chief justices of the highest appellate courts similar to the Montana supreme court for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the salary for a Montana supreme court justice or the chief justice in determining the average salary for a justice and the average salary for the chief justice. If the average salaries are greater than the salaries for a supreme court justice or the chief justice in Montana, then beginning July 1, 1997, the average salaries are the new salaries for a supreme court justice or the chief justice. In each year following the year in which a survey is conducted, the average salary is the new salary for the position. A justice's salary or the chief justice's salary may not be reduced.

Section 17. Section 15-2-102, MCA, is amended to read:

"15-2-102. Qualification and compensation. (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other state or any office under the government of the United States or under the government of any other state. ~~He~~ *The person* shall devote ~~his~~ *the* entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his *the person's* duties. The state tax appeal board is transferred to the department of administration for administrative purposes

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only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) ~~The member designated chairman as provided for in 15-2-103 shall receive a salary equivalent to that of an entry grade 17 salary, plus 5%. The remaining state~~ *State* tax appeal board members shall be paid a salary equivalent to that of ~~an entry~~ *a* grade 17 salary *as provided in 2-18-312. State tax appeal board members must receive pay and pay adjustments consistent with those required by the legislature for classified state employees in 2-18-303 and 2-18-304. The member designated as presiding officer as provided for in 15-2-103 must have an additional 5% added to the salary.* All members of the board shall receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business."

Section 18. Section 19-5-101, MCA, is amended to read:

"**19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Compensation" means remuneration as defined in ~~2-16-404~~ *[section 16]*, 3-5-211, and 3-7-222 paid to a member.

(2) "Current salary" means the current compensation for the office retired from.

(3) "Involuntary retirement" means a retirement not for cause and before retirement age.

(4) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter."

Section 19. Section 44-4-101, MCA, is amended to read:

"**44-4-101. Position established — *salary*.** There is created within the department of justice the position of training coordinator for county attorneys. *The position of training coordinator for county attorneys is an exempt position as provided in 2-18-103. The salary for this position is the same as that provided in 7-4-2503 for a county attorney in a county with a population in excess of 30,000.*"

Section 20. Appropriation. (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided for in [sections 4 through 12]:

	Fiscal 1996		Fiscal 1997	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Auditor	51,284	45,662	104,006	92,602
Legislative Fiscal Analyst	21,466	0	55,772	0
Legislative Council	30,879	16,846	99,067	21,774

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Environmental Quality Council	8,064	0	20,591	0
Consumer Counsel	0	12,416	0	28,959
Judiciary	175,407	9,565	281,401	23,291
University System (including Commissioner of Higher Education)	2,186,361	1,405,233	4,565,478	2,876,264
Office of Budget and Program Planning (for distribution to all other agencies)	2,441,914	3,803,043	6,486,487	10,785,119

(2) There is appropriated from the general fund to the state personnel division:

(a) $10,000 for changes in the payroll/personnel/position control system for the fiscal year ending June 30, 1996. Any unexpended portion of this appropriation is reappropriated for the biennium ending June 30, 1997.

(b) $20,000 to conduct a salary survey as required under 2-18-301(2).

Section 21. Repealer. Sections 2-16-404 and 2-18-305, MCA, are repealed.

Section 22. Codification instruction. [Section 16] is intended to be codified as an integral part of Title 2, chapter 16, part 4, and the provisions of Title 2, cbapter 16, part 4, apply to [section 16].

Section 23. Retroactive applicability. [Section 17] applies retroactively, within the meaning of 1-2-109, to a member of the state tax appeal board who was a member on December 31, 1994.

Section 24. Effective dates. (1) [Sections 1 through 19, 22, and 23] and this section are effective on passage and approval.

(2) [Sections 20 and 21] are effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 456

[HB 19]

AN ACT ALLOCATING COAL TAX REVENUE TO THE LONG-RANGE BUILDING PROGRAM; ESTABLISHING A LONG-RANGE BUILDING PROGRAM ACCOUNT; TERMINATING THE ALLOCATION OF COAL TAX REVENUE TO HIGHWAY RECONSTRUCTION; TRANSFERRING FUNDS FROM THE LONG-RANGE BUILDING PROGRAM ACCOUNT TO THE GENERAL FUND UPON OCCURRENCE OF A CONTINGENCY; AMENDING SECTIONS 15-35-108 AND 16-11-119, MCA, AND SECTIONS 1 AND 4, CHAPTER 191, LAWS OF 1991; AND PROVIDING AN EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(1) ~~To~~ *Fifty percent of total coal severance tax collections are allocated to* the trust fund created by Article IX, section 5, of the Montana constitution~~, 50% of total coal severance tax collections~~. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) ~~Starting July 1, 1987, and ending June 30, 2003, 12%~~ *Twelve percent* of coal severance tax collections are allocated to the ~~highway reconstruction trust fund~~ *long-range building program* account ~~in the state special revenue fund~~ *established in [section 3].*

(3) Coal severance tax collections remaining after allocation ~~to the trust fund~~ under ~~subsection~~ *subsections* (1) *and (2)* are allocated in the following percentages of the remaining balance:

(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 0% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects.

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Income from this trust fund ~~shall~~ *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) beginning July 1, 1993, and ending June 30, 1995, 3 1/3% to a special revenue account to be used by the department of fish, wildlife, and parks for the stabilization and preservation of historic and cultural sites within the state park system;

(l) all other ~~revenues~~ *revenue* from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. (Terminates June 30, 1995—sec. 4, Ch. 536, L. 1993.)

15-35-108. (Effective July 1, 1995) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(1) ~~To~~ *Fifty percent of total coal severance tax collections are allocated to* the trust fund created by Article IX, section 5, of the Montana constitution~~, 50% of total coal severance tax collections~~. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) ~~Starting July 1, 1987, and ending June 30, 2003, 12%~~ *Twelve percent* of coal severance tax collections are allocated to the ~~highway reconstruction trust~~ fund *long-range building program* account ~~in the state special revenue fund~~ *established in [section 3].*

(3) Coal severance tax collections remaining after allocation ~~to the trust fund~~ under ~~subsection~~ *subsections* (1) *and (2)* are allocated in the following percentages of the remaining balance:

(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to puhlic schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

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(h) 1 1/4% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund ~~shall~~ *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other ~~revenues~~ *revenue* from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. ~~(Terminates July 1, 2003—sec. 4, Ch. 191, L. 1991.)~~

~~**15-35-108. (Effective July 1, 2003) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:~~

~~(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.~~

~~(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:~~

~~(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.~~

~~(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;~~

~~(c) 1% to the state special revenue fund to the credit of the county land planning account;~~

~~(d) 1 1/4% to the credit of the renewable resource development bond fund;~~

~~(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.~~

~~(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;~~

~~(g) 1/2 of 1% to the state special revenue fund for conservation districts;~~

~~(h) 1 1/4% to the debt service fund type to the credit of the renewable resource loan debt service fund;~~

~~(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;~~

~~(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.~~

~~(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state.~~"

Section 2. Section 16-11-119, MCA, is amended to read:

"**16-11-119. Disposition of taxes — retirement of bonds.** *(1)* The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of corrections and human services for the operation and maintenance of state veterans' nursing homes.

(2) All remaining revenue collected under the provisions of 16-11-111, less the expense of collecting the taxes, must, in accordance with the provisions of 15-1-501(6), be deposited as follows:

(a) ~~79.25%~~ *79.75%* in the long-range building program fund in the debt service fund type; and

(b) 20.25% in the long-range building program ~~fund in the capital projects fund type~~ *account provided for in [section 3]*."

Section 3. Long-range building program account. (1) There is a long-range building program account in the capital projects fund type.

(2) Cigarette tax revenue deposited in the account pursuant to 16-11-119 must be obligated prior to obligating other funds in the account.

(3) Coal severance taxes allocated to the account under 15-35-108 may be appropriated for the long-range building program or debt service payments on building projects. Coal severance taxes required for general obligation bond debt service may be transferred to the debt service fund.

(4) Interest earnings, project carryover funds, administrative fees, and miscellaneous revenue must be retained in the account.

Section 4. Section 1, Chapter 191, Laws of 1991, is amended to read:

"Section 1. Section 7, Chapter 541, Laws of 1983, is amended to read:

"Section 7. **Effective date — termination date.** Sections 1 through 5 are effective July 1, 1983, and *sections 1 through 4* terminate July 1, ~~1993~~ *2003*.*1995*.""

Section 5. Section 4, Chapter 191, Laws of 1991, is amended to read:

"Section 4. **Effective date — applicability — termination date.** (1) [This act] is effective on passage and approval.

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(2) [Section 1] applies retroactively, within the meaning of 1-2-109, to April 16, 1983.

(3) [Sections 1 through 3] terminate July 1, ~~2003~~ *1995*."

Section 6. Contingent fund transfer. If prior to June 30, 1996, there is sufficient money in the account, the state treasurer shall transfer $5,200,000 from the long-range building program account to the general fund.

Section 7. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 17, chapter 7, part 2, and the provisions of Title 17, chapter 7, part 2, apply to [section 3].

Section 8. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 457

[HB 167]

AN ACT PROVIDING FOR SCHOOL DISTRICT COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL GUN-FREE SCHOOLS ACT OF 1994; AMENDING SECTION 20-5-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-202, MCA, is amended to read:

"**20-5-202. Suspension and expulsion.** *(1)* As provided in 20-4-302, 20-4-402, and 20-4-403, ~~any~~ *a* pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and ~~to define~~ *defining* the circumstances and procedures by which the trustees may expel a pupil. Expulsion ~~shall be~~ *is* a disciplinary action available only to the trustees.

(2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.

(4) Nothing in this section prevents a school district from:

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(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting."

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 458

[HB 186]

AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD PROTECTIVE SERVICES; DELETING REFERENCES TO "DEPENDENT YOUTH"; ADDING A CHILD'S GUARDIAN AS A MANDATORY REPORTER OF SUSPECTED CHILD ABUSE OR NEGLECT; ADDING PERSONS TO WHOM CONFIDENTIAL RECORDS MAY BE DISCLOSED; PROVIDING FOR LIMITED IMMUNITY FOR A PERSON WHO PROVIDES OR USES EMPLOYMENT-RELATED CHILD ABUSE INFORMATION; CLARIFYING THAT A CHILD'S HEARSAY STATEMENTS MAY BE USED AT A CONTESTED HEARING; CLARIFYING PROVISIONS REGARDING POTENTIAL COURT-ORDERED PLACEMENTS; REVISING LIMITED EMANCIPATION OPTIONS FOR YOUTH; LIMITING ACCESS OF RECORDS TO PARENTS WHOSE PARENTAL RIGHTS HAVE BEEN TERMINATED; CLARIFYING THAT CERTAIN FACILITIES MAY BE REGISTERED INSTEAD OF LICENSED; AMENDING SECTIONS 20-5-321, 20-7-422, 40-6-125, 40-6-126, 40-8-111, 41-3-102, 41-3-103, 41-3-201, 41-3-203, 41-3-205, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-408, 41-3-602, 41-3-603, 41-3-607, 41-3-609, 41-3-611, 52-1-103, 52-2-101, 52-2-112, 52-2-113, AND 52-2-211, MCA; REPEALING SECTION 41-3-1112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval — tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and:

(i) the resident district does not provide transportation; or

(ii) the district of residence provides transportation and is not within the same county as the child's school district of choice;

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(b) the child resides in a location where, due to road or geographic conditions, it is impractical to attend the school nearest the child's residence;

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school;

(d) the child has been adjudicated by a court of competent jurisdiction to he an abused, *or* neglected~~, or dependent~~ child, as defined in 41-3-102, or a youth in need of supervision or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the department of family services and, as a result of tbe placement, is required te attend school outside of the child's district of residence; or

(e) the child is required to attend school outside of the district of residence as the result of a placement by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under tbe provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, cbapter 10.

(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

(4) Unless tbe child is a cbild with disabilities who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 2. Section 20-7-422, MCA, is amended to read:

"**20-7-422. Out-of-state placement of children with disabilities — payment of costs.** (1) In accordance with a placement made by persons determining an individualized education program for a child with disahilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of tbe state of Montana.

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(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with disabilities who is in need of special education and related services is adjudicated by a court of competent jurisdiction to he an abused~~,~~ *or* neglected~~, or dependent~~ child as defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and is placed hy a state agency in an out-of-state private residential facility, the superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program.

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of puhlic instruction from the state special education appropriation."

Section 3. Section 40-6-125, MCA, is amended to read:

"40-6-125. **Children born out of wedlock — relinquishment — consent.** (1) If the mother of a child born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the birth father cannot be obtained, the child may not he placed for adoption until the parental rights of the father are terminated hy the court as provided in this part, by the court pursuant to Title 41, chapter 3, or hy a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a relinquishment, in accordance with 40-6-135(2) through (5), terminating ~~her~~ *the mother's* rights to the child. If the mother relinquishes the child, the agency of the state of Montana, a licensed adoption agency, or the person to whom the child is relinquished may file a petition under this part or a petition of ~~dependency or~~ neglect pursuant to Title 41, chapter 3. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, ~~her~~ *the mother's* execution of a relinquishment must be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated ~~his~~ *the father's* rights under this part."

Section 4. Section 40-6-126, MCA, is amended to read:

"40-6-126. **Notice of intent to claim paternity.** (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intont to claim paternity with the district court in any county of this stato. The form of the notice ~~shall~~ *must* be prescribed by the director of the department of health and environmental sciences and

supplied to the clerks of the district courts. The notice ~~shall~~ *must* include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 ~~shall be~~ *is* presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. ~~Such~~ *The* notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. ~~Such~~ *The* notice creates a rebuttable presumption as to paternity of the child for purposes of a ~~dependency or~~ neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate ~~his~~ *the person's* paternal rights to the child."

Section 5. Section 40-8-111, MCA, is amended to read:

"40-8-111. **Consent required for adoption.** (1) An adoption of a child may be decreed when there have been filed written consents te adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102~~(8)(d)~~*(7)(d)*;

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during ~~said~~ *that* period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and ~~such~~ *the* guardian has authority by order of the court appointing ~~him~~ *the guardian* to consent to the adoption;

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(c) the executive head of an agency if the child has been relinquished for adoption to ~~such~~ *the* agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in ~~such~~ *the* agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated~~, but in such~~. *In that* case, the court having jurisdiction of the custody of the child ~~must~~ *shall* consent to adoption and a certified copy of its order ~~shall~~ *must* be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) ~~shall~~ *must* be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed by a representative of the court."

Section 6. Section 41-3-102, MCA, is amended to read:

"**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent;

(b) a staff person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) Nothing in this chapter may be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(4) "Child" or "youth" means ~~any~~ *a* person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in subsection ~~(8)~~*(7)*; or

(ii) threatened harm to a child's health or welfare, as defined in subsection (15).

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

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(6) "Department" means the department of family services provided for in 2-15-2401.

(7) ~~"Dependent youth" means a youth:~~

~~(a) who is abandoned;~~

~~(b) who is without parents or guardian or not under the care and supervision of a suitable adult;~~

~~(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;~~

~~(d) who is destitute;~~

~~(e) who is dependent upon the public for support; or~~

~~(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has been transferred to a licensed agency.~~

~~(8)~~ "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to he inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving the child under circumstances that make reasonahle the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

~~(9)~~*(8)* "Limited emancipation" means a status conferred on a ~~dependent~~ youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(10)~~*(9)* "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(10) "Parent" means a biological or adoptive parent or stepparent.

(11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function ~~and~~. *The term* includes death,

permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(14) "Social worker" means an employee of the department whose duties generally involve the provision of either child or adult protective services, or both.

(15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(16) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection *(16)*, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(17) "Youth in need of care" means a youth who is ~~dependent,~~ abused, or neglected as defined in this section."

Section 7. Section 41-3-103, MCA, is amended to read:

"**41-3-103. Jurisdiction and venue.** (1) In all matters arising under this chapter, the youth court ~~shall have~~ *has* concurrent jurisdiction with the district court over:

(a) ~~all youths~~ *a youth* who ~~are~~ *is* within the state of Montana for any purpose;

(b) ~~any~~ *a* youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily ~~removed himself from~~ *left* the state or the jurisdiction of the court; or

(c) ~~any~~ *a* person who is alleged to have abused, *or* neglected, ~~or caused the dependency of~~ a youth who is in the state of Montana for any purpose.

(2) Venue ~~shall be~~ *is* determined pursuant to 41-5-204."

Section 8. Section 41-3-201, MCA, is amended to read:

"**41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of family services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operater or employee of a child-care facility;

(f) foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official; ~~or~~

(h) clergy; *or*

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect.

(3) Any person may make a report under this section if ~~he~~ *the person* knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A clergyperson or priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the clergyperson or priest in ~~his~~ *the* capacity as a clergyperson or priest;

(ii) the statement was intended to be a part of a confidential communication between the clergyperson or priest and a member of ~~his~~ *the clergyperson's or priest's* church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the clergyperson or priest.

(c) A clergyperson or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section ~~shall~~ *must* contain:

(a) the names and addresses of the child and ~~his or her~~ *the child's* parents or other persons responsible for ~~his or her~~ *the child's* care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible ~~therefor~~ *for the injury or neglect*; and

(d) the facts ~~which~~ *that* led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 9. Section 41-3-203, MCA, is amended to read:

"**41-3-203. Immunity from liability.** *(1)* Anyone investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person *was grossly negligent or* acted in bad faith or with malicious purpose. ~~There is a rebuttable presumption that the person acted in good faith and with no malicious purpose.~~

(2) A person who provides information pursuant to 41-3-201 that is substantiated by the department or a person who uses information received pursuant to 41-3-205 that is substantiated by the department to refuse to hire or to discharge a prospective or current employee, volunteer, or other person who through employment or volunteer activities may have unsupervised contact with children is immune from civil liability unless the person acted in bad faith or with malicious purpose."

Section 10. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department of social and rehabilitation services, the department

of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. ~~Any~~ *A* person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state ~~or~~ *and* any other state *or country*:

(a) a department, agency, or organization, including *a* federal ~~agencies~~ *agency, military enclave, or Indian tribal organization, that is* legally authorized to receive, inspect, or investigate reports of child abuse or neglect *and that otherwise meets the disclosure criteria contained in this section*;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a ~~licensed~~ health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the *child's legal guardian or legal representative, including the* child's guardian ad litem *or attorney or a special advocate appointed by the court to represent a child in a pending case;*

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or will be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

~~(f)~~*(k)* the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

~~(g)~~*(l) the coroner or medical examiner when determining the cause of death of a child;*

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license *or registration that is required* to operate a youth care facility, day-care facility, or child-placing agency ~~if the investigation is based on a substantiated report and the applicant is notified of the investigation~~;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (o) must be made in writing. Disclosure under this subsection (o) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian as determined by the department;

~~(h)~~*(q)* an employee of the department *or other state agency* if disclosure of the records is necessary for administration of programs designed to benefit the child;

~~(i)~~*(r)* an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

~~(j)~~*(s)* a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

~~(k)~~*(t)* a county attorney ~~or~~, peace officer, *or attorney who is hired by or represents the department,* if disclosure is necessary for the investigation, *defense,* or prosecution of a case involving child abuse or neglect;

~~(l)~~*(u)* a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

~~(m)~~*(v)* a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

~~(n)~~*(w)* a member of a county interdisciplinary child information team formed under *the provisions of* 52-2-211 ~~who is not listed in subsection (3)~~; ~~or~~

~~(o)~~*(x)* members of a local interagency staffing group provided for in 52-2-203*; or*

(y) a member of a youth placement committee formed under the provisions of 41-5-525.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 11. Section 41-3-401, MCA, is amended to read:

"41-3-401. **Abuse, *and* neglect, ~~and dependency~~ petitions.** (1) The county attorney, attorney general, or an attorney hired by the county ~~welfare department or office of human services shall be~~ *is* responsible for filing all petitions alleging abuse, *or* neglect, ~~or dependency~~. The county attorney, ~~or~~ *the* attorney general, or an attorney hired by the ~~county welfare department or office of human services~~ *department* with the written consent of the county attorney or *the* attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct ~~such~~ *the* investigations and furnish such reports ~~as~~ *that* may be necessary.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. ~~Such~~ *The* petitions ~~shall~~ *must* be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, *or* neglect, ~~or dependency~~ is a civil action brought in the name of the state of Montana. The rules of civil procedure ~~shall~~ apply except as ~~herein~~ modified *in this part*. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, ~~shall~~ *must* be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If ~~such~~ *the* person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) ~~In the event~~ *If* personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party ~~where~~ *when* in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice ~~shall~~ *must* be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced at the request of the department of family services, a citation ~~shall~~ *must* be issued and served upon a representative of the department prior to the court hearing.

(9) The petition ~~shall~~ *must*:

(a) state the nature of the alleged abuse~~,~~ *or* neglect~~, or dependency~~;

(b) state the full name, age, and address of the youth and the name and address of ~~his~~ *the youth's* parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption;

(d) any combination of the ~~above~~ *provisions of subsections (10)(a) through (10(c)* or ~~such~~ *any* other relief as *that* may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 12. Section 41-3-402, MCA, is amended to read:

"41-3-402. **Petition for temporary investigative authority and protective services.** (1) In ~~cases where~~ *a case in which* it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, *the* attorney general, or an attorney hired by the county ~~welfare department or office of human services~~ may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services ~~shall~~ *must* state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services ~~shall~~ *must* be supported by an affidavit signed by the county attorney, *the* attorney general, or an attorney hired by the county ~~welfare department or office of human services~~ or *must be supported by* a department ~~of family services~~ report stating in detail the facts upon which the request is based."

Section 13. Section 41-3-403, MCA, is amended to read:

"41-3-403. **Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or

persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date specified and show cause why the person has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing *or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.*

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary legal custody of the youth with the department until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having legal custody;

(c) requirement that the youth, parents, guardians, or person having legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having custody furnish services that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) other temporary disposition that may be required in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined."

Section 14. Section 41-3-404, MCA, is amended to read:

"41-3-404. Adjudicatory hearing — temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

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(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse~~,~~ *or* neglect~~, or dependency~~, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused~~,~~ *or* neglected~~, or dependent~~ child, the petition ~~shall~~ *must* be dismissed and any order made pursuant to 41-3-403 ~~shall~~ *must* be vacated.

(b) If the court determines that the youth is an abused~~,~~ *or* neglected~~, or dependent~~ child, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2)."

Section 15. Section 41-3-406, MCA, is amended to read:

"**41-3-406. Dispositional hearing — contrihutions by parents or guardians for youth's care.** (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parents or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(c) transfer legal custody to any of the following:

(i) the department;

(ii) a child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by ~~a social service~~ *the department or a licensed child-placing* agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(d) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a

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timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(2) If the youth is transferred to the custody of the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

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(6) (a) If the court orders the payment of contrihutions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 16. Section 41-3-408, MCA, is amended to read:

"**41-3-408. Limited emancipation.** (1) The court~~, after the dispositional hearing provided for in 41-3-406,~~ may, upon the request of a youth who is 16 years of age or older, *the youth's parent, or the department,* enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public interest compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and

(g) that, *if it is considered necessary by the court,* the youth will undergo periodic counseling with an appropriate advisor.

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct his *the youth's* own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

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(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

~~(5) If the court determines that a youth to whom limited emancipation is granted does not have sufficient funds to finance transition to limited emancipated status, the court may order the department to provide such funds, not to exceed $500, directly to the youth. The youth shall account to the court for the disposition of such funds and shall repay all such money to the department within 1 year of the order of limited emancipation unless the court for cause orders an extension.~~

~~(6)~~ The court, on its own motion or on the motion of *the county attorney or* any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

~~(b) the youth is failing to diligently pursue graduation from high school;~~

~~(c)~~ the youth has violated a condition of the limited emancipation order; *or*

~~(d)~~*(c)* the best interests of the youth are no longer served by limited emancipation~~; or~~

~~(e) the youth has discontinued periodic counseling with approved advisors.~~

~~(7) The department shall mail a copy of this part to all high school counseling offices.~~"

Section 17. Section 41-3-602, MCA, is amended to read:

"**41-3-602. Purpose.** This part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this part is to be used in those situations ~~where~~ *when* there is a determination that a child is abused~~,~~ *or* neglected~~, or dependent~~, as defined in 41-3-102."

Section 18. Section 41-3-603, MCA, is amended to read:

"**41-3-603. Definitions.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed te represent a child who is the subject of a petition for the termination of the parent-child legal relationship.

(2) "Parent-child legal relationship" means the legal relationship that exists between a child and ~~his~~ *the child's* birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

(3) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective

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services for the child. The treatment plan may involve other parties, if necessary, for protective services.

(4) "Youth in need of care" means a youth who is ~~dependent,~~ abused~~,~~ or neglected as defined in 41-3-102."

Section 19. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial. (1) The termination of a parent-child legal relationship ~~shall~~ *may* be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination *pursuant to 41-3-609*. ~~Termination~~ *If termination* of a parent-child legal relationship ~~shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days after the filing of the petition~~ *is ordered, the court may transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:*

(a) the department;

(b) a licensed child-placing agency; or

(c) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child.

(2) After ~~the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services files~~ a petition for termination of a parent-child relationship *is filed* ~~pursuant to this part~~, parents shall *must* be advised of the right to counsel, and counsel ~~shall~~ *must* be appointed in accordance with 41-3-401(12).

(3) A guardian ad litem ~~shall~~ *must* be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 20. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by ~~his~~ *the* parents as set forth in 41-3-102~~(8)(d)~~*(7)(d)*;

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequato parental care. In making ~~such~~ *the* determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by tbe parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that ~~such person~~ *the parent* cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and ~~such~~ *a* treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred."

Section 21. Section 41-3-611, MCA, is amended to read:

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"**41-3-611. Effect of decree.** (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, *and Title 41, chapter 3, part 2,* except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due ~~him~~ *the child* from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to 41-3-610."

Section 22. Section 52-1-103, MCA, is amended to read:

"**52-1-103. Powers and duties of department.** The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

(3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who are referred or committed to the department;

(4) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(5) administer youth correctional facilities;

(6) provide supervision, care, and control of youth released from a state youth correctional facility;

(7) *register or* license youth care facilities, child-placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for severely disabled persons, and adult foster care facilities;

(8) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

(9) administer interstate compacts for children and delinquent youth;

(10) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

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(b) administer elder abuse prevention services;

(11) (a) make a written evaluation of each plan developed by the local family services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented hy the department, those portions that will not be implemented, and the reasons for not implementing those portions;

(h) develop a statewide youth services and resources plan that takes into consideration local needs as reflected in plans developed by the local family services advisory councils;

(12) administer services to the aged;

(13) provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

(14) utilize at maximum efficiency the resources of state government in a coordinated effort to:

(a) provide for children in need of temporary protection or correctional services; and

(h) coordinate and apply the principles of modern institutional administration to the institutions in the department;

(15) subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:

(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and

(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions in the department;

(16) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(17) propose programs with specific goals and objectives to the legislature to meet the projected long-range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department;

(18) contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

(19) adopt rules necessary to carry out the purposes of 41-3-1126, 41-5-527 through 41-5-529, and this chapter."

Section 23. Section 52-2-101, MCA, is amended to read:

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"52-2-101. **Definitions.** As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services~~(~~, especially in predominantly rural areas~~)~~, for the protection and care of abused~~, dependent,~~ or neglected children.

(2) "Department" means the department of family services provided for in 2-15-2401.

(3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist, licensed social worker, or special education child study team (established under rules adopted by the superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:

(i) an identifiable mental health problem as identified in a nationally recognized classification system or as defined in 20-7-401(8); and

(ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a dysfunction in any of the following areas:

(A) relationships;

(B) behavior;

(C) cognition; or

(D) education.

(b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one recognized by rules established by the department.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 24. Section 52-2-112, MCA, is amended to read:

"52-2-112. **Duty to strengthen child welfare services.** The department shall make provision for establishing and strengthening child welfare services, including protective services, and for care of children in *registered or* licensed family foster homes, child care agencies, group homes, or treatment facilities. Payment provided under this section is made under the provisions of 41-3-1122 and 41-3-1115."

Section 25. Section 52-2-113, MCA, is amended to read:

"52-2-113. **Child rehabilitation — duties of department.** The department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of abused~~,~~ *or* ~~dependent, and~~ neglected children;

(2) use funds allocated or appropriated to the department for the purpose of providing for the special medical or material needs of developmentally disabled or physically handicapped children who are eligible for department programs;

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(3) cooperate for the purposes ~~hereof~~ *of this part* with all reputable child-helping and child-placing agencies; and

(4) inspect and *register or* license youth care facilities, child-placing agencies, and adoption agencies."

Section 26. Section 52-2-211, MCA, is amended to read:

"**52-2-211. County interdisciplinary child information team.** (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

(a) the youth court;

(b) the county attorney;

(c) the department of family services;

(d) the county superintendent of schools;

(e) the sheriff;

(f) the chief of any police force; and

(g) the superintendents of public school districts.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the information team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the information team will serve.

(3) The members of the information team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused, neglected, ~~dependent,~~ and delinquent children and youth in need of supervision. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205, 41-5-602, or 41-5-603 may not be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared,

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distributed, and managed, and any other matters necessary to the purpose and functions of the team."

Section 27. Repealer. Section 41-3-1112, MCA, is repealed.

Section 28. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 459

[HB 195]

AN ACT IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S ADVISORY COUNCIL ON PRIVATE LAND/PUBLIC WILDLIFE; CREATING PROGRAMS FOR HUNTER MANAGEMENT AND HUNTING ACCESS ENHANCEMENT WITHIN THE BLOCK MANAGEMENT PROGRAM; RESTRICTING THE LIABILITY OF LANDOWNERS WHO PARTICIPATE IN THE PROGRAMS; PROVIDING A MORATORIUM ON THE ISSUANCE OF NEW LAND-BASED HUNTING OUTFITTER LICENSES; REVISING THE CLASS B-11 RESIDENT SPONSOR LIMIT BY ALLOWING THE ISSUANCE OF ONLY 10 CERTIFICATES FOR EACH SPONSOR AND PROVIDING THAT ALL DEER HUNTING UNDER THE LICENSE MUST BE CONDUCTED ON THE SPONSOR'S DEEDED LAND; REVISING REQUIREMENTS FOR LICENSEES WHO USE AN OUTFITTER-RESERVED LICENSE; ALLOWING VARIABLE PRICING OF OUTFITTER-SPONSORED CLASS B-10 AND CLASS B-11 LICENSES; AMENDING SECTIONS 87-1-201, 87-1-242, 87-2-505, 87-2-510, AND 87-2-511, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND TERMINATION DATES.

WHEREAS, Montana has a cherished hunting heritage based on a deep knowledge of and respect for wildlife and the land; and

WHEREAS, private landowners provide wildlife habitat and hunting opportunities, the hunting public provides financial and political support for sound wildlife management, and the combined efforts of landowners and the hunting public have sustained Montana's hunting and wildlife heritage; and

WHEREAS, landowner/outfitter/sportsperson relations have become increasingly strained over the past several years, leading to increased polarization between tbe groups; and

WHEREAS, the 1993 Legislature addressed this problem through the passage of House Joint Resolution No. 24, which requested the Governor, through the Department of Fish, Wildlife, and Parks, to coordinate a sustained, ongoing, cooperative effort to address these issues by establishing statewide, regional, and local groups to develop mutually satisfactory solutions that would preserve Montana's hunting and wildlife heritage and encourage the continuance of a viable outfitting industry; and

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WHEREAS, in response to that request, the Governor appointed the Advisory Council on Private Land/Public Wildlife, consisting of representatives of the affected groups, to study the issues in anticipation of legislation that reflects the mutual interests of landowners, outfitters, and the sporting community; and

WHEREAS, after considering extensive input and advice from individual private citizens, local working groups, agencies, and nonprofit organizations involved in conservation, the Advisory Council by consensus developed recommendations for improving hunting access to private lands and for providing tangible benefits for landowners who allow access to their lands for hunting; and

WHEREAS, the Advisory Council has made efforts to break new ground philosophically in designing its recommendations, requiring that all interested parties be willing to accept change in order to benefit everyone who has an interest in Montana's hunting and wildlife heritage; and

WHEREAS, the Advisory Council finds it appropriate to present the following recommendations to the Legislature in the spirit of a cooperative and positive effort to enhance relations between landowners, outfitters, and sportspersons.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 1 through 3] grant rulemaking authority to the department of fish, wildlife, and parks and the fish, wildlife, and parks commission to implement programs for hunter management and hunting access enhancement. It is intended that in addition to the statutory guidelines set out in those sections, any rules be adopted with the purpose of optimizing hunting opportunity and access while minimizing administrative costs in providing benefits to landowners who voluntarily participate in the programs. In addition, [section 6] grants rulemaking authority to the fish, wildlife, and parks commission to implement the provisions of variable pricing for Class B-10 and Class B-11 outfitter-sponsored licenses. It is intended that the fish, wildlife, and parks commission use its licensing authority to adjust the price of those licenses as necessary and that any additional revenue generated by variable pricing be used to fund the hunting access enhancement program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Hunter management and hunting access enhancement programs created — private landowner assistance to promote puhlic hunting access — rules. (1) The department may establish within the block management program established by administrative rule pursuant to authority contained in 87-1-301 and 87-1-303 programs of landowner assistance that encourage public access to private lands for purposes of hunting and may adopt rules to carry out program purposes. Rules may address but are not limited to incentives provided under:

(a) a hunter management program as set out in [section 2], consisting of a cooperative agreement between a landowner and the department and including other resource management agencies when appropriate, that allows public hunting with certain restrictions or use rules; and

(b) a hunting access enhancement program as set out in [section 3], consisting of incentives for private landowners who allow public hunting access on their lands.

(2) The department may also develop similar efforts outside the scope of the block management program that are designed to promote public access to private lands for hunting purposes.

(3) Participation in a program established under subsection (1) is voluntary. Programs may not be structured in a manner that provides assistance to a private landowner who charges a fee for hunting access to private land that is enrolled in the program or who does not provide reasonable public hunting access to private land that is enrolled in the program. The commission shall develop criteria by which tangible benefits are allocated to participating landowners, and the department may distribute the benefits to participating landowners. The department may by rule limit the number of licenses that can be provided as incentives.

Section 2. Hunter management program — benefits for providing hunting access — nonresident landowner limitation — restriction on landowner liability. (1) As provided in [section 1], the department may establish a voluntary bunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.

(2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class AAA sportsman's license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.

(3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the quota of 11,500 established under 87-2-505.

(4) (a) A resident landowner who is enrolled in the block management program may receive the benefits provided under the hunter management program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in [section 3].

(b) A nonresident landowner who chooses to receive a license under subsection (3) may also receive assistance under the block management program, but is not eligible to receive cash payments under [section 3].

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(5) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program.

Section 3. Hunting access enhancement program — benefits for providing hunting access — cooperative agreement — factors for determining benefits earned — restriction on landowner liability. (1) As provided in [section 1], the department may establish and administer a voluntary program to enhance the block management program, to he known as the hunting access enhancement program. The program must be designed to provide tangible benefits to participating private landowners who grant access to their land for puhlic hunting.

(2) Land is not eligihle for inclusion in the hunting access enhancement program if outfitting or commercial hunting restricts public hunting opportunities.

(3) A contract for participation in the bunting access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public hunting. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed hy the landowner and the department and may include but is not limited to:

(a) hunting access management;

(h) services to be provided to the public;

(c) ranch rules and other restrictions; and

(d) any other management information to be gathered, which must he made available to the public.

(4) If the department determines that the plan referred to in subsection (3) may adversely influence game management decisions or wildlife hahitat on public lands outside the hlock management area, then other puhlic land agencies, interested sportspersons, and affected landowners must he consulted. An affected landowner's management goals and personal ohservations regarding game populations and hahitat use must be considered in developing the plan.

(5) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing puhlic hunting access. Benefits will be provided to offset potential impacts associatod with puhlic hunting access, including but not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may include but are not limited to:

(a) the number of days of puhlic hunting provided hy a participating landowner;

(h) wildlife habitat provided;

(c) resident game populations;

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(d) number, sex, and species of animals taken; and

(e) access provided to adjacent public lands.

(6) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner :

(a) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.

(b) A landowner may direct fire protection payments to be made to the local fire district or the county where the landowner resides or may elect to receive payments directly.

(c) A landowner may receive direct payment to offset insurance costs incurred for allowing public hunting access.

(d) The department may provide assistance in the construction and maintenance of roads, gates, and parking facilities and in the signing of property.

(7) The commission may provide a total of not more than $8,000 a year to a landowner who participates in the hunter management program or hunting access enhancement program, or both, subject to the conditions set out in [section 2(4)].

(8) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunting access enhancement program.

Section 4. Section 87-1-201, MCA, is amended to read:

"**87-1-201. Powers and duties.** (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state *and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public.* It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) ~~It~~ *The department* shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) ~~It shall have~~ *The department has* the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources are appropriated to and under control of the department.

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(4) ~~It~~ *The department* may discharge any appointee or employee of the department for cause at any time.

(5) ~~It~~ *The department* may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds ~~which~~ *that* is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) ~~It~~ *The department* may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is ~~hereby~~ authorized to make, promulgate, and enforce ~~such~~ reasonable rules and regulations not inconsistent with the provisions of chapter 2 as *that* in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or without the state."

Section 5. Section 87-1-242, MCA, is amended to read:

"87-1-242. **(Temporary) Funding for wildlife habitat.** (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature.

(a) Class B-10, nonresident combination, $77;

(b) Nonresident antelope, $20;

(c) Nonresident moose, $20;

(d) Nonresident mountain goat, $20;

(e) Nonresident mountain sheep, $20;

(f) Class D-1, nonresident mountain lion, $20;

(g) Nonresident black bear, $20;

(h) ~~Wild turkey nonresident~~ *Nonresident wild turkey*, $10;

(i) Class AAA, sportsman's, $7;

(j) Class B-11 nonresident deer combination, $200.

(2) Twenty percent of any increase ~~after March 1, 1988,~~ in the fee for the Class B-7 license or any license or permit listed in subsection (1), *except outfitter-sponsored Class B-10 and Class B-11 licenses subject to variable pricing under [section 6],* must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income ~~therefrom~~ *from the money*, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) ~~(a) Until March 1, 1991, 20% of the money allocated by this section must be credited to the account created by 87-1-601(5) for use in the manner~~

~~prescribed therein for the development and maintenance of real property used for wildlife habitat.~~

~~(b) On and after March 1, 1991, 20%~~ *Twenty percent* of the money allocated hy this section must be used as follows:

~~(i)~~*(a)* up to 50% a year may he used for development and maintenance of real property used for wildlife habitat; and

~~(ii)~~*(b)* the remainder and any money not allocated for development and maintenance under subsection ~~(4)(b)(i)~~ *(4)(a)* hy the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for use in the manner prescribed ~~therein~~ for the development and maintenance of real property used for wildlife habitat. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)"

Section 6. Variable pricing of outfitter-sponsored Class B-10 and B-11 licenses. The commission shall annually set fees for outfitter-sponsored Class B-10 and Class B-11 licenses allowed under 87-2-505 and 87-2-510. The fees must be set at a market rate intended to sell as close to but not more than an average of 5,500 Class B-10 licenses and 2,300 Class B-11 licenses each year, calculated over a 5-year period. The sale period for the licenses must he established so that by the last date in the established period, those licenses that are unsold, up to 5,500 Class B-10 licenses and 2,300 Class B-11 licenses, may be reallocated by the commission for a drawing at a price set by the commission.

Section 7. Report required — review committee. (1) The governor shall appoint a committee of persons interested in the hunter management program, the hunting access enhancement program, or other issues related to private lands and public wildlife to review the success and progress of the hunter management program and the hunting access enhancement program. The committee must have equal representation of landowners, outfitters, and sportspersons and be broadly representative of the various geographical areas of the state. The department may provide administrative assistance as necessary to facilitate the efforts of the review committee.

(2) The review committee shall report to the governor regarding the success of the hunter management program and the hunting access enhancement program, including a report of annual landowner participation and the number of acres annually enrolled in the programs. The report may also include suggestions for funding, modification, or improvement of the programs. If the review committee determines that expanding funding for programs for hunter management and hunting access enhancement is desirable, consideration must be given to providing the expanded funding through increases in resident hunting license fees.

Section 8. Section 87-2-505, MCA, is amended to read:

"87-2-505. (Temporary) Class B-10—nonresident big game combination license. Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of ~~$462 beginning March 1, 1992, and~~ $475 ~~beginning March 1, 1994,~~ or upon payment of the fee ~~of $472 beginning March 1, 1992, and $485~~

~~beginning March 1, 1994,~~ *established as provided in [section 6]* if the license is one of the ~~5,600~~ licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license ~~which shall entitle~~ *that entitles* the holder to all the privileges of Class B, Class B-1, and Class B-7 licenses~~,~~ and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than ~~17,000~~ *11,500 unreserved* Class B-10 licenses may be sold in any ~~one~~ *1* license year. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-505. (Effective March 1, 2006) Class B-10—nonresident big game combination license. Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of $398 or upon payment of the fee ~~of $408~~ *established as provided in [section 6]* if the license is one of the ~~5,600~~ licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license ~~which shall entitle~~ *that entitles* the holder to all the privileges of Class B, Class B-1, and Class B-7 licenses~~,~~ and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than ~~17,000~~ *11,500 unreserved* Class B-10 licenses may be sold in any one *1* license year."

Section 9. Section 87-2-510, MCA, is amended to read:

"**87-2-510. Class B-11—nonresident deer combination license.** (1) Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of a fee of $220 or upon payment of the fee of ~~$225~~ *established as provided in [section 6]* if the license is one of ~~the 4,000~~ *those* reserved pursuant to 87-2-511 for applicants indicating their intent ~~either~~ to use the services of a licensed outfitter or *upon payment of the fee of $225 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent* to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles the holder to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) ~~Six thousand~~ *Not more than 2,300 unreserved* Class B-11 licenses ~~are authorized for sale each~~ *may be sold in any 1* license year."

Section 10. Section 87-2-511, MCA, is amended to read:

"**87-2-511. Sale *and use* of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with ~~5,600~~ *a number* of the authorized Class B-10 *and Class B-11* licenses, *as determined under [section 6],* ~~and 2,000 Class B-11 licenses~~ reserved for applicants indicating their intent to use the services of a licensed outfitter~~,~~ and

2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a reserved license under subsection (1) must contain a written affirmation that the applicant intends to hunt with a licensed outfitter or a resident sponsor and must indicate the name of the licensed outfitter or resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter or resident sponsor and ~~which~~ *that* affirms that the outfitter or resident will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with ~~him~~ *the outfitter or resident*, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. *A resident sponsor of a Class B-11 license may submit no more than 20 certificates of sponsorship in any license year prior to expiration of the moratorium established in [section 11], after which no more than 10 certificates of sponsorship may be submitted in any license year.*

(4) *A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.*

(5) Any permits or tags secured as a result of obtaining a Class B-10 or Class B-11 license through an outfitter sponsor are valid only when hunting is conducted with a licensed outfitter.

(6) The department shall make the reserved *outfitter-sponsored* Class B-10 and Class B-11 licenses that remain unsold ~~on April 15~~ available ~~to nonresident applicants without restriction as to hunting with a licensed outfitter or resident sponsor~~ *as provided in [section 6].*

~~(5)~~*(7)* All Class B-10 and Class B-11 licenses not reserved under subsection (1) ~~and all unsold reserved licenses available under subsection (4)~~ must be issued by a drawing among all applicants for the respective unreserved licenses."

Section 11. Moratorium on issuance of hunting outfitter licenses. The legislature finds it necessary to protect the hunting resource, public health, public safety, and public welfare. Therefore, the board shall establish and regulate a moratorium on the issuance of outfitter licenses for land-based hunting activities. An outfitter licensed on [the effective date of this section] may receive a renewal license, if qualified, but the total number of land-based

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hunting outfitter licenses issued after [the effective date of this section] may not exceed the number in existence on [the effective date of this section].

Section 12. Codification instruction. (1) [Sections 1 through 3, 6, and 7] are intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply te [sections 1 through 3, 6, and 7].

(2) [Section 11] is intended to he codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [section 11].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications tbat are severable from the invalid applications.

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Coordination instructions. (1) If Senate Bill No. 211 is passed and approved and if it includes a section repealing 70-16-302, then the reference to 70-16-302(1) in [sections 2(5) and 3(8) of this act] is changed to "[sections 1 through 4] of Senate Bill No. 211".

(2) If House Bill No. 196 is passed and approved and if it includes a section amending 87-2-511 to revise the process for submission of records by licensed outfitters, then the added language in 87-2-511(2)(b) in this bill is changed to "*the resident sponsor*".

Section 16. Applicability. The moratorium on the issuance of outfitter licenses in [section 11] applies only to applications for new licenses filed on or after [the effective date of this section].

Section 17. Effective dates. (1) [Sections 5 through 9] are effective March 1, 1996.

(2) [Sections 1 through 4, 10, and 18] are effective October 1, 1995.

(3) [Sections 11 through 16 and this section] are effective on passage and approval.

Section 18. Termination. (1) [Sections 1 through 10] terminate October 1, 2001.

(2) [Section 11] terminates June 30, 1999.

Approved April 14, 1995

CHAPTER NO. 460

[HB 298]

AN ACT INCREASING THE NUMBER OF HOURS A RETIREE MAY RETURN TO COVERED EMPLOYMENT UNDER THE PUBLIC

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EMPLOYEES' RETIREMENT SYSTEM PRIOR TO A TEMPORARY REDUCTION IN SERVICE RETIREMENT BENEFITS; INCREASING THE EARNINGS LIMITATION FOR RETIRED MEMBERS WHO ARE 65 YEARS OF AGE AND OLDER; PROVIDING AN EXCEPTION; AMENDING SECTION 19-3-1106, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-1106, MCA, is amended to read:

"**19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — *exception*.** (1) A retired member under 65 years of age *who is* receiving a service retirement benefit may return to employment covered by the retirement system for a period not to exceed ~~600~~ *640* hours in any calendar year without returning to *active* service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this ~~600-hour~~ *640-hour* limitation in any calendar year after retirement must be *temporarily* reduced $1 for each $1 earned after working ~~600~~ *640* hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the ~~600-hour~~ *640-hour* limitation of subsection (1) or may earn *in any calendar year* an amount ~~equal to 50% of~~ *that, when added to* the retiree's current annual retirement benefits, *will not exceed the member's annualized final average salary, adjusted for inflation as of January 1 of the current calendar year,* whichever limitation provides the ~~greater~~ *higher limit on earned* compensation to the retiree~~, in any calendar year~~. Upon reaching the applicable limitation, the retiree's benefits must be *temporarily* reduced $1 for each $1 ~~in other income~~ *of compensation* earned in covered service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by tbe retirement system shall report to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) A retired member 70 1/2 years of age or older who returns to employment covered by the retirement system is not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3)."

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

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CHAPTER NO. 461

[HB 309]

AN ACT RELATING TO MEDICAL MALPRACTICE CLAIMS AND RECOVERIES; LIMITING NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE CASES; REVISING THE LAW RELATING TO PERIODIC PAYMENT OF FUTURE DAMAGES IN MEDICAL MALPRACTICE CASES; AMENDING SECTION 25-9-403, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Medical malpractice noneconomic damages limitation. (1) (a) In a malpractice claim or claims against one or more health care providers based on a single incident of malpractice, an award for past and future damages for noneconomic loss may not exceed $250,000. All claims for noneconomic loss deriving from injuries to a patient are subject to an award not to exceed $250,000. This limitation applies whether:

(i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or deaths on which the action or actions are based; or

(ii) the act or series of acts were by one or more health care providers.

(b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

(2) (a) For purposes of the limitation on awards contained in subsection (1), a claimant has the burden of proving separate injuries, each arising from a different act or series of acts. An award or combination of awards in excess of $250,000 must be reduced to $250,000, after which the court shall make other reductions that are required by law. If a combination of awards for past and future noneconomic loss is reduced in the same action, future noneconomic loss must be reduced first and, if necessary to reach the $250,000 limit, past noneconomic loss must then be reduced. If a combination of awards is reduced to $250,000, a claimant's share of the $250,000 must be the same percentage as the claimant's share of the combined awards before reduction.

(b) For each claimant, further reductions must be made in the following order:

(i) first, reductions under 27-1-702;

(ii) second, reductions under 27-1-703; and

(iii) third, setoffs and credits to which a defendant is entitled.

(3) An award of future damages for noneconomic loss may not be discounted to present value.

(4) The $250,000 limit provided for in subsection (1) may not be disclosed to a jury.

(5) As used in this section, the following definitions apply:

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(a) "Claimant" includes but is not limited to:

(i) a person suffering bodily injury;

(ii) a person making a claim as a result of bodily injury to or the death of another;

(iii) a person making a claim on behalf of someone who suffered bodily injury or death;

(iv) the representative of the estate of a person who suffered bodily injury or death; or

(v) a person bringing a wrongful death action.

(b) "Health care provider" means a physician, dentist, podiatrist, optometrist, chiropractor, physical therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50, chapter 5.

(c) "Malpractice claim" means a claim based on a negligent act or omission by a health care provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful death.

(d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:

(i) physical and mental pain or suffering;

(ii) emotional distress;

(iii) inconvenience;

(iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;

(v) loss of society, companionship, and consortium, other than household services;

(vi) injury to reputation; and

(vii) humiliation.

(e) "Patient" means a person who receives services from a health care provider.

Section 2. Periodic payment of future damages in medical malpractice cases. (1) A party to an action for a malpractice claim, as defined in [section 1], in which $50,000 or more of future damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment. Upon a request, the court shall enter an order for periodic payment of future damages. The total dollar amount of the ordered periodic payments must equal the total dollar amount of the future damages without a reduction to present value.

(2) A court ordering the payment of future damages by periodic payments shall make specific findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for future damages.

(3) The judgment order must specify the recipient or recipients of periodic payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments must be made.

(4) The court shall order that periodic payment of future damages be made, during the life of the judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor, through the purchase of an inflation-indexed annuity approved hy the court. The annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher classification. The annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity, the court shall order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining payments become the property of the creditor's estate.

Section 3. Section 25-9-403, MCA, is amended to read:

"**25-9-403. Request for periodic payment of future damages — *nonmalpractice claims.*** (1) A *Except as provided in [section 2], a* party to an action for personal injury, property damage, or wrongful death in which $100,000 or more of future damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment. Upon ~~such~~ *a* request, the court may enter an order for periodic payment of future damages if the court finds that ~~such~~ *periodic* payment is in the best interests of the claimant. The total dollar amount of the ordered periodic payments must equal the total dollar amount of the future damages without a reduction to present value.

(2) A court ordering the payment of future damages by periodic payments shall make specific findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for future damages and as to whether an order for periodic payment of future damages is in the best interests of the claimant.

(3) The judgment order must specify the recipient or recipients of periodic payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments ~~shall~~ *must* be made.

(4) A court ordering periodic payment of future damages shall order that the payments be made, during the life of the judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor, through the purchase of an inflation-indexed annuity approved by the court. The annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher classification. The annuity also serves as any required supersedeas bond. Upon purchase of a

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court-approved annuity, the court may order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining payments become the property of ~~his~~ *the creditor's* estate."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 25, chapter 9, part 4, and the provisions of Title 25, chapter 9, part 4, apply to [sections 1 and 2].

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Applicability. [This act] applies to causes of action arising on or after October 1, 1995.

Approved April 14, 1995

CHAPTER NO. 462

[HB 311]

AN ACT PROVIDING FOR A REVIEW AND ASSESSMENT OF PROPOSED STATE GOVERNMENT EXECUTIVE BRANCH ACTIONS THAT MIGHT RESULT IN DEPRIVING A PROPERTY OWNER OF ALL OR PART OF THE USE OR ECONOMIC VALUE OF PRIVATE PROPERTY IN A MANNER REQUIRING COMPENSATION UNDER THE 5TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION OR ARTICLE II, SECTION 29, OF THE MONTANA CONSTITUTION.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants the attorney general authority to develop guidelines for state agencies to follow in identifying and evaluating agency actions with taking implications. The attorney general, using a puhlic process, should develop an orderly, consistent, internal management process for state agencies to evaluate the effects of proposed state actions on private property. Consistent with the Montana and United States constitutions, the attorney general should consider the following issues in developing guidelines:

(1) whether there is a constitutionally protected property right that will be affected;

(2) whether the proposed action would substantially advance a legitimate state interest;

(3) whether the action would deprive the owner of economically viable use of the property or result in a temporary or permanent physical invasion of the property;

(4) whether the action would damage the property;

(5) whether the action would require a property owner to dedicate a portion of the property to a public use or to grant an easement; and

(6) whether in balance, benefits of the proposed action justify the burden on private property. In addition, the attorney general may consider any other factors that hear upon the determination of whether a compensable taking has occurred, including new case law.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Private Property Assessment Act".

Section 2. Purpose. It is the policy of this state that a person may not be deprived of the use of private property without due process of law and that private property may not be taken or damaged by a state agency without prior just compensation to the owner in accordance with the meaning ascribed to these concepts by the United States supreme court and the Montana supreme court. An assessment of each state agency action with taking or damaging implications is needed to avoid imposing expensive litigation burdens on citizens and to minimize the risk of unanticipated demands on the state's fiscal resources. The purpose of [sections 1 through 5] is to establish an orderly and consistent process that better enables state agencies to evaluate whether an action with taking or damaging implications might result in the taking or damaging of private property. It is not the purpose of [sections 1 through 5] to expand or diminish the private property protections provided in the federal and state constitutions.

Section 3. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Action with taking or damaging implications" means a proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana constitution. It does not include:

(a) proposed eminent domain proceedings;

(h) a proposed seizure of property by law enforcement officials as evidence or under a state forfeiture statute;

(c) a proposed forfeiture of property during or as a result of criminal proceedings; or

(d) a proposal to repeal a rule, discontinue a government program, or implement a proposed change that has the effect of reducing regulation of private property.

(2) "Private property" means all real property, including but not limited to water rights.

(3) "State agency" means an officer, board, commission, department, or other entity within the executive branch of state government.

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(4) "Taking or damaging" means depriving a property owner of private property in a manner requiring compensation under the 5th and 14th amendments to the constitution of the United States or Article II, section 29, of the Montana constitution.

Section 4. Guidelines for actions with taking implications. (1) The attorney general shall develop and provide to state agencies guidelines, including a checklist, to assist the agencies in identifying and evaluating agency actions with taking or damaging implications. The attorney general shall at least annually review the guidelines and modify them as necessary to comply with changes in statutes and court decisions.

(2) In developing guidelines, the attorney general shall include a provision that state agencies should consider and follow obligations imposed hy the 5th and 14th amendments to the Constitution of the United States and Article II, section 29, of the Montana constitution, as construed hy the United States supreme court and the Montana supreme court, when considering and implementing an action with taking or damaging implications in order to avoid unanticipated and undue burdens on the state treasury.

Section 5. Impact assessment. (1) Each state agency shall assign a qualified person or persons in the state agency the duty and authority to ensure that the state agency complies with [sections 1 through 5]. Each state agency action with taking or damaging implications must be submitted to that person or persons for review and completion of an impact assessment. The state agency may not take the action unless the review and impact assessment have been completed, except that the action witb taking or damaging implications may be taken before the review and impact assessment are completed if necessary to avoid an immediate threat to public health or safety.

(2) Using the attorney general's guidelines and checklist, the person shall prepare a taking or damaging impact assessment for each state agency action with taking or damaging implications that includes an analysis of at least the following:

(a) the likelihood that a state or federal court would hold that the action is a taking or damaging;

(b) alternatives to the action that would fulfill the agency's statutory obligations and at the same time reduce the risk for a taking or damaging; and

(c) the estimated cost of any financial compensation by the state agency to one or more persons that might be caused by the action and the source for payment of the compensation.

(3) A copy of the impact assessment for a proposed action with taking or damaging implications must be given to the governor before the action is taken, except that an action to avoid an immediate threat to public health or safety may be taken before the impact assessment is completed and the assessment may be reported to the governor after the action is taken.

Approved April 14, 1995

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CHAPTER NO. 463

[HB 349]

AN ACT CREATING THE FUTURE FISHERIES IMPROVEMENT PROGRAM; PROVIDING FOR THE PROTECTION AND ENHANCEMENT OF MONTANA FISHERIES THROUGH VOLUNTARY ENHANCEMENT OF SPAWNING STREAMS AND OTHER HABITATS FOR THE NATURAL REPRODUCTION OF FISH AND GROWTH OF POPULATIONS OF WILD FISH; DIRECTING A PORTION OF STATE FISHERIES MONEY TO FUND THE FUTURE FISHERIES IMPROVEMENT PROGRAM; AUTHORIZING THE GOVERNOR TO APPOINT A FUTURE FISHERIES REVIEW PANEL AND ESTABLISHING THE DUTIES OF THE PANEL; DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ESTABLISH AND ADMINISTER THE PROGRAM; REQUIRING THE DEPARTMENT TO SUBMIT REGULAR PROGRAM PROGRESS REPORTS TO THE FISH, WILDLIFE, AND PARKS COMMISSION AND TO SUBMIT A PROGRESS REPORT AND THE ANTICIPATED EXPENSES AND RELATED PROJECTIONS TO THE LEGISLATURE; AND PROVIDING EFFECTIVE DATES AND TERMINATION DATES.

WHEREAS, the rivers and streams of Montana hold one of the state's most important and economically valuable resources—wild fish; and

WHEREAS, the loss of historic spawning areas and other crucial habitats of native fish species is one of the greatest threats to the natural reproduction and propagation of the fish resource; and

WHEREAS, the state is presently in a position to address the key issue of these aquatic habitats in order to promote the future viability of Montana's wild fisheries before the continued loss of spawning areas and other habitats diminishes or destroys the resource; and

WHEREAS, a wild fisheries enhancement program will immensely benefit landowner-sportsperson relations; and

WHEREAS, a wild fisheries enhancement program will benefit Montana's economy; and

WHEREAS, it is fiscally sound state policy to enhance natural habitats and spawning areas to improve fishing opportunities now and preserve fishing opportunities for future generations; and

WHEREAS, voluntary cooperation between landowners, interested citizens, public and private organizations, and the Department of Fish, Wildlife, and Parks will help accomplish the purposes of the future fisheries improvement program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Future fisheries improvement program — funding priority — reports required. (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

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(2) The department shall by April 1, 1996, and thereafter when projects are suggested by the future fisheries review panel, through a public hearing process and with the approval of the commission, prioritize projects that have heen recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

(a) for negotiations with landowners, local officials, citizens, and others;

(b) for coordination with other agencies that may be involved in projects conducted under this section; and

(c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in [section 2] and approved by the commission and may not he used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on the state electronic bulletin board to ensure public access to the report.

(b) The department shall also present a detailed report to each regular session of the legislature on the progress of the future fisheries improvement program. The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program.

(c) In order to implement [sections 1 and 2], the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees.

Section 2. Future fisheries review panel — purpose — appointment and duties. (1) The governor or governor's designee shall call for nominees for, accept and review recommendations for, and, by August 1, 1995, appoint a

future fisheries review panel. The panel must consist of at least 10 members, including but not limited to:

(a) one member who is a representative of conservation districts;

(b) one member with expertise in commercial agriculture or silviculture;

(c) one member with expertise in irrigated agriculture;

(d) one member from the private sector who is a fisheries restoration professional;

(e) two members who are licensed Montana anglers;

(f) one member of the house of representatives, chosen by the speaker of the house;

(g) one member of the senate, chosen by the committee on committees;

(h) one member who is a representative of the governor's office; and

(i) one member who is a Montana high school student.

(2) A member appointed to the review panel shall serve a 2-year term and may be reappointed.

(3) The purpose of the review panel is to:

(a) review, at least every 6 months, proposed projects that have been submitted by public or private entities for funding;

(b) determine what projects are eligible for inclusion in the future fisheries improvement program;

(c) approve or reject proposed projects; and

(d) forward a list of approved projects to the department.

(4) To be eligible for funding, a project must be generated at the local level and must be developed and presented to the review panel by the department, local landowners, conservation districts, or other interested citizens. Before consideration of any project that involves streambed or streambank restoration, a change in the use of water, or any other purpose that affects a particular property owner's interest in land or water, the review panel is required to find that the project is being proposed for funding with tbe voluntary approval of the participating property owner.

Section 3. Funding of future fisheries program. The following amounts must be expended by the department to enhance future fisheries, as directed by [section 1]:

(1) $290,000 redirected from the river restoration program;

(2) $1.5 million redirected from the Blue Water hatchery phase II project for the 1996-97 biennium; and

(3) $510,000 redirected from the Tongue River restoration project, to be used in the Tongue River basin for the purposes of [section 1].

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Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [sections 1 and 2].

Section 5. Termination. (1) [Sections 1 and 2] terminate July 1, 2005.

(2) [Section 3] terminates July 1, 1997.

Section 6. Effective dates. (1) [Section 3] is effective July 1, 1995.

(2) [Sections 1, 2, 4, and 5 and this section] are effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 464

[HB 338]

AN ACT AMENDING THE METAL MINE RECLAMATION LAWS TO PROVIDE RECLAMATION REQUIREMENTS FOR OPEN PITS AND ROCK FACES; AND AMENDING SECTION 82-4-336, MCA.

STATEMENT OF INTENT

In this bill, the legislature is implementing, with regard to open pits and rock faces that are the result of metal mining, the duty imposed upon it by Article IX, section 2(1), of the Montana constitution, which provides that "All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed."

The drafters of this provision of the constitution expressly decided not to impose a constitutional requirement for a specified level of reclamation for all disturbed lands in all locations under all circumstances. Rather, they delegated to the legislature the duty to more specifically define reclamation in the public interest.

The legislature expects, and this bill requires, that miners will prepare and submit to the state reclamation plans for open pits and rock faces. This bill requires that these plans must, at a minimum, provide for return of these lands to structural stability and that the plans must be protective of air and water quality as provided elsewhere in the metal mine reclamation laws. These requirements and standards will prevent risks to public health and safety and the environment and will thereby adequately protect the environmental life support system from degradation.

In order to prevent unreasonable depletion and degradation of natural resources, the legislature finds that further reclamation of open pits and rock faces to provide functional uses and to blend with surrounding areas should be accomplished whenever feasible.

In determining feasibility of further reclamation, the legislature directs the department of state lands to consider and give effect to each of the following objectives:

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(1) to encourage mining as an activity beneficial to the economy of our state;

(2) to encourage the production of minerals to meet the needs of society and the economic demands of the marketplace;

(3) to encourage reclamation to a condition that is aesthetically unobtrusive;

(4) to encourage reclamation to functional use;

(5) to discourage requirements that may foreclose future access to mineral resources not fully developed by current mining operations;

(6) to discourage requirements that will generate undesirable offsite environmental impacts.

The legislature finds that functional postreclamation uses include but are not limited to livestock grazing, agriculture, timber, recreation, wildlife habitat or other wildlife use, or other industrial use, including remining.

The legislature finds that when reclamation has been accomplished in accordance with an approved reclamation plan, the economic and social benefits of mining outweigh the scenic and other impacts associated with open-pit mining.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-336, MCA, is amended to read:

"82-4-336. Reclamation plan and specific reclamation requirements. (1) The reclamation plan ~~shall~~ *must* provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, ~~shall~~ *must* be conducted simultaneously with the operation and in any case ~~shall~~ *must* be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance. In the absence of an order by the board providing a longer period, the plan ~~shall~~ *must* provide that reclamation activities ~~shall~~ *must* be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval ~~of his~~ *for the* proposed change.

(3) Provision ~~shall~~ *must* be made to avoid accumulation of stagnant water in the mined area ~~which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life~~.

(4) All final grading ~~shall~~ *must* be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(5) ~~Where~~ *When* mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (~~hereinafter~~ "objectionable effluents") on exposure to moisture, the reclamation plan ~~shall~~ *must* include provisions which *that* adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before ~~their being~~ *they are* allowed to flow or be pumped out of ~~it~~ *the pit* to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the board;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the board before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and ~~such~~ other devices ~~as~~ *that* may reasonably be required by the board.

(6) Provisions for vegetative cover ~~shall~~ *must* be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover ~~shall~~ *must* meet county standards for noxious weed control.

(7) The reclamation plan ~~shall~~ *must* provide for the reclamation of all disturbed land. Proposed reclamation ~~shall~~ *must* provide for the reclamation of disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces ~~which~~ *that* may not be feasible to reclaim *in the same fashion as other disturbed lands.* In ~~such excepted cases,~~ *the case of open pits and rock faces, the reclamation plan must provide for reclamation to a condition:*

(a) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(b) that affords utility to humans and the surrounding natural system to the extent feasible; and

(c) that blends with the appearance of the surrounding area to the extent feasible.

(8) ~~the board shall require~~ *The reclamation plan must provide* sufficient measures to ~~insure~~ *ensure* public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

~~(8)~~*(9)* A reclamation plan ~~shall~~ *must* be approved by the board if it adequately provides for the accomplishment of the activities specified in this section.

~~(9)~~*(10)* The reclamation plan ~~shall~~ *must* provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan ~~shall~~ *must* also provide measures to prevent objectionable postmining ground water discharges."

Approved April 14, 1995

CHAPTER NO. 465

[HB 366]

AN ACT GENERALLY REVISING THE LAWS RELATED TO ADULT PROTECTIVE SERVICES; INCORPORATING PROTECTIVE SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES INTO THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT; EXPANDING THE LIST OF PERSONS TO WHOM CERTAIN CONFIDENTIAL INFORMATION MAY BE RELEASED; GRANTING LIMITED IMMUNITY TO PERSONS WHO PROVIDE OR USE BACKGROUND OR EMPLOYMENT SCREENING INFORMATION REGARDING AN EMPLOYEE'S OR VOLUNTEER'S HISTORY OF ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION IN MAKING AN EMPLOYMENT DECISION; REVISING DEFINITIONS; AMENDING SECTIONS 52-3-202, 52-3-207, 52-3-803, 52-3-804, 52-3-813, AND 52-3-814, MCA; REPEALING SECTIONS 52-4-101, 52-4-102, 52-4-103, 52-4-104, 52-4-105, 52-4-106, 52-4-107, 52-4-108, AND 52-4-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-3-202, MCA, is amended to read:

"**52-3-202. Definitions.** As used in this part, the following definitions apply:

(1) "Aged person" means an aged person as defined by the department.

(2) "Department" means the department of family services.

(3) "Disabled adult" means a person 18 years of age or ~~over~~ *older* who is defined by the department as disabled ~~but not~~ *or who is* developmentally disabled, *as defined in 53-20-102.*

(4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department."

Section 2. Section 52-3-207, MCA, is amended to read:

"**52-3-207. Protective services not creating guardianship or conservatorship.** *(1)* The provision of protective services does not create a guardianship or conservatorship relationship between the department and the aged person *or disabled adult* unless a guardianship or conservatorship is created in accordance with the requirements of Title 72, chapter 5, part 3 or 4.

(2) The department may not provide protective services that impose a legal limitation or restriction on an aged person or a disabled adult:

(a) except emergency protective services provided under 52-3-804; or

(b) unless the department has been appointed legal guardian or conservator for that person under the provisions of Title 72, chapter 5, part 3 or 4."

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Section 3. Section 52-3-803, MCA, is amended to read:

"52-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a ~~developmentally disabled~~ person *with a developmental disability* without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) ~~"Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102.~~

~~(3)~~ "Exploitation" means the unreasonable use of an older person or a ~~developmentally disabled~~ person *with a developmental disability*, the person's money, or the person's property to the advantage of another by means of duress, menace, fraud, or undue influence.

~~(4)~~*(3)* "Incapacitated person" has the meaning given in 72-5-101.

~~(5)~~*(4)* "Long-term care facility" means a facility defined in 50-5-101.

~~(6)~~*(5)* "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

~~(7)~~*(6)* "Neglect" means the failure of a guardian~~;~~*; an* employee of a public or private residential institution, facility, home, or agency~~;~~*;* or any person legally responsible in a residential setting for *the welfare of* an older ~~person's~~ *person* or a ~~developmentally disabled person's welfare~~ *person with a developmental disability* to provide, to the extent of legal responsibility, food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the ~~developmentally disabled~~ person *with a developmental disability*.

~~(8)~~*(7)* "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(8) "Person with a developmental disability" means a person 18 years of age or older who is developmentally disabled, as defined in 53-20-102.

(9) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

Section 4. Section 52-3-804, MCA, is amended to read:

"52-3-804. Duties of department ~~of family services~~. (1) The department shall investigate reports of abuse, sexual abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

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(2) The department ~~of family services~~ shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, ~~or under Title 52, chapter 4, part 1,~~ for ~~a~~ *an older* person *or a person with a developmental disability* alleged to have been abused, sexually abused, neglected, or exploited.

(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding *that* there is probable cause to believe *that* the person is abused, sexually abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older ~~or developmentally disabled~~ person *or person with a developmental disability* alleged to be abused, sexually abused, or neglected is suffering from abuse, sexual abuse, or neglect that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in 72-5-317."

Section 5. Section 52-3-813, MCA, is amended to read:

"52-3-813. Confidentiality. (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

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(a) a physician who is caring for an older person or a ~~developmentally disabled~~ person *with a developmental disability* who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the ~~developmentally disabled~~ person *with a developmental disability* if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the ~~developmentally disabled~~ person *with a developmental disability* who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, *sexually abused,* neglected, or exploited older person or ~~developmentally disabled~~ person *with a developmental disability*~~,~~ if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case; ~~or~~

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, *sexually abused,* neglected, or exploited older person or ~~developmentally disabled~~ person *with a developmental disability*; *or*

(iii) the person is carrying out background screening or employment- or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department. A request for information under this subsection must be made in writing.

(g) an employee of the department or the department of social and rehabilitation services if disclosure of the record or report is necessary for administration of a program desigued to benefit a person alleged te he an abused, *sexually abused,* neglected, or exploited older person or ~~developmentally disabled~~ person *with a developmental disability*; ~~and~~

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of

guardianship services to a person alleged to be an abused, *sexually abused,* neglected, or exploited older person or ~~developmentally disabled~~ person *with a developmental disability;*

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42 U.S.C. 6042 and 42 U.S.C. 10805;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person, person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

(k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;

(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;

(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and

(n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court ~~which~~ *that* has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a ~~developmentally disabled~~ person *with a developmental disability* is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 6. Section 52-3-814, MCA, is amended to read:

"52-3-814. **Immunity from civil and criminal liability.** *(1)* ~~Any~~ *A* person who makes a report required or authorized to be made under 52-3-811 is immune from civil or criminal liability ~~which~~ *that* might otherwise be incurred or imposed as a result of ~~such a~~ *the* report unless the report is false in any material respect and the person acted in bad faith or with malicious purpose.

(2) A person who provides information or who uses information obtained pursuant to 52-3-813(2) to refuse to hire or to discharge an employee, volunteer, or other person who through their employment or volunteer activities may have unsupervised contact with an older person or a person with a developmental disability is immune from civil liability unless the person providing or using the information acts in bad faith or with malicious purpose."

Section 7. Name change — instructions to code commissioner. Wherever the phrase "developmentally disabled person" or a similar phrase appears in Title 52, chapter 3, part 8, the code commissioner is directed to change the phrase to "person with a developmental disability" or a similar phrase, as that term is defined in 52-3-803.

Section 8. Notification of tribal governments. The secretary of state shall send a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal chairperson of the Little Shell tribe.

Section 9. Repealer. Sections 52-4-101, 52-4-102, 52-4-103, 52-4-104, 52-4-105, 52-4-106, 52-4-107, 52-4-108, and 52-4-110, MCA, are repealed.

Section 10. Two-thirds vote required. Because section 52-3-814(2) limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If House Bill No. 366 does not receive the required two-thirds vote, then 52-3-814(2) is void.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 466

[HB 429]

AN ACT GENERALLY REVISING YOUTH COURT CONFIDENTIALITY PROVISIONS; PROVIDING THAT CERTAIN YOUTH CASE RECORDS MUST BE SEALED WHEN THE COURT'S JUDGMENTS HAVE BEEN FULFILLED; CLARIFYING THAT JUSTICE'S COURT RECORDS RELATED TO A YOUTH CONTINUE TO BE A MATTER OF PUBLIC RECORD AFTER THE YOUTH REACHES 18 YEARS OF AGE; REQUIRING NOTIFICATION OF AND CONSULTATION WITH VICTIMS OF JUVENILE FELONY OFFENSES; AMENDING SECTIONS 41-5-521, 41-5-603, 41-5-604, 46-24-207, AND 52-2-211, MCA; REPEALING SECTIONS 41-5-601 AND 41-5-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Youth court records — public record. Except as provided in 41-5-603, all youth court records on file with the clerk of court related to a youth who is alleged or found to be a youth in need of supervision or a delinquent youth are a public record until the record is sealed under 41-5-604.

Section 2. Youth matters cited in justice's court — public record. Except as provided in 41-5-604, all filed matters related to a youth cited in a justice's court are a public record.

Section 3. Section 41-5-521, MCA, is amended to read:

"**41-5-521. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, ~~his~~ *or the youth's* parent, guardian, or attorney may demand a jury trial on ~~such~~ *the* contested offenses. In the absence of ~~such~~ *a* demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing ~~shall~~ *must* be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing ~~shall~~ *must* be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function ~~shall be~~ *is* to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record ~~his~~ findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing ~~shall~~ *must* be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded ~~when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601~~, *except that in the court's discretion, the general public may be excluded if the petition does not allege that the youth is delinquent.*

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and *in Rule 47,* M.R.Civ.P., ~~Rule 47~~."

Section 4. Section 41-5-603, MCA, is amended to read:

"**41-5-603. Youth court and department records.** (1) ~~Youth~~ *Except as provided in subsection (2), all youth* court ~~and youth court related department~~ records *on file with the clerk of court*, including ~~social, medical, and psychological records,~~ reports of preliminary inquiries, ~~predispositional studies, and supervision records of probationers~~ *petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees*, are open to *public* inspection ~~prior to the sealing of~~ *until* the records *are sealed under 41-5-604.*

(2) Social, medical, and psychological records, predispositional studies, supervision records of probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon ~~such~~ *the* party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after ~~he has been emancipated~~ *emancipation* or ~~reaches~~ *reaching* the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in *this* subsection ~~(1)~~ *(2)*; and

(h) members of a local interagency staffing group provided for in 52-2-203.

~~(2)~~*(3)* All or any part of records information secured from records listed in subsection ~~(1)~~ *(2)* ~~of this section~~, when presented to and used by the court in a proceeding under this chapter, ~~shall~~ *must* also be made available to the counsel for the parties to the proceedings.

~~(3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and decrees, shall be open to public inspection only when related to an offense for which access must be allowed under 41-5-601.~~

~~(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court or the department shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.~~

~~(5)~~*(4)* After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection ~~(1)~~ *(2)*; and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Section 5. Section 41-5-604, MCA, is amended to read:

"**41-5-664. Disposition of records.** (1) ~~All~~ *Except as provided in subsections (2) and (5),* youth court records and law enforcement records ~~except fingerprints and photographs~~ pertaining to a youth ~~coming~~ under this chapter ~~shall~~ *must* be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the ~~above~~ records and files ~~shall~~ *referred to in subsection (1) must* be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, ~~any~~ *an* agency or department that has in its possession copies of the *sealed* records ~~so sealed~~ shall also seal or destroy ~~such~~ *its* copies of *the* records. Anyone violating the provisions of this subsection ~~shall be~~ *is* subject to contempt of court.

(4) ~~Nothing herein contained~~ *This section* ~~shall~~ *does not* prohibit the destruction of ~~such~~ records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall~~ *do* not apply to *fingerprints and photographs,* youth traffic records, or to records ~~directly related to an offense to which access must be allowed under 41-5-601~~ *in any case in which the youth did not fulfill all requirements of the court's judgment or disposition.*"

Section 6. Section 46-24-207, MCA, is amended to read:

"**46-24-207. Victims and witnesses of juvenile felony offenses — *consultation — notification of proceedings.*** (1) The *attorney general shall ensure that the* services and assistance that must be provided under this chapter to ~~a~~ victim or witness of a crime ~~must~~ *are* also ~~be~~ provided to the victim or witness of a juvenile felony offense.

(2) ~~The attorney general shall assure that a victim or witness of a juvenile felony offense is provided the same services and assistance required under this chapter for the victim or witness of a crime.~~ *In a proceeding filed under Title 41, chapter 5, part 5, the county attorney or a designee shall consult with the victim of a juvenile felony offense or, in the case of a minor victim or a homicide victim, with the victim's family regarding the disposition of the case, including:*

(a) a dismissal of the petition filed under 41-5-501;

(b) a reduction of the charge to misdemeanor;

(c) the release of the youth from detention or shelter care pending the adjudicatory hearing; and

(d) the disposition of the youth.

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(3)(a) Whenever possible, a person described in subsection (3)(b) who provides the youth court with a current address and telephone number must receive prompt advance notification of youth court case proceedings, including:

(i) the filing of a petition under 41-5-501;

(ii) the release of the youth from detention or shelter care; and

(iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-524, the setting of a date for the adjudicatory hearing under 41-5-521, the setting of a date for the dispositional hearing under 41-5-522, the disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim of a juvenile felony offense, an adult relative of the victim if the victim is a minor, or an adult relative of a homicide victim.

(c) The court shall provide to the department the list of people entitled to notification under this subsection (3), and the department is responsible to provide the notification.

(4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

Section 7. Section 52-2-211, MCA, is amended to read:

"52-2-211. County interdisciplinary child information team. (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

(a) the youth court;

(b) the county attorney;

(c) the department of family services;

(d) the county superintendent of schools;

(e) the sheriff;

(f) the chief of any police force; and

(g) the superintendents of public school districts.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the information team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the information team will serve.

(3) The members of the information team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused, neglected, dependent, and delinquent children and youth in need of supervision. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205~~, 41-5-602,~~ or 41-5-603*(2)* may not be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team."

Section 8. Repealer. Sections 41-5-601 and 41-5-602, MCA, are repealed.

Section 9. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 41, chapter 5, part 6, and the provisions of Title 41, chapter 5, part 6, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 3, chapter 10, part 5, and the provisions of Title 3, chapter 10, part 5, apply to [section 2].

Section 10. Coordination instruction. If both [this act] and House Bill No. 551 are passed and approved and if both include a section that amends 41-5-604, then 41-5-604 is intended to read:

"41-5-604. **Disposition of records.** (1) ~~All~~ *Except as provided in subsections (2) and (5),* youth court records and law enforcement records ~~except fingerprints and photographs~~ pertaining to a youth ~~coming under~~ *covered by* this chapter ~~shall~~ *must* be physically sealed when the youth reaches ~~the age of~~ 18 years *of age*.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the ~~above~~ records and files ~~shall~~ *not exempt from sealing under subsection (5) must* be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, ~~any~~ *an* agency or department that has in its possession copies of the *sealed* records ~~so sealed~~ shall also seal or destroy ~~such~~ *the* copies of *the* records. Anyone violating the provisions of this subsection ~~shall be~~ *is* subject to contempt of court.

(4) ~~Nothing herein contained shall~~ *This section does not* prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

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(5) The requirements for sealed records in this section ~~shall~~ *do* not apply to *fingerprints, DNA records, photographs, or* youth traffic records or to records ~~directly related to an offense to which access must be allowed under 41-5-601~~ *in any case in which the youth did not fulfill all requirements of the court's judgment or disposition.*"

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 467

[HB 444]

AN ACT PROVIDING REBUTTABLE PRESUMPTIONS IN CHILD CUSTODY PROCEEDINGS; ALLOWING A PARENT TO OBJECT AND HAVE A HEARING IN VISITATION PROCEEDINGS AND CUSTODY MODIFICATION PROCEEDINGS IF A PERSON RESIDING IN THE OTHER PARENT'S HOUSEHOLD HAS BEEN CONVICTED OF A CERTAIN LISTED CRIME; REVISING THE OFFENSE OF CUSTODIAL INTERFERENCE; AMENDING SECTIONS 40-4-212, 40-4-217, 40-4-219, AND 45-5-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-212, MCA, is amended to read:

"**40-4-212. Best interest of child.** (1) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including but not limited to:

(a) the wishes of the child's parent or parents as to ~~his~~ custody;

(b) the wishes of the child as to ~~his~~ *a* custodian;

(c) the interaction and interrelationship of the child with ~~his~~ *the child's* parent or parents~~, his~~ *and* siblings~~,~~ and *with* any other person who may significantly affect the child's best interest;

(d) the child's adjustment to ~~his~~ home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child; and

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent.

(2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) Custody should be granted to the parent who has provided most of the primary care during the child's life.

(b) A custody action brought by a parent within 6 months after a child support action against that parent is vexatious.

(4) The following are rebuttable presumptions:

(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best interest of the child.

(b) Failure to pay child support that the person is able to pay is not in the best interest of a child in need of the child support."

Section 2. Section 40-4-217, MCA, is amended to read:

"**40-4-217. Visitation.** (1) A parent *who is* not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) So *As* long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of his *the* visitation schedule.

(6) (a) If a noncustodial parent *or other person residing in the noncustodial parent's household* has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

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(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

~~(v)~~*(vi)* incest, as described in 45-5-507;

~~(vi)~~*(vii)* aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

~~(vii)~~*(viii)* endangering the welfare of children, as described in 45-5-622;

~~(viii)~~*(ix)* domestic abuse of the type described in 45-5-206(1)(a);

~~(ix)~~*(x)* sexual abuse of children, as described in 45-5-625."

Section 3. Section 40-4-219, MCA, is amended to read:

"**40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or ~~his~~ *the child's* custodian and that the modification is necessary to serve the hest interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child ~~has~~ been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously ~~his~~ *the child's* physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to ~~him~~ *the child*;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

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(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e) or (8).

(4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(5) Attorney fees and costs ~~shall~~ *must* be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(6) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding.

(8) (a) If a parent *or other person residing in that parent's household* has been convicted of any of the crimes listed in subsection (8)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection te the current custody order with the court. The parent or other person having custody shall give notice to the ~~convicted~~ *other* parent of the objection as provided by the Montana Rules of Civil Procedure, and the ~~convicted~~ *other* parent shall have 20 days from the notice to respond. If the ~~convicted~~ *other* parent fails to respond within 20 days, the custody rights of the ~~convicted~~ *other* parent are suspended until further order of the court. If the ~~convicted~~ *other* parent responds and objects, a hearing must be held within 30 days of the response.

(b) The ~~convicted~~ *other* parent has the burden at the hearing to prove that custody by the ~~convicted~~ *other* parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.

(c) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

~~(v)~~*(vi)* incest, as described in 45-5-507;

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~~(vi)~~*(vii)* aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

~~(vii)~~*(viii)* endangering the welfare of children, as described in 45-5-622;

~~(viii)~~*(ix)* domestic abuse of the type described in 45-5-206(1)(a);

~~(ix)~~*(x)* sexual abuse of children, as described in 45-5-625."

Section 4. Section 45-5-304, MCA, is amended to read:

"**45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if, knowing that ~~he~~ *the person* has no legal right to do so, *the person*:

(a) ~~he~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, ~~he~~ takes, entices, or withholds any child from the other parent ~~where~~ *when* the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) he is one of two persons who has joint custody of a child under a court order and ~~he~~ takes, entices, or withholds the child from the other ~~where~~ *when* the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) A *With respect to the first alleged commission of the offense only, a* person who has not left the state does not commit an offense under this section if he *the person* voluntarily returns ~~such~~ *the child, incompetent person, or other* person to lawful custody prior to arraignment. A *With respect to the first alleged commission of the offense only, a* person who has left the state does not commit an offense under this section if ~~he~~ *the person* voluntarily returns ~~such~~ *the child, incompetent person, or other* person to lawful custody prior to arrest."

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 15, 1995

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CHAPTER NO. 468

[HB 473]

AN ACT GENERALLY REVISING LOCAL SUBDIVISION LAWS; MODIFYING THE REQUIREMENTS FOR AN ENVIRONMENTAL ASSESSMENT; MODIFYING BONDING REQUIREMENTS FOR PUBLIC IMPROVEMENTS; MODIFYING PARK DEDICATION REQUIREMENTS; ESTABLISHING PAYMENT CRITERIA FOR THE EXTENSION OF CAPITAL FACILITIES; ESTABLISHING MITIGATION GUIDELINES; PROVIDING FOR SUITS AGAINST LOCAL GOVERNMENTS; AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-207, 76-3-507, 76-3-603, 76-3-608, AND 76-3-609, MCA; REPEALING SECTIONS 76-3-606 AND 76-3-607, MCA; AND PROVIDING AN APPLICABILITY DATE.

STATEMENT OF INTENT

It is the intent of the legislature that the department of commerce, local government assistance division, update its model subdivision rules to minimize the fiscal impacts to local governments in implementing this legislation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2324, MCA, is amended to read:

"**7-16-2324. Sale, lease, or exchange of dedicated park lands.** (1) For the purposes of ~~this section and part 25 of~~ chapter 8, *part 25, and this section*, lands dedicated to the public use for park or playground purposes under ~~76-3-606 and 76-3-607~~ *[section 9]* or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are considered county lands.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under ~~this section and part 25 of~~ chapter 8, *part 25, and this section*.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice as provided in 7-1-2121 of intention to sell, lease, or dispose of ~~such~~ *the park or playground* lands, giving the people of the county opportunity to be heard regarding ~~such~~ *the* action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body ~~thereof~~ for the action; and

(f) comply with any other applicable requirements under ~~part 25 of~~ chapter 8, *part 25*.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes ~~shall~~ *must* be paid into the park fund and used in the manner prescribed in ~~76-3-606 and 76-3-607~~ *[section 9]* for cash received in lieu of dedication."

Section 2. Section 76-3-102, MCA, is amended to read:

"**76-3-102. Statement of purpose.** It is the purpose of this chapter to:

(1) promote the public health, safety, and general welfare by regulating the subdivision of land;

(2) ~~to~~ prevent overcrowding of land;

(3) ~~to~~ lessen congestion in the streets and highways;

(4) ~~to~~ provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;

(5) ~~to~~ require development in harmony with the natural environment;

(6) protect the rights of property owners; and

(7) ~~to~~ require uniform monumentation of land subdivisions and transferring interests in real property by reference to *a* plat or certificate of survey."

Section 3. Section 76-3-207, MCA, is amended to read:

"**76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter hut are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by *gift,* sale, or agreement to buy and sell ~~where~~ *in which* the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

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(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body, and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) A division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid."

Section 4. Section 76-3-507, MCA, is amended to read:

"**76-3-507. Provision for bonding requirements to insure *ensure* construction of public improvements.** *(1) Except as provided in subsection (2), the governing body shall require the subdivider to complete required improvements within the subdivision prior to the approval of the final plat.*

(2) ~~Local regulations may provide that, in~~ *(a) In* lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the ~~governing body~~ *subdivider* shall ~~require~~ *provide or cause to be provided* a bond or other reasonable security, in an amount and with surety and conditions satisfactory to ~~it~~ *the governing body*, providing for and securing the construction and installation of ~~such~~ *the* improvements within a period specified by the governing body and expressed in the bonds or other security. *The governing body shall reduce bond requirements commensurate with the completion of improvements.*

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111."

Section 5. Section 76-3-603, MCA, is amended to read:

"**76-3-603. Contents of environmental assessment.** ~~Where required, the~~ *When required, the* environmental assessment ~~shall~~ *must* accompany the preliminary plat and ~~shall~~ *must* include:

(1) *for a major subdivision:*

(a) a description of every body or stream of surface water ~~as~~ *that* may he affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

~~(2)~~*(b)* ~~maps and tables showing soil types in the several parts of the proposed subdivision and their suitability for any proposed developments in those several parts~~ *a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608*; *and*

~~(3)~~*(c)* ~~a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection;~~ *a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and*

(d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

(2) except as provided in 76-3-609(3), for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.

~~(4) such additional relevant and reasonable information as may be required by the governing body.~~"

Section 6. Section 76-3-608, MCA, is amended to read:

"**76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter. *A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services.*

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) the effect on agriculture, *agricultural water user facilities,* local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) When a minor subdivision is proposed in an area where a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the plan, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a master plan to serve as the basis for the exemption provided by this subsection (6), the plan must, at a minimum, contain:

(i) housing, transportation, and land-use elements sufficient for the governing body to protect public health, safety, and welfare; and

(ii) a discussion of physical constraints on development that exist within the area encompassed by the proposed subdivision."

Section 7. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions. Subdivisions containing five or fewer parcels ~~where~~ *in which* proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(1) The governing body ~~must~~ *shall* approve, conditionally approve, or disapprove the first ~~such~~ *minor* subdivision from a tract of record within 35 days of the submission of ~~an~~ *the* application ~~for approval thereof~~.

(2) The governing body shall state in writing the conditions ~~which~~ *that* must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

(3) The requirements for holding a public hearing ~~and preparing an environmental assessment~~ shall *and preparing an environmental assessment do* not apply to the first ~~such~~ *minor* subdivision created from a tract of record.

(4) Subsequent subdivisions from a tract of record ~~shall~~ *must* be reviewed under 76-3-505 and regulations adopted pursuant to that section."

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Section 8. Payment for extension of capital facilities. A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

Section 9. Park dedication requirement. (1) Except as provided in subsections (2), (3), and (6), a subdivider shall dedicato to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a master plan under Title 76, chapter 1, or pursuant to zoning regulations under Title 76, chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the plans or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

(d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(e) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

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(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1).

(7) For the purposes of this section:

(a) "dwelling unit" means a residential structure in which a person or persons reside; and

(b) "cash donation" is the fair market value of the unsubdivided, unimproved land.

Section 10. Violations — actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

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(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Section 11. Repealer. Sections 76-3-606 and 76-3-607, MCA, are repealed.

Section 12. Codification instruction. (1) [Section 8] is intended to be codified as an integral part of Title 76, chapter 3, part 5, and the provisions of Title 76, chapter 3, part 5, apply to [section 8].

(2) [Sections 9 and 10] are intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [sections 9 and 10].

Section 13. Applicability. Funds in a park fund that exceed $10,000 as of [the effective date of this act] must be used for park land acquisition and initial development. Funds in a park fund up to $10,000 as of [the effective date of this act] may be used for park maintenance in accordance with a formally adopted park plan.

Approved April 14, 1995

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CHAPTER NO. 469

[HB 482]

AN ACT REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION FOR A MINOR OR INCOMPETENT PERSON; PROVIDING A JUDICIAL WAIVER OF NOTIFICATION; PROVIDING PENALTIES; AMENDING SECTION 41-1-405, MCA; AND REPEALING SECTION 50-20-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 10] may be cited as the "Parental Notice of Abortion Act".

Section 2. Legislative purpose and findings. (1) The legislature finds that:

(a) immature minors often lack the ability to make fully informed choices that take into account botb immediate and long-range consequences;

(b) the medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature;

(c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;

(d) parents ordinarily possess information essential to a physician in the exercise of the physician's best medical judgment concerning the minor;

(e) parents who are aware that their minor daughter bas had an abortion may better ensure that the daughter receives adequate medical care after the abortion; and

(f) parental consultation is usually desirable and in the best interests of the minor.

(2) The purpose of [sections 1 through 10] is to further the important and compelling state interests of:

(a) protecting minors against their own immaturity;

(b) fostering family unity and preserving the family as a viable social unit;

(c) protecting the constitutional rights of parents to rear children who are members of tbeir household; and

(d) reducing teenage pregnancy and unnecessary abortion.

Section 3. Definitions. As used in [sections 1 through 10], unless the context requires otherwise, the following definitions apply:

(1) "Actual notice" means the giving of notice directly in person or by telephone.

(2) "Coercion" means restraining or dominating the choice of a minor female by force, threat of force, or deprivation of food and shelter.

(3) "Emancipated minor" means a person under 18 years of age who is or has been married or who has been granted an order of limited emancipation by a court as provided in 41-3-406.

(4) "Incompetent person" means a person who is an incapacitated person or a protected person who has had a guardian appointed pursuant to Title 72, chapter 5.

(5) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

(6) "Minor" means a female under 18 years of age who is not an emancipated minor.

(7) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a child.

(8) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

(9) "Sexual abuse" has the meaning given in 41-3-102.

Section 4. Notice of parent required. A physician may not perform an abortion upon a minor or an incompetent person unless the physician has given at least 48 hours' actual notice to one parent or to the legal guardian of the pregnant minor or incompetent person of the physician's intention to perform the abortion. The actual notice may be given by a referring physician. The physician who performs the abortion must receive the written statement of the referring physician certifying that the referring physician has given actual notice. If actual notice is not possible after a reasonable effort, the physician or the physician's agent shall give alternate notice as provided in [section 5].

Section 5. Alternate notification. In lieu of the actual notice required by [section 4], notice may be made by certified mail addressed to the parent at the usual place of residence of the parent with return receipt requested and delivery restricted to the addressee, which means a postal employee may deliver the mail only to the authorized addressee. Time of delivery is considered to occur at noon on the next day on which regular mail delivery takes place after mailing.

Section 6. Exceptions. Notice is not required under [section 4 or 5] if:

(1) the attending physician certifies in the patient's medical record that a medical emergency exists and there is insufficient time to provide notice;

(2) notice is waived, in writing, by the person entitled to notice; or

(3) notice is waived under [section 9].

Section 7. Coercion prohibited. A parent, a guardian, or any other person may not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be used to obtain an abortion.

Section 8. Reports. A monthly report indicating the number of notices issued under [sections 1 through 10] and the number of times in which exceptions were made to the notice requirement under [section 6], as well as the type of exceptions, must be filed with the department of health and environmental sciences on forms prescribed by the department. Patient names and other identifying information may not be used on the forms. The department shall prepare and make available to the public on an annual basis a compilation of the data reported.

Section 9. Procedure for judicial waiver of notice. (1) The requirements and procedures under this section are available to minors and incompetent persons whether or not they are residents of this state.

(2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person's own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to court-appointed counsel and shall provide the petitioner with counsel upon request.

(b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the youth court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part 2, apply to an investigation conducted pursuant to this subsection.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

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(a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or

(b) the notification of a parent or guardian is not in the best interests of the petitioner.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition.

Section 10. Criminal and civil penalties. (1) A person convicted of performing an abortion in violation of [section 4 or 5] shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(2) Failure to provide the notice required under [section 4 or 5] is prima facie evidence in an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other than failure to notify the parents or guardian. A civil action may be based on a claim that the failure to notify was the result of a violation of the appropriate legal standard of care. Failure to provide notice is presumed to be actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 10] do not limit the common-law rights of parents.

(3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than $500 and not more than $50,000 and be imprisoned in the state prison for a term not less than 10 days and not more than 5 years, or both.

(4) A person not authorized to receive notice under [section 5] who signs a notice of waiver as provided in [section 6(2)] is guilty of a misdemeanor.

Section 11. Section 41-1-405, MCA, is amended to read:

"**41-1-405. Emergencies and special situations.** (1) ~~Any~~ *A* health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) Any *A* health professional may render nonemergency services to minors for conditions which *that* will endanger the health or life of the minor if services

would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) ~~No consent shall~~ *Consent may not* be required of ~~any~~ *a* minor who does not possess the mental capacity or who has a physical disability ~~which~~ *that* renders ~~him~~ *the minor* incapable of giving ~~his~~ consent and who has no known relatives or legal guardians, if a physician determines *that* the health service should be given.

(4) Self-consent of minors ~~shall~~ *does* not apply to sterilization or abortion, *except as provided in [sections 1 through 10]*."

Section 12. Right of intervention. Pursuant to Rule 24(a), Montana Rules of Civil Procedure, a legislator has the right to intervene in any case in which the legality of Title 50, chapter 20, is challenged.

Section 13. Repealer. Section 50-20-107, MCA, is repealed.

Section 14. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 10].

Section 15. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 15, 1995

CHAPTER NO. 470

[HB 514]

AN ACT INCREASING THE VALUE OF PROJECTS FOR WHICH THE DEPARTMENT OF ADMINISTRATION MAY PREPARE WORKING DRAWINGS; AMENDING SECTION 18-2-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-111, MCA, is amended to read:

"**18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited.** (1) It is the policy of the state not to engage in the practice of architecture;. ~~however~~ *However*, this policy may not be construed as prohibiting the department of administration from:

(a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;

(b) supervising construction as provided in 18-2-105(7); or

(c) preparing working drawings for minor projects.

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(2) The department of administration ~~is expressly prohibited from preparing~~ *may not prepare* working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed ~~$25,000~~ *$75,000.*"

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 471

[HB 521]

AN ACT REQUIRING CERTAIN STATE ADMINISTRATIVE AND LOCAL AGENCIES TO JUSTIFY THE ADOPTION OF RULES THAT ARE MORE STRINGENT THAN CORRESPONDING FEDERAL REGULATIONS; REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, AND LOCAL UNITS OF GOVERNMENT TO REVIEW AND REVISE CERTAIN RULES TO ENSURE COMPLIANCE WITH THIS ACT; AMENDING SECTIONS 50-2-116, 75-2-111, 75-2-301, 75-2-503, 75-3-201, 75-5-201, 75-5-311, 75-6-103, 75-10-204, 75-10-405, 75-10-603, 76-3-501, 76-3-504, 76-4-104, AND 80-15-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY PROVISIONS.

WHEREAS, the federal government frequently regulates areas that are also subject to state regulation; and

WHEREAS, differing state and federal policy goals and unique state prerogatives frequently result in different levels of regulation, different standards, and different requirements being imposed by state and federal programs covering the same subject matter; and

WHEREAS, Montana must simultaneously move toward reducing redundant and unnecessary regulation that dulls the state's competitive advantage while being ever vigilant in the protection of the public's health, safety, and welfare; and

WHEREAS, Montana's administrative agencies should consider applicable federal standards when adopting, readopting, or amending rules with analogous federal counterparts; and

WHEREAS, Montana's administrative agencies should analyze whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana's citizens; and

WHEREAS, as part of the formal rulemaking process, the public should be advised of the agencies' conclusions about whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana citizens.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences, the department of health and

environmental sciences, and local units of government in complying with [this act].

The legislature intends that in addition to all requirements imposed by existing law and rules, the board or the department include as part of the initial publication and all subsequent publications of a rule a written finding if the rule in question contains any standards or requirements that exceed the standards or requirements imposed by comparable federal law.

If the rules are more stringent than comparable federal law, the written finding must include but is not limited to a discussion of the policy reasons and an analysis that supports the board's or department's decision that the proposed state standards or requirements protect public healtb or the environment of the state and that the state standards or requirements to be imposed can mitigate harm to the public health or the environment and are achievable under current technology. The department is not required to show that the federal regulation is inadequate to protect public health. The written finding must also include information from the hearing record regarding the costs to the regulated community directly attributable to the proposed state standard or requirement.

Be it enacted by the Legislature of the State of Montana:

Section 1. State regulations no more stringent than federal regulations or guidelines. (1) After [the effective date of this act], except as provided in subsections (2) through (5) or unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the

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petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed $250.

(h) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

Section 2. State regulations no more stringent than federal regulations or guidelines. (1) After [the effective date of this act], except as provided in subsections (2) through (5) or unless required by state law, the board or department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board or department may incorporate by reference comparable federal regulations or guidelines.

(2) The board or department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board or department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's or department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board or department adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition tbe board or department to review the rule. If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, tbe board or department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the board or department for a rule review under subsection (4)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or

guidelines that are less stringent than the previously adopted board or department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

Section 3. State regulations no more stringent than federal regulations or guidelines. (1) After [the effective date of this act], except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule te conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

Section 4. Local regulations no more stringent than state regulations or guidelines. (1) After [the effective date of this act], except as provided in subsections (2) through (4) or unless required by state law, the local

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board may not adopt a rule under 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule.

Section 5. Local regulations no more stringent than state regulations or guidelines. (1) After [the effective date of this act], except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a rule under 76-3-501 or 76-3-504(5)(c) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a rule to implement 76-3-501 or 76-3-504(5)(c) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

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(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the governing body adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the rule. If the governing body determines that the rule is more stringent than comparable stato regulations or guidelines, the governing body shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The governing body may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the governing body for a rule review under subsection (4)(a) if the governing body adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body rule.

Section 6. Section 50-2-116, MCA, is amended to read:

"**50-2-116. Powers and duties of local boards.** (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) *subject to the provisions of [section 4],* adopt necessary regulations that are no less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chaptor 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards

promulgated by the board of health and environmental sciences and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things that are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting puhlic health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings (fees must be deposited with the county treasurer);

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) *subject to the provisions of [section 4],* on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and

(v) *subject to the provisions of [section 4],* for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401."

Section 7. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall, *subject to the provisions of [section 2]*:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with

42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

(2) hold hearings relating to any aspect of or mattor in the administration of this chaptor at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter wbo shall *must* be present at all hearings and take full stonographic notes of all proceedings ~~thereat~~, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits and permit applications, consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 8. Section 75-2-301, MCA, is amended to read:

"75-2-301. **Local air pollution control programs.** (1) After public hearing, a municipality or county may establish and administor a local air pollution control program if the program is consistent with this chapter and is approved by tbe board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) *(a)* Except as provided in subsection (4), the board by order may approve a local air pollution control program that:

~~(a)~~*(i)* provides by ordinance or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402~~;~~ and rules adopted under these sections;

~~(b)~~*(ii)* provides for the enforcement of requirements established under subsection (3)(a)*(i)* by appropriate administrative and judicial processes; and

~~(c)~~*(iii)* provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(b) Board approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of [section 2].

(4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons ~~per~~ *a* year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(5) If the board finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these ~~are such as to~~ make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(6) If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in tbe jurisdiction to which the program relates er is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(7) If, after the hearing, the board determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(8) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(9) If the board finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonahle capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be eitber on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(10) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (8) may, with the approval of the

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board, establish or resume an air pollution control program that meets the requirements of subsection (3).

(11) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states."

Section 9. Section 75-2-503, MCA, is amended to read:

"75-2-503. Rulemaking authority — issuance of permits. (1) The department shall, *subject to the provisions of [section 2],* adopt rules establishing standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations. The rules must be consistent with federal law and include but are not limited to:

(a) standards for training course review and approval;

(b) standards for accreditation of applicants for asbestos-related occupations;

(c) examination requirements for accreditation of applicants for asbestos-related occupations;

(d) requirements for renewal of accreditation, including periodic refresher courses;

(e) revocation of accreditation;

(f) inspection requirements for asbestos projects and asbestos-related occupations credentials;

(g) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.

(h) requirements for issuance of asbestos project permits and conditions that permitholders shall meet;

(i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

(j) advance notification procedures and issuance of permits for asbestos projects; and

(k) fees, which must be commensurate with costs, for:

(i) review and approval of training courses;

(ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;

(iii) issuance of asbestos project permits; and

(iv) requested inspections of asbestos projects.

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(2) For asbestos projects having a cost of $3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee."

Section 10. Section 75-3-201, MCA, is amended to read:

"**75-3-201. State radiation control agency.** (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensato, and prescribe the powers and duties of the individuals ~~which~~ *that* are necessary to carry out this chapter.

(3) The department may, *subject to the provisions of [section 3],* for the protection of the occupational and public health and safety:

(a) develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(b) develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other radioactive materials. These rules ~~shall~~ *must* cover equipment and facilities, methods for transporting, handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas and sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

(c) adopt rules relating to control of other sources of ionizing radiation. These rules shall *must* cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

(d) advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing radiation;

(e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(f) encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation;

(g) collect and disseminate information relating to control of sources of ionizing radiation, including:

(i) maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this chapter and any administrative or judicial action pertaining ~~thereto~~ *to this chapter*;

(iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or adopted, and proceedings ~~thereon~~."

Section 11. Section 75-5-201, MCA, is amended to read:

"**75-5-201. Board rules authorized.** (1) The board shall, *subject to the provisions of [section 1],* adopt rules for the administration of this chapter.

(2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611."

Section 12. Section 75-5-311, MCA, is amended to read:

"**75-5-311. Local water quality districts — board approval — local water quality programs.** (1) A county that establishes a local water quality district according to the procedures specified in Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the board after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the board shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to the board's approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of pollution:

(a) onsite waste water disposal facilities;

(b) storm water runoff from paved surfaces;

(c) service connections between buildings and publicly owned sewer mains;

(d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

(e) internal combustion engine lubricants.

(5) *(a)* For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

~~(a)~~*(i)* be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste

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discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

~~(b)~~*(ii)* provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

~~(c)~~*(iii)* provide for civil penalties not to exceed $1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed $500 per day of violation or imprisonment for not more than 30 days, or both.

(b) Board approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of [section 1].

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant te Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, cbapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the board has approved the local water quality program for the district, the board of directers of the local water quality district shall submit a program amendment to the board and obtain the board's approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

(8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of tbe surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.

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(9) If the board determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the hoard shall give notice and conduct a hearing on the matter.

(10) If after the hearing the board determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

(12) If the board finds that, because of the complexity or magnitude of a particular water pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the board may direct the department to assume and retain control over the source. A charge may not be assessed against the local water quality district for that source. Findings made under this subsection may be based on the nature of the source involved or on the source's relationship to the size of the community in which it is located."

Section 13. Section 75-6-103, MCA, is amended to read:

"**75-6-103. Duties of the board.** (1) The board has general supervision over all state waters ~~which~~ *that* are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, *subject to the provisions of [section 1],* adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply system;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;

(f) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(g) the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(h) the collection and analysis of samples of water used for drinking or domestic purposes;

(i) tbe issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(j) administrative enforcement procedures and administrative penalties authorized under this part; and

(k) any other requirement necessary for tbe protection of public health as described in tlhis part.

(3) The board may issue orders necessary to fully implement the provisions of this part."

Section 14. Section 75-10-204, MCA, is amended to read:

"**75-10-204. Powers and duties of department.** The department shall, *subject to the provisions of [section 3],* adopt rules governing solid waste management systems ~~which shall~~ *that must* include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted witb an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) requirements relating to ground water monitoring, including but not limited to:

(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 must submit to tbe department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);

(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and

(c) recordkeeping and reporting;

(6) fees related to the review of solid waste management system license applications;

(7) the renewal of solid waste management system licenses and related fees;

(8) a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana.; ~~These rules must be adopted by August 1, 1993.~~

(9) any other factors relating to the sanitary disposal or management of solid wastes."

Section 15. Section 75-10-405, MCA, is amended to read:

"**75-10-405. Administrative rules.** (1) The department may, *subject to the provisions of [section 3],* adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject te regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for hazardous wasto management facilities;

(e) requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel and for financial assurance of facility owners and operators and for liability of guarantors providing financial assurance;

(b) requirements for registration of generators and transporters;

(i) establishing a schedule of fees and procedures for the collection of fees for:

(i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

(ii) hazardous waste management as provided in 75-10-433;

(iii) the reissuance and modification of hazardous waste management facility permits; and

(iv) the registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes;

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(l) procedures for the assessment of administrative penalties as authorized by 75-10-424; and

(m) other rules which *that* are necessary to obtain and maintain authorization under the federal program.

(2) ~~The~~ *Notwithstanding the provisions of [section 3], the* department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require generators and facilities to report on an annual rather than on a biennial basis;

(c) may adopt requirements for the prevention and correction of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and corrective action;

(iv) standards for design, construction, installation, and closure;

(v) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program;

(vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-10-423; and

(vii) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(d) may adopt regulatory requirements for hazardous waste transfer facilities;

(e) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

(f) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations."

Section 16. Section 75-10-603, MCA, is amended to read:

"**75-10-603. Cooperative agreement — authority of department.** (1) In order to assist in implementation of CERCLA, the department may, *subject to the provisions of [section 3]*:

(a) participate in the determination of appropriate remedial action to deal with the release or threatened release within Montana of:

(i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

(ii) any hazardous substance;

(b) in the event of the release or threatened release of any of the substances described in subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing mutual commitments of each party to remedial action, including the elements required by subsection (2).

(2) A cooperative agreement may contain the following assurances:

(a) the state of Montana will ~~assure~~ *ensure* the future maintenance of the removal and remedial actions agreed upon for the expected life of the actions;

(b) a hazardous waste disposal facility is available to the state of Montana that meets the specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and

(c) the state of Montana will pay or ~~assure~~ *ensure* payment of a share of the costs of the remedial action, including all future maintenance."

Section 17. Section 76-3-501, MCA, is amended to read:

"**76-3-501. Local subdivision regulations.** (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, *and* drainage~~, and~~; *subject to the provisions of [section 5], for the regulation of* sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body."

Section 18. Section 76-3-504, MCA, is amended to read:

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"**76-3-504. Minimum requirements for subdivision regulations.** The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas whicb, because of natural or ~~man-caused~~ *human-caused* hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) *subject to the provisions of [section 5],* water supply and sewage and solid waste disposal ~~which~~ *that*, at a minimum, meet the regulations adopted by the department of health and environmental sciences under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, stato, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this cbapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."

Section 19. Section 76-4-104, MCA, is amended to read:

"**76-4-104. Rules for administration and enforcement.** (1) The department shall, *subject to the provisions of [section 3],* adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, conteur of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other

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factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall provide for the review of the following divisions of land by a local department or board of health, as described in Title 50, chaptor 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to review these divisions of land:

(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and

(b) divisions of land proposed to connect to existing municipal water and waste water systems previously approved by the department, if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the divisions of land described in subsection (3).

(5) The department shall review those divisions of land described in subsection (3) if:

(a) a proposed division of land lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules shall further provide for:

(a) the furnishing to the reviewing authority of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

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(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect at the time plans and specifications are submitted to the department, except in cases where current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time such lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality will apply."

Section 20. Section 80-15-105, MCA, is amended to read:

"**80-15-105. Rulemaking.** (1) The board shall, *subject to the provisions of [section 1],* adopt rules for the administration of this chapter for which the board and the department of health and environmental sciences have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

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(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of health and environmental sciences on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Section 21. Codification instructions. (1) [Section 1] is intended to be codified as an integral part of Title 75, chapter 5; Title 75, chapter 6; and Title 80, chapter 15, and the provisions of Title 75, chapter 5; Title 75, chapter 6; and Title 80, chapter 15, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 75, chapter 3; Title 75, chapter 10; and Title 76, chapter 4, and the provisions of Title 75, chapter 3; Title 75, chapter 10; and Title 76, chapter 4, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 50, chapter 2, and the provisions of Title 50, chapter 2, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 76, chapter 3, and the provisions of Title 76, chapter 3, apply to [section 5].

Section 22. Applicability. (1) [Sections 1 through 3] are intended to apply to any rule that is in effect, adopted, or amended, and that regulates those resources or activities for which the state has been given primary authority to regulate by federal authority pursuant to Title 75, chapter 2; Title 75, chapter 3; Title 75, chapter 5; Title 75, chapter 6; or Title 75, chapter 10, as of [the effective date of this act].

(2) [Sections 4 and 5] apply to local units of government when they attempt to regulate the control and disposal of sewage from private and public buildings.

(3) [This act] does not apply to the establishment of fees or public participation requirements.

Section 23. Effective date. [This act] is effective on passage and approval.

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Approved April 14, 1995

CHAPTER NO. 472

[HB 545]

AN ACT EXEMPTING FROM PROPERTY TAXATION THE VALUE OF IMPROVEMENTS MADE TO COMMERCIAL BUILDINGS THAT REMOVE BARRIERS TO PERSONS WITH DISABILITIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemption of improvements made to commercial buildings to remove barriers to persons with disabilities. (1) Any additional value associated with specific improvements made to an existing or new commercial building, after December 31, 1995, for the purpose of removing barriers to the movement, safety, or comfort of a person with a disability may not increase the taxable valuation of the building.

(2) A person shall apply for an exemption under this section by March 1 of the tax year for which the exemption is sought, on a form provided by the department of revenue, setting forth the nature of the improvement, the date on which the improvement was completed, and any other information that the department may require.

(3) For the purposes of this section, improvements for the removal of barriers include:

(a) permanent ramps leading to entrances to the premises and between levels of the premises;

(b) elevators installed for the use of a person with a disability;

(c) handrails installed in and about the premises, indoors and outdoors;

(d) enlarged bathrooms and kitchens and any special equipment installed in them for the benefit of a person with a disability; and

(e) other reasonable accommodations made for the safety, convenience, and comfort of a person with a disability.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 1].

Approved April 14, 1995

CHAPTER NO. 473

[HB 552]

AN ACT CHANGING THE DEPOSIT OF FUNDS COLLECTED FOR THE STATE WARRANT SYSTEM FROM THE SPECIAL REVENUE FUND TO

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THE INTERNAL SERVICE FUND; AMENDING SECTION 17-8-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-305, MCA, is amended to read:

"**17-8-305. Cost accounting for warrant.** ~~In his discretion it is the duty of the~~ *The* state auditor ~~to~~ *may* establish a cost accounting system to determine the unit cost of issuing and processing warrants and provide for a system of charges for services rendered in issuing and processing warrants for claims submitted by any department or agency of the state. ~~No such charge shall be made for warrants issued against the general fund. Funds collected under this section for budgeted programs shall be deposited to the credit of the general fund.~~ Funds collected for ~~new or unforeseen programs may~~ *operation of the state warrant system must* be deposited to the credit of ~~a state special revenue~~ *an internal service* fund ~~account~~ and expended for the purposes of paying the processing expenses incurred as a result of the ~~new program~~ *state warrant system*."

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 474

[HB 562]

AN ACT DELETING THE AGRICULTURAL SPECIAL ELIGIBILITY CRITERIA FOR SOD, ORNAMENTAL, NURSERY, OR HORTICULTURAL PROPERTY THAT REQUIRED AT LEAST 10 ACRES IN THE PRODUCTION OF THOSE CROPS; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-202, MCA, is amended to read:

"**15-7-202. Eligibility of land for valuation as agricultural.** (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family members, agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

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(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(c) For the purposes of this subsection (1), "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

(i) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(ii) rental payments made under the federal conservation reserve program or a successor to that program.

(2) ~~Except as provided in subsection (8), contiguous~~ *Contiguous* or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(6) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is taxed as provided in 15-6-133(1)(c). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the

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department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use.

~~(8) Subject to the provisions of subsections (1), (2)(a), and (2)(b), property upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres before the property is eligible to be classified as agricultural land. Improvements devoted to crop production described in this subsection may not be included in class eleven property.~~"

Section 2. Applicability. [This act] applies to tax years beginning after December 31, 1995.

Approved April 14, 1995

CHAPTER NO. 475

[HB 585]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF $9 MILLION OF GENERAL OBLIGATION BONDS FOR THE CONSTRUCTION OF REGIONAL CORRECTIONAL AND LAW ENFORCEMENT FACILITIES; APPROPRIATING THE PROCEEDS OF THE BONDS; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization of bonds. Subject to the provisions of [section 4], the board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $9 million for regional correctional and law enforcement facilities over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1995, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds. The bond proceeds are appropriated to the department of administration for the projects.

Section 2. Planning and design. The department of administration may proceed with the planning and design of regional correctional and law enforcement facility projects prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred prior to the receipt of other funding sources.

Section 3. Legislative consent. The appropriation authorized in [section 1] constitutes legislative consent for the capital project contained in [section 1] within the meaning of 18-2-102.

Section 4. Regional correctional and law enforcement facilities. The bonds authorized in [section 1] are for regional correctional and law enforcement facilities to be developed pursuant to the provisions of House Bill No. 304. The board of examiners may not issue any bonds under [section 1] unless the

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department of corrections and human services has entered into an agreement for the provision of the regional correctional and law enforcement facilities in accordance with House Bill No. 304.

Section 5. Requirements for approval of state debt. Because [section 1] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [section 1] is not approved hy the required vote, then [this act] is void.

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 14, 1995

CHAPTER NO. 476

[HB 600]

AN ACT PROVIDING FLEXIBILITY FOR FUNDING THE STATE'S RECREATIONAL BOATING SAFETY PROGRAM BY ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONTRACT WITH COUNTIES TO IMPLEMENT PARTS OF THE PROGRAM; REDUCING FROM 25 PERCENT TO 20 PERCENT THE AMOUNT OF THE BOAT FEE IN LIEU OF TAX THAT MAY BE USED FOR IMPROVING REGIONAL BOATING FACILITIES AND ALLOCATING THAT AMOUNT FOR AN ADDITIONAL 7 YEARS; DELAYING TERMINATION OF THE BOATING ADVISORY COUNCIL FOR 7 YEARS; ALLOWING THE BOATING ADVISORY COUNCIL TO ADVISE THE DEPARTMENT ON THE EXPENDITURE OF ALL FUNDS IN THE MOTORBOAT ACCOUNT AND TO BE REIMBURSED FOR COSTS FROM THE MOTORBOAT ACCOUNT; REVISING THE FINE FOR FAILURE TO PAY THE BOAT FEE IN LIEU OF TAX; REMOVING LAMBETH STATE PARK FROM THE LIST OF PRIMITIVE PARKS IN ORDER TO ALLOW ROAD AND FACILITY IMPROVEMENTS AT THE PARK; ADDING BIG PINE MANAGEMENT AREA TO THE LIST OF PRIMITIVE PARKS; AMENDING SECTIONS 23-1-116, 23-2-518, 23-2-519, 23-2-533, AND 23-2-536, MCA, AND SECTION 6, CHAPTER 511, LAWS OF 1993; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the state's recreational boating safety program would be substantially strengthened if the Department of Fish, Wildlife, and Parks could delegate part of the administration and enforcement to counties; and

WHEREAS, the 1993 Legislature temporarily allocated 25% of the boat fee in lieu of tax to the motorboat account to improve regional boating facilities under the control of the Department of Fish, Wildlife, and Parks and created the Boating Advisory Council, composed of public members, to advise the Department on the expenditure of those funds; and

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WHEREAS, the 1995 Legislature finds it appropriate to authorize the Department to contract with counties for boating safety administration and enforcement and to continue both the allocation for regional boating facilities and the Boating Advisory Council for an additional 7 years.

Be it enacted by the Legislature of the State of Montana:

Section 1. Funding of state recreational boating safety program — certification of county programs — administration by counties. (1) The department may in its discretion use available state funds and federal matching funds to contract with counties to implement designated parts of the state recreational boating safety program. If a county accepts a grant, the county shall agree to implement a program that is certified by the department as fulfilling the requirements of the state recreational boating safety program.

(2) A county may designate any amount of boat fees in lieu of tax, unless otherwise allocated by 23-2-518(2), or other funds for collection by the department for the recreational boating safety program. This money must be used by the department for contracts with counties for the recreational boating safety program.

Section 2. Section 23-2-518, MCA, is amended to read:

"**23-2-518. (Temporary) Disposition of fees in lieu of tax.** (1) Except for fees allocated under subsection (2), the county treasurer shall distribute all fees in lieu of tax collected on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons pursuant to 23-2-516 and 23-2-517 in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall allocate ~~25%~~ *20%* of all fees in lieu of tax collected under this section to the motorboat account in the state special revenue fund for use by the department as provided in 23-2-533. (Terminates July 1, ~~1995~~ *2002*~~—sec. 6, Ch. 511, L. 1993~~.)

23-2-518. (Effective July 1, ~~1995~~ *2002*) Disposition of fees in lieu of tax. The county treasurer shall distribute all fees in lieu of tax collected on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons pursuant to 23-2-516 and 23-2-517 in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed."

Section 3. Section 23-2-519, MCA, is amended to read:

"**23-2-519. Penalty — disposition.** (1) Failure to pay the fee in lieu of tax as provided for in 23-2-517 is a misdemeanor, punishable by a fine equal to ~~five~~ *four* times the fee in lieu of tax that is due on the motorboat, sailboat, personal watercraft, motorized canoe, motorized rubber raft, or motorized pontoon for the current year of registration.

(2) All fines collected pursuant to subsection (1) must be distributed in the following ratio:

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(a) 50% to the general fund of the county in which the motorboat, sailboat, personal watercraft, motorized canoe, motorized ruhber raft, or motorized pontoon is issued a certification number; and

(b) 50% to the motorboat account of the state special revenue fund for use by the department in the enforcement of this part."

Section 4. Section 23-2-533, MCA, is amended to read:

"**23-2-533. (Temporary) Use of percentage of boat fees for boat facilities — designation of fees for regional use.** (1) At the time the fee in lieu of tax imposed under 23-2-516 is collected, the payor shall designate the fish, wildlife, and parks administrative region in which the majority of the payor's boating activities take place. Upon receipt of the fee in the motorboat account in the state special revenue fund, the department shall earmark the fee for use in the designated region.

(2) All fees designated to the motorboat account by 23-2-518(2) must be used by the department to improve regional boating facilities under the control of the department and, *in conjunction with other funds in the motorboat account,* to cover costs associated with the boating advisory council created in 23-2-536. The department may use the fees to match available federal funds to the extent possible. Expenditure of fees must be made after consideration of recommendations by the boating advisory council. (Terminates July 1, ~~1995~~ *2002*~~—sec. 6, Ch. 511, L. 1993~~.)"

Section 5. Section 23-2-536, MCA, is amended to read:

"**23-2-536. (Temporary) Creation of boating advisory council — appointment of members — duties.** (1) The department director appointed under 2-15-3401 shall appoint a boating advisory council to advise the department on the expenditure of funds ~~made available under 23-2-518(2)~~ *in the motorboat account in the state special revenue fund.*

(2) The boating advisory council must be composed of *at least* five members of the public, each of whom must be interested in boating activities and the use of public boating facilities.

(3) The boating advisory council is attached to the department in an advisory capacity only, as defined in 2-15-102(8).

(4) All costs associated with the boating advisory council must be paid from the ~~fees collected under 23-2-518(2)~~ *motorboat account in the state special revenue fund.* Council members are not entitled to compensation or travel expenses as provided in 2-15-122. (Terminates July 1, ~~1995~~ *2002*~~—sec. 6, Ch. 511, L. 1993~~.)"

Section 6. Section 23-1-116, MCA, is amended to read:

"**23-1-116. Primitive parks established.** Because of their unique and primarily undeveloped character, the following state parks and management areas are designated as primitive parks and are subject to the provisions of 23-1-115 through 23-1-118:

(1) ~~Lambeth (Lake Mary Ronan) state park~~ *Big Pine management area*;

(2) Thompson Falls state park;

(3) Wild Horse Island state park;

(4) Lost Creek state park;

(5) Painted Rocks state park;

(6) Ackley Lake state park;

(7) sluice boxes state park;

(8) Deadman's basin state park;

(9) Pirogue Island state park;

(10) Medicine Rocks state park;

(11) Headwaters state park;

(12) Council Grove state park;

(13) Beaverhead Rock state park;

(14) Natural Bridge state park; and

(15) Madison Buffalo Jump state park."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 2, part 5, and the provisions of Title 23, chapter 2, part 5, apply to [section 1].

Section 8. Effective date. [This act] is effective June 30, 1995.

Section 9. Section 6, Chapter 511, Laws of 1993, is amended to read:

"Section 6. **Termination.** [This act] terminates June 30, ~~1995~~ *2002*."

Section 10. Termination. [Sections 1 and 3] terminate June 30, 2002.

Approved April 14, 1995

CHAPTER NO. 477

[HB 602]

AN ACT AUTHORIZING LOANS TO LOCAL GOVERNMENT FOR BUSINESSES ESTIMATED TO EMPLOY AT LEAST 50 PEOPLE; PROVIDING THAT LOANS MUST BE USED TO PROVIDE INFRASTRUCTURE FOR A BUSINESS; PROVIDING FOR REPAYMENT OF THE LOANS THROUGH INFRASTRUCTURE FEES; PROVIDING A TAX CREDIT FOR INFRASTRUCTURE FEES PAID; AMENDING SECTIONS 17-6-305, 17-6-309, 17-6-311, AND 17-6-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 17-6-305, MCA, is amended to read:

"17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy — report by board. (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. *Investments made pursuant to this section do not include investments made pursuant to 17-6-309(2).*

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111."

Section 2. Section 17-6-309, MCA, is amended to read:

"17-6-309. Investment preferences. *(1)* ~~In~~ *Subject to the provisions of subsection (2), in* deciding which of several investments of equal or comparable security and return are to be made when sufficient funds are not available to fund all possible investments, the board shall give preference to the business investments that:

~~(1)~~*(a)* assist employee-owned enterprises in providing new jobs or in preserving existing jobs for Montana residents or in otherwise contributing to the long-term benefit of the Montana economy;

~~(2)~~*(b)* are for locally owned enterprises that are either expanding or establishing new operations;

~~(3)~~*(c)* provide jobs that will be substantially filled by current Montana residents as opposed to providing jobs that will be filled by nonresidents coming into the state to fill such jobs;

~~(4)~~*(d)* maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

~~(5)~~*(e)* encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

~~(6)~~*(f)* benefit small- and medium-sized businesses as defined in rules adopted hy the board.

(2) The board may make a loan to enhance economic development and create jobs in the basic sector of the economy, as defined by the board by rule, if the loan will result in the creation of a business estimated to employ at least 50 people in Montana on a permanent, full-time basis or result in the expansion of a business estimated to employ at least an additional 50 people in Montana on a permanent, full-time basis."

Section 3. Section 17-6-311, MCA, is amended to read:

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"**17-6-311. Limitation on size of investments.** (1) Except as provided in subsections (2) and ~~(3)~~ *through (4)*, no *an* investment may *not* be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund.

(2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company; however, the total amount of such dehentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

(4) The total amount of loans made pursuant to 17-6-309(2) may not exceed $20 million, and a single loan may not be less than $500,000. Loans must be made in $250,000 increments. A loan may not exceed $10,000 per job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes; and

(d) other matters that the board considers necessary."

Section 4. Section 17-6-312, MCA, is amended to read:

"**17-6-312. State participation in loans.** (1) ~~State~~ *Subject to 17-6-311(4), state* participation in any loan to a business enterprise, except for a loan guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

(2) The purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1).

(3) State participation in loans to nonprofit corporations may qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to a for-profit business creating the jobs."

Section 5. Economic development loan — infrastructure tax credit. (1) A loan made pursuant to 17-6-309(2) must he used to huild infrastructure, as provided for in 7-15-4288(4), that allows the location or creation or expansion of a business in Montana. The loan must he made to a local government that will create the necessary infrastructure. The infrastructure may serve as collateral for the loan. The local government receiving the loan may charge fees to the users of the infrastructure. A loan repayment agreement must provide for repayment of the loan from the entity authorized to charge fees for the use of the services of the infrastructure. Loans made pursuant to 17-6-309(2) qualify

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for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to the business creating the jobs.

(2) A loan pursuant to 17-6-309(2) and this section may not be made until the board is satisfied that the condition in 17-6-309(2) will be met. If the condition contained in 17-6-309(2) is not met, any credits received pursuant to subsection (3) of this section must be returned to the state.

(3) A business that is created or expanded as the result of a loan made pursuant to 17-6-309(2) and subsection (1) of this section is entitled to a credit against taxes due under Title 15, chapter 30 or 31, for the portion of the fees attributable to the use of the infrastructure. The total amount of tax credit claimed may not exceed the amount of the loan. The credit may be carried forward for 7 tax years or carried back for 3 tax years.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [section 5].

Section 7. Coordination instructions. (1) If [this act] is passed and approved, then the amendment to 17-6-308 contained in section 1, Chapter 2, Laws of 1995, and the amendment to 17-6-309 contained in section 2, Chapter 2, Laws of 1995, are void.

(2) The code commissioner shall codify [section 5 of this act] as an integral part of section 5, Chapter 2, Laws of 1995.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 478

[HB 603]

AN ACT EXEMPTING CERTAIN CONSTRUCTION PROJECTS FROM CERTAIN STATE LAWS; AUTHORIZING FUNDING FOR THE PROJECTS; ESTABLISHING PARAMETERS AND CONDITIONS FOR THE PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemptions. The renovation or construction of a stadium at Montana state university - Bozeman, the restoration and remodeling of the Prescott house and campus drive at the university of Montana - Missoula, and improvements to the physical education complex and renovation of vigilante stadium at western Montana college of the university of Montana are authorized by [sections 1 through 6]. The design and construction of these projects are not subject to the requirements of Title 18, chapters 2 and 8, except that:

(1) the department of administration shall execute the provisions of 18-2-103(1)(a) and (1)(e); and

(2) the provisions of Title 18, chapter 2, part 4, apply to all labor other than donated labor.

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Section 2. Authorization. Private funding is authorized for the following projects:

Montana State University - Bozeman		
Renovate or Construct Athletic Complex	$12,000,000	Private Funds
University of Montana - Missoula		
Prescott House and Campus Drive Improvements	1,650,000	Private and Auxiliary Funds
Western Montana College of the University of Montana		
Physical Education Complex Improvements	150,000	Private Funds
Renovate Vigilante Stadium	300,000	Private Funds

Section 3. Terms and conditions. The terms, guaranties, and agreements relative to these projects must be negotiated in the best interests of the state and must include guaranties that no commitment of state appropriated funds for design, construction, operations, or maintenance is expressed or implied. The terms, guaranties, and agreements are subject to final review and approval by the board of regents, after which the approving authority is required to provide a report certifying to the budget director that these conditions are met. The budget director shall certify acceptance of this report to the department of administration prior to final approval by the department of administration pursuant to 18-2-103(1)(a).

Section 4. Specific terms for Prescott house and campus drive improvements. For the authorization to the university of Montana - Missoula for the Prescott house project, the university is prohibited from substantially altering or changing the configuration of campus drive.

Section 5. Specific terms for athletic complex. The authorization for athletic facilities at Montana state university - Bozeman, as authorized in [sections 1 through 6], allows the board of regents to lease the land or the land and its facilities to a private, nonprofit organization in order to solicit, manage, and administer gifts, donations, in-kind contributions, and revenue on behalf of the university for the purpose of completing the renovation or construction of a new athletic complex.

Section 6. Coordination instruction. If [this act] and House Bill No. 352 are both passed and approved, then [section 1] of House Bill No. 352 is amended to read:

"**Section 1. Prohibition on transfer to foundation.** *(1)* ~~In~~ *Except as provided in subsection (2), in* order to implement the provisions of Article VIII, section 12, of the Montana constitution, ownership of the following may not he transferred to a nonprofit corporation or foundation established for the benefit of a unit of the university system unless full market value is received for the transfer and laws applicable to the disposition of property are followed:

~~(1)~~*(a)* money in the higher education funds provided for in 17-2-102;

~~(2)~~*(b)* excess proceeds of money borrowed pursuant to 20-25-402; and

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~~(3)~~*(c)* real or personal property acquired with money listed in subsection (1)*(a)* or proceeds listed in subsection ~~(2)~~ *(1)(b)*.

(2) Subsection (1) does not apply to the lease for the athletic complex at Montana state university provided for in [section 5] of House Bill No. 603. The land lease for the athletic complex must be of a term not to exceed 7 years from the date of approval of the lease."

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 479

[HB 272]

AN ACT CLARIFYING CERTAIN LABOR LAWS AND TAX LAWS TO INCLUDE A SERVICE CHARGE RECEIVED BY EMPLOYEES OF THE FOOD, BEVERAGE, AND LODGING INDUSTRY; AMENDING SECTIONS 15-30-111, 15-30-201, 39-3-201, AND 39-3-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-201, MCA, is amended to read:

"**39-3-201. Definitions.** The following are the definitions used for the purpose of this part:

(1) "Board" means the board of personnel appeals provided for in 2-15-1705.

(2) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by ~~him~~ *the director, commissioner, or chief* for the purpose of this part.

(3) "Department" means the department of labor and industry as provided for in 2-15-1701.

(4) "Employ" means *to* permit or suffer to work.

(5) "Employee" includes any person who works for another for hire.

(6) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or ~~any~~ organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but ~~shall~~ *does* not include the United States.

(7) *(a)* "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, montbly, or yearly, and ~~shall include~~ *includes* bonus, piecework, *and all* tips~~,~~ and gratuities ~~of any kind~~ *that are covered by section 3402(k) and service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered*

by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

(b) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved in related services, pursuant to a tip pool agreement."

Section 2. Section 39-3-402, MCA, is amended to read:

"39-3-402. Definitions. As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" means an individual employed by an employer.

(4) "Farm or ranch" means any endeavor primarily engaged in cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

(5) "Farm worker" means a person employed to do any service performed on a farm or ranch.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(7) *(a)* "Wage" means compensation due to an employee by reason of ~~his~~ employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to an allowance as may be permitted by regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or *any* other facility if the lodging or other facility is customarily furnished by the employer to ~~his~~ employees; however, the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the employee.

(b) The term "wage" does not include the cost to the employer of providing meals or a meal allowance to the employee or the value of any tips *or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging* ~~received by an employee as a gratuity for service~~.

(c) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved in related services, pursuant to a tip pool agreement."

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Section 3. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ *is* the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 ~~or~~ as that section may be labeled or amended and in addition ~~shall include~~ *includes* the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision ~~thereof~~;

(b) refunds received of federal income tax, to the extent the deduction of ~~such~~ *the* tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income, under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision ~~thereof~~;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) hy $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if hoth taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips *or gratuities that are* covered by section 3402(k) *or service charges that are covered by section 3401* of the Internal Revenue Code of 1954, as

amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all henefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; and

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in ~~his~~ adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who ~~must~~ *are required to* include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 4. Section 15-30-201, MCA, is amended to read:

"15-30-201. **Definitions.** When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision ~~thereof~~ *of the United States or Montana* or any agency or instrumentality of the United States, the state of Montana, or a political subdivision ~~thereof~~ *of the United States or Montana*. The term ~~"employee"~~ also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person~~;~~, except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term ~~"employer"~~ means the person having control of the payment of wages.

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for ~~his~~ *the* employer, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include remuneration paid:

(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during a quarter the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, ~~(~~as determined under subsection (4)(d)(i)~~)~~, by the employer in the performance of service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by ~~a duly~~ *an* ordained, commissioned, or licensed minister of a church in the exercise of ~~his~~ *the minister's* ministry or by a member of a religious order in the exercise of duties required by the order;

(g) (i) for services performed by an individual under ~~the age of~~ 18 *years of age* in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by ~~him~~ *the individual* at a fixed price, his *with* compensation ~~being~~ based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged to ~~him~~ *the individual*, whether or not he *the individual* is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when the payments are in the form of lodgings or meals and the services are received by the employee at the request of and for the convenience of the employer;

(i) te or for an employee as a payment for or a contribution toward the cost of any group plan or program ~~which~~ *that* benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

(j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

(k) as tips~~;~~ *or gratuities that are* in accordance with section 3402(k) *or service charges that are covered by section 3401* of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(l) by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection (4)(k) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 5. Effective date — applicability. [This act] is effective on passage and approval and applies to contracts entered into on or after [the effective date of this act].

Approved April 15, 1995

CHAPTER NO. 480

[HB 537]

AN ACT PROHIBITING ESTABLISHMENTS THAT HAVE ONE OR MORE COMMON OWNERS AND VIDEO GAMING MACHINES FROM BEING WITHIN 150 FEET OF EACH OTHER; EXTENDING THE EXEMPTION PERIOD FOR PREMISES NOT MEETING CURRENT PREMISES APPROVAL REQUIREMENTS; AND AMENDING SECTION 23-5-117, MCA.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Permit for premises within 150 feet of another premises. (1) (a) A licensee may not be granted a permit for video gamhling machines allowed on a premises under 23-5-611 if, at the time of application for the permit, the licensee's premises are within 150 feet of, or have an external structural connection not amounting to a common internal wall, as that term is used in 23-5-117, to, a premises that already has a permit for video gambling machines allowed on a premises under 23-5-611 and if the two premises have one or more common owners. A measurement of the distance hetween two premises must he taken between the nearest exterior wall of each premises.

(b) A premises for which an on-premises alcoholic beverages license was granted, was applied for, or the transfer of which was validly contracted for prior to February 1, 1995, is not subject to subsection (1)(a) during the 10-year period following [the effective date of this section]. A premises licensed hefore January 1, 1985, is not subject to subsection (1)(a) for as long as ownership remains within the immediate family that owned the premises on January 1, 1985, if ownership of the premises on [the effective date of this section] was within the immediate family that owned the premises on January 1, 1985.

(2) For purposes of this section, the following definitions apply:

(a) "Affiliate" means a person or entity that controls, is controlled by, or is under common control with another person or entity. The term includes but is not limited to a premises that has:

(i) shareholders, partners, or other individual owners, by trust or otherwise, who are also shareholders, partners, or individual owners, by trust or otherwise, of the other premises;

(ii) shareholders, partners, or other individual owners, hy trust or otherwise, who are income taxpayers related to the shareholders, partners, or other individual owners, by trust or otherwise, of the other premises;

(iii) an agreement with the other premises or the other premises' shareholders, partners, or other individual owners, by trust or otherwise, for the ownership and operation of gaming equipment if the agreement has other financial components, such as a landlord and tenant relationship or noninstitutional financing; or

(iv) a premises rental agreement with the other premises or its shareholders, partners, or other individual owners, by trust or otherwise, at a rental rate other than the market rental rate, as determined by a Montana independent appraisers association appraisal done at the time that the rental rate is set or changed.

(b) "Commonality of business interests" means:

(i) a contract, deed, contract for deed, concession agreement, or lease, rental, or other agreement involving real property, with the same person or entity, except:

(A) a commercial mall with at least 50,000 square feet and at least eight separate husinesses; or

(B) an agreement by a licensee to lease premises from a person or entity that also leases other premises in the same building or structure to one or more licensees if there is no other common ownership between any of the licensees; or

(ii) that the same person or entity, except a financial institution, provides the financing for:

(A) the purchase of the liquor license;

(B) the purchase of the premises; or

(C) operating expenses of more than $25,000, except for expenses allowed under 23-5-130.

(c) "Common owner" means an affiliate, immediate family member, manager, parent or subsidiary business entity, investor, person or entity with a commonality of business interests, or other person or entity able to influence the operator or manager of the premises or to prevent the operator or manager from fully pursuing the premises' separate interests.

(d) "Control" means the power to cause or direct management and policies through ownership, contract, or otherwise.

(e) "Immediate family" means a parent, children, siblings, grandchildren, grandparents, nieces, and nephews.

(f) "Investor" means a person who:

(i) advances or pledges to advance funds with the expectation of a specified or unspecified return;

(ii) guarantees a loan, except a loan guaranteed by a route operator who would not otherwise be considered a common owner; or

(iii) has an option to participate in the premises.

Section 2. Section 23-5-117, MCA, is amended to read:

"**23-5-117. Premises approval.** (1) Except as provided in subsection (4), the department may approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) and (3).

(2) The premises must:

(a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which the premises is located; and

(c) have a public external entrance, leading to a street or other common area, that is not shared with another premises for which an operator's license has been issued.

(3) If the premises shares a common internal wall with another premises for which an operator's license has been issued, the common wall must be

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permanently installed, opaque, and extend from floor to ceiling and may not contain an internal entrance through which public access is allowed.

(4) A second operator's license may be issued or renewed until June 30, ~~1996~~ *2001*, for a person operating a gambling activity on a premises that did not meet the requirements of subsections (2) and (3) if:

(a) the second operator's license was issued to the person on or before January 1, 1991; or

(b) (i) the application for the second operator's license was received by the department on or before January 1, 1991;

(ii) a second on-premises alcoholic beverages license was obtained for the premises on or before January 1, 1991; and

(iii) substantial physical modifications to the premises were made on or before January 1, 1991."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 5, part 6, and the provisions of Title 23, chapter 5, apply to [section 1].

Approved April 15, 1995

CHAPTER NO. 481

[SB 64]

AN ACT REVISING THE LAWS RELATING TO A YOUTH WHO POSSESSES OR ATTEMPTS TO PURCHASE AN INTOXICATING SUBSTANCE; AND AMENDING SECTIONS 16-6-314, 41-5-601, 41-5-602, 41-5-603, 41-5-604, 45-5-624, AND 61-2-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-6-314, MCA, is amended to read:

"16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as ~~is herein~~ otherwise provided *in this section*.

(2) If a retail licensee is convicted of an offense under this code, ~~his~~ *the licensee's* license ~~shall~~ *must* be immediately revoked or, in the discretion of the department, such other sanction imposed as may be authorized under 16-4-406.

(3) A person under 21 years of age who violates 16-3-301(4) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2) *or (3)*."

Section 2. Section 41-5-601, MCA, is amended to read:

"41-5-601. Confidentiality. (1) ~~No information shall~~ *Information may not* be given concerning a youth or any matter or proceeding in the youth court

involving a youth proceeded against as, or found to be, a youth in need of supervision.

(2) When a petition is filed under 41-5-501, publicity may not be withheld regarding any youth formally charged with or proceeded against as or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult. All court proceedings must be open to the public with the exception of the transfer hearing specified in 41-5-206 if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair trial.

(3) In all cases, the victim is entitled to all information concerning the identity and disposition of the youth.

(4) The identity of ~~any~~ *a* youth who admits violating or is adjudicated as having violated 45-5-624 or 45-9-102 may be disclosed by youth court officials to the administrative officials of the school in which the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(5) A conviction or youth court adjudication under 45-5-624 may be reported and used as provided in that section."

Section 3. Section 41-5-602, MCA, is amended to read:

"**41-5-602. Law enforcement records.** (1) ~~No~~ *Except as provided in 45-5-624(7),* law enforcement records concerning a youth, except traffic records, may *not* be open to public inspection or their contents disclosed to the public unless the records are directly related to an offense to which publicity must be allowed under ~~subsection (2) of~~ 41-5-601*(2)* or unless inspection is ordered by the court.

(2) Inspection of law enforcement records concerning a youth, which records are not open to public inspection under subsection (1), is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the department if it is investigating, supervising, or providing services to the youth;

(c) the officers of agencies having legal custody of the youth and those responsible for ~~his~~ *the youth's* supervision after release;

(d) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(e) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(f) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(g) the county attorney;

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(h) the youth, ~~his~~ *and the youth's* parent, guardian, or counsel;

(i) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in subsection (2); or

(j) members of a local interagency staffing group provided for in 52-2-203."

Section 4. Section 41-5-603, MCA, is amended to read:

"**41-5-603. Youth court and department records.** (1) Youth court and youth court-related department records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimato interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon ~~such~~ *the* party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after ~~he~~ *the youth* has been emancipated or reaches the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in subsection (1); and

(h) members of a local interagency staffing group provided for in 52-2-203*; and*

(i) persons allowed access to the records under 45-5-624(7).

(2) ~~All or any~~ *Any* part of records information secured from records listed in subsection (1) ~~of this section~~, when presented to and used by the court in a proceeding under this chapter, ~~shall~~ *must* also be made available to the counsel for the parties to the proceedings.

(3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and decrees, ~~shall~~ *must* be open to public inspection only when related to an offense for which access must be allowed under 41-5-601.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court or the department ~~shall be~~ *is* privileged and ~~shall~~ *may* not be disclosed to anyone other than the judge and others entitled under this chapter to receive ~~such~~ *the* information, unless otherwise ordered by the judge.

(5) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are

sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Section 5. Section 41-5-604, MCA, is amended to read:

"**41-5-604. Disposition of records.** (1) All youth court records and law enforcement records, except fingerprints and photographs pertaining to a youth coming under this chapter, shall *must* be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the *sealed* records so sealed shall also seal or destroy such *the* copies of *the* records. Anyone violating the provisions of this subsection ~~shall be~~ *is* subject to contempt of court.

(4) ~~Nothing herein contained shall~~ *This section does not* prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall~~ *do* not apply to youth traffic records ~~or to~~, records directly related to an offense to which access must be allowed under 41-5-601, *or records referred to in 45-5-624(7).*"

Section 6. Section 45-5-624, MCA, is amended to read:

"**45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance — interference with sentence or court order.** (1) ~~(a)~~ A person under the age of ~~19~~ *21* years commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. The person need not be consuming or in possession of the intoxicating substance at the time of arrest to violate this subsection.

~~(b)~~ A person ~~under the age of 21 commits the offense of possession of an intoxicating substance if the person knowingly has in the person's possession an alcoholic beverage, except as provided in 16-6-305 and except that a person~~ does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) A *In addition to any disposition by the youth court under 41-5-523, a* person *under 18 years of age who is* convicted of the offense of possession of an intoxicating substance shall ~~if the person~~:

(a) ~~is less than 18 years of age~~ *for the first offense*, be fined *an amount* not to exceed ~~$50~~ *$100* and:

(i) have the person's driver's license confiscated by the court for *not less than 30 days and* not more than 90 days and be ordered not to drive during that period if the person was driving or *was* otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) be ordered to perform community service *if a community service program is available; and*

~~(iii) have the person's driver's license suspended if convicted of a second or subsequent offense under this section; or~~

~~(iv) be sentenced to any combination of the penalties provided for in subsections (2)(a)(i) through (2)(a)(iii); or~~

~~(b) is 18 years of age or older, be fined an amount not to exceed $50 for a first offense, $100 for a second offense, and $200 for a third offense or be fined an amount not to exceed $300 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a fourth or subsequent offense and:~~

~~(i)~~ be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, *if any is available,* all costs of participation in a community-based substance abuse information course, *if one is available*;

(b) for a second offense, be fined an amount not to exceed $200 and:

~~(ii)~~*(i)* have the person's driver's license ~~confiscated by the court~~ *suspended* for *not less than 60 days and* not more than ~~90~~ *120* days ~~and be ordered not to drive during that period if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred~~;

~~(iii)~~*(ii)* be ordered to perform community service *if a community service program is available*; ~~or~~ *and*

~~(iv) be sentenced to any combination of the penalties provided for in subsections (2)(b)(i) through (2)(b)(iii)~~

(iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(c) for a third or subsequent offense, be fined an amount not less than $300 or more than $500 and:

(i) have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches the age of 18, whichever occurs last;

(ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by

the department of corrections and human services, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance shall:

(a) for a first offense, be fined an amount not to exceed $50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, be fined an amount not to exceed $100 and:

(i) be ordered to perform community service if a community service program is available; and

(ii) have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, be fined an amount not to exceed $200 and:

(i) be ordered to perform community service if a community service program is available;

(ii) have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court be imprisoned in the county jail for a term not to exceed 6 months.

~~(3)~~*(4)* A person under the age of 21 commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed ~~$50~~ *$50 if the person was 18 years of age or older at the time the offense was committed or $100 if the person was under 18 years of age at the time that the offense was committed.*

~~(4)~~*(5)* A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. ~~If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply.~~ If proceedings for ~~violation of subsection (1) or for~~ failure to comply with a sentence are held in the youth court, the offender ~~shall~~ *must* be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

~~(5)~~*(6)* A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition

order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses committed but may not be considered part of the person's driving record for insurance purposes unless a second or subsequent conviction or adjudication under this section occurs."

Section 7. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver improvement program — participation by offending drivers. (1) The department ~~of justice~~ may establish by administrative rules a driver rehabilitation and improvement program or programs ~~which~~ *that* may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other ~~such~~ subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in ~~such~~ *the* driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state *or, unless otherwise provided by the sentencing court, a violation of 45-5-624*; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) have met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order ~~which~~ *that* constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for ~~herein~~ *in this section* may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

(4) In the event *that* a person's driver's license has been surrendered prior to ~~his~~ *the person's* selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of ~~his~~ *the person's* agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order ~~shall~~ *must* be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) Nothing in this part creates a right to be included in any program established under this part.

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(7) The department ~~of justice~~ may establish a schedule of fees ~~which~~ *that* may be charged those persons participating in the driver improvement and rehabilitation program~~;~~. ~~which~~ *The* fees ~~shall~~ *must* be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, *youth court judge,* judge of a district court of the state, or a hearing examiner of the department ~~of justice~~.

(9) The department ~~of justice~~ may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth ~~thereon~~ *on the license.*

(10) It is a misdemeanor for ~~any~~ *a* person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to ~~him~~ *the person* under this section."

Approved April 15, 1995

CHAPTER NO. 482

[SB 66]

AN ACT PROVIDING THAT A PERSON CONVICTED OF A SPECIFIED NUMBER OF MAJOR VIOLENT OFFENSES MUST BE SENTENCED TO LIFE IN PRISON UNLESS THE DEATH PENALTY IS APPLICABLE AND IMPOSED; PROVIDING THAT THE LIFE SENTENCE BE SERVED ONLY IN PRISON AND BE SERVED WITH NO POSSIBILITY OF PAROLE OR EARLY RELEASE ON ANY GROUNDS; AMENDING SECTIONS 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, 45-5-503, 45-5-625, 45-5-627, 45-6-103, 46-18-111, 46-18-201, 46-18-222, 46-18-225, 46-18-502, 46-23-201, AND 46-23-411, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if a person convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the Unitod States that, if committed in this state, would be one of the following offenses, the person must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if a person convicted of one of the following offenses was previously convicted of two of the following offenses, two

of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the person must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202(1), aggravated assault;

(iii) 45-5-302, kidnapping;

(iv) 45-5-401, robbery;

(v) 45-6-103, arson.

(2) Except as provided in 46-23-210 and subsection (3) of this section, a person sentenced under subsection (1):

(a) sball serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except medical reasons, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the person was previously sentenced for either of two or three offenses listed in subsection (1), as applicable, pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the person's present sentence.

(4) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention.

Section 2. Section 45-5-102, MCA, is amended to read:

"**45-5-102. Deliberate homicide.** (1) A person commits tbe offense of deliberate homicide if:

(a) he *the person* purposely or knowingly causes the death of another human being; or

(b) he *the person* attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or fligbt thereafter, he *the person* or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222 *and [section 1]*."

Section 3. Section 45-5-103, MCA, is amended to read:

"**45-5-103. Mitigated deliberate homicide.** (1) A person commits the offense of mitigated deliberate homicide when he *the person* purposely or knowingly causes the death of another human heing hut does so under the influence of extreme mental or emotional stress for which there is reasonahle explanation or excuse. The reasonableness of ~~such~~ *the* explanation or excuse ~~shall~~ *must* be determined from the viewpoint of a reasonable person in the actor's situation.

(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress ~~for which there was reasonable explanation or excuse, the reasonableness of which shall be determined from the viewpoint of a reasonable person in the actor's situation~~ *as provided in subsection (1)*. Tbis defense constitutes a mitigating circumstance reducing deliberate homicide te mitigated deliberate homicide and must be proved hy the defendant by a preponderance of the evidence.

(3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222 *and [section 1]*."

Section 4. Section 45-5-202, MCA, is amended to read:

"**45-5-202. Aggravated assault — felony assault.** (1) A person commits the offense of aggravated assault if ~~he~~ *the person* purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if he *the person* purposely or knowingly causes:

(a) bodily injury te another with a weapon;

(b) reasonable apprehension of serious bodily injury in another hy use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222 *and [section 1]*. A person convicted of felony assault shall be imprisoned in the state prison for a term not ~~to~~ exceed 10 years or be fined not more than $50,000, or both."

Section 5. Section 45-5-302, MCA, is amended to read:

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"45-5-302. **Kidnapping.** (1) A person commits the offense of kidnapping if ~~he~~ *the person* knowingly or purposely and without lawful authority restrains another person hy either secreting or holding ~~him~~ *the other person* in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000, except as provided in 46-18-222 *and [section 1]*."

Section 6. Section 45-5-303, MCA, is amended to read:

"45-5-303. **Aggravated kidnapping.** (1) A person commits the offense of aggravated kidnapping if he *the person* knowingly or purposely and without lawful authority restrains another person hy eitber secreting or holding ~~him~~ *the other person* in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another;

(d) to interfere with tbe performance of any governmental or political function; or

(e) to bold another in a condition of involuntary servitude.

(2) Except as provided in 46-18-222 *and [section 1]*, a person convicted of the offense of aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, unless ~~he~~ *the person* has voluntarily released the victim alive, in a safe place, and ~~not suffering from~~ *with no* serious bodily injury, in which event ~~he~~ *the person* shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000."

Section 7. Section 45-5-401, MCA, is amended to read:

"45-5-401. **Robbery.** (1) A person commits the offense of robbery if in the course of committing a theft, ~~he~~ *the person*:

(a) inflicts bodily injury upon another;

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery sball be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more tban $50,000, except as provided in 46-18-222 *and [section 1]*.

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(3) "In the course of committing a theft", as used in this section, includes acts ~~which~~ *that* occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission."

Section 8. Section 45-5-503, MCA, is amended to read:

"**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222 *and [section 1].*

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222 *and [section 1].* An act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222 *and [section 1].*

(4) In addition te any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 9. Section 45-5-625, MCA, is amended to read:

"**45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

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(c) persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) possesses material referred to in subsection (1)(d); or

(f) finances any of the activities described in subsections (1)(a) through (1)(d), knowing that the activity is of the nature described in those subsections.

(2) (a) Except as provided in *[section 1] and* subsections (2)(b) and (2)(c) *of this section*, a person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(b) If *Except as provided in [section 1], if* the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 50 years, or both.

(c) A *Except as provided in [section 1], a* person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(f) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

Section 10. Section 45-5-627, MCA, is amended to read:

"45-5-627. Ritual abuse of minor — exceptions — penalty. (1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, or felony assault against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

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(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) A *Except as provided in [section 1], a* person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, or botb.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 11. Section 45-6-103, MCA, is amended to read:

"**45-6-103. Arson.** (1) A person commits the offense of arson when, by means of fire or explosives, he *the person* knowingly or purposely:

(a) damages or destroys an occupied structure ~~which~~ *that* is property of another without consent; or

(b) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.

(2) A *Except as provided in [section 1], a* person convicted of the offense of arson shall be imprisoned in the state prison for ~~any~~ *a* term not to exceed 20 years or be fined an amount not to exceed $50,000, or both."

Section 12. Section 46-18-111, MCA, is amended to read:

"**46-18-111. Presentence investigation — when required.** (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, *or* 45-5-507, or *under* 45-5-625 involving a victim who was less than 16 years of age when the offense was committed, the investigation must include an evaluation of the defendant and a recommendation as to treatment of the offender in the least restrictive environment, considering community safety and

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offender needs, *unless the defendant was sentenced under [section 1].* The evaluation must be completed by a person who is determined to be qualified under guidelines established by the department of corrections and human services. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation officer is presented to and considered by the district court. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor."

Section 13. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, *an* order *that* the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of the above.

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(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections and human services for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense, as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

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(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in *and complete* the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

(11) Except as provided in 46-18-222, a provision of this section that conflicts with [section 1] does not apply to a person sentenced under [section 1]."

Section 14. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state, *[section 1],* and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(4) through (6), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less tban 18 years of age at the time of the commission of the offense for which the defendant is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which the defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which the defendant is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the court determines that treatment of the defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the ultimate protection of society, in which case the court shall include in its judgment a statement of the reasons for its determination."

Section 15. Section 46-18-225, MCA, is amended to read:

"46-18-225. Criteria for sentencing nonviolent felony offenders. Prior to sentencing a nonviolent felony offender *to whom [section 1] does not*

apply to a term of imprisonment in the state prison or the women's correctional center, the court shall take into account whether:

(1) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in the state prison or the women's correctional center;

(2) the needs of the offender can be better served in the community or in a facility or program other than the state prison or the women's correctional center;

(3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(4) the offender acted under strong provocation;

(5) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

(6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a substantial period of time before the commission of tbe present crime;

(7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(8) the character and attitude of the offender indicate that the offender is likely to commit another crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on the offender or the offender's family."

Section 16. Section 46-18-502, MCA, is amended to read:

"**46-18-502. Sentencing of persistent felony offender.** (1) Except as provided in *[section 1] and* subsection (2) *of this section*, a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if he *the offender* was 21 years of age or older at the time of the commission of the present offense.

(2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of his *the offender's* previous felony conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and ~~he~~ *the offender* was 21 years of age or older at the time of the commission of the present offense, he *the offender* shall, *except as provided in [section 1],* be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both.

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(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) ~~shall~~ *must* run ~~consecutive~~ *consecutively* to any other sentence imposed."

Section 17. Section 46-23-201, MCA, is amended to read:

"**46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's correctional center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2) *or [section 1]*, when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-half of the prisoner's full term, less the good time allowance provided for in 53-30-105. Except as provided in subsection (3), a prisoner designated as a nondangerous offender under 46-18-404 may be paroled after the prisoner has served one-quarter of the prisoner's full term, less the good time allowance provided for in 53-30-105. Any prisoner serving a time sentence may be paroled after the prisoner has served 17 1/2 years of the sentence.

(3) A prisoner serving a time sentence under 45-9-109 may not be paroled until the prisoner has served at least one-half of the full term, less the good time allowance provided for in 53-30-105.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years, less the good time allowance provided for in 53-30-105.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

(6) Whenever the department of corrections and human services certifies to the board that the population at either the male or female correctional facility has exceeded its designed capacity for 30 consecutive days, the board shall consider the respective male or female prisoners under the jurisdiction of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) through (4).

(7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration, the provisions of subsection (6) do not apply."

Section 18. Section 46-23-411, MCA, is amended to read:

"**46-23-411. Application to participate — eligibility.** (1) Any prisoner, except a prisoner serving a sentence imposed under 46-18-202(2) *or [section 1]*, may ~~make application~~ *apply* to participate in the supervised release program if

~~he~~ *the prisoner* has served at least one-half of the time required to be considered for parole and not more than 24 months remain before ~~he~~ *the person* is eligible for parole.

(2) Prisoners serving sentences *under [section 1] or* with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department."

Section 19. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46 apply to [section 1].

Section 20. Coordination instruction. If House Bill No. 46 is passed and approved, then the crime of arson, 45-6-103, is deleted from the crimes listed in [subsection (1)(b) of section 1 of this act].

Section 21. Coordination — effective dates. (1) If House Bill No. 357 and [this act] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void.

Approved April 14, 1995

CHAPTER NO. 483

[SB 98]

AN ACT PROMOTING CAMPAIGN REFORM AND INTEGRITY; AND CREATING THE CIVIL OFFENSE OF POLITICAL LIBEL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Misrepresentation of voting record — political civil libel. (1) It is unlawful for a person to willfully or negligently make or publish a false statement about a candidate's public voting record or to make or publish a false statement that reflects unfavorably upon a candidate's character or morality.

(2) It is unlawful for a person to willfully or negligently provide false information to a candidate concerning another candidate's public voting record when the person knows or should know that the information will be made public during the course of a campaign.

(3) For the purposes of this section, the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of

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representatives. Failure of a person to verify a public voting record is evidence of the person's willful or negligent conduct if the statement made by the person or the information provided to the candidate is false.

(4) A person violating subsection (1) or (2) is liable in a civil action brought by the commissioner or county attorney pursuant to 13-37-124 for an amount up to $1,000. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37, apply to [section 1].

Approved April 14, 1995

CHAPTER NO. 484

[SB 126]

AN ACT REVISING THE PROVISIONS UNDER WHICH AN AGENCY MAY CHARGE A FEE FOR PROVIDING CERTAIN PUBLIC INFORMATION; ALLOWING THE DEPARTMENT OF REVENUE TO CHARGE A FEE FOR PROVIDING INFORMATION FROM ANY PROPERTY VALUATION AND ASSESSMENT SYSTEM DATA BASE MAINTAINED BY THE DEPARTMENT; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY CHARGE FEDERAL AND STATE AGENCIES, BUT NOT LOCAL TAXING JURISDICTIONS AND CERTAIN STATE AGENCIES, A FEE FOR PROVIDING PROPERTY VALUATION AND ASSESSMENT SYSTEM DATA BASE INFORMATION; ALLOWING AN AGENCY TO CHARGE A FEE FOR PROVIDING ONLINE COMPUTER ACCESS TO ELECTRONIC INFORMATION; AMENDING SECTION 2-6-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-110, MCA, is amended to read:

"2-6-110. Electronic information — public access — *fees*. (1) Except as provided by law, each person is entitled to a copy of information compiled, created, or otherwise in the custody of public agencies that is in electronic format, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic information.

(2) Except as provided by law and subject to subsection (4), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media; ~~or~~

(b) expenses incurred by the agency as a result of mainframe processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access; and

(d) ~~or~~ other out-of-pocket expenses directly associated with the request for information.

(3) An agency may also charge an hourly fee for each hour, or fraction of an hour, after one-half hour of copying service has been provided. The hourly fee may not exceed the hourly rate for the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312.

(4) *(a)* In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the ~~computer-assisted mass appraisal system~~ *property valuation and assessment system data base from which the information is requested.* The fee must be charged to persons, *federal agencies, state agencies, and other entities* requesting the data base or any part of the data base from ~~the mass appraisal system~~ *any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.*

(b) The department *of revenue* may not charge a fee for information provided from ~~this~~ *any department property valuation and assessment system* data base to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department *of revenue* under *subsection (2) and* this subsection *(4)* must be deposited in a state special revenue fund as provided in 15-1-521.

(5) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(6) This section does not authorize the release of electronic security codes giving access to private information."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 485

[SB 138]

AN ACT REVISING THE TAXATION OF CERTAIN LAND BY CHANGING THE CLASSIFICATION OF 1 ACRE OF QUALIFYING AGRICULTURAL LAND BENEATH CERTAIN IMPROVEMENTS FROM RESIDENTIAL TO AGRICULTURAL AND CLARIFYING THE VALUATION OF LAND DESCRIBED IN SECTION 15-6-133(1)(C), MCA; AMENDING SECTIONS 15-6-133, 15-6-134, 15-7-202, 15-7-206, AND 15-7-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements, including trailers or mobile homes used as a residence, except those specifically included in another class;

(c) the first $80,000 or less of the market value of any improvement on real property, including trailers or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $10,000 for a single person or $12,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least 9 holes and not less than 3,000 lineal yards; and

(e) all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202~~(2)~~, including 1 acre of real property beneath ~~the agricultural~~ improvements *on land described in 15-6-133(1)(c)*. The 1 acre must be valued at market value.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a), (1)(b), and (1)(e) is taxed at 3.86% of its market value.

(b) (i) Property described in subsection (1)(c) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$ 0 - $ 1,000	$ 0 - $ 1,200	0%
1,001 - 2,000	1,201 - 2,400	10%
2,001 - 3,000	2,401 - 3,600	20%
3,001 - 4,000	3,601 - 4,800	30%
4,001 - 5,000	4,801 - 6,000	40%
5,001 - 6,000	6,001 - 7,200	50%

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6,001 - 7,000	7,201 - 8,400	60%
7,001 - 8,000	8,401 - 9,600	70%
8,001 - 9,000	9,601 - 10,800	80%
9,001 - 10,000	10,801 - 12,000	90%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1986; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

~~(3) After July 1, 1986, an adjustment may not be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111.~~

~~(4)~~*(3)* Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 2. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family members, agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(c) For the purposes of this subsection (1)~~, "marketing"~~:

(i) "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

~~(i)~~*(A)* rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

~~(ii)~~*(B)* rental payments made under the federal conservation reserve program or a successor to that program~~.~~*;*

(ii) land that is devoted to residential use or that is used for agricultural buildings and is included in or is contiguous to land under the same ownership that is classified as agricultural land, other than land described in 15-6-133(1)(c), must be classified as agricultural land, and the land must be valued as provided in 15-7-206.

(2) Except as provided in subsection (8), contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year *that* the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

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(6) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is taxed as provided in 15-6-133(1)(c). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use.

(8) Subject to the provisions of subsections (1), (2)(a), and (2)(b), property upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres before the property is eligible to be classified as agricultural land. Improvements devoted to crop production described in this subsection may not be included in class eleven property."

Section 3. Section 15-7-206, MCA, is amended to read:

"**15-7-206. Improvements on agricultural land.** *(1)* In determining the total area of land actively devoted to agricultural use, there ~~shall be~~ *is* included the area of all land under barns, sheds, silos, cribs, greenhouses, and like structures, lakes, dams, ponds, streams, irrigation ditches, and like facilities.

(2) One acre of land beneath agricultural improvements on agricultural land, as described in 15-7-202(1)(c)(ii), is valued at the class with the highest productive value and production capacity of agricultural land."

Section 4. Section 15-6-133, MCA, is amended to read:

"**15-6-133. Class three property — description — taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as

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agricultural land under 15-7-202(1). The land may not be devoted to a commercial or industrial purpose.

(2) Class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The land described in subsection (1)(c) is valued at the productive capacity value of grazing land, at ~~a production level set by the department~~ *the average grade of grazing land*, and the taxable value is computed by multiplying the value by seven times the taxable rate for agricultural land."

Section 5. Section 15-7-221, MCA, is amended to read:

"**15-7-221. Phasein of the taxable value of agricultural land.** The increase or decrease in taxable value of agricultural land resulting from the change in the method of determining productive capacity value under 15-7-201 must be phased in beginning January 1, 1994, as follows:

(1) For the year beginning January 1, 1994, and ending December 31, 1994, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, 1993, value by 25% of the difference between the product of the productive capacity value of agricultural land for 1994 determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, 1993.

(2) For the year beginning January 1, 1995, and ending December 31, 1995, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, 1993, value by 50% of the difference between the product of the productive capacity value of agricultural land for 1994 determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, 1993.

(3) For the year beginning January 1, 1996, and ending December 31, 1996, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, 1993, value by 75% of the difference between the product of the productive capacity value of agricultural land for 1994 determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, 1993.

(4) Beginning January 1, 1997, the taxable value of agricultural land in each land use and production category is equal to 100% of the productive capacity value of agricultural land determined under 15-7-201 times the class tbree tax rate.

(5) This section does not apply to land described in 15-6-133(1)(c)."

Section 6. Applicability. (1) [Sections 1 through 3] apply to tax years beginning after December 31, 1995.

(2) [Sections 4 and 5] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 486

[SB 140]

AN ACT AUTHORIZING THE BOARD OF PUBLIC EDUCATION TO PLACE A WRITTEN REPRIMAND IN A PERSON'S CERTIFICATION FILE AS A RESULT OF A HEARING ON REVOCATION OR SUSPENSION OF A TEACHER, ADMINISTRATOR, OR SPECIALIST CERTIFICATE; AUTHORIZING THE BOARD OF PUBLIC EDUCATION TO INFORM A SCHOOL DISTRICT OF THE EXISTENCE OF A LETTER OF REPRIMAND UPON REQUEST; CLARIFYING THE PROCEDURE FOR NOTIFYING A PERSON WHEN THE BOARD OF PUBLIC EDUCATION INTENDS TO CONSIDER A LETTER OF REPRIMAND OR THE SUSPENSION OR REVOCATION OF A CERTIFICATE; AMENDING SECTION 20-4-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-110, MCA, is amended to read:

"**20-4-110. Suspension *Letter of reprimand, suspension*, revocation, and denial of certificate.** (1) The board of public education may *issue a letter of reprimand or may* suspend or revoke the teacher, administrator, or specialist certificate of any person for the following reasons:

(a) making any statement of material fact in applying for a certificate that the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher, administrator, or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher, administrator, or specialist and the trustees of a school or school district without good cause or the written consent of the trustees; or

(h) denial, revocation, suspension, or surrender of a teacher, administrator, or specialist certificate in another state for any reason constituting grounds for similar action in this state.

(2) The board may initiate proceedings under this section if a request for the suspension or revocation of the teacher, administrator, or specialist certificate of any person is made to it by:

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(a) the trustees of a district as to a teacher, administrator, or specialist employed by that school or school district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction.

(3) (a) If the employment relationship between a school district and a teacher, administrator, or specialist is terminated or not renewed or if a teacher, administrator, or specialist resigns to prevent termination or nonrenewal because the trustees have reason to believe that the teacher, administrator, or specialist engaged in conduct described in subsection (1)(e) or (1)(f), the trustees shall make a written report to the superintendent of public instruction describing the circumstances of the termination, nonrenewal, or resignation.

(b) The superintendent shall review the report and any supporting evidence included in the report and may conduct further investigation. If the superintendent is satisfied that sufficient grounds exist, the superintendent may request action by the board of public education under subsection (1). The request must be brought within 1 year after discovery of the events that gave rise to the report.

(c) The trustees and the superintendent shall ensure the confidentiality of the report.

(d) The trustees and the superintendent and their agents and employees are immune from suit for actions taken in good faith under this section with respect to the report.

(4) The board shall give a 30-day written notification to any person when the board intends to consider *a letter of reprimand or* the suspension or revocation of a certificate. *Service of the notice must be accomplished by sending the notification by registered mail to the last address that the person has provided to the school district or the superintendent of public instruction.*

(5) The board shall conduct an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing, the board shall afford the person an opportunity for defense against the charge.

~~(5)~~*(6)* After a hearing, the board may *place a written reprimand in the person's certification file or may* suspend or revoke the person's teacher, *administrator,* or specialist certificate, except that in the case of a first violation under subsection (1)(g), the maximum penalty is a 2-year suspension of the person's certificate. *The board may, upon a request by a school district, inform the school district that a person's certification file includes a letter of reprimand, but the board may not provide a copy of the letter without first determining that the public's right to know outweighs the person's right to privacy.*

~~(6)~~*(7)* Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher, *administrator,* or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in the same manner provided in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board is final."

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Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 1995

CHAPTER NO. 487

[SB 144]

AN ACT CLOSING THE UPPER CLARK FORK RIVER BASIN TO FURTHER APPROPRIATIONS; AMENDING THE DUTIES OF THE UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE; PROVIDING FOR A 10-YEAR UPPER CLARK FORK RIVER BASIN INSTREAM FLOW PILOT PROGRAM TO BENEFIT THE FISHERY RESOURCE; PROVIDING FOR THE AWARDING OF REASONABLE ATTORNEY FEES TO THE PREVAILING PARTY IN WATER USE PERMIT AND CHANGE APPROVAL PROCEEDINGS; AMENDING SECTIONS 85-2-102, 85-2-125, 85-2-335, 85-2-336, 85-2-338, 85-2-402, 85-2-404, AND 85-2-436, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-335, MCA, is amended to read:

"**85-2-335. Definitions.** Unless the context requires otherwise, in 85-2-335 through 85-2-338, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302.

~~(2) "Domestic use" means use of water common to family homes, including use for culinary purposes, washing, drinking water for humans and domestic pets, and irrigation of a lawn or garden of less than 1 acre, not to exceed a total of 3.5 acre-feet per year. The term includes municipal uses for expanded domestic use but does not include commercial or industrial use.~~

~~(3) "Ground water" means any water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not a part of that surface water.~~

~~(4)~~ "Upper Clark Fork River basin" means the drainage area of the Clark Fork River and its tributaries above Milltown dam ~~but does not include the Blackfoot River, designated as subbasin 76F, or Rock Creek, designated as subbasin 76E.~~"

Section 2. Section 85-2-336, MCA, is amended to read:

"**85-2-336. Basin closure — exception.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin ~~during the period from May 1, 1991, until June 30, 1995~~.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water ~~or water for domestic use; and~~

(b) an application *filed prior to January 1, 2000,* for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, *at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second.* A permit issued to conduct response actions or remedial actions *may not be used for dilution and* must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action;

(c) an application for a permit to appropriate water for stock use;

(d) an application to store water; or

(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.

(3) Applications for water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. ~~Reservation applicants have no~~ *The filing of a reservation application does not provide* standing to object under 85-2-402 ~~during the period of the basin closure provided in subsection (1)~~.

(4) The board may not process or approve applications for reservations of water~~, except ground water,~~ in the Upper Clark Fork River basin filed pursuant to 85-2-316 ~~during the period of the basin closure provided in subsection (1)~~."

Section 3. Section 85-2-338, MCA, is amended to read:

"85-2-338. **Upper Clark Fork River basin steering committee — membership and duties — comprehensive management plan.** (1) There is an Upper Clark Fork River basin steering committee. The department director shall appoint the members of the committee, selecting them on the basis of their knowledge of water use, water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the committee must include but is not limited to representatives from affected:

(a) agricultural organizations;

(b) conservation districts;

(c) departments of state government;

(d) environmental organizations;

(e) industries;

(f) local governments;

(g) reservation applicants;

(h) utilities; and

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(i) water user organizations.

(2) The steering committee, *consistent with the Upper Clark Fork River basin comprehensive management plan,* shall:

~~complete an Upper Clark Fork River basin comprehensive management plan pursuant to 85-1-203. The plan must:~~

~~(a) consider and balance all beneficial uses of the water in the Upper Clark Fork River basin;~~

~~(b) include a description of the standards applied, the data relied upon, and the methodology used in preparing the plan;~~

~~(c) contain recommendations regarding the Upper Clark Fork River basin closure as provided in 85-2-336;~~

~~(d) identify and make recommendations regarding the resolution of water-related issues in the Upper Clark Fork River basin; and~~

~~(e) include the Blackfoot River, designated as subbasin 76F, and Rock Creek, designated as subbasin 76E, in any considerations made under subsections (2)(a) through (2)(d)~~

(a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less than every 5 years after [the effective date of this act] and make recommendations to the legislature regarding necessary changes;

(b) make recommendations to the 1997 legislature concerning representation, terms, and the method of appointing members to the steering committee;

(c) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot program as provided in [section 6];

(d) prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin;

(e) provide a forum for all interests to communicate about water issues;

(f) provide education about water law and water management issues;

(g) identify short-term and long-term water management issues and problems and identify alternatives for resolving them;

(h) identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;

(i) assist in facilitating the resolution of water-related disputes;

(j) provide coordination with other basin management and planning efforts;

(k) advise government agencies about water management and permitting activities;

(l) consult with local governments within the Upper Clark Fork River basin; and

(m) report periodically to the legislature.

~~(3) The steering committee shall complete and submit a management plan to the governor and the legislature by December 31, 1994.~~"

Section 4. Section 85-2-102, MCA, is amended to read:

"**85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, ~~to~~ reserve water in accordance with 85-2-316; ~~or~~

(c) in the case of the department of fish, wildlife, and parks, ~~to~~ lease water in accordance with 85-2-436*; or*

(d) in the Upper Clark Fork River basin, maintain and enhance streamflows to benefit the fishery resource in accordance with [section 6].

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436*; or*

(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under [section 6].

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(7) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

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(8) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(9) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(10) "Existing right" means a right to the use of water ~~which~~ *that* would be protected under the law as it existed prior to July 1, 1973.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency ~~thereof~~ *of the United States*, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "Substantial credible information" means probable believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(21) "Water division" means a drainage basin as defined in 3-7-102.

(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

(23) "Water master" means a master as provided for in Title 3, chapter 7.

(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

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85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water; ~~or~~;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; *or*

(c) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with [section 6].

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; ~~and~~

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; *or*

(c) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under [section 6].

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water ~~which~~ *that* would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

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(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency ~~thereof~~ *of the United States*, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "Substantial credible information" means probable believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(17) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(18) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(19) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22) "Water master" means a master as provided for in Title 3, chapter 7.

(23) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 5. Section 85-2-125, MCA, is amended to read:

"85-2-125. Recovery of attorney fees by prevailing party. *(1) (a) In the Upper Clark Fork River basin, as defined in 85-2-335, the prevailing party in a hearing under 85-2-309 on an application for a permit or change approval may bring an action in district court for costs and attorney fees. The court shall award the prevailing party reasonable costs and attorney fees.*

(b) If a final decision of the department on an application for a change approval in the Upper Clark Fork River basin is appealed to a district court, the district court shall award the prevailing party reasonable attorney fees.

(2) If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable attorney fees."

Section 6. Upper Clark Fork River basin instream flow pilot program. (1) The department shall accept and process change applications from a person in accordance with 85-2-402 for the purpose of leasing or temporarily changing existing water rights to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin, as defined in 85-2-335. The application must:

(a) include specific information on the length and location of the stream reach in which the streamflow is to be maintained or enhanced; and

(b) provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(2) The applicant shall pay all costs associated with installing measuring devices, measuring flows, and providing measurement records according to the measurement plan required in subsection (1).

(3) The maximum quantity of water that may be changed to maintain and enhance streamflows to benefit the fishery resource is the amount historically diverted. However, only the amount historically consumed may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion.

(4) The department may modify or revoke a change approval if an appropriator other than an appropriator described in subsection (5) proves by a preponderance of the evidence that the appropriator's water right is adversely affected.

(5) A person issued a water use permit with a priority of appropriation after the date of filing an application for change under this section may not object to the change approval, the use of tbe appropriation right according to the terms of the change approval, or the reversion of the appropriation right to its previous use.

(6) The priority of appropriation for a right to maintain and enhance streamflows to benefit the fishery resource under this section is the same as the priority of appropriation of the right approved for change.

(7) Neither a change in appropriation right nor any other approval is required for the reversion of the appropriation right to its previous use.

(8) Only the owner of the water right may seek enforcement of the change authorization or object under 85-2-308.

(9) The Upper Clark Fork River basin steering committee shall complete and submit to the governor and the legislature by December 31, 2004, a report evaluating the effects of all change approvals issued to maintain and enhance streamflows to benefit the fishery resource under this section. The report must:

(a) consider the effects upon other water right holders, tax values and revenue, fisheries, recreation, water quality, and other economic, social, and environmental effects; and

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(b) include recommendations to terminate, continue, enlarge, or otherwise modify the pilot program.

(10) Nothing in this section authorizes the sale of an appropriation right to maintain or enhance streamflows.

Section 7. Section 85-2-402, MCA, is amended to read:

"85-2-402. (Temporary) Changes in appropriation rights. (1) An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), tbe department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) Except for a lease authorization pursuant to 85-2-436 *or water use pursuant to [section 6]* that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; *and*

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(b)(ii) and (6)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

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(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must bo kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

85-2-402. (Effective July 1, 1999) Changes in appropriation rights. (1) An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) ~~The~~ *Except for water use pursuant to [section 6] that does not require appropriation works, the* proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the

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department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; *and*

(b) the proposed change is a reasonable use. A finding of reasonahle use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by

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clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved hy clear and convincing evidence that the requirements of subsections (6)(b)(ii) and (6)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicahle criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

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(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section."

Section 8. Section 85-2-404, MCA, is amended to read:

"**85-2-404. (Temporary) Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of ~~his~~ *an* appropriation right with the intention of wholly or partially abandoning the right or if ~~he~~ *the appropriator* ceases using ~~his~~ *the* appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right ~~shall~~ *is*, to that extent, be considered abandoned and ~~shall~~ *must* immediately expire.

(2) If an appropriator ceases to use all or part of ~~his~~ *an* appropriation right or ceases using ~~his~~ *the* appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for ~~his~~ use, there is a prima facie presumption that the appropriator has abandoned ~~his~~ *the* right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of ~~his~~ *an* appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

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(4) The lease of an existing right pursuant to 85-2-436, *the use of water pursuant to [section 6],* or ~~the~~ *a* temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

85-2-404. (Effective July 1, 1999) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of *an* ~~his~~ appropriation right with the intention of wholly or partially abandoning the right or if he *the appropriator* ceases using ~~his~~ *the* appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall *is*, to that extent, ~~be deemed~~ considered abandoned and shall *must* immediately expire.

(2) If an appropriator ceases to use all or part of ~~his~~ *an* appropriation right or ceases using ~~his~~ *the* appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, ~~there shall be~~ *is* a prima facie presumption that the appropriator has abandoned ~~his~~ *the* right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of ~~his~~ *an* appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A *The use of water pursuant to [section 6] or a* temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter."

Section 9. Section 85-2-436, MCA, is amended to read:

"85-2-436. (Temporary) Water leasing study. (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

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(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. ~~For~~ *Except as provided in [section 6], for* purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the board pursuant to 85-2-437.

(b) Upon receipt of a correct and complete application for a lease from the department of fish, wildlife, and parks, the department shall puhlish notice of the application as provided in 85-2-307. Parties who believe they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other

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water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3)(a) The department of fish, wildlife, and parks shall complete and submit to the board, commission, and water policy committee an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the board and commission and submitted to the water policy committee, which shall complete the final report by Decemher 1, 1998.

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)"

Section 10. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 6].

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Applicability. [This act] applies to all applications for changes in appropriation rights, permits, and water reservations received by the

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department of natural resources and conservation after [the effective date of this act].

Section 13. Effective date. [This act] is effective on passage and approval.

Section 14. Termination. [Sections 4 through 8] terminate June 30, 2005.

Approved April 14, 1995

CHAPTER NO. 488

[SB 153]

AN ACT CONFORMING CERTAIN DEFINITIONS TO THE FEDERAL SAFE DRINKING WATER ACT; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO ESTABLISH REQUIREMENTS BY RULE FOR VOLUNTARY PROGRAMS FOR CROSS-CONNECTIONS; SPECIFYING THE WATER SUPPLY, SEWAGE, AND WASTE SYSTEMS THAT REQUIRE REVIEW AND APPROVAL OF PLANS AND SPECIFICATIONS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; CLARIFYING CERTAIN DEFINITIONS IN THE OPERATOR CERTIFICATION LAWS; ALLOWING VOLUNTARY PARTICIPATION IN A WELLHEAD PROTECTION PROGRAM; AUTHORIZING COUNTY GOVERNMENTS TO ADOPT WELLHEAD PROTECTION AREA ORDINANCES; AND AMENDING SECTIONS 37-42-101, 37-42-102, 75-6-102, 75-6-103, AND 75-6-112, MCA.

STATEMENT OF INTENT

A statement of intent is provided for this bill because 75-6-103 directs the board of health and environmental sciences to develop rules regarding the voluntary submission of petitions for cross-connection control programs.

The legislature is aware that currently cross-connections of sources of contamination with a public water supply system are illegal, but there are no state standards for cross-connection control devices and no mechanism exists for public water suppliers to implement cross-connection control programs. The legislature grants the board the authority to set minimum standards and requirements to ensure that a public water supply does not become contaminated when the system is connected to another nonpublic water supply or to a possible source of contamination. The standards and requirements must be consistent with other rules adopted under Title 75, chapter 6, and may require that any cross-connection control program voluntarily submitted for approval require the installation of specific types of cross-connection control devices in accordance with industry standards. The rules may include model standards and requirements for recommended implementation by public water supply system suppliers.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-42-101, MCA, is amended to read:

"**37-42-101. Purpose.** It is ~~hereby found~~ and declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's *state* waters are

endangered by persons not properly qualified to operate the wastewater treatment plants. It is declared *that* the public policy of this state *is* to ~~control~~ *protect the public health and safety* by certifying ~~those~~ persons working in these occupations ~~in order to protect the public health and safety~~."

Section 2. Section 37-42-102, MCA, is amended to read:

"**37-42-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) *"Community water system" means the term as defined in 75-6-102.*

(3) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

~~(3)~~*(4)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(4) "Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state), wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.~~

(5) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(6) "State waters" means the term as defined in 75-6-102.

~~(6)~~*(7)* "Wastewater treatment plant" means a facility *that:*

(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and ~~which~~*;*

(b) discharges an effluent directly into ~~this state's~~ *state* waters*;* and ~~which serves 10 or more families or serves an industry employing 10 or more persons~~

(c) is part of either an industrial waste discharge system or a public sewage system as defined in 75-6-102.

~~(7)~~*(8)* "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and ~~which serves 10 or more families or supplies an industry employing 10 or more persons~~ *that is part of a community water system.*

~~(8)~~*(9)* "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and ~~which~~ *that* ~~serves 10 or more families or serves an industry employing 10 or more persons~~ *is part of a community water system.*

~~(9)~~*(10)* "Water treatment plant" means that portion of the water supply system ~~which~~ *that* alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use."

Section 3. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) *"Certified wellhead protection area" means an area certified by the department that protects the surface and subsurface area surrounding a source of ground water for a public water supply system through which contaminants may move toward and reach the source of supply.*

(3) "Community water system" means ~~any~~ *a* public water supply system that serves at least ~~10~~ *15* service connections used by year-round residents or *that* regularly serves at least 25 year-round residents.

~~(3)~~*(4)* "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(5) "Cross-connection" means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewer line or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

~~(4)~~*(6)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter ~~15~~, part 21.

~~(5)~~*(7)* "Drainage" means rainfall, surface, and subsoil water.

~~(6)~~*(8)* "Industrial waste" means any waste substance from the processes of business or industry or from the development of ~~any~~ *a* natural resource, together with any sewage that may be present.

(9) "Industrial waste discharge system" means a system that discharges industrial waste into state waters.

~~(7)~~*(10)* "Maximum contaminant level" means the maximum permissible level of a contaminant in water ~~which~~ *that* is delivered to ~~any~~ *a* user of a public water supply system.

(11) "Montana wellhead protection program" means a program administered by the department to certify wellhead protection areas and review wellhead protection ordinances.

~~(8)~~*(12)* "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

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~~(9)~~*(13)* "Person" means ~~any~~ *an* individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

~~(10)~~*(14)* "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of ~~any~~ state waters ~~which~~ *that* exceeds that *which is* permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of ~~any~~ *a* liquid, gaseous, solid, radioactive, or other substance into ~~any~~ state water ~~which~~ *that* will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, *or* welfare, *to* livestock, *or to* wild animals, birds, fish, or other wildlife. A discharge ~~which~~ *that* is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

~~(11)~~*(15)* "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that ~~is designed to serve or~~ serves ~~10~~ *15* or more families or 25 or more persons daily for a period of at least 60 days ~~out of the~~ *in a* calendar year.

~~(12)~~*(16)* "Public water supply system" means a system for the provision of water for human consumption from ~~any~~ *a* community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that ~~is designed to serve or~~ *has at least 15 service connections or that regularly* serves ~~10 or more families or~~ *at least* 25 ~~or more~~ persons daily ~~or has at least 10 service connections~~ *for a period of* at least 60 days ~~out of the~~ *in a* calendar year.

~~(13)~~*(17)* "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at ~~Title~~ 40, CFR, ~~Parts~~ *parts* 141 and 142.

~~(14)~~*(18)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

~~(15)~~*(19)* "State waters" means ~~any~~ *a* body of water, irrigation system, or drainage system, either surface or underground.

~~(16)~~*(20)* "Transient noncommunity water system" means ~~any~~ *a* public water supply system that is not a community water system and that ~~serves~~ *does not regularly serve at least 25 of the same* persons ~~on a transient basis~~ *for at least 6 months a year*."

Section 4. Section 75-6-103, MCA, is amended to read:

"75-6-103. Duties of the board. (1) The board has general supervision over all state waters ~~which~~ *that* are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply ~~system~~ *systems*;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;

(f) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(g) the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(h) the collection and analysis of samples of water used for drinking or domestic purposes;

(i) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(j) administrative enforcement procedures and administrative penalties authorized under this part; ~~and~~

(k) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and

~~(k)~~*(l)* any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part."

Section 5. Section 75-6-112, MCA, is amended to read:

"**75-6-112. Prohibited acts.** A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into ~~any~~ state waters or on the banks of ~~any~~ state waters or into ~~any~~ *an* abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate ~~any~~ *a* railroad, logging road, logging camp, or electric or manufacturing plant of any kind on ~~any~~ *a* watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

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(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) commence construction, alteration, ~~or~~ extension, *or operation* of ~~any~~ *a* system of water supply~~,~~ *or* water distribution~~,~~ *that is designed to be a public water supply system or a system of* sewer, drainage, ~~wastewater~~ *waste*, or sewage disposal *that is designed to be a public sewage system or industrial waste discharge system* before he *the person* submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;

(5) operate or maintain ~~any~~ *a* public water supply system ~~which~~ *that* exceeds a maximum contaminant level established by the board unless ~~he~~ *the person* has been granted or has an application pending for a variance or exemption pursuant to this part;

(6) violate any provision of this part or *a* rule adopted under this part; or

(7) violate any condition or requirement of an approval issued pursuant to this part."

Section 6. Montana wellhead protection program — voluntary petitions. (1) The federal Safe Drinking Water Act, including 42 U.S.C. 300h-7, enables the department to administer a wellhead protection program that involves certification of local wellhead protection areas and review of wellhead protection area ordinances. In administering this program, the department may perform only those functions provided for by the federal Safe Drinking Water Act and this section.

(2) A supplier of a public water supply system may voluntarily submit for department review and approval a petition to establish a wellhead protection program for the system.

(3) The department may certify a wellhead protection area upon:

(a) receipt of a petition by a supplier for a public water supply system; and

(b) making a determination that the wellhead protection area meets criteria and thresholds for certification established by the Montana wellhead protection program.

(4) (a) The governing body of the county in which a wellhead protection area or areas exist may adopt an ordinance to regulate, control, and prohibit conditions that threaten the quality of water used within the wellhead protection area or areas.

(b) Prior to adopting a wellhead protection area ordinance, the governing body shall confer with the supplier of the public water supply system and shall then submit the ordinance to the department for review and verification that the ordinance is consistent with the requirements of this chapter.

(c) A wellhead protection area ordinance must be adopted using the procedures described in 7-5-103 through 7-5-107.

(5) (a) An ordinance adopted under subsection (4) is limited in applicability to the certified wellhead protection area or areas within the county.

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(b) For a wellhead protection area that is located in two or more counties, the proposed wellhead protection area ordinance must be adopted by each county in order for the ordinance to be effective.

(6) A wellhead protection area ordinance adopted under this section may not conflict with and may not duplicate any other federal, state, or local law or regulation, including but not limited to zoning, fire codes, hazardous waste regulation under Title 75, chapter 10, part 4, or pesticide regulation under Title 80, chapter 8.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 75, chapter 6, part 1, and the provisions of Title 75, chapter 6, part 1, apply to [section 6].

Approved April 14, 1995

CHAPTER NO. 489

[SB 163]

AN ACT ALLOWING THE ISSUANCE OF COMBINED LICENSE PLATES FOR VETERANS OR PERSONS WITH A DISABILITY AND AMATEUR RADIO OPERATORS; AMENDING SECTIONS 49-4-302, 49-4-304, 61-3-424, 61-3-452, 61-3-453, 61-3-454, AND 61-3-504, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Combined license plates. (1) An application for license plates for amateur radio operators may be combined with an application for the special license plates issued to veterans of the armed services who comply with the provisions in 61-3-332(10)(d), (10)(e), and (10)(f) or with an application for special license plates issued to a person with a disability who complies with the provisions in 61-3-332(10)(g). The applicant for the combined license plates is liable for the payment of all taxes and fees applicable to regular motor vehicle license plates and shall pay an additional fee of $5 for the original issuance as provided in 61-3-422.

(2) An application for license plates for amateur radio operators may be combined with an application for license plates for disabled veterans as provided in 61-3-332(10)(c). The fees for the registration of the combined license plates are the fees provided for in 61-3-332(10)(c) and in 61-3-422. The fees are in lieu of all other fees and taxes for that vehicle under this chapter.

(3) The combined license plates must be stamped with the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission. The plates must also he stamped with the design or decal provided for in 61-3-332(10)(c), (10)(d), (10)(e), (10)(f), or (10)(g).

Section 2. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when

displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use.

(2) A vehicle ~~other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a person with a disability or one displaying a specially inscribed license plate issued under 61-3-332(10)(c)(i)(A) and conveying a 100% disabled veteran~~ may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability *unless the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1) of this section, or a specially inscribed license plate issued under 61-3-332(10)(c)(i)(A) or (10)(g) or [section 1(2)].*

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c)(i)(A) *or [section 1(2)]* and parked in public places along public streets from any time limitation imposed upon parking except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign

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must be attached to a wall or post in ~~such~~ a way that it is not obscured by a vehicle parked in the space."

Section 3. Section 49-4-304, MCA, is amended to read:

"**49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle.** (1) The department of justice shall provide a special license plate under 61-3-332~~(10)(f)~~ *(10)(g) or [section 1(1)]* or a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-303, a person with a disability who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a person with a disability."

Section 4. Section 61-3-424, MCA, is amended to read:

"**61-3-424. List of radio operators' special plates — distribution to public officials.** The department ~~shall~~, on or before July 1 of each year, furnish to the chief of the state highway patrol, to the director of civil defense, to the sheriff of each county in the state, to the chief of police of each incorporated city in the state, and to other public officials as the department ~~shall deem~~ *considers* necessary, an alphabetically arranged list of the names, addresses, and license plate numbers and letters of each person to whom a special license plate *or a combined license plate* has been issued, and it ~~shall be~~ *is* the duty of the department, sheriffs, and chiefs of police to maintain and keep current ~~such~~ *the* lists for public information and inquiry, particularly in relation to public emergencies."

Section 5. Section 61-3-452, MCA, is amended to read:

"**61-3-452. Disabled veterans' plates nontransferable.** The special license plates for disabled veterans issued pursuant to 61-3-332(10)(c)(i)(A) *or [section 1(2)]* are not transferable."

Section 6. Section 61-3-453, MCA, is amended to read:

"**61-3-453. Disabled veterans' plates limited to one automobile or truck — personalized plates.** (1) A disabled veteran is not entitled to special license plates for disabled veterans under 61-3-332(10)(c)(i)(A) *or [section 1(2)]*

for more than one passenger automobile or one truck up to and including 1 ton GVW-rated capacity.

(2) Upon submitting the application provided for in 61-3-405 and payment of the $25 fee provided for in 61-3-406, a disabled veteran must receive personalized disabled veteran license plates."

Section 7. Section 61-3-454, MCA, is amended to read:

"**61-3-454. Special parking privilege.** A vehicle lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c)(i)(A) *or [section 1(2)]* and conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under 49-4-302."

Section 8. Section 61-3-504, MCA, is amended to read:

"**61-3-504. Computation of tax.** (1) The amount of taxes on a motor vehicle, other than an automobile, truck having a rated capacity of 1 ton or less, motorcycle, quadricycle, motor home, travel trailer, camper, or mobile home, is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration.

(2) The amount of tax on an automobile or truck having a rated capacity of 1 ton or less, except for vehicles owned by disabled veterans qualifying for special license plates under 61-3-332(10)(c)(i)(A) *or [section 1(2)]*, and on a motorcycle or quadricycle is 2% of the value determined under 61-3-503.

(3) The amount of tax on fleet vehicles subject to the provisions of 61-3-318 is 1% of the value determined under 61-3-503.

(4) For all taxable motor vehicles, the amount of tax is entered on the application form in a space provided ~~therefor~~ *for that amount*."

Section 9. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 1].

Section 10. Effective date. [This act] is effective January 1, 1996.

Approved April 14, 1995

CHAPTER NO. 490

[SB 200]

AN ACT REVISING THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; CLARIFYING THE EXEMPTION FROM LIABILITY FOR PERSONS HOLDING INDICIA OF OWNERSHIP PRIMARILY TO PROTECT SECURITY INTERESTS; EXTENDING A LIMITED EXEMPTION TO FIDUCIARIES; DEFINING "FORECLOSURE" AND "FIDUCIARY"; CLARIFYING THE STATUTE OF LIMITATIONS FOR COST RECOVERY TO CONFORM TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT; AMENDING SECTIONS 75-10-701, 75-10-711, 75-10-715, 75-10-718, AND

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75-10-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is included with this bill because of the authorization granted to the department in 75-10-702 to adopt rules to implement Title 75, chapter 10, part 7, including implementation of the exemption from liability for persons holding indicia of ownership primarily to protect a security interest. To date, the department has not adopted rules under this section.

The legislature finds that existing state law related to the liability of persons holding security interests for environmental contamination is unclear and that this lack of clarity has created uncertainty on the part of security interest holders as to whether they are liable for environmental contamination caused by their borrowers or other third parties. The uncertainty has negatively affected the availability of credit in Montana.

In enacting Montana's Comprehensive Environmental Cleanup and Responsibility Act (CECRA), the legislature modeled the statute after and borrowed many terms from the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The legislature specifically borrowed the term "own or operate", which excludes from liability those persons who, without participating in the management of the facility, hold indicia of ownership merely to protect a security interest.

When significant questions arose under CERCLA as to the scope of the terms "indicia of ownership" and "participating in the management of the facility", the federal government devoted substantial effort to developing a federal policy and a rule that employ a framework of specific tests to provide clearer articulation of a lender's scope of liability under CERCLA, both to governmental agencies and to third parties. The April 1992 rule, which appears at 40 CFR 300.1100, et seq., was preceded by many public hearings and public comment periods. Although the rule was recently judged to be technically beyond EPA's rulemaking authority, the contents of the rule still constitute EPA policy on the scope of the secured creditor exemption under CERCLA and the legislature finds that the rule in its current form provides a well-reasoned basis for interpreting the identical language in CECRA.

Therefore the legislature finds that the clarification of potential liability in a manner consistent with federal statutes, current EPA policy, and the regulations at 40 CFR 300.1100, et seq., is desirable in order to provide certainty for security interest holders, including persons engaged in lease financing, to enhance the availability of credit, and to encourage responsible practices by those security interest holders and borrowers to protect the public health and environment.

The legislature also finds that uncertainty exists in state law regarding the potential liability of certain fiduciaries for environmental contamination on property held in their fiduciary capacity and determines that a limited exemption from liability, comparable to the one being proposed for action by congress under CERCLA, should apply to fiduciaries and that it is necessary to add language concerning fiduciaries to Title 75, chapter 10, part 7.

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Therefore, in adopting rules under 75-10-702 to implement the exemption under 75-10-701(10)(b) for holders of "the indicia of ownership", the department of health and environmental sciences shall adopt rules consistent with the revisions to CECRA contained in this bill, including rules that address fiduciaries within the exemption. The rules also must be consistent with the federal regulations set forth at 40 CFR 300.1100, et seq.

Finally, the legislature intends that the limited exemptions for secured creditors and fiduciaries that are clarified and granted by this legislation extend not only to liability asserted by governmental entities hut also extend to claims by any third parties for cleanup or for cost recovery or contrihution.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-701, MCA, is amended to read:

"**75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Director" means the director of the department of health and environmental sciences.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or suhsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian, conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person. The term does not include:

(a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

(b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part. For the purposes of 75-10-715(7), the term does not include the state, a state agency, or a political subdivision of the state acting as trustee of natural resources within the state of Montana.

(6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing transaction, or

acquisition of a right to title or other agreement in full or partial settlement of a loan obligation.

~~(5)~~*(7)* "Fund" means the environmental quality protection fund established in 75-10-704.

~~(6)~~*(8)* "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or tbe environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

~~(7)~~*(9)* "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

~~(8)~~*(10)* (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of tbe Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

~~(9)~~*(11)* "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

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~~(10)~~*(12)* "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction ~~thereof~~ *of the product or waste* that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

~~(11)~~*(13)* "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

~~(12)~~*(14)* "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

~~(13)~~*(15)* "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

~~(14)~~*(16)* "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection ~~(14)(a)~~ *(16)(a)* to provide services relating to a remedial action.

~~(15)~~*(17)* "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

Section 2. Section 75-10-711, MCA, is amended to read:

"75-10-711. Remedial action — orders — penalties — judicial proceedings. (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1).

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or persons determined by the department to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs ~~him~~ *the person* that if ~~he is~~ subsequently found liable pursuant to 75-10-715(1), he *the person* may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to ~~75-10-715(3)~~ *this part*.

(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release that may pose an imminent and substantial threat to *the* public health, safety, or welfare or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect *the* public health, safety, or welfare or the environment.

(5) *(a)* A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account:

(i) the nature, circumstances, extent, and gravity of the noncompliance; ~~and,~~

(ii) with respect to the person liable under 75-10-715(1), ~~his~~:

(A) the person's ability to pay;

(B) any prior history of ~~sueh~~ violations;

(C) the degree of culpability; *and*

(D) the economic benefit or savings, if any, resulting from the noncompliance; and

(iii) any other matters as justice may require.

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(b) Civil penalties collected under ~~this~~ subsection *(5)(a)* must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part."

Section 3. Section 75-10-715, MCA, is amended to read:

"75-10-715. Liability — reimbursement and penalties — proceedings — defenses. (1) Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (5), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A person identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the person liable under ~~75-10-715~~ *subsection* (1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1), ~~through (3)~~ *(2), and (3)*. Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the person liable under ~~75-10-715~~ *subsection* (1) resides or has its principal place of business or in the district court of the first judicial district.

(5) No *A* person is *not* liable under subsections (1), ~~through (3)~~ *(2), and (3)* if that *the* person can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required;

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the person had any ownership, authority, or control and was not caused by any action or omission of the person;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that he *the person*:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the

hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or threat of release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), ~~that~~ factors beyond the control of the person prevented the person from taking timely remedial action; or

(g) the person accepted only household refuse (garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants, or similar facilities) for transport to a solid waste disposal facility, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that ~~he~~ *the person* has satisfied the requirements of ~~subsections~~ *subsection* (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Nothing in subsections (5)(b) and (5)(c) or in this subsection (6) may diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable under subsections (1), ~~through (3)~~ *(2), and (3)* and no defense under subsection (5)(b) or (5)(c) is available to that person.

(e) Nothing in this subsection (6) affects the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

(7) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

(8) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of 75-10-701(10)(b) because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to influence a facility's management of hazardous or deleterious substances;

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in lawful possession of a facility;

(j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release;

(k) requiring or conducting remedial action in response to a release or threatened release if prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

(i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would effectively compensate the holder for the amount secured by the facility;

(ii) worsen the contamination at the facility;

(iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

(iv) engage in conduct described in subsection (9).

(9) The protection from liability provided in subsections (7) and (8) is not available to a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

(a) causes or contributes to a release of hazardous or deleterious substances from the facility;

(b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

(c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually participates in the management of a facility by:

(i) exercising decisionmaking control over environmental compliance; or

(ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational, as opposed to financial or administrative, aspects of the facility."

Section 4. Section 75-10-718, MCA, is amended to read:

"75-10-718. Liability of remedial action contractor. (1) A person who is a remedial action contractor with respect to a release or threatened release of a hazardous or deleterious substance is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss or damage to property, or economic loss.

(2) Immunity from liability, pursuant to subsection (1), does not apply in the case of a release that is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(3) This section does not affect the liability of a person under a warranty under federal, state, or common law or the liability to an employee of an employer who is a remedial action contractor under any provision of law, including any provision of a law relating to workers' compensation.

(4) A state agency~~,~~ *or* state employee~~,~~ or an employee of a political subdivision who provides services relating to remedial action while acting within the scope of ~~its~~ *the entity's* or his *individual's* authority as a governmental agency or employee has the same exemption from liability as is provided to the remedial action contractor under this section.

(5) The defense provided by 75-10-715(5)(c) is not available to a person liable under 75-10-715(1) with respect to remedial action costs or damages caused by an act or omission of a remedial action contractor.

(6) Except as provided in subsections (4) and (5), this section does not affect the liability under this part of a person other than a remedial action contractor.

(7) This section does not affect the plaintiff's burden of establishing liability under this part.

(8) This section does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance."

Section 5. Section 75-10-722, MCA, is amended to read:

"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

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(2) Based on this record, the department shall require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) An action to recover remedial action costs may be brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding on any subsequent action or actions to recover further remedial action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part.

(5) An initial action ~~for recovery of remedial action costs~~ *brought under 75-10-715(4) or a contribution action for costs incurred under this part* must be commenced within 6 years after initiation of physical onsite construction of the remedial action *final permanent remedy*.

(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704."

Section 6. Applicability. [This act] does not apply to civil actions commenced prior to the [effective date of this act] or to the claims upon which such civil actions are based.

Section 7. Effeetive date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 491

[SB 209]

AN ACT REFORMING THE PUBLIC ASSISTANCE SYSTEM; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ESTABLISH A DEMONSTRATION PROJECT CALLED THE FAMILIES ACHIEVING INDEPENDENCE IN MONTANA (FAIM) PROJECT; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ADMINISTER A FOOD STAMP PROGRAM; PROVIDING RULEMAKING AUTHORITY FOR THE FOOD STAMP PROGRAM; ALLOWING PUBLIC ASSISTANCE INFORMATION TO BE USED FOR AGENCY PURPOSES; REVISING AID TO FAMILIES WITH DEPENDENT CHILDREN AND MEDICAID TO INCLUDE THE FAIM PROJECT; AND AMENDING SECTIONS 53-2-105, 53-2-211, 53-4-201, 53-4-202, 53-4-212, 53-4-241, 53-4-702, 53-4-706, 53-4-707, 53-4-717, 53-6-101, 53-6-113, 53-6-131, AND 53-6-134, MCA.

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STATEMENT OF INTENT

A statement of intent is required for this bill because [section 11] grants the department of social and rehabilitation services authority to adopt rules for the administration of the food stamp program.

(1) It is the intent of the legislature that the department adopt rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amounts;

(c) certification periods;

(d) reporting requirements;

(e) work registration and employment and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;

(g) disqualification because of intentional program violations, voluntarily quitting a job without good cause, or any other violation of program rules;

(h) penalties applicable to recipients of aid to families with dependent children who have been sanctioned because of failure to meet any requirement of the aid to families with dependent children program; and

(i) special requirements or criteria applicable to participants in the families achieving independence in Montana (FAIM) project.

(2) It is intended that the rules adopted by the department comply with federal requirements under the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq., and 7 CFR 271 through 285, as may be amended, or, in the event that waivers of federal law have been granted by the food and nutrition service of the U.S. department of agriculture, with the waivers.

(3) [Section 19] revises the department's rulemaking authority for the aid to families with dependent children program, including the FAIM project.

It is the intent of the legislature that the department adopt rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance and methods for computing benefit amounts;

(c) deprivation of parental support or care for purposes of qualifying as a dependent child;

(d) the degree of kinship required for a person to qualify as a specified caretaker relative with whom a child may live to be eligible for assistance;

(e) reporting requirements;

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(f) requirements for participation in the JOBS program and exemptions from participation;

(g) procedures and policies of the JOBS program;

(h) sanctions, disqualification, or other penalties for failure to comply with program rules or requirements; and

(i) special requirements or policies applicable to participants in the FAIM project.

(4) It is intended that rules adopted under [section 19] comply with federal requirements under Title IV of the Social Security Act, 42 U.S.C. 601, et seq., and 45 CFR parts 200 through 499, as amended, or, in the event that waivers of federal law have been granted by the U.S. department of health and human services, with the waivers.

(5) [Section 26] grants the department additional rulemaking authority. It is the intent of the legislature that the department adopt rules specifying the income limits for eligibility for extended medical assistance for persons receiving aid to families with dependent children under the FAIM project who lose eligibility because of increased income and specifying the length of time for which they may receive extended medical assistance.

It is intended that rules adopted under [section 26] comply with waivers of federal medicaid law granted by the secretary of the U.S. department of health and human services pertaining to the FAIM project and promote the goals of the FAIM project of self-sufficiency and responsibility of participants. In adopting the rules, the department may consider the amount of funds appropriated by the legislature for the Montana medicaid program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Demonstration project — purpose. (1) The department is authorized to administer a demonstration project pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, to provide assistance under Title IV of that act, 42 U.S.C. 601, et seq., to families who are currently receiving, eligible for, or at risk of becoming eligible for aid to families with dependent children benefits. This demonstration project may be cited as the families achieving independence in Montana (FAIM) project.

(2) The purpose of the demonstration project is to promote self-sufficiency and responsibility of participants by providing supports and incentives, such as child-care assistance, training, education, medical assistance, and resource referrals, and to make procedures and requirements less complex and more uniform in the aid to families with dependent children, food stamp, and medicaid programs.

Section 2. Definitions. As used in [sections 1 through 10], unless the context requires otherwise, the following definitions apply:

(1) 'Cash assistance" means monetary payments to a recipient of aid to families with dependent children to meet basic needs, such as shelter, utilities, clothing, and personal needs.

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(2) "Child-care assistance" means payments to or on behalf of the specified caretaker relative of a dependent child to defray the cost of having a third party care for the child.

(3) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(4) "FAIM project" means the families achieving independence in Montana project, including an aid to families with dependent children part established in [section 3], a food stamp part administered under the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

(5) "JOBS program" means the job opportunities and basic skills training program established in 53-4-703.

Section 3. FAIM project — components. (1) The aid to families with dependent children part of the FAIM project consists of three components referred to as the job supplement program, pathways, and the community services program.

(2) The job supplement program is an alternative to the components of the FAIM project that provide cash assistance. An eligible family may receive assistance under the job supplement program instead of receiving assistance under pathways or the community services program or may receive assistance under the job supplement program either prior to or after receiving assistance under pathways or the community services program.

(3) Services that may be provided to eligible individuals in the job supplement program include:

(a) full medicaid benefits for dependent children, as provided in 53-6-101, and basic medicaid benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

(b) child-care assistance, as provided in [section 8] and as specified by the department by rule;

(c) assistance in obtaining child support; and

(d) a one-time only cash payment to meet special employment-related needs of the family. In order to receive a one-time cash payment, the family is required to agree not to apply for or receive cash assistance for a period of time based on the size of the one-time cash payment received.

(4) (a) Pathways may provide eligible individuals with job training and education; resource referrals; assistance in obtaining child support; one-time cash payments for special employment-related needs; child-care assistance, as provided in [section 8] and as specified by department rule; cash assistance payments; full medicaid benefits for dependent children, as provided in 53-6-101; and basic medicaid benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by the secretary of

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the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

(b) A specified caretaker relative in a single-parent family may receive assistance under pathways for a maximum of 24 months. The 24 months do not need to be consecutive.

(c) Specified caretaker relatives in a two-parent family may receive assistance under pathways for a maximum of 18 months. The 18 months do not need to be consecutive.

(5) In the community services program, a specified caretaker relative who has received the maximum number of months of assistance allowable under pathways may continue to receive assistance for the specified caretaker relative's needs if the specified caretaker relative performs community service work as required by the department. A specified caretaker relative who performs community service work as required is entitled to cash assistance for the specified caretaker relative's needs and basic medicaid benefits, as provided in 53-6-101, if waivers of federal law are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits. Job training and education, resource referrals and assistance in obtaining child support may also be provided if determined by the department to be appropriate. Child-care assistance may be provided as set forth in [section 8] and as specified by department rule.

(6) Failure of a caretaker relative to participate in community service work as required must result in the needs of the specified caretaker relative being removed from the cash assistance payment.

(7) A dependent child who meets all eligibility requirements for aid to families with dependent children may receive assistance under any component of the FAIM project without any time limits.

(8) The department shall furnish workers' compensation coverage, as provided in 39-71-118, for recipients in any component of the FAIM project who perform community service work or who participate in a work experience program.

Section 4. Requirements for eligibility. (1) Eligibility for aid to families with dependent children benefits under the FAIM project with regard to income, resources, and all other factors of eligibility must be determined in accordance with the waivers granted by the U.S. secretary of health and human services under section 1115 of the Social Security Act, 42 U.S.C. 1315.

(2) If waivers of federal law are granted by the secretary of the U.S. department of health and human services, two-parent families applying for or receiving aid to families with dependent children benefits under the FAIM project based on the unemployment of one parent may not be required to meet the special eligibility requirements of section 407 of the Social Security Act, 42 U.S.C. 607.

(3) (a) As a condition of eligibility for assistance under pathways and the community services program, all specified caretaker relatives shall enter into a

family investment agreement with the department and shall comply with the terms of that agreement. Entering into an agreement is not a condition of eligibility for the job supplement program.

(b) The family investment agreement must set forth the mutual obligations of the specified caretaker relative and the department to help the family achieve the goal of self-sufficiency. The agreement may contain provisions:

(i) regarding actions to be taken by the specified caretaker relative and by the department to secure child support;

(ii) requiring that the immunization and health-screening requirements of the early and periodic screening, diagnosis, and treatment program be met for all children in the family; and

(iii) specifying other services and activities appropriate for the specified caretaker relative or family.

(c) An individual who is required to enter into a family investment agreement and who fails without good cause to do so or fails without good cause to comply with the individual's obligations under the agreement is ineligible, as provided in [section 6], for aid to families with dependent children benefits.

(4) As a condition of eligibility for the community service program, a specified caretaker relative shall perform community service work as required by the department.

Section 5. Exemptions from time limitations in pathways. (1) Recipients of aid to families with dependent children under the FAIM project may be exempted from the time limitations on assistance under pathways contained in [section 3] as provided by the department by rule.

(2) In establishing categories of individuals who are exempt from the time limitations on assistance under pathways, the department may take into consideration factors that may delay an individual's attainment of self-sufficiency, including but not limited to the following:

(a) The individual has a verifiable illness, injury, or physical or mental impairment, handicap, or disability.

(b) The individual is of advanced age.

(c) The individual does not have child care available.

(d) The individual is attending high school or is working toward a graduate equivalency diploma, if the individual is under 20 years of age.

(e) The individual is the parent of a child under 1 year of age.

(f) The individual is providing care to a household member with a disability who requires special care.

(g) The individual is a teenage parent participating in activities pursuant to a family investment agreement.

(h) The department failed to substantially comply with its obligations under the family investment agreement.

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(i) The individual is a homeless person.

(j) The individual is a victim of domestic violence.

Section 6. Ineligibility because of failure to comply with terms of agreement. If an individual is required to enter into a family investment agreement pursuant to [section 4] and fails without good cause either to enter into an agreement or to comply with the individual's obligations under the agreement, the individual is ineligible for aid to families with dependent children benefits and the needs of the individual may not be taken into consideration in determining the assistance unit's amount of cash assistance. However, the family of an ineligible individual is entitled to assistance for its own needs if it is otherwise eligible. The income and resources of the individual must be considered in determining the family's eligibility for assistance during the period of ineligibility.

Section 7. Categorical eligibility for other assistance. All recipients of aid to families with dependent children under a component of the FAIM project are categorically eligible for food stamp benefits and the low-income energy assistance program, regardless of whether they would otherwise meet all the eligibility requirements for those programs, unless otherwise prohibited by federal law.

Section 8. Child-care assistance. (1) In the job supplement program component of the FAIM project, the department shall provide child-care assistance to all single-parent families if child care is necessary to allow the parent to engage in paid employment. Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both parents to engage in paid employment.

(2) In the pathways component of the FAIM project, the department shall provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement. However, child-care assistance for single-parent families to enable the parent to participate in postsecondary education is not guaranteed and may be provided only if funding is available. Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement.

(3) In the community services program component of the FAIM project, the department shall provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement. Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement.

Section 9. Extended child care and medical assistance benefits. A family receiving aid to families with dependent children benefits under a component of the FAIM project that loses eligibility for assistance because of increased income from any source may receive extended child care and medical assistance benefits if funding is available, provided that the family's income does

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not exceed a percentage of the federal poverty level specified hy the department hy rule.

Section 10. JOBS program. (1) In cases in which the department determines that participation in the JOBS program would be appropriate for a participant in pathways, the participant may be required to participate in the JOBS program as one of the conditions of the participant's family investment agreement.

(2) If waivers of federal law are granted by the secretary of the U.S. department of health and human services, the exemptions from participation in the JOBS program provided in section 201 of the federal Family Support Act of 1988, 42 U.S.C. 602(a)(19), may not apply to recipients of aid to families with dependent children benefits who are participating in the FAIM employment and training demonstration project.

Section 11. Administration of food stamp program — rulemaking authority. (1) The department is authorized to administer the food stamp program.

(2) The department shall adopt rules that are necessary and desirable for the administration of the food stamp program.

(3) The department sball adopt rules that may include but are not limited to rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amount;

(c) certification periods;

(d) reporting requirements;

(e) work registration, employment, and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;

(g) disqualification because of intentional program violations, for voluntarily quitting a job without good cause, or for any other violation of program rules; and

(h) penalties applicable to recipients of aid to families with dependent children who have been sanctioned because of failure to meet any requirement of the aid to families with dependent children program.

Section 12. Definitions. As used in [sections 11 through 14], the following definitions apply:

(1) "Child support pass-through payments" means child support received for a dependent child or children in a family receiving aid to families with dependent children, up to $50 a month, that is paid or "passed through" to the family pursuant to section 402 of the Social Security Act, 42 U.S.C. 602(a)(8)(A)(vi).

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(2) "Department" means the department of social and rehabilitation services provided in Title 2, chapter 15, part 22.

(3) "Employment and training demonstration project" means the employment and training program for recipients of aid to families with dependent children who are participating in the FAIM project.

(4) "FAIM project" means the families achieving independence in Montana project, including the aid to families with dependent children part estahlished in [section 3], a food stamp part administered pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

(5) "Food stamp program" means the provision of coupons that can be used to purchase food to low-income persons pursuant to the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq.

(6) "JOBS program" means the job opportunities and basic skills training program for recipients of aid to families with dependent children that is conducted in accordance with the requirements of section 201 of the federal Family Support Act of 1988, 42 U.S.C. 602(a)(19), 681 through 686.

Section 13. Employment and training program. The department shall establish and administer an employment and training program for food stamp recipients that is in compliance with federal requirements. For purposes of the FAIM project, if waivers of federal law are granted by the food and nutrition service of the U.S. department of agriculture, the department may merge its food stamp program employment and training program with its JOBS program or may modify the rules and requirements of the food stamp program employment and training program as necessary to make them consistent with those of the employment and training demonstration project.

Section 14. Income and resource exclusions — FAIM participants. If waivers of federal law are granted by the food and nutrition service of the U.S. department of agriculture, the department may by rule establish special income and resource exclusions to be applied to participants of the FAIM project in determining their eligibility for food stamps and in determining the benefit amount. Exclusions that may be established include but are not limited to exclusions for one-time only cash payments for special employment-related needs as provided in [section 3] and child support pass-through payments of up to $50 a month in determining the recipients' eligibility for food stamps and determining the benefit amount.

Section 15. Section 53-2-105, MCA, is amended to read:

"53-2-105. Misuse of public assistance information unlawful. Except as provided in 53-2-211, it is unlawful for ~~any~~ *a* person, body, association, firm, corporation, or other agency to solicit, disclose, receive, *or* make use of~~,~~ or to authorize, knowingly permit, participate in, or acquiesce in the use of ~~any~~ lists or names for commercial or political purposes of any nature or for any purpose not directly connected with the administration of public assistance. *However, the department may, to the extent permitted by federal law, diselose public assistance information to an agency of the state or to any other organization if*

the information is used solely for purposes directly connected with the administration of a program or purpose of the agency."

Section 16. Section 53-2-211, MCA, is amended to read:

"53-2-211. Department to share eligibility data. (1) The department shall make available to the unemployment compensation program of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for medicaid, aid to families with dependent children, and food stamps. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation program of the state and for no other purpose.

(2) The department shall make available to the unemployment compensation and the workers' compensation programs of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for low-income energy assistance, weatherization, and general relief. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs of the state.

(3) (a) Subject to federal restrictions, the department may request information from the department of labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers' compensation, or occupational benefits, the department of labor and industry may request information from the department of revenue pertaining to income as provided in 15-30-303(8)(c).

(b) The information must be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

(4) The department may, to the extent permitted by federal law, make available to an agency of the state or to any other organization information contained in its files and records pertaining to the eligibility of persons for medicaid, aid to families with dependent children, food stamps, low-income energy assistance, weatherization, or other public assistance. The information may be disclosed only for purposes directly connected with the administration of a program or purpose of the agency and may not be used by the agency for any other purpose."

Section 17. Section 53-4-201, MCA, is amended to read:

"53-4-201. Definitions. *As used in this part and in [sections 1 through 10], the following definitions apply:*

(1) The term "aid to families with dependent children" means money payments made on behalf of a dependent child pursuant to Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.), ~~including~~ *and may include* payments to meet the needs of a *specified caretaker* relative with whom the dependent

child is living. The term also includes emergency assistance to families with children as provided by the federal Social Security Act.

(2) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(3) (a) The term "dependent child", for public assistance purposes, means:

(i) a child under the age of 18; or

(ii) a person under the age of 19 who is a student under the regulations prescribed by the department.

(b) The child ~~(~~*described in subsection (3)*(a)(i) or *(3)*(a)(ii) ~~above)~~ must be deprived of parental support or care by reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of a parent and be living with a *specified caretaker* relative, as defined in rules adopted by the department.

(4) "FAIM project" means the families achieving independence in Montana project as established in [section 1].

(5) "Federal poverty level" means the measure of indigence established annually by the U.S. office of management and budget.

~~(4)~~*(6)* "Public assistance" or "assistance" means ~~any~~ *a* type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(7) "Specified caretaker relative" means a person within a degree of kinship to the dependent child, as specified by department rule, who lives with the child and exercises care and control over the child."

Section 18. Section 53-4-202, MCA, is amended to read:

"53-4-202. Aid to families with dependent children to be in effect in all counties. It is hereby mandatory and required that the state plan and operation of aid to families with dependent children ~~shall~~ *must* be in effect in each ~~and every~~ county of the state, and the administration and supervision of aid to families with dependent children shall *must* he uniform throughout the ~~several~~ counties of the state. *However, the department may administer demonstration programs pursuant to section 1115 of the federal Social Security Act, 42 U.S.C. 1315, or any other provision of that act that permits the states to administer experimental, pilot, or demonstration projects."*

Section 19. Section 53-4-212, MCA, is amended to read:

"53-4-212. Department to make rules. *(1)* The department shall make such rules and take such action as ~~may be~~ necessary or desirable for ~~carrying out the provisions of this part~~ *the administration of the aid to families with dependent children program, including the FAIM project.*

(2) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance and methods for computing benefit amounts;

(c) what constitutes deprivation of parental support or care sufficient to qualify a child as dependent;

(d) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(e) requirements for participation in the JOBS program and exemptions from those requirements;

(f) procedures and policies of the JOBS program;

(g) special requirements or criteria applicable to participants in the FAIM project, such as:

(i) community service requirements for specified caretaker relatives participating in the community services program, including the number of hours of community service work per month and other terms of performance;

(ii) eligibility for and terms and conditions of child-care assistance for FAIM project participants, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(iii) maximum amounts of one-time only cash payments for special employment-related needs and the length of time that a family is required to remain off cash assistance after a payment is received;

(iv) exemptions from time limits in pathways;

(v) terms of a specified caretaker relative's ineligibility for assistance because of failure to enter into a family investment agreement or to comply with the specified caretaker relative's obligations under the agreement, including the length of the period of ineligibility;

(vi) requirements, if any, for participation in and exemptions from participation in and procedures and policies of the employment and training demonstration project; and

(vii) eligibility for and terms and conditions of extended child-care and medical assistance benefits;

(h) reporting requirements; and

(i) sanctions, disqualification, or other penalties for failure to comply with the program rules or requirements."

Section 20. Section 53-4-241, MCA, is amended to read:

"53-4-241. Amount of assistance determined by department rules. The amount of aid to families with dependent children granted in any case ~~shall~~, *including cases in which the recipient is participating in the FAIM project, must* be determined according to the rules and standards of assistance established by the department, as required by the federal Social Security Act."

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Section 21. Section 53-4-702, MCA, is amended to read:

"**53-4-702. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aid to families with dependent children" has the same meaning as provided in 53-4-201.

(2) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(3) *"FAIM project" means the families achieving independence in Montana project as established in [section 1].*

(4) "Family Support Act of 1988" means the federal Family Support Act of 1988, Public Law 100-485, as amended.

~~(4)~~*(5)* "JOBS program" or "program" means the joh opportunities and basic skills training program established in 53-4-703."

Section 22. Section 53-4-706, MCA, is amended to read:

"**53-4-706. Participation requirements.** (1) Except as otherwise provided in this section and 53-4-707, the department may require individuals to participate in the JOBS program as a condition of their eligibility for aid to families with dependent children.

(2) To the extent that the program is available and that state resources permit, the department shall:

(a) require recipients of aid to families with dependent children *who are not participating in the FAIM project and* with respect to whom the state guarantees child care in accordance with section 402(g) of the Social Security Act (42 U.S.C. 602(g)) to participate in the program; ~~and~~

(b) *require recipients of aid to families with dependent children who are participating in either the pathways or community service program component of the FAIM project to participate in the program if the department determines that it is an appropriate activity for the recipient and includes participation as a condition of the recipient's family investment agreement; and*

(c) allow applicants for and recipients of aid to families with dependent children who are not required under subsection (2)(a) to participate in the program to do so on a voluntary basis."

Section 23. Section 53-4-707, MCA, is amended to read:

"**53-4-707. Exemptions.** (1) ~~An individual may not be required to~~ participate *Recipients of aid to families with dependent children must be exempted from participation* in the JOBS program ~~if the individual:~~ *as provided by department rule.*

(2) The department shall establish, by rule, categories of individuals who are exempt from participation in the JOBS program in accordance with the requirements of section 201 of the federal Family Support Act of 1988, 43 U.S.C.

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602(a)(19)(C)(i) through (a)(19)(C)(vii). In establishing the exemptions, the department shall take into consideration whether the individual:

(a) is ill, incapacitated, or of advanced age;

(b) is needed in the home because of the illness or incapacity of another member of the household;

(c) is the parent or other relative who is personally providing care for a child ~~under 3 years of age, except as otherwise provided in administrative rules adopted by the department~~ *of a very young age*;

(d) is employed ~~for 30 or more hours a week~~;

(e) is a child who is under the age of 16 or attends an elementary, secondary, or vocational school on a full-time basis;

(f) is pregnant ~~and it has been medically verified that the child is expected to be born in the month in which participation in the program would otherwise be required. Such individual may not be required to participate in the program within the 6-month period immediately following that month.~~;

(g) resides in an area of the state where the program is not available; or

(h) is for any other reason exempt from participating in the program pursuant to state or federal regulations.

(2) If a family is eligible for aid to families with dependent children because of the unemployment of the parent who is the principal wage earner, ~~subsection (1)(c) applies to~~ only one parent *may be exempted to provide care for a very young child.*

(3) If waivers of federal law are granted by the secretary of the U.S. department of health and human services, recipients of aid to families with dependent children participating in the FAIM project may not be exempted from participation in the employment and training demonstration project."

Section 24. Section 53-4-717, MCA, is amended to read:

"53-4-717. Sanctions. ~~An~~ *(1) Except as provided in subsection (2), an* individual who without good cause fails to participate in the JOBS program as required or who without good cause refuses to accept suitable employment shall lose eligibility for aid to families with dependent children as provided in 42 U.S.C. 602(a)(19)(G).

(2) If an individual receiving aid to families with dependent children under the FAIM project is required to participate in the JOBS program as a condition of the individual's family investment agreement and fails without good cause to participate, the individual must be sanctioned in accordance with rules established by the department."

Section 25. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for

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medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act, (42 U.S.C. 1396, et seq.), as may he amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided hy the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) *If waivers of federal law are granted by the secretary of the U.S. department of health and human services, the department of social and rehabilitation services may implement limited medicaid benefits, to be known as basic medicaid, for recipients who are eligible because they are receiving aid to families with dependent children as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to aid to families with dependent children. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsection (3)(a) through (3)(p) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature for the FAIM project and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant is entitled to full medicaid coverage.*

(6) The department may implement, as provided for in Title XIX of the federal Social Security Act, ~~(~~42 U.S.C. 1396, et seq.~~)~~, as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

~~(6)~~*(7)* The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

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~~(7)~~*(8)* The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

~~(8)~~*(9)* The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act, ~~(~~42 U.S.C. 1396, et seq.~~)~~, as may be amended.

~~(9)~~*(10)* Services, procedures, and items of an experimental or cosmetic nature may not be provided.

~~(10)~~*(11)* If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

~~(11)~~*(12)* Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

~~(12)~~*(13)* Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning tbat payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 26. Section 53-6-113, MCA, is amended to read:

"53-6-113. Department to adopt rules. (1) The department of social and rehabilitation services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and as may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the federal Social Security Act, ~~(~~42 U.S.C. 1396, et seq.~~)~~, as amended.

(2) The department shall adopt rules as are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services ~~utilized~~ *being used* are medically necessary and that ~~these~~ *the* services are the most efficient and ~~cost-effective~~ *cost-effective* available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set ~~such~~ rates of reimbursement ~~as~~ *that* it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to *considering*:

(a) the availability of appropriated funds;

(b) the actual cost of services;

(c) the quality of services;

(d) the professional knowledge and skills necessary for the delivery of services; and

(e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, and confidentiality of applicant and recipient information.

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the federal Social Security Act, (42 U.S.C. 1396, et seq.), as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed-care systems. Rules to be adopted may include but are not limited to rules concerning:

(a) participation in managed care;

(b) selection and qualifications for providers of managed care; and

(c) standards for the provision of managed care.

(9) (a) The department shall establish by rule income limits for eligibility for extended medical assistance of persons receiving aid to families with dependent children as participants of the FAIM project who lose eligibility because of increased income, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature for the FAIM project.

(b) Notwithstanding [sections 1 through 14], it is the intent of the legislature that rules may not be adopted except to implement the waiver granted by the U.S. secretary of health and human services under section 1115 of the Social Security Act, 42 U.S.C. 1315, and to implement the FAIM program. Rules may not implement any other program or programs that may result because of federal welfare reform unless the rules are required for compliance with federal law."

Section 27. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act, ~~(~~42 U.S.C. 1381, et seq.~~)~~, or aid to families with dependent children under Title IV of the federal Social Security Act, ~~(~~42 U.S.C. 601, et seq.~~)~~.

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards *that* the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) *If waivers of federal law are granted by the secretary of the U.S. department of health and human services, the department of social and rehabilitation services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving aid to families with dependent children as the specified caretaker relative of a dependent child under the FAIM project and to all adult recipients of medical assistance only who are covered under a group related to aid to families with dependent children. A recipient who is pregnant is entitled to full medicaid coverage as provided in 53-6-101.*

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act, (42 U.S.C. 1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

~~(6)~~*(7)* Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty ~~threshold~~ *level*, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

~~(7)~~*(8)* A person described in subsection ~~(6)~~ *(7)* must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7)."

Section 28. Section 53-6-134, MCA, is amended to read:

"**53-6-134. Extension of eligibility for medical assistance to persons terminated from aid to families with dependent children.** (1) In accordance with section 1925 of Title XIX of the Social Security Act, (42 U.S.C. 1396r-6), the department of social and rehabilitation services shall provide for the extension of eligibility for medical assistance to persons who lose eligibility for aid to families with dependent children ~~due to~~ *because of*:

(a) increased hours or income from employment; or

(b) loss of federally prescribed earned income disregards.

(2) In providing for the extension of eligibility for medical assistance under subsection (1), the department may provide for health insurance or other health coverage in accordance with subsections 1925(a)(4)(B) and 1925(b)(4)(C) of Title XIX of the Social Security Act, (42 U.S.C. 1396r-6(a)(4)(B) and 42 U.S.C. 1396r-6(b)(4)(C)), and may exercise the other options contained in section 1925 of Title XIX of the Social Security Act, (42 U.S.C. 1396r-6), regarding the provision of medical assistance.

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(3) If waivers of federal law are granted by the secretary of the U.S. department of health and human services, the department of social and rehabilitation services may provide extended eligibility for medical assistance for a period of time established by the department by rule for persons receiving aid to families with dependent children under the job supplement program, pathways, or community services program components of the FAIM project described in [section 3] who lose eligibility because of increased income from any source, provided that the family's income does not exceed a percentage of the federal poverty level established by the department by rule. The department, in exercising its discretion to establish income standards and duration of extended medical assistance by rule, may consider the amount of funds appropriated by the legislature for the FAIM project."

Section 29. Codification instruction. (1) [Sections 1 through 10] are intended to be codified as an integral part of Title 53, chapter 4, and the provisions of Title 53, chapter 4, apply to [sections 1 through 10].

(2) [Sections 11 through 14] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 11 through 14].

Approved April 15, 1995

CHAPTER NO. 492

[SB 236]

AN ACT RELATING TO MEDICAID; PROVIDING FOR CONSERVATION OF MEDICAID FUNDS BY IMPOSITION OF RESTRICTIONS ON ELIGIBILITY AND BY ALLOWING OR REQUIRING RECOVERY OF MEDICAID EXPENSES FROM INDIVIDUALS AND ESTATES; PROVIDING FOR LIENS AGAINST ESTATES AND PROPERTY OF OTHER INDIVIDUALS; PROVIDING FOR UNDUE HARDSHIP EXCEPTIONS; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTIONS 53-6-143 AND 53-6-144, MCA; REPEALING SECTIONS 53-2-601, 53-2-611, AND 53-5-401, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

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WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] grant the department of social and rehabilitation services rulemaking authority to implement the provisions of this bill.

The legislature intends that the department of social and rehabilitation services adopt rules that are reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should include but are not limited to rules addressing the following:

(1) a description of the circumstances considered to constitute an undue hardship;

(2) the procedures by which an individual may seek an undue hardship exception;

(3) the persons entitled to an undue hardship exception; and

(4) whether the exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(2) "Recipient" means an individual who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has received benefits, whether or not that person has been determined to be eligible.

(3) "Recoverable medical assistance" means a payment pursuant to this part, including but not limited to a payment made for items or services provided to and insurance premiums, deductibles, and coinsurance paid on behalf of a recipient who:

(a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease and, with respect to that institutionalization, the department

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determined under [section 8] that the person was not reasonably expected to be discharged and return home; or

(b) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

(4) "Recovery" means legal action brought for the payment or repayment of recoverable medical assistance or amounts of money paid for other purposes.

Section 2. Period of ineligibility for medical assistance when assets disposed of for less than fair market value — undue hardship exception — department to adopt rules. (1) The department sball, in accordance with 42 U.S.C. 1396p, as may be amended, and implementing federal regulations and policies, impose upon an applicant or recipient a period of ineligibility for medical assistance under this part when the applicant or recipient or the spouse of either directly or indirectly disposes of any assets for less than fair market value during the applicable 3-year, 5-year, or other period provided by 42 U.S.C. 1396p, as may he amended, or by other federal law.

(2) A period of ineligibility for medical assistance may not be imposed upon an applicant or recipient under this section to the extent that the department determines, in accordance with procedures specified by department rule, tbat the denial of eligibility would cause an undue hardship as defined by department rule.

(3) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies to implement this section. The rules adopted under this section must include but are not limited to rules addressing the following:

(a) a description of the circumstances considered to constitute an undue hardship;

(b) the procedures by which an individual may seek an undue hardship exception;

(c) the persons entitled to an undue bardship exception; and

(d) notice and opportunity for a hearing regarding imposition of a period of ineligibility or denial of an undue hardship exception.

(4) Nothing in [section 1], 53-6-143, 53-6-144, [sections 5 through 26], or this section is intended to prohibit the department from adopting rules consistent with federal law that provide for a period of ineligibility for public assistance programs other than medical assistance when an applicant or recipient directly or indirectly disposes of assets for less than fair market value.

Section 3. Section 53-6-143, MCA, is amended to read:

"53-6-143. ~~Limitations on~~ *Medical assistance* liens and recoveries. (1) ~~An~~ *Except as provided in this section, the department may not impose a lien upon the property of an* applicant for or recipient of *medical* assistance ~~may not be required to execute an agreement creating a lien on his real property~~.

(2) A lien *for recovery of medical assistance paid or to be paid under this chapter* may be imposed against the real or personal property of ~~an individual~~ *a medicaid applicant or recipient* prior to his *the applicant's or recipient's* death ~~for recovery of medical assistance paid or to be paid on his behalf under this~~ chapter only:

(a) pursuant to a judgment of a court for recovery of *medical* assistance ~~incorrectly~~ paid on behalf of the recipient; ~~or~~

(b) on a third-party recovery as provided in 53-2-612*; or*

(c) as provided in [sections 8 through 25].

(3) ~~(a)~~ The department may recover medical assistance correctly paid on behalf of a recipient only~~:~~

~~(i)~~ as provided in ~~53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before he reached age 65; or~~

~~(ii) as provided in~~ *[sections 5 through 7], [sections 8 through 25], or* 53-2-612 *or as provided in a written agreement between the department and the recipient or the recipient's representative pursuant to 42 U.S.C. 1382b(b).*

~~(b) The department may recover under 53-2-611 only:~~

~~(i) after the death of the recipient's surviving spouse, if any; and~~

~~(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and totally disabled.~~

~~(4) Recoveries must be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this section are hereby extended to provide for the recovery of all medical assistance paid under this part and likewise to all medical aid to the aged assistance paid by the department of social and rehabilitation services during the period of time July 1, 1965, through June 30, 1967.~~

(4) Except as otherwise specifically provided by 53-6-144, [sections 1, 2, and 5 through 26], and this section, the department may pursue recovery under any section or combination of sections as may be applicable in a particular case. However, the department may not recover pursuant to [sections 5 through 7] or [sections 8 through 25] more than the total amount of recoverable medical assistance paid on behalf of a recipient, plus any applicable costs, interest, or other charges specifically allowed by law. The fact that the department has or may have a lien on particular property does not preclude the department from pursuing recovery under another section against other assets of the recipient or assets of another person as provided in 53-6-144, [sections 1, 2, and 5 through 26], and this section."

Section 4. Section 53-6-144, MCA, is amended to read:

"53-6-144. Relative's responsibility. ~~The~~ *Except as otherwise provided in [sections 5 through 26] and the* provisions of other parts of this title~~, as amended,~~ notwithstanding, the only relatives that ~~can~~ *may* be held responsible for

payment of medical assistance under the program are the husband or wife of the individual, the parents of children under age 18 *years of age*, and the parents of blind or disabled persons over age 18 *years of age*."

Section 5. Recovery of medicaid benefits after recipient's death. (1) After the death of a recipient, the department shall execute and present a claim:

(a) against the recipient's estate, within the time specified in the published notice to creditors in the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the recipient; and

(b) against a person who has received property of the recipient by distribution or survival for an amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the property received by the person from the recipient by distribution or survival, whichever is less. The amount recoverable from a person with respect to property of the recipient must be reduced by the value of any property transferred to the person for less than full market value for which a period of ineligibility was imposed under [section 2] against the recipient during the recipient's life. The department may bring an action in district court to collect upon a claim under this subsection (1)(b).

(2) A department claim under subsection (1) must include notice of the right to seek an undue hardship exception under rules adopted by the department in accordance with subsection (7).

(3) (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by law, a department claim against an estate is not barred for lack of timely presentation if it is presented in the probate proceeding within the time specified in the published notice to creditors.

(b) An action to collect a claim under subsection (1)(b) must be commenced within 3 years of the later of the recipient's death or the closing of the recipient's estate.

(4) (a) For purposes of this section, property of a deceased recipient received by distribution or survival is any real or personal property or other assets in which the recipient had any right, title, or interest immediately prior to the time of death, including but not limited to assets passing to one or more survivors, heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For purposes of this section, property is not received hy distribution or survival to the extent that the person received the property or property interest for consideration equal to the fair market value of the property or property interest received.

(b) Property received by distribution includes but is not limited to:

(i) property from a deceased recipient's estate distributed to a person through a probated estate or a small estate administration procedure; and

(ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a person through any other procedure or when a legal procedure for distribution has not been followed.

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(c) Assets of a deceased recipient's estate and property of a deceased recipient received by distribution or survival are not exempt from recovery under this section because the assets or property were or may have been considered by the department as exempt income or resources for the purpose of determining eligibility for medical assistance during the recipient's lifetime.

(5) (a) The department may seek recovery under subsection (1)(a) or (1)(b), or both, with respect to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and to other affected persons.

(b) An estate or other person is not entitled to a reduction or waiver of the department's claim on the grounds that there is or may be another person from whom recovery may be made under this section.

(6) The department may waive recovery under this section if it determines that recovery would not be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection, the department may consider but is not limited to consideration of the following factors:

(a) the estimated cost of recovery;

(b) the amount reasonably likely to be recovered;

(c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and

(d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of this section.

(7) (a) Upon presentation or assertion of a claim by the department under this section, the personal representative of the estate or another affected person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery based on undue hardship. The department shall waive its recovery under this section in whole or in part if it determines that recovery would result in undue hardship as defined by department rule.

(b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies, establishing procedures and criteria for undue hardship exceptions. The rules adopted under this section must include but are not limited to rules addressing the following:

(i) a description of the circumstances considered to constitute an undue hardship;

(ii) the procedures by which an individual may seek an undue hardship exception;

(iii) the persons entitled to an undue hardship exception; and

(iv) whether an exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted.

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(c) If a person is aggrieved by a department determination on an application for an undue hardship exception, the person may assort a claim of entitlement to an undue hardship exception in any court proceeding on a department petition for allowance of an estate claim or for recovery of an amount due under this section. When a person claims entitlement to an undue hardship exception in the proceeding, the court shall make a determination on the claim for an exception based upon the department rules adopted in accordance with this section. Department denial of all or any part of the relief requested in an exception application under this section may be reviewed by a district court only as provided in this subsection (c). Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the department's rules.

(8) (a) Except as provided in subsection(8)(b), if the requirements of this section are met, the department may collect upon its claim.

(b) The department may not recover under this section while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection (b) does not preclude the department from recovering from the recipient's estate after the death of the surviving spouse or child.

(9) All money recovered under this section from any source must be distributed to the state general fund and to the United States as required by applicable state and federal laws and regulations.

Section 6. Payment of certain funds of deceased recipient to department. (1) (a) A nursing facility or a person, other than a financial institution, holding personal funds of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days following the resident's death, pay those funds to the department.

(b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the deceased resident's personal funds that are held by the nursing facility and that would have been payable to the facility from the resident's funds. The facility shall pay the remaining funds to the department as required by this section.

(c) Funds paid to the department under this section are not considered to be property of the deceased resident's estate, and [section 5] does not apply to recovery of the funds by the department.

(2) For purposes of this section, a nursing facility is holding personal funds of a resident if the facility:

(a) maintains possession of the funds in the facility; or

(b) as the recipient's trustee or representative, has deposited the resident's funds in an individual or shared account in a financial institution.

(3) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds.

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Section 7. Payment of excess burial funds or assets to department. (1) After the death of a person who at any time received medicaid benefits, a mortician, funeral director, or other person, including hut not limited to the decedent's spouse, heir, devisee, or personal representative, who holds funds or other property in excess of $5,000 in value that was specifically designated and set aside for paying for the disposition of the decedent's remains and for related expenses shall, after paying for the disposition and related expenses, pay all remaining funds to the department within 30 days following the burial, cremation, or other final disposition of the decedent's remains. The funds must be paid to the department regardless of any provision in a written contract, trust, or other agreement entered into on or after [the effective date of this section], directing a different disposition of the funds. Funds paid to the department under this section are not considered to be property of the decedent's estate, and [section 5] does not apply to recovery of the funds by the department.

(2) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds.

Section 8. Department lien upon real property of certain medicaid recipients — conditions. (1) Following notice and opportunity for hearing as provided in [section 9], the department shall impose a lien upon the real property, including the home, of an institutionalized recipient of recoverable medical assistance to secure the assets of the recipient for recovery of medical assistance paid on behalf of the recipient prior to, on, or after the imposition of the lien if:

(a) the recipient has been admitted to a nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental disease;

(b) the property upon which a lien is being imposed is the recipient's home and the home is not lawfully resided in by:

(i) the recipient's spouse;

(ii) the recipient's child who is under 21 years of age, blind, or permanently and totally disabled; or

(iii) the recipient's sibling who was residing in the recipient's home for a period of at least 18 months immediately prior to the recipient's institutionalization; and

(c) the recipient has been determined by the department, pursuant to subsection (2), to be permanently institutionalized.

(2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department determines that the recipient cannot reasonably be expected to be discharged from the facility and to return home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for 6 months or longer without a discharge plan. The recipient's institutionalization for a period of 6 months or longer without a discharge plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but failed to do so. A recipient or a recipient's

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representative who alleges that there is a reasonable expectation of discharge from the facility and a return home has the burden of demonstrating the reasonable expectation. The reasonable expectation must be established based upon medical evidence and medical opinion. A declaration hy the recipient or a recipient's representative that the recipient intends to be discharged from the facility and to return home is not alone sufficient to estahlish that there is a reasonable expectation of discharge from the facility and a return home.

(3) For purposes of this section, real property of a recipient includes any interest in real property that may be subject to a judgment lien.

Section 9. Notice of intent to impose lien — opportunity for hearing. Before imposing a lien under [section 8], the department shall provide the recipient 30 days' written notice of its determination under [section 8(1)(c)], of its intent to impose a lien, and of an opportunity for a hearing pursuant to the department's hearing procedures under Title 2, chapter 4, part 6.

Section 10. Contents of lien document — scope of obligation secured. (1) The lien must contain the name and address of the recipient who owns an interest in the property, a legal description of the property, and an address and telephone number of the office or representative of the department who can provide more information about the lien. The lien applies only to the property described in the lien.

(2) The lien need not be executed by or on behalf of the medicaid recipient, but it must be executed hy an authorized agent or employee of the department. The execution must be acknowledged as provided in 70-21-203.

(3) The lien need not state the specific amount of medical assistance repayment owed. The lien is sufficient to secure repayment of past, current, and future recoverable medical assistance if the lien states that:

(a) the lien is imposed under [sections 8 through 25] to secure the described property for recovery of medical assistance paid on hehalf of the recipient prior to, on, and after the date of the lien; and

(b) the amount paid for recoverable medical assistance is due upon sale, transfer, or exchange of any right, title, or interest of the recipient in the property or upon the recipient's death.

Section 11. Filing of lien — effect of filing — priority — renewal — dissolution of lien. (1) The lien must be filed in the office of the clerk and recorder in the county in which the real property is located.

(2) Filing of the lien constitutes legal notice of the lien to all persons, including subsequent purchasers, encumbrancers, mortgagees, and other lienholders. Upon filing, the lien is prior to any earlier unrecorded interest or claim and is prior to any subsequent interest or claim, whether or not recorded. The lien is subject to any unpaid property taxes, any prior recorded mortgage, or any other prior recorded encumhrance, interest, or claim. For purposes of recovery under [sections 8 through 25] a sale, transfer, or exchange of the property by the recipient is considered a relinquishment of any homestead exemption under 70-32-201 and 70-32-202 of the recipient in the property subject to the lien.

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(3) Except as provided in [sections 8 through 25], the lien has the effect of a judgment lien when the lien is filed. For purposes of provisions of state laws relating to judgment liens, the department is considered the judgment creditor and the recipient or the recipient's spouse or successor in interest is considered the judgment debtor.

(4) After filing, the lien remains effective for a period of 6 years unless earlier satisfied, released, or dissolved. The department may renew a lien for one or more additional 6-year periods.

(5) If the recipient is discharged from the facility and returns home, the lien dissolves and is no longer effective unless a new lien is later imposed in accordance with [sections 8 through 25]. Following the recipient's discharge and return home, the department shall upon written request file a release of lien in the clerk and recorder's office. Dissolution of the lien under this subsection does not preclude the department from recovering under [section 5, 6, or 7].

(6) If the lien is imposed pursuant to [section 8] on the recipient's interest in jointly owned property that is subject to a right of survivorship, upon the recipient's death, the recipient's interest passes to the survivor, subject to the lien imposed pursuant to [section 8].

Section 12. Recovery of medical assistance secured by lien — application for issuance of writ of execution. (1) After the recipient's death or upon the sale, transfer, or exchange of any right, title, or interest of the recipient in the property, the department may file with the clerk of the district court in the county in which the real property is located an application for issuance of a writ of execution for levy on the real property described in the lien. The levy may be for the amount of recoverable medical assistance paid on behalf of the recipient prior to, on, and after the date of the lien, including amounts paid up to the date of sale of the property, plus interest and costs as provided by law. Costs do not include attorney fees.

(2) The application for the writ must be sworn and must contain the following:

(a) the name of the recipient, a legal description of the real property, and a description of the recipient's interest in the property;

(b) a statement that the department has imposed a lien upon the property under [section 8];

(c) a statement that the lien complies with the requirements of [sections 8 through 25];

(d) the date upon which the lien was filed and the office in which it was filed;

(e) a description of the sale, transfer, exchange, or other event that entitles the department to recover;

(f) a statement that the lien has not dissolved under [section 11(5)];

(g) the amount of recoverable medical assistance; the amount of any unreimbursed taxes, insurance costs, maintenance costs, or other costs paid under [section 23]; and, if applicable, a statement that additional amounts may be paid up to the time that the property is sold in satisfaction of the lien;

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(h) a statement that the total amount due has not been paid as of the date of the application for the writ;

(i) a statement that recovery is not probibited by this section;

(j) the names and addresses of all persons who have a recorded interest in the property, including a recipient or recipient's estate, co-owner, purchaser, grantee, encumbrancer, mortgagee, and lienholder; and

(k) a request that a writ of execution be issued for sale of the described property if an action is not filed within the time provided for in [section 14].

(3) The filing of an application under this section for a writ of execution is not the filing of a legal action, and the requirements applicable to legal actions do not apply to the application or application proceedings.

Section 13. Notice of application — proof of notice — request for issuance of writ of execution. (1) The department shall provide notice, as required by this section, of the filing of the application for a writ of execution pursuant to [section 12] to all persons having a recorded interest in the property or residing lawfully on the property.

(2) The notice must contain a description of the property and must state that the department has a lien under [section 8] upon the described property, that the department has filed an application for a writ of execution seeking sale of the property, and that a writ will be issued unless an action challenging issuance of the writ bas been filed in accordance with [section 14] within 60 days of the date of mailing or service of notice or first publication of notice. The department shall include with the notice a copy of the application for the writ. The notice must also include notice of the right to seek an undue hardship exception as provided in [section 17].

(3) (a) The department may mail a copy of the notice, postage prepaid and return receipt requested, to the name and address stated in the recorded instrument creating each person's interest in the property or, in the case of a person residing on the property, to the address of the residence on the property. Mailing as provided in this subsection (a) is sufficient notice to the addressee if the return receipt is returned to the department and indicates that the notice was received by or on behalf of the addressee.

(b) If the return receipt is not returned to the department indicating that the notice was received by or on behalf of the addressee, the department shall attempt with reasonable diligence to locate the addressee and to personally serve or mail notice to that person.

(c) If after the exercise of reasonable diligence the department is unable to locate the person owning tbe interest in the property, the department shall publish the notice required by subsection (2) three times, once each week for 3 successive weeks, in a newspaper published in the county in which the property is located if a newspaper is published in the county. If a newspaper is not published in the county, then publication must be in a newspaper having a general circulation in the county.

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(d) With respect to a person residing lawfully on the property but having no recorded interest in the property, the notice may he delivered to the residence and delivery is sufficient notice as to that person.

(e) In the alternative, the notice and application may be personally served upon any person entitled to notice under this section.

(4) (a) After giving notice as required by this section, the department shall file with the clerk of court an affidavit describing:

(i) the manner in which notice has heen provided to each person entitled to notice;

(ii) the date of mailing, personal service, or first publication of the notice; and

(iii) the date by which each person is required to file an action to challenge issuance of the writ of execution.

(b) The department shall attach to the affidavit the return receipt, the affidavit of personal service, the affidavit of publication, or other proof of service of the notice. If no action has been filed within the time required by [section 14], the affidavit must so state and may request immediate issuance of the writ.

Section 14. Action to challenge issuance of writ of execution. A person with a recorded interest in or residing lawfully upon the real property described in an application filed under [section 12], including the recipient or recipient's estate or a co-owner, purchaser, grantee, encumbrancer, mortgagee, or lienholder, or any person described in [section 8(1)(b) or 15(2) or (3)], may, within 60 days of mailing or service of notice or first publication of notice as provided in [section 13], file an action in the district court in the county in which the real property is located challenging the requested issuance of a writ of execution. The court shall determine the validity or invalidity of the department's lien and order appropriate relief, including issuance of the writ or denial of the application for issuance of the writ.

Section 15. Department right of recovery — limitations. (1) Except as provided in [sections 17 and 19] and this section, the department may collect upon its lien as provided in [sections 8 through 25].

(2) The department may not recover upon a lien imposed on the recipient's home under [section 8] while the recipient's sibling or child who has resided lawfully and continuously in the home for at least 1 year immediately before the recipient's institutionalization continues to lawfully reside in the home. This subsection does not preclude tbe department from recovering under [section 5, 6, or 7].

(3) The department may not recover on a lien imposed under [section 8] while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection does not preclude the department from later recovery in accordance with [section 18].

Section 16. Payment of amount due — periodic payments — substitute security. (1) If the total amount due to the department to satisfy

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a lien imposed under [sections 8 through 25] is paid, the department may not file an application under [section 12], shall withdraw its application if the application has already been filed, or shall instruct the sheriff to cancel the sale proceedings.

(2) In lieu of applying for a writ of execution, the department may agree with the heirs or devisees of the recipient to accept periodic payments for the repayment of recoverable medical assistance or may agree with the recipient's surviving spouse to accept substitute security and partial payment. The department may agree to periodic payments or substitute security if the terms of agreement, including security for repayment, are acceptable to the department and if the agreement does not reduce the amount due or the likelihood of recovering the amount due. The department may delay filing an application for issuance of a writ of execution for purposes of conducting negotiations for an agreement in lieu of execution.

Section 17. Waiver of recovery in cases of undue hardship — rulemaking. (1) (a) A person with a recorded interest in real property subject to a lien under [sections 8 through 25] or any other interested person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery because of undue hardship. The department shall waive its recovery under this section, in whole or in part, if it determines that recovery would result in undue hardship as defined by department rule.

(b) The department shall adopt rules, consistent with 42 U.S.C. 1396p, as may be amended, and implementing federal regulations and policies, establishing procedures and criteria for granting undue hardship exceptions under this section. The rules must include but are not limited to rules addressing the following:

(i) a description of the circumstances considered to constitute an undue hardship;

(ii) the procedures by which an individual may seek an undue hardship exception;

(iii) the persons entitled to an undue hardship exception; and

(iv) whether an exception is partial or temporary and the circumstances under which a partial or temporary exception may be granted.

(c) A person aggrieved by a department determination on an application for an undue hardship exception may assert a claim of entitlement to an undue hardship exception in an action filed under [section 14] to challenge issuance of the writ. If a person claims entitlement to an undue hardship exception as part of that action, the court shall make a determination on the undue hardship claim in accordance with the department's rules adopted pursuant to this section. Department denial of all or any part of the relief requested in an application for an undue hardship exception under this section may be reviewed by a district court only through filing of an action as provided in this subsection (c). Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the department's rules.

(2) The department may waive recovery of recoverable medical assistance secured by a lien imposed under [section 8] if the department determines that

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recovery would not be cost-effective. In determining whether recovery would be cost- effective, the department may consider but is not limited to consideration of the following factors:

(a) the estimated cost of recovery;

(b) the amount reasonably likely to be recovered;

(c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and

(d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of [sections 8 through 25].

Section 18. Delay in recovery — sale subject to lien. (1) If the department is precluded by [section 15(2) or (3)] from recovery upon a lien imposed under [sections 8 through 25], the department shall maintain the lien in place and upon elimination of the condition that precluded recovery, the department may recover under this section. The department may not file an application for issuance of a writ of execution to recover under this subsection more than 3 years after elimination of the last condition that precluded recovery.

(2) If upon sale, transfer, or exchange of property subject to a lien imposed pursuant to [sections 8 through 25] the department is precluded by [section 15(2) or (3)] from recovering upon the lien, the lien remains in effect, subject to renewal as provided in [section 11], and the sale, transfer, or exchange is also subject to the lien.

Section 19. Spouse's limited exemption from lien. (1) Subject to Title 70, chapter 32, a recipient's surviving spouse who owns a home or an interest in a home in which the spouse resides that is subject to a lien imposed under [sections 8 through 25] is, upon sale, transfer, or exchange of the home, entitled to an exemption from the department's lien in an amount determined in accordance with this section. The exemption is in the form of:

(a) a partial release of the department's lien if the exemption amount is less than the full amount of the department's lien; or

(b) a full release of the department's lien if the exemption amount is equal to or greater than the full amount of the department's lien.

(2) The amount of the exemption is the lesser of an amount equal to:

(a) the fair market value of the interest in the home that the surviving spouse received from the recipient by distribution or survival; or

(b) $100,000 minus the total fair market value of all of the surviving spouse's assets, other than the interest in the home that the surviving spouse received from the recipient by distribution or survival. For purposes of this section, the surviving spouse's assets do not include personal property that is exempt from execution under Title 25, chapter 13, part 6.

(3) The department may by rule require a surviving spouse to file an application for the exemption and to provide information, documentation, and verification regarding the applicant's assets and the fair market value of assets.

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The department shall provide the applicant notice of its determination on the application and of the opportunity for a hearing pursuant to Title 2, chapter 4, part 6.

(4) Upon determination by the department that the applicant is entitled to an exemption, the department shall provide to the applicant an appropriate full or partial release in the amount of the exemption.

Section 20. Issuance of writ of execution by clerk of court. (1) If the requirements of subsection (2) are met, the clerk of court shall issue a writ of execution specifying the property to he levied upon, the amount due as of the date of filing of the application, and a statement that additional amounts may be due up to and through the date of the sale.

(2) The clerk shall issue the writ if:

(a) (i) an action has not been filed under [section 14] within 60 days of mailing, service, or first publication of notice, as provided in [section 13];

(ii) the department has filed an affidavit meeting the requirements of [section 13(4)]; and

(iii) the department has filed a sworn application containing the statements required by [section 12]; or

(b) the court has ordered the issuance of the writ in an action under [section 14].

Section 21. Effect of sale — title acquired. The purchaser of property pursuant to a writ of execution issued under [sections 8 through 25] acquires the right, title, interest, and claim that the recipient had at the time the lien was imposed, subject only to any right, title, interest, or claim arising from an instrument recorded prior to the department's lien under [section 8] and to any unpaid property taxes. The sale is absolute and is not subject to any period of redemption allowed by Title 25, chapter 13, part 8, or other law.

Section 22. Disposition of sale proceeds — application of recovered medical assistance. (1) The proceeds of a sale of property sold pursuant to a writ of execution issued under [section 20] must be distributed in the following order:

(a) as satisfaction of any unpaid property taxes and prior recorded interests as described in [section 11(2)];

(b) as payment of any claims under [section 23(3) and (4)];

(c) to the department for application to any costs incurred under [section 23(1) and (2)] or incurred in collection;

(d) to the department for recoverable medical assistance.

(2) The department shall apply any funds received under subsection (1)(d) proportionately to the federal and state shares of recoverable medical assistance.

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(3) Any excess funds remaining after application of proceeds to recoverable medical assistance must be paid to the recipient, if living, or otherwise to the recipient's representative or successor in interest.

Section 23. Action by department or other person to preserve property subject to lien — recovery of costs. (1) The department may, in its discretion, take any action it considers necessary to prevent waste or loss or to preserve the value of property subject to a lien under [sections 8 through 25], including but not limited to the following:

(a) the payment of any unpaid taxes on the property;

(b) the purchase or renewal of insurance coverage on the property and the payment of necessary insurance premiums;

(c) the ordering of and payment for necessary repairs and maintenance on the property; and

(d) if the property is unoccupied, the rental or lease of the property and the application of any receipts first to unpaid property taxes, insurance, and maintenance and repair and, second, any remaining amount toward repayment of recoverable medical assistance.

(2) The department's reasonable costs and expenses to prevent waste or loss or to preserve the value of the property are secured hy the lien imposed under [section 8] and may be recovered in addition to all other amounts secured by the lien.

(3) A person who, after the institutionalization or death of the recipient and after the institutionalization of the recipient's surviving spouse, if any, paid real property taxes, homeowner's insurance premiums, or reasonable costs of necessary maintenance or repairs on behalf of the recipient or recipient's spouse, with respect to property subject to a lien under [sections 8 through 25], has a claim against the proceeds of a sale of the property under writ of execution issued pursuant to [section 20] for recovery of any amounts paid for those purposes. The claim must be supported by written documentation that clearly demonstrates the amount of each payment, the purpose of each payment, and the services and items purchased with each payment. A claim for reimbursement made under this subsection is prior to the department's lien imposed under [section 8].

(4) The amount of a claim made under subsection (3) must be reduced by:

(a) the amount of any rents and profits from the property paid after the institutionalization or death of the recipient and the institutionalization of the recipient's surviving spouse, if any;

(b) the value of any property that the person with a claim under subsection (3) will receive by distribution or survival from a deceased recipient if the recipient did not leave a surviving spouse; and

(c) the value of any property that the person with a claim under subsection (3) will receive by distribution or survival from the recipient's deceased spouse if the spouse survived the recipient.

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Section 24. Time for filing of application. Except as provided in [section 18], the department may not file an application for issuance of a writ of execution to recover upon a lien imposed under [sections 8 through 25] more than 3 years after the latest of:

(1) a sale, transfer, or exchange of any right, title, or interest of the recipient in the property;

(2) the death of the recipient; or

(3) the death of the recipient's surviving spouse.

Section 25. Coordination of lien with other medical assistance recoveries. The existence of a valid lien imposed under [sections 8 through 25] or the fact that a lien under [sections 8 through 25] is invalid for any reason or is unenforceahle under [section 17] does not preclude the department from recovering under [section 5, 6, or 7].

Section 26. Rulemaking authority. The department may adopt rules to implement 53-6-143, 53-6-144, and [sections 1, 2, and 5 through 25]. The rules must comply with applicable federal law in 42 U.S.C. 1396, et seq., as may be amended, and applicable implementing regulations and policies.

Section 27. Repealer. Sections 53-2-601, 53-2-611, and 53-5-401, MCA, are repealed.

Section 28. Codification instruction. [Sections 1, 2, and 5 through 26] are intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [sections 1, 2, and 5 through 26].

Section 29. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 30. Retroactive applicability. [Section 2] applies retroactively, within the meaning of 1-2-109, to assets disposed of or trusts established after August 10, 1993, for purposes of determining eligibility for medical assistance on or after July 1, 1995.

Section 31. Applicability. (1) [Sections 3 through 7] apply to medical assistance recipients who die on or after [the effective date of those sections].

(2) [Sections 2 and 8 through 25] apply as a condition of medical assistance eligibility or continuation of medical assistance eligibility after [the effective date of those sections].

Section 32. Effective dates. (1) [Sections 1, 28 through 31, and this section] are effective on passage and approval.

(2) [Sections 2 through 27] are effective July 1, 1995.

Approved April 14, 1995

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CHAPTER NO. 493

[SB 250]

AN ACT AUTHORIZING A SCHOOL DISTRICT TO ESTABLISH A NONBUDGETED LITIGATION RESERVE FUND; AMENDING SECTION 20-9-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Litigation reserve fund. (1) The trustees of a school district may establish a litigation reserve fund only when litigation that is pending against the district could result in an award against the district.

(2) At the end of each school fiscal year, the trustees of a district may transfer money from the general fund, within the adopted budget, to establish the fund.

(3) Upon conclusion of litigation, the balance of the money in the fund reverts to the general fund and must be used to reduce the district's general fund BASE budget levy requirement computed pursuant to 20-9-141.

Section 2. Section 20-9-201, MCA, is amended to read:

"**20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, agency fund, extracurricular fund, metal mines tax reserve fund, endowment fund, *litigation reserve fund,* and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) Except as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall

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close the fund by transferring all cash and other account balances to the general fund if the fund does not have a cash or fund balance deficit."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, part 5, and the provisions of Title 20, chapter 9, part 5, apply to [section 1].

Section 4. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1994.

Approved April 15, 1995

CHAPTER NO. 494

[SB 271]

AN ACT DECLARING THE POLICY OF THE STATE TO PLACE A CHILD REMOVED FROM THE HOME WITH THE EXTENDED FAMILY UPON DEPARTMENT OF FAMILY SERVICES' APPROVAL OF THE HOME; REQUIRING A DEPARTMENT INVESTIGATION OF PERSONS LIVING IN THE HOME; AND AMENDING SECTIONS 41-3-101 AND 52-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-101, MCA, is amended to read:

"**41-3-101. Declaration of policy.** (1) It is ~~hereby declared to be~~ the policy of tbe state of Montana to:

(a) ~~insure~~ *ensure* that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; and

(d) preserve the unity and welfare of the family whenever possible.

(2) It is the policy of this state to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that tbe mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever appropriate.

(3) In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the

department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children."

Section 2. Section 52-2-102, MCA, is amended to read:

"52-2-102. Recognition of parental control of children — *placement with extended family.* ~~Nothing in this~~ *This* title ~~shall~~ *may not* be construed as authorizing any state or county official, agent, or representative, in carrying out any of the provisions of this title, to take charge of any child over the objection of either of the parents of ~~such~~ *the* child or the person standing in loco parentis to ~~such~~ *the* child, except pursuant to a proper court order. *When it is necessary to take charge of a child pursuant to a court order, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility."*

Approved April 15, 1995

CHAPTER NO. 495

[SB 330]

AN ACT GENERALLY REVISING THE WATER QUALITY NONDEGRADATION PROVISIONS OF MONTANA WATER QUALITY LAWS; CHANGING THE DEFINITION OF HIGH-QUALITY WATERS; CHANGING THE DEFINITION OF INTERESTED PERSON; AND AMENDING SECTIONS 75-5-103 AND 75-5-303, MCA.

WHEREAS, water quality nondegradation rules adopted by the Board of Health and Environmental Sciences in 1994 create a nondegradation review system that is unnecessarily cumhersome and that accordingly requires revision; and

WHEREAS, the water quality nondegradation statutes require amendment te remedy a conflict with the Montana Administrative Procedure Act and for clarification.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

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(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents ~~which~~ *that* are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means *all* state waters ~~whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life~~, *except:*

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(10) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who ~~has submitted oral or written comments on~~ *has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by* the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat,

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chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(15) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(16) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(17) "Person" means tbe state, a political suhdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(18) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(19) *(a)* "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters ~~which~~ *that* exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water ~~which~~ *that* will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration or flow ~~which~~ *that* is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(20) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(22) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants ~~which~~ *that* reflects the greatest degree of effluent reduction achievable through application of the hest available demonstrated control technology, processes, operating methods, or other alternatives, including, ~~where~~ *when* practicable, a standard permitting no discharge of pollutants.

(23) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground;. ~~however~~ *However*, this subsection does

not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(24) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(25) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(26) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 2. Section 75-5-303, MCA, is amended to read:

"**75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality necessary to protect those uses must he maintained and protected.

(2) Unless authorized by the department under subsection (3), the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally and technologically feasible ~~alternatives~~ *modifications* to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development ~~that exceeds the benefit to society of maintaining existing high-quality waters~~ and *that the benefit of the development* exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements,

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required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

~~(6) Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board.~~

(6) Periodically, but not more often than every 5 years, the department may review authorizations to degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing, modify the authorization if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify an authorization may be appealed to the board.

(7) The board shall adopt rules to implement this section."

Approved April 15, 1995

CHAPTER NO. 496

[SB 324]

AN ACT PROHIBITING STATE AGENCIES FROM SHIFTING STATE PROGRAM COSTS TO LOCAL GOVERNMENTS WITHOUT AUTHORIZATION IN STATE LAW; AND REQUIRING THE OPPORTUNITY FOR A HEARING PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. State agencies not to shift cost to local governments. (1) A state agency may not take any action prohibited by subsection (2) without authorization in state law.

(2) A state agency may not demand, bill, request, or otherwise require a local government to take any of the following actions or make the provision of a service to a local government that is required by state law to be provided to that government contingent on the local government taking any of the following actions:

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(a) pay for all or part of the administrative costs of a program, activity, or undertaking required by state law to be carried out primarily by a state agency;

(b) pay for costs of computer hardware or software used in the operation of a state program, activity, or undertaking or pay for the application of either hardware or software in a state program;

(c) pay for forms required to be completed either by a local government or by third persons through a local government office and used by or filed with a state agency; or

(d) pay for the filing in a state office of forms required by state law to be completed by a local government.

(3) (a) A local government may refuse to pay for services billed or charged to it by a state agency in violation of this section. Upon refusal by the local government, the state agency may send to the local government a written notice of the program or activity for which the local government is billed, a detailed statement of the amount of the bill or charge, and a citation to the legal authority requiring the local government to pay the bill or charge.

(b) Within 30 days of receipt of the notice required by this subsection (3), the local government shall pay the bill or charge or request a hearing before the state agency. Upon request, the state agency shall provide a hearing. If a local government fails to pay the bill or charge and fails to request a hearing, the state agency may initiate a contested case proceeding. Proceedings authorized by this subsection must be beld in accordance with the provisions of the Montana Administrative Procedure Act governing contested cases. A decision of the state agency following opportunity for a hearing may be appealed to the district court as provided in 2-4-702.

(4) The remedy provided in subsection (3) is exclusive of any other remedy provided in law for a state agency claiming a right to recover an administrative cost from a local government and is exclusive of any other remedy provided in law for a local government refusing to pay a bill or charge of a state agency.

(5) This section does not apply to services provided by a state agency pursuant to a written or oral contract.

(6) The following definitions apply to this section:

(a) "Administrative cost" means the cost of administering a program, activity, or undertaking, including costs for salaries, wages, rent, heat, electricity, computer hardware, computer software, telephone, travel, equipment, supplies, or postage.

(b) "Local government" means a county, city, town, township, school district, or other district or local public entity witb the authority to spend or receive public funds.

(c) "State agency" means a department, board, commission, office, bureau, or other public authority of state government.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 2, part 1, and the provisions of Title 1, chapter 2, part 1, apply to [section 1].

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Approved April 14, 1995

CHAPTER NO. 497

[SB 331]

AN ACT GENERALLY REVISING THE MONTANA WATER QUALITY ACT; ESTABLISHING WATER QUALITY STANDARDS; REQUIRING THAT TREATMENT STANDARDS BE ECONOMICALLY, ENVIRONMENTALLY, AND TECHNOLOGICALLY FEASIBLE; AMENDING SECTIONS 75-5-103, 75-5-106, 75-5-301, 75-5-302, 75-5-304, 75-5-305, 75-5-401, 75-5-403, 75-5-605, 75-5-614, 75-5-631, 75-5-636, AND 75-6-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, experience with implementation and enforcement of the Montana water quality statutes has revealed deficiencies in the statutes that have led to inefficiency and unfairness in administration and enforcement of the statutes; and

WHEREAS, those deficiencies can be addressed by selective amendment of the statutes.

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the board of health and environmental sciences regarding rulemaking. The legislature confirms the policy of this state, as reflected in 75-5-101. It is concerned that implementation of the water quality laws has in the past been too dependent on assumptions and conjecture springing from experiences and circumstances from other states and has not been sufficiently based on the conditions and needs of our state. The legislature intends that, in promulgating rules under this bill, the board of health and environmental sciences should seriously consider the impact of proposed rules and that the rules should be adopted only on the basis of sound, scientific justification and never on the basis of projections or conjecture. The legislature is specifically concerned that water quality criteria must reflect concentrations that can be reliably measured, or the rules will, as a practical matter, be unenforceable. [Section 1], providing conditions for adoption of standards more stringent than federal standards, is not intended to prohibit the adoption of ground water quality standards.

Be it enacted by the Legislature of the State of Montana:

Section 1. Standards more stringent than federal standards. (1) In adopting rules to implement this chapter, the board may adopt rules that are more stringent than corresponding draft or final federal regulations, guidelines, or criteria if the board makes written findings, based on sound scientific or technical evidence in the record, which state that rules that are more stringent than corresponding federal regulations, guidelines, or criteria are necessary to protect the public health, beneficial use of water, or the environment of the state.

(2) The board's written findings must be accompanied by a board opinion referring to and evaluating the public health and environmental information and studies contained in the record that forms the hasis for the board's conclusion.

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Section 2. Site-specific standards of water quality for aquatic life. (1) Notwithstanding any other provisions of this chapter and except as provided in subsection (2), the board, upon application by a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must he developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of heneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of the department or the applicant, hear and determine the dispute. The board's decision must be based on sound scientific, technical, and available site-specific evidence.

Section 3. Section 75-5-103, MCA, is amended to read:

"**75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which *that* are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

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(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(13)~~*(14)* "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(14)~~*(15)* "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(15)~~*(16)* "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(16)~~*(17)* "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(17)~~*(18)* "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(18)~~*(19)* "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(19)~~*(20)* "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor, or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water ~~which~~ *that* will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to

public health, recreation, safety, *or* welfare, *to* livestock, *or to* wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow ~~which~~ *that* is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(20)~~*(21)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(21)~~*(22)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(22)~~*(23)* "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which *that* reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, ~~where~~ *when* practicable, a standard permitting no discharge of pollutants.

~~(23)~~*(24) (a)* "State waters" means a body of water, irrigation system, or drainage system, either surface or underground~~; however, this subsection~~.

(b) The term does not apply to*:*

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters *or land application disposal waters* ~~where~~ *when* the waters are used up within the irrigation *or land application disposal* system and the waters are not returned to ~~any other~~ state waters.

~~(24)~~*(25)* "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or otber wastes.

~~(25)~~*(26)* "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include hut are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(26)~~*(27)* "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 4. Section 75-5-106, MCA, is amended to read:

"**75-5-106. Interagency cooperation — enforcement authorization.** (1) The council, board, and department may require the use of records of all state agencies and may seek the assistance of ~~such~~ *the* agencies. *When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under*

this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts."

Section 5. Section 75-5-301, MCA, is amended to read:

"**75-5-301. Classification and standards for state waters.** Consistent with the provisions of ~~75-5-302 through 75-5-307 and~~ 80-15-201 *and this chapter*, the board shall:

(1) establish ~~and modify~~ the classification of all *state* waters in accordance with their present and future most beneficial uses, *creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish*;

(2) *(a)* formulate *and adopt* standards of water ~~purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention~~ *quality, giving consideration to the economics of waste treatment and prevention.*

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10^{-3} in the case of arsenic and 1 x 10^{-5} for other carcinogens. However, if a standard established at a risk level of 1 x 10^{-3} for arsenic or 1 x 10^{-5} for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(ii) standards for the protection of aquatic life do not apply to ground water;

(3) review, from time to time at intervals of not more than 3 years *and, to the extent permitted by this chapter, revise* established classifications of waters and *adopted* standards of water ~~purity and classification~~ *quality*;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; ~~and~~

(c) establish criteria for determining whether a proposed activity or class of activities will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; ~~and~~

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or

denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 6. Section 75-5-302, MCA, is amended to read:

"75-5-302. Revised classifications not to lower water quality standards — exception. In revising classifications or standards or in adopting new classifications or standards, the board may not so formulate standards of water ~~purity~~ *quality* or classify ~~any~~ state water as to lower ~~any~~ *the* water quality standard applicable to ~~any~~ state water below the level applicable under the classifications and standards adopted except upon a finding that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 75-5-307. *When the board or department is presented with facts indicating that a body of water is misclassified, the board shall, within 90 days, initiate rulemaking to correct the misclassification.*"

Section 7. Section 75-5-304, MCA, is amended to read:

"75-5-304. Adoption of standards — pretreatment, effluent, performance. *(1)* The board shall:

(a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;;

(b) adopt effluent standards as defined in 75-5-103;;

(c) adopt toxic effluent standards and prohibitions;; and

(d) establish standards of performance for new point source discharges.

(2) In taking action under subsection (1), the board shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible."

Section 8. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes — variance procedure — appeals. (1) The board may establish minimum requirements for the treatment of wastes. *For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.*

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(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 9. Section 75-5-401, MCA, is amended to read:

"**75-5-401. Board rules for permits.** (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. *The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:*

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(2) The rules shall *must* allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ~~insures~~ *ensures* that ~~such~~ *the* permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and

that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety."

Section 10. Section 75-5-403, MCA, is amended to read:

"**75-5-403. Denial or modification of permit — *time for review of permit application.*** (1) *The department shall review for completeness all applications for new permits within 60 days of the receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all major deficiency issues, based on the information submitted. The department and the applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period.*

(2) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and ~~he~~ *the applicant or holder* may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. ~~Such~~ *The* hearing ~~shall~~ *must* be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit ~~shall be~~ *is* effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, ~~no~~ *an* order modifying ~~his~~ *the* permit ~~shall be~~ *is not* effective until 20 days after ~~he has received~~ *receipt of* notice of the action of the board.

~~(2) This section does not apply to any modification made in permit conditions at the time of reissuance, but only to those modifications made in existing permits during their terms.~~"

Section 11. Section 75-5-605, MCA, is amended to read:

"**75-5-605. Prohibited activity.** (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any wastes *where they will* ~~in a location where they are likely to~~ cause pollution of any state waters; *Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters.*

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

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(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) It is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system ~~which~~ *that* discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters."

Section 12. Section 75-5-614, MCA, is amended to read:

"**75-5-614. Injunctions authorized.** (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation ~~which~~ *that* would be subject to a compliance order under 75-5-613. An action under this subsection may he commenced in the district court of ~~the county in which the defendant is located or resides or is doing business or any~~ *the* county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana~~, and the court ~~shall have~~ *has* jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Section 13. Section 75-5-631, MCA, is amended to read:

"**75-5-631. Civil penalties — injunctions not barred.** (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter ~~shall be~~ *is* subject to a civil penalty not to exceed $25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain ~~any~~ enforcement proceedings in the name of the state.

(4) ~~When~~ *In an action* seeking penalties under this section, the department shall take into account the following factors in determining an appropriate settlement, if any, subsequent to the filing of a complaint:

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(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, ~~his~~ *the violator's* ability to pay~~, any~~ *and* prior history of ~~such~~ violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, *amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state,* and ~~any~~ other matters as justice may require."

Section 14. Section 75-5-636, MCA, is amended to read:

"**75-5-636. Action by other parties.** A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency ~~which~~ *that* made the protest. If a violation is established by the investigation of the department, appropriate enforcement action ~~shall~~ *must* be taken. *If the investigation proves the protest to have been without reasonable cause, the department may seek recovery of investigative costs from the person who made the application.*"

Section 15. Section 75-6-112, MCA, is amended to read:

"**75-6-112. Prohibited acts.** A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) commence construction, alteration, or extension of any system of water supply, water distribution, sewer, drainage, wastewater, or sewage disposal before he *the person* submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications~~;~~. *However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section.*

(5) operate or maintain any public water supply system ~~which~~ *that* exceeds a maximum contaminant level established by the board unless ~~he~~ *the person* has been granted or has an application pending for a variance or exemption pursuant to this part;

(6) violate any provision of this part or *a* rule adopted under this part; or

(7) violate any condition or requirement of an approval issued pursuant to this part."

Section 16. Codification instruction. [Sections 1 and 2] are intended to he codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections 1 and 2].

Section 17. Saving clause. [This act] does not apply to civil or administrative actions commenced prior to [the effective date of this act] or to claims made in those actions, except that compliance plans resulting from those actions must reflect changes made by [this act].

Section 18. Effective date. [This act] is effective on passage and approval.

Approved April 15, 1995

CHAPTER NO. 498

[SB 349]

AN ACT REQUIRING SITE-SPECIFIC AMBIENT AIR QUALITY AND METEOROLOGICAL MONITORING AT COMMERCIAL HAZARDOUS WASTE INCINERATORS; REQUIRING COMMERCIAL HAZARDOUS WASTE INCINERATORS TO PROVIDE TELEMETERING SERVICE TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES WITH AN IMMEDIATE NOTIFICATION SYSTEM ACTIVATED WHEN EMISSIONS APPROACH OR EXCEED PERMITTED LIMITS; CLARIFYING ALLOWABLE INTAKES; REQUIRING COMMERCIAL HAZARDOUS WASTE INCINERATORS TO ACHIEVE THE LOWEST ALLOWABLE EMISSION LEVELS; ESTABLISHING A PRESUMPTION OF CONTINUING VIOLATION FOR CERTAIN VIOLATIONS OF THE CLEAN AIR ACT OF MONTANA; AMENDING SECTIONS 75-2-231 AND 75-2-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this hill because the bill gives the department authority to adopt administrative rules that specify meteorologic conditions that necessitate cessation of the burning of bazardous waste at a commercial hazardous waste incinerator if site-specific monitoring determines that inversion conditions exist.

Be it enacted by the Legislature of the State of Montana:

Section 1. Commercial hazardous waste incinerators — additional permit requirements. (1) In addition to the requirements under 75-2-231, the department shall require the owner or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to submit a plan that requires the cessation of the burning of hazardous waste if site-specific monitoring determines that inversion conditions, as defined by department rule, exist. The department shall consider the proximity of the commercial hazardous waste incinerator to populated areas when determining the appropriate plan content. The plan must include a site-specific ambient air quality and meteorological monitoring program in order to establish the conditions under which the

burning of commercial hazardous waste must be halted and conditions under which the burning of commercial hazardous waste may be resumed. Conditions of the plan must be incorporated as a condition of the facility's permit.

(2) When, because of the proximity of a commercial hazardous waste incinerator to populated areas, the department determines that continuing monitoring is appropriate, the department shall require the owner or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to provide telemetering service to the department with an immediate notification system activated when emissions approach or exceed permitted limits.

Section 2. Section 75-2-231, MCA, is amended to read:

"75-2-231. Medical waste and hazardous waste incineration — additional permit requirements. (1) Because of the potential ~~formation~~ *emission* of chlorinated dioxins, furans, heavy metals, and carcinogens as a result of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose, the board shall adopt rules establishing additional permit requirements for commercial medical waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The board shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream and hazardous waste stream that may be a source of chlorine, in order to minimize the potential ~~creation~~ *emission* of chlorinated dioxins, furans, ~~heavy metals,~~ and carcinogens;

(b) require commercial medical waste and commercial hazardous waste incinerators to achieve the lowest achievable emission rate~~, except when best available control technology is adequate~~ to prevent *the public health risk from air emissions or ambient concentrations from* exceeding the *negligible risk standard required by 75-2-215 and any applicable federal* allowable ~~daily~~ intake standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other ~~carcinogens~~ *hazardous air pollutants*;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of ~~high-quality~~ *high-quality* scientific information and for the submission of the information by the applicant;

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream and hazardous waste stream, including *heavy metals and* possible precursors to the formation of chlorinated dioxins, furans, ~~heavy metals,~~ and carcinogens;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; and

(e) are necessary to implement the provisions of this section and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215.

(2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a commercial medical waste *incinerator* or commercial hazardous waste incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved methods, and those studies that are necessary to identify the potential community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical contact by the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins, furans, heavy metals, and carcinogens for the affected communities.

(3) The department may not issue or alter an air quality permit pursuant to this chapter until the department has determined, based upon an analysis of the information provided by the applicant pursuant to subsection (2) and other necessary and relevant data, that the public health risk from *air emissions or ambient concentrations of* chlorinated dioxins, furans, heavy metals, and other ~~carcinogens~~ *hazardous air pollutants* will not exceed *the negligible risk standard required by 75-2-215 and any applicable* ~~appropriate~~ federal standards for allowable ~~daily~~ intake, as determined by the department after a review of established and relevant federal standards and guidelines.

(4) This section may not be construed in any way to:

(a) require the board to promulgate standards for the allowable ~~daily~~ intake of any substances for which the federal government has not established standards;

(b) allow the board to promulgate standards for the allowable ~~daily~~ intake of any substances for which the federal government has established standards that are more stringent than the federal standards; or

(c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality permit pursuant to 75-2-211 and 75-2-215."

Section 3. Section 75-2-413, MCA, is amended to read:

"75-2-413. Civil penalties — out-of-state litigants — effect of action — *presumption of continuing violation under certain circumstances.* (1) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed $10,000 per violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in

the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised or otherwise tampered with.

~~(3)~~*(4)* Money collected under this section must be deposited in the state general fund. This subsection does not apply to money collected by an approved local air pollution control program."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1995

CHAPTER NO. 499

[SB 350]

AN ACT REQUIRING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO NOTIFY AN EMPLOYER IF A PROBATIONER OR PAROLEE HAS BEEN CONVICTED OF AN OFFENSE INVOLVING THEFT FROM AN EMPLOYER; AND AMENDING SECTION 46-23-1004, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-1004, MCA, is amended to read:

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"46-23-1004. **Duties of the department.** The department is responsible for any investigation and supervision requested by the board or the courts. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff;

(7) cooperate with all agencies, public and private, ~~which~~ *that* are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the interstate compact for the supervision of parolees and probationers*; and*

(9) notify the employer of a probationer or parolee if the probationer or parolee has been convicted of an offense involving theft from an employer."

Approved April 14, 1995

CHAPTER NO. 500

[SB 354]

AN ACT PROVIDING FOR CONTRACTOR REGISTRATION; PROVIDING FOR FEES TO FUND THE ADMINISTRATION AND ENFORCEMENT OF THE REGISTRATION; PROVIDING THAT A PERCENTAGE OF THE FEES BE USED FOR AN EDUCATION PROGRAM; SETTING REQUIREMENTS FOR REGISTRATION; REQUIRING SURETY BONDS; PROVIDING EXEMPTIONS; PROVIDING RESTRICTIONS ON ADVERTISING; PROVIDING FOR ADMINISTRATIVE HEARINGS; PROVIDING FOR VIOLATIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; REQUIRING INDEPENDENT CONTRACTORS TO OBTAIN AN EXEMPTION; AMENDING SECTIONS 37-71-211, 39-3-703, 39-3-705, 39-3-706, AND 39-71-120, MCA; AND REPEALING SECTION 39-3-704, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of labor and industry authority to adopt administrative rules. It is the intent of the legislature that the department adopt rules to implement a self-funding registration program for contractors to ensure that:

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(1) contractors are in compliance with the laws governing workers' compensation coverage, unemployment insurance coverage, and other state laws; and

(2) all persons in the construction business are operating on a "level playing field" with regard to compliance with state laws.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. It is the purpose of [sections 1 through 25] to ensure that all contractors are competing fairly and in compliance with state laws.

Section 2. Definitions. As used in [sections 1 through 25], the following definitions apply:

(1) "Contractor" means a person, firm, or corporation that:

(a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or

(b) in order to do work similar to that described in subsection (1)(a) upon the contractor's property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided.

(2) "Department" means the department of labor and industry.

(3) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole or in part.

(4) "Specialty contractor" means a contractor whose operations do not fall within the definition of general contractor.

(5) "Verification" means the receipt and duplication by a political subdivision of a contractor registration card that is current on its face.

Section 3. Registration required — prohibited acts — criminal penalty. (1) On or before July 1, 1996, each contractor shall register with the department.

(2) It is a misdemeanor for a contractor to:

(a) advertise, offer to perform work, submit a bid, or perform work as a contractor:

(i) without being registered as required by [sections 1 through 25]; or

(ii) when the contractor's registration is suspended;

(b) use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required; or

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(c) transfer a valid registration to an unregistered contractor to work under a registration issued to another contractor.

(3) The department may cause the criminal proceedings for a misdemeanor action under [sections 1 through 25] to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the infraction occurs.

Section 4. Application for registration — grounds for denial. (1) An applicant for registration as a contractor shall submit an application under oath on a form to be provided by the department that must include the following information:

(a) the applicant's social security number;

(b) proof of compliance with workers' compensation laws;

(c) proof of compliance with unemployment insurance laws;

(d) the I.R.S. employer identification number, if any;

(e) the type of contracting activity, such as general or specialty, and, if applicable, the type of specialty; and

(f) the name and address of:

(i) each partner if the applicant is a firm or partnership;

(ii) the owner if the applicant is an individual proprietorship;

(iii) the corporate officers and registered agent if the applicant is a corporation; or

(iv) tbe manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if tbe applicant is a limited liability company.

(2) The information contained in the application is a matter of public record and is open to public inspection.

(3) The department may verify the workers' compensation coverage information provided by the applicant in subsection (1)(b), including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Montana.

(4) Registration must be denied if:

(a) the applicant has been previously registered as a sole proprietor, partnership, limited liability company, or corporation and was a principal or officer of the corporation; and

(b) the applicant has an unsatisfied final judgment in an action based on Title 39, chapter 3, part 7, that was incurred during a previous registration under [sections 1 through 25].

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Section 5. Bond or other security required. Each applicant shall, at the time of registration or reregistration, file with the department a surety bond or other security as provided in Title 39, chapter 3, part 7.

Section 6. Certificate of registration — issuance — duration — renewal — suspension. (1) The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of [sections 1 through 25].

(2) If the department approves an application, it shall issue a certificate of registration to the applicant. The department shall place the expiration date on the certificate. Except as provided in subsection (3), the certificate is valid until the earliest date of:

(a) 1 year;

(b) the date the bond expires; or

(c) the date the workers' compensation or unemployment insurance expires or any applicable exemption terminates.

(3) The certificate issued under this section to an independent contractor is invalid on the date the contractor hires employees unless the contractor provides proof to the department of workers' compensation coverage for those employees.

(4) A contractor may supply a short-term bond or insurance policy to bring its registration period to the full 1 year.

(5) If a contractor's surety bond or other security has an unsatisfied judgment against it or it is canceled, the contractor's registration is automatically suspended on the effective date of the impairment or cancellation. The department shall give notice of the suspension to the contractor.

Section 7. When partnership or joint venture considered registered. A partnership or joint venture is considered registered under [sections 1 through 25] if one of the general partners or venturers whose name under which the partnership or venture does business is registered.

Section 8. Fees — education program. (1) The department shall charge fees for:

(a) issuance, renewal, and reinstatement of certificates of registration; and

(b) changes of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees shall cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing [sections 1 through 25]. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed $80.

(4) The fees collected under this section must be deposited in the state special revenue account to the credit of the department for the administration and enforcement of [sections 1 through 25].

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(5) The department shall establish, cooperatively with representatives of the building industry, an industry and consumer information program, funded with 15% of the fees, to educate the huilding industry about the registration program and to educate the public regarding the hiring of building contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption may not exceed the fee charged for a certificate of registration.

Section 9. Registration prerequisite to suit or lien claim — limiting liability. (1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain an action in any court of this state for the collection of compensation for the performance of any work or for breach of contract for which registration is required under [sections 1 through 25] without alleging and proving that the contractor was a registered contractor and held a current and valid certificate of registration at the time the contractor entered the contract for the performance of work.

(2) For the purposes of this section, the court may not find a contractor in compliance with the registration requirements of [sections 1 through 25] unless:

(a) the department has on file the information required by [section 4]; and

(b) the contractor has a current bond or other security as required by [section 5].

(3) In determining whether a contractor is in compliance with the registration requirements of [sections 1 through 25], the court shall consider the length of time during which the contractor did not hold a valid certificate of registration.

(4) A contractor may not bring or maintain a lien claim under Title 71, chapter 3, part 5, unless the contractor is registered at the time of entering into a contract.

(5) A contractor engaging the services of another contractor is not liable as an employer for workers' compensation and unemployment insurance coverage for the other contractor or for any employee of the other contractor if the contractor verifies with the department that the other contractor with whom the contractor is contracting for services is registered as provided under [sections 1 through 25].

Section 10. Exemptions. [Sections 1 through 25] do not apply:

(1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) to an officer of a court acting within the scope of office;

(3) to a public utility operating under the regulations of the public service commission in construction, maintenance, or development work incidental to its own business;

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(4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the legal jurisdiction of the federal government;

(7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the contractor;

(8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than $500. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or different contractor, or in which a division of the operation is made into contracts of amounts of less than $500 for the purpose of evasion of [sections 1 through 25] or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor or is qualified to engage in the business of a contractor.

(9) except when work is performed by a registered contractor, to a construction or operation incidental to the construction or repair:

(a) of irrigation and drainage ditches of an irrigation district or reclamation district;

(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or

(c) related to clearing or other work upon land in rural districts for fire prevention purposes;

(10) to an owner who contracts for a project with a registered contractor;

(11) to a person working on the person's property, whether occupied hy the person or not, and a person working on the person's residence, whether owned by the person or not, but this exemption does not apply to a person otherwise covered by [sections 1 through 25] who constructs an improvement on the person's property with the intention and for the purpose of selling the improved property;

(12) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(13) to a licensed architect or civil or professional engineer acting solely in a professional capacity;

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(14) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

(15) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license; or

(16) to a person who engages in the activities regulated as an employee of a registered contractor with wages as the sole compensation or as an employee with wages as the sole compensation.

Section 11. Business practices — advertising — penalty. (1) Except as provided in [section 7], a person who has registered under one name as provided in [sections 1 through 25] may not engage in the business or act in the capacity of a contractor under any other name unless that name also is registered under [sections 1 through 25].

(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a contractor's name or address must show the contractor's name and address as registered under [sections 1 through 25].

(3) (a) The alphabetized listing of contractors appearing in the advertising section of directories, excluding telephone books, and all advertising must show the contractor's current registration number. However, signs on motor vehicles and on-premises signs do not constitute advertising under this section.

(b) All materials used to directly solicit business from retail customers who are not businesses must show a contractor's current registration numher. A contractor may not use a false or expired registration number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not subject to this subsection.

(4) A contractor may not advertise that the contractor is bonded because of the bond required to be filed provided in [section 5].

(5) A contractor may not falsify a registration number and use it in connection with a solicitation or identification as a contractor. An individual contractor, partner, associate, agent, salesperson, solicitor, officer, or employee of a contractor shall use a true name and address at all times while engaged in the business or capacity of a contractor or in activities related to a contractor.

(6) (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than $5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of [sections 1 through 25].

(b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error.

Section 12. Unlawful advertising — liability — citations. (1) When determining a violation under [section 11], the person who purchased or offered to purchase the advertising must be held responsible.

(2) If the department, upon investigation, has probable cause to believe that a person holding a registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor who is not otherwise exempted from [sections 1 through 25] has violated [section 11] by unlawfully advertising for work covered by [sections 1 through 25] in an alphabetical or classified directory, the department may issue a citation containing an order of correction. The order must require the violator to cease the unlawful advertising.

(3) If the person to whom a citation is issued under subsection (2) notifies the department in writing that the person contests the citation, the department shall offer an opportunity for an adjudicative proceeding under the Montana Administrative Procedure Act within 30 days after receiving the notification.

Section 13. Department to compile and update list of registered contractors — availability — fee. (1) The department shall compile a list of all contractors registered under [sections 1 through 25] and update the list at least bimonthly. The list is public information and must be available to the public upon request for a reasonable fee.

(2) The department shall inform a person, firm, or corporation whether a contractor is registered. The department shall provide the information without charge, except for a reasonable fee for any copies made.

Section 14. Provisions exclusive — certain local authority not limited or abridged. The provisions of [sections 1 through 25] relating to the registration or licensing of a person, firm, or corporation, including the requirement of a bond with the state of Montana named as obligee and the collection of a fee, are exclusive. A political subdivision of the state may not require or issue any registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee levied upon all businesses. This section does not limit the authority of a local government with respect to contractors not required to be registered under [sections 1 through 25].

Section 15. Violation — infraction. (1) It is a violation of [sections 1 through 25] and an infraction for any contractor to:

(a) advertise, offer to perform work, submit a bid, or perform work as a contractor without being registered as required by [sections 1 through 25];

( ) advertise, offer to perform work, submit a bid, or perform work as a contractor when the contractor's registration is suspended; or

(c) transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor.

(2) Each day that a contractor works without being registered as required by [sections 1 through 25], works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction. Each worksite at which a contractor works without being registered as required by [sections 1 through 25], works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction.

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Section 16. Violations — investigations — citations. (1) The department shall appoint compliance inspectors to investigate alleged or apparent violations of [sections 1 through 25]. An authorized compliance inspector, upon presentation of appropriate credentials, may inspect and investigate worksites at which a contractor had bid or is presently working to determine whether the contractor is registered in accordance with [sections 1 through 25] or rules adopted under [section 25] or whether there is a violation of [section 15]. Upon request of the compliance inspector, a contractor or an employee of the contractor shall provide information identifying the contractor.

(2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee is cited as the agent of the unregistered contractor, and issuance of the citation to the employee is notice to the contractor that the contractor is in violation of [sections 1 through 25]. An employee who is citod by a compliance inspector is not liable for any of the alleged violations contained in the citation unless the employee is also the contractor.

Section 17. Failure to provide information to identifying contractor — misdemeanor. Willful refusal to provide information identifying a contractor as required by [section 16] is a misdemeanor.

Section 18. Restraining orders — injunctions. (1) If the authorized compliance inspector, upon investigation or inspection, reasonably believes that a contractor has failed to register in accordance with [sections 1 through 25] or the rules adopted under [section 25], the department may issue an order immediately restraining further construction work at the worksite by the contractor. The order shall describe the specific violation that necessitated the issuance of the restraining order. The contractor or representative to whom the restraining order is directed may request a hearing to be conducted pursuant to the Montana Administrative Procedure Act. A request for hearing may not stay the effect of the restraining order.

(2) In addition to and after having invoked the powers of restraint vested in the department as provided in subsection (1), the department, through the attorney general, may petition the district court to enjoin any activity in violation of [sections 1 through 25]. A prima facie case for issuance of an injunction must be established by affidavits and supporting documentation that a restraining order was served upon the contractor and that the contractor continued to work after service of the order. Upon the filing of the petition, the district court has jurisdiction to grant injunctive or other appropriate relief, pending the outcome of enforcement proceedings under [sections 1 through 25], or to enforce restraining orders issued by the department. If the contractor fails to comply with a court order, the department shall petition the district court for an order holding the contractor in contempt of court and for any other appropriate relief.

Section 19. Notice of infraction — service. The department may issue a notice of infraction if the department reasonably believes that the contractor required to be registered by [sections 1 through 25] has failed to do so or has otherwise committed a violation under [section 15]. A notice of infraction issued under this section may be personally served on the contractor named in the notice by the department's compliance inspectors or service may be made by certified mail directed to the contractor named in the notice of infraction. If the contractor named in the notice of infraction is a firm or corporation, the notice

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may be personally served on any employee of the firm or corporation. If a notice of infraction is personally served upon an employee of a firm or corporation, the department shall send a copy of the notice by certified mail within 4 days of service to the contractor if the department is able to obtain the contractor's address.

Section 20. Notice of infraction — form. The form of the notice of the infraction issued under [sections 1 through 25] must include a statement:

(1) that the notice represents a determination that the infraction has been committed by the contractor named in the notice and that the determination is final unless contested as provided in [sections 1 through 25];

(2) that the infraction is a civil offense;

(3) of the specific violation that necessitated the issuance of the notice of infraction;

(4) of penalty involved if the infraction is established;

(5) of the options provided in [sections 1 through 25] for responding to the notice and the procedures necessary to exercise these options;

(6) that at a hearing to contest the notice of infraction, the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed and that the contractor may subpoena witnesses, including the compliance inspector who issued and served the notice of infraction;

(7) signed by the person who has been served with the notice of infraction that the contractor promises to respond to the notice of infraction in one of the ways provided in [sections 1 through 25];

(8) that refusal to sign the notice of infraction as directed in subsection (7) is a misdemeanor and may be punished by a fine, imprisonment in jail, or both; and

(9) that the contractor's failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine, imprisonment in jail, or both.

Section 21. Notice of infraction — determination — appeal — duty to respond. (1) Unless contested, the notice of infraction represents a determination that the contractor to whom the notice was issued committed the infraction.

(2) If a party desires to contest the determination, the party shall file a notice of appeal with the department within 20 days of the issuance of the notice of infraction. The department shall conduct a hearing in accordance with the Montana Administrative Procedure Act. The department may conduct the hearing by telephone or by videoconference.

(3) A contractor who is issued a notice of infraction shall respond within 20 days of the date of issuance of the notice of infraction.

(4) If a contractor named in the notice does not elect to contest the notice of infraction, the contractor shall pay to the department the amount of the penalty

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prescribed for the infraction. When payment of the appropriate penalty is received by the department, the department shall make the appropriate entry in its records.

(5) If a contractor named in the notice elects to contest the notice of infraction, the contractor shall respond by filing an answer of protest with the department, specifying the grounds of protest.

Section 22. Notice of infraction — failure to respond — refusal to sign — penalty. (1) If a contractor issued a notice of infraction fails to respond within the prescribed response period, the contractor is guilty of a misdemeanor and the department may cause the criminal proceedings to he initiated against the person for prosecution in the lowest court of concurrent jurisdiction in the county where the infraction occurred.

(2) After a final determination by the department that an infraction has been committed, a contractor who fails to pay a penalty within 30 days, unless waived, reduced, or suspended pursuant to [section 24], and who fails to file an appeal pursuant to [section 23] is guilty of a misdemeanor and the department may cause the criminal proceedings to be initiated against the person for prosecution in the lowest court of concurrent jurisdiction in the county in which the infraction occurred.

(3) A contractor who fails to pay a penalty within 30 days after exhausting appellate remedies pursuant to [section 23] is guilty of a misdemeanor and the department may cause the criminal proceedings to be initiated against the person for prosecution in the lowest court of concurrent jurisdiction in the county where the infraction occurred.

(4) It is a misdemeanor for a person who has heen personally served with a notice of infraction to refuse to sign a written promise to respond to the notice.

(5) It is a misdemeanor for a contractor who has been personally served with a notice of infraction to willfully violate the written promise to respond to a notice of infraction as provided in [sections 1 through 25], regardless of the ultimate disposition of the infraction.

Section 23. Infraction — administrative hearing — procedure — burden of proof — order — appeal. (1) The department shall conduct a case related to a contractor's notice of infraction pursuant to Title 2, chapter 4.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction must be dismissed if the defendant establishes that, at the time the notice was issued, the defendant was registered by the department, was not suspended, or was exempt from registration.

(3) The hearings officer shall dismiss the notice of infraction at any time upon written notification from the department that the contractor named in the notice of infraction was registered, was not suspended, or was exempt from registration at the time the notice of infraction was issued.

(4) After consideration of the evidence and argument, the hearings officer shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice

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must be entered in the record of the proceedings. If it has been estahlished that the infraction was committed, the hearings officer shall issue findings of fact and conclusions of law in the decision and order determining whether the infraction was committed.

(5) An appeal from the hearings officer's determination or order must be to the district court.

Section 24. Infraction — penalty. (1) A contractor found to have committed an infraction under [section 15] must be assessed a penalty of $150 for each day for each infraction in which the contractor conducted business without being registered, beginning with the date the notice of infraction was served to the contractor or to the contractor's agent.

(2) The department may waive, reduce, or suspend the penalty imposed for the infraction only upon a showing of good cause that the penalty would be unduly burdensome to the contractor.

(3) A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of [sections 1 through 25].

Section 25. Rulemaking authority. The department may adopt rules to implement [sections 1 through 25].

Section 26. Section 37-71-211, MCA, is amended to read:

"37-71-211. Application for license — contents. *(1)* To obtain a license under this chapter, the applicant shall submit on ~~such~~ forms as *that* the department ~~shall prescribe~~ *prescribes* an application, under oath, ~~which shall~~ *that must* contain*:*

(a) proof of registration under [sections 1 through 25];

(b) a statement of the applicant's experience and qualifications as a contractor;

(c) the value and character of contract work completed and for whom performed during 5 years prior to the filing of ~~such~~ *the* application; and

(d) a complete financial statement on ~~such~~ *the* forms and disclosing ~~such~~ *the* information ~~as shall be~~ *that is* required by the department.

(2) ~~Such~~ *The* application shall *must* also contain ~~such~~ *any* other information ~~as~~ *that* may be requested by the department under ~~such~~ *the* rules ~~as may be~~ adopted by the department and ~~which~~ *that* will assist the department in determining the applicant's fitness to act in the capacity of a public contractor as defined in this chapter.

(3) ~~Such~~ *The* application ~~shall~~ *must* also contain a statement that the applicant desires the issuance of a license under the terms of this chapter and ~~shall~~ *must* specify the field of contracting and the class of license applied for."

Section 27. Section 39-3-703, MCA, is amended to read:

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"**39-3-703. Contractor to furnish bond ~~for wages and fringe benefits~~ — bond requirements — *deposit.*** (1) ~~Any~~ *Except as provided in subsection (3), a* contractor who contracts with ~~another~~ *any person or entity* to do any work or perform any services for the ~~other~~ *person or entity*~~, except personal services of the contractor not involving work of hired employees~~, shall furnish a surety bond or other form of security ~~to the other which shall~~ *that must* be:

(a) approved by the commissioner;

(b) in an amount ~~equal to the contractor's average monthly payroll as estimated by the commissioner~~*:*

(i) of $6,000 for a general contractor or $4,000 for a specialty contractor if the contractor is a sole proprietor, an independent contractor, or a corporate officer working as an individual without employees; or

(ii) equal to a contractor's average monthly employee payroll, based on 12 consecutive months' payroll, as estimated by the commissioner. However, the amount may not be less than $6,000 for a general contractor or $4,000 for a specialty contractor and may not exceed $25,000 for any contractor.

(c) in the name of the state of Montana;

(d) for the purpose of ~~insuring~~ *guaranteeing:*

(i) the wages and fringe benefits of all workers employed by the contractor for the contracted work;

(ii) all taxes and contributions due to the state;

(iii) payment to persons furnishing labor;

(e) filed with the commissioner within 1 week of the making of the contract or the commencement of work ~~thereunder~~ *under the contract*, whichever comes first.

(2) Only one bond ~~shall be~~ *is* required on any contractor for each year, and when the bond is filed with and approved by the commissioner, the commissioner shall certify ~~to~~ any person contracting ~~with~~ a contractor that the bond is in full force and effect.

(3) In lieu of the surety bond required by subsection (1), the contractor may file with the department a deposit consisting of cash or other security acceptable to the department.

(4) A change in the name of a business or a change in the type of business may not impair a bond for the purposes of this section as long as one of the original applicants for the bond maintains partial ownership in the business covered by the bond."

Section 28. Section 39-3-705, MCA, is amended to read:

"**39-3-705. Suit on bond.** *(1)* Any ~~employee employed by a contractor~~ *person, firm, or corporation having a claim against the contractor for any of the items referred to in 39-3-703* may bring an action on the surety bond ~~in his own name for unpaid wages and fringe benefits~~ *in the district court in the county in*

which the work was performed or in any county that has jurisdiction over the contractor.

(2) The surety issuing the bond must be named as a party to any suit upon the bond. Action upon the bond or deposit must be commenced by filing the summons and complaint with the clerk of the appropriate district court within 1 year from the date of expiration of the certificate of registration that was in force at the time the claimed labor was performed and benefits accrued, the taxes and contribution owing the state became due, or the claimed contract work was completed. Service of process in an action against the contractor, the contractor's bond, or the deposit must be exclusively by service upon the department. Three copies of the summons and complaint and a fee of $10 for handling costs must be served by certified mail upon the department at the time suit is started. The $10 fee must be deposited in the state special revenue fund to the credit of the department. The department shall maintain a record, available for public inspection, of all suits served. Service is not complete until the department receives the $10 fee and three copies of the summons and complaint. The service constitutes service on the registrant and the surety for suit upon the bond or deposit. The department shall mail the summons and complaint or a copy of the summons and complaint to the registrant at the address listed in the registrant's application and to the surety within 48 hours after it has been received.

(3) The surety is not liable in an aggregate amount in excess of the amount named in the bond or for any penalty assessed pursuant to [sections 1 through 25]. The liability for the surety may not accumulate when the bond has been renewed, continued, reinstated, reissued, or otherwise extended. The surety may, upon notice to the department and the parties, tender to the clerk of the court that has jurisdiction over the claim an amount equal to the claims under the bond or the amount of the bond less any judgments, if any, previously satisfied from the bond and exonerate the bond to the extent of the tender. However, if the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, claims must be satisfied from the bond in the following order:

(a) labor, including employee benefits;

(b) taxes and contributions due to the state; and

(c) any court costs, interest, and attorney fees that a plaintiff may be entitled to recover.

(4) If a final judgment impairs the liability of the surety to the extent that the bond is no longer in effect in the full amount required in 39-3-703, the department shall suspend the registration of the contractor until the bond liability has been furnished in the required amount, unimpaired by unsatisfied judgment claims. If the bond becomes fully impaired, a new bond must be furnished in the amount prescribed by 39-3-703.

(5) A person who filed and served a summons and complaint as required by this section and who has an unsatisfied final judgment against the registrant for any items referred to in 39-3-703 may execute upon the security held by the department by serving a certified copy of the unsatisfied final judgment within 1 year of the date of the entry of the judgment. Upon the receipt of service of the certified copy, the department shall pay or order to be paid from the deposit, through the district court that rendered the judgment, a payment toward the

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unsatisfied judgment. The priority of payment by the department must be the order of receipt by the department, but the department has no liability for payment in excess of the amount of the deposit."

Section 29. Section 39-3-706, MCA, is amended to read:

"39-3-706. Liability of ~~person~~ *contractor* contracting with *another* contractor ~~for failure to require bond.~~ ~~Any person~~ *A contractor* contracting with a *another* contractor who fails to require the *other* contractor to ~~acquire the surety bond provided for in 39-3-703(1)~~ *be registered pursuant to [sections 1 through 25]* is liable to the employees of ~~that~~ *the other* contractor for their wages and fringe benefits on that particular job."

Section 30. Section 39-71-120, MCA, is amended to read:

"39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his *the* contract and in fact; ~~and~~

(b) is engaged in an independently established trade, occupation, profession, or business; *and*

(c) has received an exemption granted under 39-71-401(3).

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1) are met."

Section 31. Repealer. Section 39-3-704, MCA, is repealed.

Section 32. Codification instruction. [Sections 1 through 25] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 25].

Section 33. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 15, 1995

CHAPTER NO. 501

[SB 371]

AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING CERTAIN STATE WATERS AS OUTSTANDING RESOURCE WATERS; ESTABLISHING A PROCESS FOR STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING ACTIVITIES THAT ARE EXEMPT FROM THE WATER QUALITY NONDEGRADATION REVIEW PROCESS; AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-303, MCA.

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STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the board of health and environmental sciences the authority to adopt administrative rules. It is the intent of the legislature that this legislation and the rules adopted pursuant to this legislation serve as Montana's regulatory scheme for both outstanding national resource waters and outstanding state resource waters. It is the further intent of the legislature that surface and ground water in Montana be designated as outstanding resource waters only if there is no other reasonable means of protecting the water. The legislature intends that because this designation may severely limit future use of the designated water, the designation should be accomplished only after a very thorough examination of the environmental, social, and economic impacts.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

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(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(15) *"Outstanding resource waters" means:*

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of [the effective date of this act]; or

(b) other surface waters or ground waters classified by the board under the provisions of [section 3] and approved by the legislature.

(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(16)~~*(17)* "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(17)~~*(18)* "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(18)~~*(19)* "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(19)~~*(20)* "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the

department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(20)~~*(21)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(21)~~*(22)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(22)~~*(23)* "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

~~(23)~~*(24)* "State waters" means a body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

~~(24)~~*(25)* "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(25)~~*(26)* "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(26)~~*(27)* "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 2. Outstanding resource waters — statement of purpose. (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of this section and [section 3] is to provide this protection and to provide guidance to the board in establishing rules to accomplish that level of protection.

Section 3. Outstanding resource water classification — rules — criteria — limitations — procedure. (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters. Neither this section nor rules adopted pursuant to this section apply to an activity that is identified as nonsignificant

under 75-5-301(5)(c) and that is exempted from nondegradation review required under 75-5-303.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters.

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a); and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

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(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters.

Section 4. Section 75-5-301, MCA, is amended to read:

"**75-5-301. Classification and standards for state waters.** Consistent with the provisions of 75-5-302 through 75-5-307 and 80-15-201, the board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water purity and classification;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

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(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; and

(c) establish criteria for determining whether a proposed activity or class of activities, *in addition to those activities identified in [section 6],* will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; and

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 5. Section 75-5-303, MCA, is amended to read:

"**75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) *or exempted from review under [section 6],* the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined hy the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board.

(7) *The board may not issue an authorization to degrade state waters that are classified as outstanding resource waters.*

(8) The board shall adopt rules to implement this section."

Section 6. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(j) discharges of water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(k) oil and gas drilling, production, abandonment, plugging, and restoration activities performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(l) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(m) coal and uranium prospecting performed in accordance with Title 82, chapter 4;

(n) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(o) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(p) metallic and nonmetallic mineral exploration permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(q) nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:

(i) activities authorized under Title 75, chapter 7, part 1; or

(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law;

(r) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and

(s) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c).

Section 7. Codification instruction. [Sections 2, 3, and 6] are intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections 2, 3, and 6].

Approved April 14, 1995

CHAPTER NO. 502

[SB 388]

AN ACT PROVIDING FOR AN INTEGRATED MEDICAID MANAGED CARE PROGRAM; PROVIDING A PUBLIC POLICY ON MEDICAID MANAGED CARE; PROVIDING DEFINITIONS; SPECIFYING REQUIREMENTS FOR MEDICAID MANAGED CARE NETWORKS; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO

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PROVIDE FOR DIFFERING BENEFITS FOR PERSONS ENROLLED IN THE PROGRAM; SPECIFYING REQUIREMENTS FOR MANAGED HEALTH CARE ENTITIES; PROVIDING REQUIREMENTS RELATING TO ENROLLEES OF THE PROGRAM; PROVIDING FOR PAYMENT REDUCTIONS AND ADJUSTMENTS; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO SEEK NECESSARY WAIVERS; PROVIDING FOR OVERSIGHT BY THE LEGISLATIVE AUDITOR; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 33-1-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Montana is experiencing substantial rates of growth in Medicaid expenditures and the rate of growth in Medicaid expenditures is higher than the rate of growth of the state general fund; and

WHEREAS, the increasing cost of Medicaid is limiting the ability of the Legislature to address other needs of the citizens of the state of Montana; and

WHEREAS, it is the intent of the Legislature to promote the delivery of necessary medical care to Medicaid recipients in a cost-effective manner and to encourage providers and insurers to put in place programs that will improve the health of Medicaid recipients; and

WHEREAS, the Legislature desires to promote the development of healthy competition among providers of medical care with respect to cost-effectiveness and innovation in the provision of services.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 1,4,5,6, and 7] grant rulemaking authority to the department of social and rehabilitation services and because [section 3] grants rulemaking authority to the commissioner of insurance.

The rules adopted by the department of social and rehabilitation services pursuant to [section 1] must provide for the identification of persons eligible for enrollment in the integrated health care program.

The rules adopted by the commissioner of insurance pursuant to [section 3] may provide for the elimination or reduction of any requirement found in Title 33, chapter 31, if the commissioner of insurance finds the requirement unnecessary for the operation of a managed care community network in a rural area or because of federal requirements for prepaid health plans.

The rules adopted by the commissioner of insurance pursuant to [section 3] must set forth criteria for assessing the financial soundness of a managed care community network and must also establish reserve requirements, as determined appropriate by the commissioner, in the event that a managed care community network is declared insolvent or bankrupt.

The rules adopted by the department of social and rehabilitation services pursuant to [section 4] may provide for different benefit packages for different categories of persons enrolled in a managed health care entity.

The rules adopted by the department of social and rehabilitation services pursuant to [section 5] must provide:

(1) a definition of emergency care for purposes of reimbursing all providers of emergency care to persons enrolled in the program;

(2) quality assurance and utilization review requirements for managed health care entities; and

(3) a definition of community-based organizations with which managed health care entities are encouraged to seek cooperation.

The rules adopted by the department of social and rebabilitation services pursuant to [section 6] must provide for all fee-for-service and managed health care plan options for enrollees.

Under [section 7], the department of social and rehabilitation services is required to adopt rules to provide for a method to reduce payments to managed health care entities, taking into consideration any adjustment payments to health care facilities for certain key services and the implementation of methodologies to limit financial liability for managed health care facilities.

Be it enacted by the Legislature of the State of Montana:

Section 1. Policy of medicaid managed care — system for integrated health care services. It is the public policy of the state of Montana to adopt, to tbe extent practicable, a health care program that encourages the integration of health care services and that manages the health care of program enrollees to improve their health while preserving reasonable choice within a competitive and cost-efficient environment. In furtherance of this public policy, the department shall develop and implement an integrated health care program consistent with the provisions of [sections 1 through 9]. The provisions of [sections 1 through 9] apply only to the program created under [sections 1 through 9]. The department shall by rule identify persons eligible for enrollment in the program. The department shall inform enrollees of their choice, if any, among health care delivery systems. Persons enrolled in the program may also be offered cost-effective indemnity insurance plans, subject to availability.

Section 2. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

(2) "Department" means the department of social and rehabilitation services.

(3) "Health maintenance organization" means a bealth maintenance organization as defined in 50-5-101.

(4) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that is owned, operated, or governed by a person and that provides or arranges managed health care services under contract with the department to enrollees of the program.

(5) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.

(6) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(7) "Program" means the integrated health care program created by [sections 1 through 9].

Section 3. Managed care community network. (1) A managed care community network shall comply with:

(a) the requirements of Title 33, chapter 31, but the commissioner may by rule reduce or eliminate a requirement of Title 33, chapter 31, if the requirement is demonstrated to be unnecessary for the operation of the managed care community network; and

(b) the federal requirements for prepaid health plans as provided in 42 CFR, part 434.

(2) A managed care community network may contract with the department to provide any combination of medicaid-covered health care services that is acceptable to the department.

(3) A managed care community network shall demonstrate its ability to bear the financial risk of servicing enrollees under the program. The commissioner shall by rule adopt criteria for assessing the financial soundness of a network. The rules must consider the extent to which a network is composed of providers who directly render health care and are located within the community in which they seek to contract rather than solely arrange or finance the delivery of health care. The rules must consider risk-bearing and management techniques, as determined appropriate by the commissioner. The rules must also consider whether a network has sufficiently demonstrated its financial solvency and net worth. The commissioner's criteria must be based on sound actuarial, financial, and accounting principles. The commissioner is responsible for monitoring compliance with the rules.

(4) A managed care community network may not begin operation before the effective date of rules adopted by the commissioner under [sections 1 through 9], the approval of any necessary federal waivers, and the completion of the review of an application submitted to the commissioner. The commissioner may charge the applicant an application review fee for the commissioner's actual cost of review of the application. The fees must be adopted by rule by the commissioner. Fees collected by the commissioner must be deposited in an account in the special revenue fund and are statutorily appropriated, as provided in 17-7-502, to the commissioner to defray the cost of application review.

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(5) A health care delivery system that contracts with the department under the program may not be required to provide or arrange for any health care or medical service, procedure, or product that violates religious or moral teachings and beliefs if that health care delivery system is owned, controlled, or sponsored by or affiliated with a religious institution or religious organization but must comply with the notice requirements of [section 5(4)(c)].

(6) The commissioner shall adopt rules to protect managed care community networks against financial insolvency. Managed care community networks are subject to health maintenance protections against financial insolvency contained in 33-31-216 in the event that a managed care community network is declared insolvent or bankrupt.

Section 4. Different benefit packages. (1) The department may by rule provide for different benefit packages for different categories of persons enrolled in the program. Alcohol and substance abuse services, services for mental disorders, services related to children with chronic or acute conditions requiring longer-term treatment and followup, and rehabilitation care provided by a freestanding rehabilitation hospital or a rehahilitation unit may be excluded from a benefit package if those services are made available through a separate delivery system. An exclusion does not prohibit the department from developing and implementing demonstration projects for categories of persons or services. Benefit packages for persons eligible for medical assistance under Title 53, chapter 6, parts 1 and 4, may be based on the requirements of those parts and must be consistent with the Title XIX of the Social Security Act. [Sections 1 through 9] apply only to services purchased by the department.

(2) The program established by [sections 1 through 9] may be implemented by the department in various contracting areas at various times. The health care delivery systems and providers available under the program may vary throughout the state. A licensed managed health care entity must he permitted to contract in any geographic area for which it has a sufficient provider network and that otherwise meets the requirements of the state contract.

Section 5. Requirements for managed health care entities. (1) A managed health care entity that contracts with the department for the provision of services under the program shall comply with the requirements of this section for purposes of the program.

(2) The entity shall provide for reimbursement for health care providers for emergency care, as defined by the department by rule, that must be provided to its enrollees, including emergency room screening services and urgent care that it authorizes for its enrollees, regardless of the provider's affiliation with the managed health care entity. Health care providers must be reimhursed for emergency care in an amount not less than the department's rates for those medical services rendered by health care providers who are not under contract with the entity to enrollees of the entity.

(3) The entity shall provide that any health care provider affiliated with a managed health care entity may also provide services on a fee-for-service basis to department clients who are not enrolled in a managed health care entity.

(4) The entity shall provide client education services as determined and approved by the department, including but not limited to the following services:

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(a) education regarding appropriate use of health care services in a managed care system;

(b) written disclosure of treatment policies and any restrictions or limitations on health services, including but not limited to physician services, clinical laboratory tests, hospital and surgical procedures, prescription drugs and biologicals, and radiological examinations; and

(c) written notice that the enrollee may receive from another provider those medicaid-covered services that are not provided by the managed health care entity but that are the financial responsibility of the entity.

(5) The entity shall provide that enrollees within its system will be informed of the full panel of health care providers. Contracts for the provision of services beyond 125 miles from the borders of Montana may not be entered into if services of comparable cost and quality are available within the state of Montana.

(6) The entity may not discriminate in its enrollment or disenrollment practices among recipients of medical services or program enrollees based on health status.

(7) For purposes of participation in the medicaid program, the entity shall comply with quality assurance and utilization review requirements established by the department by rule.

(8) The entity shall require that each provider meets the standards for accessibility and quality of care established by law. The department shall prepare an annual report regarding the effectiveness of the standards on ensuring access and quality of care to enrollees.

(9) The entity shall maintain, retain, and make available to the department records, data, and information, in a uniform manner determined by the department, that is sufficient for the department to monitor utilization, accessibility, and quality of care and that is consistent with accepted practices in the health care industry.

(10) Except for health care providers who are prepaid, the entity shall pay all approved claims for covered services that are correctly completed and submitted to the entity within 30 days after receipt of the claim or receipt of the appropriate capitation payment or payments by the entity from the state for the month in which the services included on the claim were rendered, whichever is later. If payment is not made or mailed to the provider by the entity by the due date under this subsection, an interest penalty of 1% of any amount unpaid must be added for each month or fraction of a month after the due date until final payment is made. [Sections 1 through 9] do not prohibit managed health care entities and health care providers from mutually agreeing to terms that require more timely payment.

(11) The entity shall seek cooperation with community-based programs provided by local health departments, such as the women, infants, and children food supplement program, childhood immunization programs, health education programs, case management programs, and health screening programs.

(12) The entity shall seek cooperation with community-based organizations, as defined by rule of the department, that may continue to operate under a

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contract with the department or a managed health care entity under [sections 1 through 9] to provide case management services to medicaid clients.

(13) A managed health care entity that provides written notice pursuant to subsection (4)(c) to an enrollee of medicaid-covered services available from another provider is responsible for payment for those services by another provider.

Section 6. Requirements relating to enrollees. (1) All individuals enrolled in the program must be provided with a full written explanation of all fee-for-service and managed health care plan options as provided by rule. The department shall provide to enrollees, upon enrollment in the program and at least annually, notice of the process for requesting an appeal under the department's administrative appeal procedures. The department shall maintain a toll-free telephone number for program enrollees' use in reporting problems with managed health care entities.

(2) If an individual becomes eligible for participation in the program while the individual is hospitalized, the department may not enroll the individual in the program until after the individual has been discharged from the hospital. This subsection does not apply to a newborn infant whose mother is enrolled in the program.

(3) The department shall, by rule, establish rates for managed health care entities that:

(a) are certified to be actuarially sound, in accordance with the department's current payment system;

(b) take into account any difference of cost to provide health care to different populations based on age and eligibility category. The rates for managed health care entities must be determined on a capitated basis.

(c) are based on treatment settings reasonably available to enrollees.

Section 7. Payment reductions and adjustments — freedom to contract. (1) The department shall by rule establish a method to reduce its payments to managed health care entities to take the following into consideration:

(a) any adjustment payments paid to health care facilities under subsection (2)(b) to the extent that those payments or any part of those payments have been taken into account in establishing capitated rates under [section 5]; and

(b) the implementation of methodologies to limit financial liability for managed health care entities under [section 5].

(2) For key services provided by a hospital that contracts with an entity, adjustment payments that are not included in capitated rates must be paid directly to the hospital by the department. Adjustment payments may include but need not be limited to:

(a) adjustment payments to disproportionate share hospitals as defined by department rule;

(b) perinatal center payments; and

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(c) payments for capital, direct medical education, indirect medical education, and certified registered nurse anesthetists.

(3) For any hospital eligible for the adjustment payments described in this section, the department shall maintain, through the period ending June 30, 1996, reimbursement levels in accordance with statutes and rules in effect at the time the payments are made.

(4) [Sections 1 through 9] do not limit or otherwise impair the authority of the department to enter into a contract, negotiated pursuant to [sections 1 through 9], with a managed health care entity, including a health maintenance organization, that provides for termination or nonrenewal of the contract without cause upon notice as provided in the contract and without a hearing. If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program and managed care.

Section 8. Waiver. The department may seek and obtain any necessary authorization provided under federal law to implement the program, including the waiver of any federal statutes or regulations. The department may not expand eligibility requirements unless authorized by the legislature. The department may seek a waiver of the federal requirement that the combined membership of medicare and medicaid enrollees in a managed health care entity may not exceed 75% of the managed health care entity's total enrollment. The department may not seek a waiver of the inpatient hospital reimbursement methodology in 42 U.S.C. 1396(a)(13) even if the federal agency responsible for administering Title XIX determines that 42 U.S.C. 1396(a)(13) applies to managed health care systems.

Section 9. Legislative auditor — oversight. (1) In order to prevent, detect, and eliminate fraud, waste, abuse, mismanagement, and misconduct and to determine that the program is administered fairly and effectively, the legislative auditor shall oversee all aspects of the managed care covered by [sections 1 through 9].

(2) A medical provider may not be compelled to provide individual medical records of patients unless the records are provided in accordance with the provisions of the Government Health Care Information Act. State and local governmental agencies shall provide the requested information, assistance, or cooperation.

(3) All activities conducted by the legislative auditor must be conducted in a manner that ensures the preservation of evidence for use in criminal prosecutions. The legislative auditor may present for prosecution the findings of any activity to the office of the attorney general or to United States attorneys in Montana.

(4) The legislative auditor shall report all convictions, terminations, and suspensions taken against vendors, contractors, and health care providers to the department and to any agency responsible for licensing or regulating those persons or entities.

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(5) The legislative auditor shall make periodic reports, findings, and recommendations regarding its oversight activities authorized by this section.

(6) [Sections 1 through 9] do not limit investigations by the department that may otherwise be required by law or that may be necessary in the department's capacity as the central administrative authority responsible for administration of public aid programs in this state.

Section 10. Applicability to managed care community networks. A managed care community network, as defined in [section 2], is governed by the provisions of this chapter and by [sections 1 through 9], but the commissioner may by rule reduce or eliminate a requirement of this chapter if the requirement is demonstrated to be unnecessary for the operation of a managed care community network.

Section 11. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; *[section 3];* 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory

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appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 12. Section 33-1-102, MCA, is amended to read:

"**33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs.** (1) A person may not transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations *or to managed care community networks, as defined in [section 2],* to the extent that the existence and operations of those organizations are ~~authorized~~ *governed* by chapter 31 *or to the extent that the existence and operations of those networks are governed by [sections 1 through 9].*

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) Tbis code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 13. Codification instruction. (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [sections 1 through 9].

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(2) [Section 10] is intended to be codified as an integral part of Title 33, chapter 31, and the provisions of Title 33, chapter 31, apply to [section 10].

Section 14. Effective date. [This act] is effective July 1, 1995.

Approved April 15, 1995

CHAPTER NO. 503

[SB 389]

AN ACT CLARIFYING THE ADMINISTRATION AND REGULATION OF GAME FARMS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF LIVESTOCK; REVISING GAME FARM PROVISIONS REGARDING LICENSURE, FEES, DEFINITIONS, INSPECTIONS, IMPORTATION, AND REPORTING; CREATING THE GAME FARM ADVISORY COUNCIL; AMENDING SECTIONS 81-1-102, 87-4-406, 87-4-408, 87-4-410, 87-4-411, 87-4-414, 87-4-415, 87-4-417, 87-4-419, 87-4-422, 87-4-424, AND 87-4-426, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to clarify rulemaking authority of the department of fish, wildlife, and parks and the department of livestock with regard to the administration and regulation of game farms. It is intended that rules promulgated pursuant to Title 87, chapter 4, part 4, be adopted in accordance with the Montana Negotiated Rulemaking Act, Title 2, chapter 5, part 1.

(1) It is intended that the department of fish, wildlife, and parks have primary authority with regard to rules governing:

(a) game farm licensure;

(b) reporting requirements;

(c) exterior fencing requirements;

(d) classification of species the importation of which may present a threat to the state's wildlife population;

(e) general enforcement of game farm licensing violations; and

(f) the definition of "reasonable time" in the context of 87-4-419(2), which must reflect specific seasonal issues related to breeding and disease.

(2) It is intended that the department of livestock have primary authority with regard to rules governing:

(a) transportation and identification of game farm animals;

(b) health inspection and game farm quarantines, including interior facilities; and

(c) importation restrictions on exotic species.

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(3) It is intended that the department of livestock's rules address the issue of immediate depopulation of game farm animals that test positive for tuberculosis.

(4) It is intended that both the department of fish, wildlife, and parks and the department of livestock consider the feasibility of using DNA as an additional method of identification of game farm animals.

(5) It is intended that the game farm advisory council advise both the department of fish, wildlife, and parks and the department of livestock regarding the administration of game farm operations, which may include input into the rules adopted pursuant to [this act].

(6) It is the intent of the legislature that in adopting rules pursuant to 87-4-426(6), the department of fish, wildlife, and parks provide for a timely and simplified process for minor amendments to an existing license. This may include, when appropriate, a categorical exclusion under the provisions of Title 75, chapter 1, part 1.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-1-102, MCA, is amended to read:

"**81-1-102. Duties and powers of department — fees based on costs.** (1) The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation which, in the judgment of the department, fosters this industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of the livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

(2) The department shall by rule establish all fees that it is authorized to charge, commensurate with costs as provided in 37-1-134.

(3) The department shall perform the duties assigned to the department relating to the administration and regulation of game farms as described in Title 87, chapter 4, part 4."

Section 2. Section 87-4-406, MCA, is amended to read:

"**87-4-406. Definitions.** As used in this part, the following definitions apply:

(1) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families suidae, camelidae, or hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

~~(1)~~*(2)* "Department" means the department of fish, wildlife, and parks.

~~(2)~~*(3)* "Facilities" means perimeter fences and other enclosures that provide for the confinement, handling, and quarantine of game farm animals.

~~(3)~~*(4)* "Game animals" means game animals as defined in 87-2-101 that are not the lawful property of any private person.

~~(4)~~*(5)* "Game farm" means the enclosed land area upon which game farm animals may be kept for purposes of obtaining, rearing in captivity, keeping, or selling game farm animals or parts of game farm animals, as authorized under this part.

~~(5)~~*(6)* "Game farm animal" means a privately owned caribou, black bear, mountain lion, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, *a privately owned reindeer,* or any other cloven-hoofed ungulate as classified by the department.

~~(6)~~*(7)* "Person" means an individual, firm, corporation, association, or partnership."

Section 3. Section 87-4-408, MCA, is amended to read:

"87-4-408. **~~Department jurisdiction—applicability of livestock laws and rules~~ *Jurisdiction.*** (1) The department has primary jurisdiction over game farms *with regard to licensing, reports and recordkeeping, exterior fencing, classification of exotic species, removal of game animals under 87-4-410, inspection under 87-4-413, and enforcement of the functions listed in this subsection.*

(2) ~~A game farm licensee must also comply with all applicable laws and rules administered by the~~ *The* department of livestock *has primary jurisdiction over game farms* relating to marking, inspection, transportation, *importation, quarantine, hold orders, interior facilities,* and health *and relating to the enforcement of the functions listed in this subsection.*"

Section 4. Section 87-4-410, MCA, is amended to read:

"87-4-410. **Removal of game animals.** (1) If game animals are present on the land ~~which~~ *that* is to be covered by a game farm license, the license ~~shall~~ *must* be issued but must be conditioned upon the applicant complying with this section.

(2) Before the fence surrounding any ~~such~~ land *to be covered by a game farm* may be closed, all game animals must to the extent possible be driven ~~therefrom~~ *from the land* by the applicant, at the applicant's expense and under the ~~direction~~ *observation* of a representative of the department.

(3) If at the time the license is issued all game animals cannot be removed from the licensed land, the applicant and a representative of the department shall decide *within 60 days* the approximate number of remaining game animals of each indigenous species. This number is the "base number".

(4) The department may remove the base number of game animals from the game farm ~~by trapping them~~ within 120 days from the date the number was determined.

(5) If the department decides not to remove the game animals or if some game animals were not successfully removed ~~by trapping~~, the public must be granted access to harvest those game animals during a special hunt set for that purpose during the next regularly scheduled hunting season. ~~All~~ administrative

~~costs incurred by the department in arranging the special hunt or providing for hunting on the applicant's land during the regular season must be reimbursed by the applicant.~~

(6) After compliance with this section, any animals from the base number that remain and their progeny belong to the licensee~~, and the licensee may deal with them as provided for in this part~~. *Under certain circumstances, a licensee may request a waiver from the identification and marking of animals in the base number on a licensed game farm.*"

Section 5. Section 87-4-411, MCA, is amended to read:

"87-4-411. **License and renewal fees — deposit of fees.** (1) The department shall charge an initial game farm license fee ~~of $200~~ and shall charge an annual renewal fee ~~of $50~~ *based on the following scale:*

(a) a game farm with 1 to 20 game farm animals, an initial license fee of $200 and an annual renewal fee of $50;

(b) a game farm with 21 to 60 game farm animals, an initial license fee of $300 and an annual renewal fee of $100; and

(c) a game farm with more than 60 game farm animals, an initial license fee of $400 and an annual renewal fee of $200.

(2) The fees must be deposited in the state special revenue fund for the use of the department for purposes of this part."

Section 6. Section 87-4-414, MCA, is amended to read:

"87-4-414. **Game farm animals as private property — source — *marking.*** (1) All game farm animals lawfully possessed on a licensed game farm are private property for which the licensee is responsible as provided by law.

(2) The licensee may acquire, breed, grow, keep, pursue, ~~capture,~~ *handle,* harvest, use, sell, or dispose of the game farm animals and their progeny in any quantity and at any time of year as long as the licensee complies with the requirements of this part.

(3) A licensee shall mark each game farm animal in a manner approved by the department of livestock, *as required under subsection (4), and* that indicates ownership and provides individual identification of animals for inspection, transportation, reporting, and taxation purposes.

(4) *The department of livestock is responsible for the control, tracking, and distribution of identification tags used for the marking of game farm animals. The department of livestock shall require that all imported game farm animals are marked within 30 days of importation and that all other game farm animals are marked prior to January 1 of each year. Each game farm animal must be marked with identification that:*

(a) is unique to the animal;

(b) is nontransferable;

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(c) has an emblem owned and registered by the department of livestock that is embossed on each identification tag; and

(d) allows for the identification of game farm animals from a distance.

(5) Upon the request of a licensee, the department of livestock may grant a temporary waiver as to the time for identification and to the manner of identification if necessary to address a special circumstance.

(6) Game farm animals must be lawfully acquired by the licensee. *A game farm animal may be kept only on a licensed game farm. A licensee who keeps a game farm animal owned by, leased to, or leased from another person shall comply with all of the requirements of this part as if the animal belonged to the licensee. Records and reports submitted by the licensee pursuant to 87-4-417 must identify any game farm animal kept by the licensee during the reporting period and the name and address of the owner or lessee.*

~~(5)~~*(7)* Except for importation permits and health certificates required under 81-2-703, laws applicable to game animals do not apply to game farm animals raised on a licensed game farm."

Section 7. Section 87-4-415, MCA, is amended to read:

"87-4-415. **Transportation and, sale, *and disposal* of game farm animals — quarantine.** (1) Prior to selling, transferring, transporting, or disposing of one or more game farm animals, the game farm licensee shall contact the department of livestock to request an inspection by a department of livestock ~~stock inspector~~ *designated agent* for all game farm animals, except carnivores and omnivores. In the case of carnivores and omnivores, the game farm licensee shall contact the department to request an inspection by a department official. ~~This section applies to all game farm animals, whether alive or dead.~~ *All dead game farm animals, except carnivores and omnivores, must be reported to the department of livestock within 1 working day of the discovery of the death.*

(2) (a) Inspection under subsection (1), *except inspection of carnivores and omnivores,* must ~~include examination of the game farm animal and all marks, tags, and tattoos to identify ownership prior to issuance of a certificate of inspection.~~

~~(b) A certificate of inspection must be made in triplicate and must specify:~~

~~(i) the date of inspection;~~

~~(ii) the place of origin and destination of the shipment;~~

~~(iii) the name and address of the owner of the game farm animals and of the purchaser or transferee;~~

~~(iv)~~ *be conducted pursuant to 81-3-203(1) through (3) and must include* the number, species, age, and sex, *and individual identification numbers* of game farm animals transported or disposed of;

~~(v) ear tag numbers and tattoos on each animal; and~~

~~(vi) any other information that the department of livestock may require.~~

~~(c) A copy of the certificate must be:~~

~~(i) retained by the inspector;~~

~~(ii) furnished by the inspector to the owner or shipper of the game farm animals, to accompany the animals to their destination;~~

~~(iii) filed by the inspector with the department of livestock within 5 days of inspection; and~~

~~(iv) provided by the department of livestock to the department within 10 days of inspection.~~

(b) A copy of the certificate of inspection must be provided by the department of livestock to the department within 10 days of the inspection.

(3) The department of livestock may quarantine *or issue a hold order on* any game farm animal pending inspection and health certification. The department shall advise the department of livestock regarding the importation or transportation of any game farm animal that the department reasonably believes may be infected with a disease specific to wildlife."

Section 8. Section 87-4-417, MCA, is amended to read:

"**87-4-417. Records and reporting — *rules*.** (1) Each game farm licensee shall keep and maintain for 3 years accurate written records of all purchases, transfers, and sales, *births, and deaths* of game farm animals, showing:

(a) the number of each species of game farm animal purchased by the game farm licensee and from whom purchased;

(b) the number of each species of game farm animal transferred or sold, the date of transfer or sale, and the name and address of the person to whom the transfer or sale was made; and

(c) individual identification of each game farm animal *that was* purchased, transferred, ~~or~~ sold, *or born or that died. However, a calf or fawn that dies prior to being marked pursuant to 87-4-414(4) need not be identified.*

(2) ~~Within~~ *Unless a different reporting frequency has been established pursuant to subsection (3), within* 2 weeks after January 1, ~~April 1,~~ and ~~September~~ *July* 1 of each year, the game farm licensee shall file a report with the ~~director~~ *department*, showing the number and species of game farm animals *that were* on hand as of January 1, ~~April 1,~~ and ~~September~~ *July* 1 and the number and species of game farm animals *that escaped, that were* bought, sold, ~~or propagated~~ *transferred, recaptured, or born, or that died* during the reporting period.

(3) The department may establish by rule the conditions under which the frequency of reporting requirements may be reduced to one report a year or increased to three reports a year. The department may establish by rule the conditions under which a licensee may submit an abbreviated report. In adopting those rules, the department shall consider the number of animals present on a game farm, the number of reported transactions during previous reporting periods, a history of accurate recordkeeping, and a historical absence of violations."

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Section 9. Section 87-4-419, MCA, is amended to read:

"87-4-419. Escape from game farm — effect. *(1)* If a game farm animal escapes from a game farm, the game farm licensee shall immediately notify the department of its escape and shall make every reasonable effort to recapture it. If the escaped animal cannot be recaptured within a reasonable time, *the department may kill the animal. If recapture or killing of the animal is unsuccessful within a reasonable time,* it *the animal* becomes the property of the state.

(2) The departme it shall by rule adopt a definition of "reasonable time", as used in this section, taking into consideration specific seasonal issues related to breeding and disease."

Section 10. Section 87-4-422, MCA, is amended to read:

"87-4-422. Rulemaking. (1) The department may adopt and enforce rules that are necessary to implement the provisions of this part *over which the department has primary jurisdiction* and to coordinate regulation of game farms with the department of livestock.

~~(2) The rules may address but are not limited to the classifying of cloven-hoofed ungulates, requirements for facilities, reporting and recordkeeping requirements, transportation and importation, restrictions on importation, identification, sale of animal parts, and the care and maintenance of game farm animals.~~

(2) The department of livestock may adopt rules addressing the transportation and importation of game farm animals, restrictions on importation, identification, sale of game farm animal parts, quarantine, hold orders, interior facilities, health regulations, and the care and maintenance of game farm animals.

(3) Rules promulgated pursuant to this part must be adopted in accordance with the Montana Negotiated Rulemaking Act, Title 2, chapter 5, part 1."

Section 11. Section 87-4-424, MCA, is amended to read:

"87-4-424. ~~Department restrictions~~ *Classification — restrictions* on importation of certain species. *(1)* ~~The department or the department of livestock may restrict from importation for purposes of game farming any species or subspecies and their hybrids with native species that are determined through scientific investigation to pose a threat to native wildlife or livestock through nonspecific genetic dilution, habitat degradation or competition caused by feral populations of escaped game farm animals, parasites, or disease.~~ *In order to properly regulate importation:*

(a) the department shall classify cloven-hoofed ungulates that have been determined through scientific investigation to pose a threat to native wildlife or livestock through nonspecific genetic dilution or habitat degradation or competition caused by feral populations of escaped game farm animals and shall notify the department of livestock of any changes in classification as they occur; and

(b) the department of livestock shall classify cloven-hoofed ungulates that have been determined through scientific investigation to pose a threat to native wildlife or livestock through parasites or disease.

(2) The department of livestock shall restrict from importation for purposes of game farming any species or subspecies and their hybrids with native species that have been classified in accordance with subsection (1) as posing a threat to native wildlife or livestock. Importation permitted by the department of livestock must comply with the requirements of Title 81, chapter 2, part 7. Copies of import permits issued by the department of livestock must be shared with the department within 10 calendar days. Other pertinent documentation relating to importation must be shared as it becomes available."

Section 12. Section 87-4-426, MCA, is amended to read:

"87-4-426. Criteria for issuance of license — fencing and enclosure requirements — *rules*. (1) A game farm license may be issued by the department only to an applicant:

(a) who owns or leases tbe premises on which the operations are to be conducted;

(h) who has not been or whose principal manager has not been convicted of or who has not forfeited bond of $100 or more for more than one violation of the fish and game laws or applicable regulations of any state or the United States within a 5-year period prior to application;

(c) who has not or whose principal manager has not at any time pleaded guilty to or been convicted of a felony, unless civil rights have been restored pursuant to law. A person may not apply for licensure during any time in which a deferred or suspended felony sentence is in effect.

(d) who is or whose principal manager is at least 18 years of age.

(2) A game farm license must be issued by the department if:

(a) the applicant has properly fenced the perimeter of the land upon which tbe game farm is to be located with fencing designed and constructed to prevent the escape of the species of game farm animal kept on the game farm and to prevent the entry of the same species of game animal or other native game animal species capable of interbreeding with or contracting diseases or parasites from game farm animals;

(b) the application is for a single location;

(c) it is demonstrated that the applicant or the applicant's principal manager has the necessary skills to properly care for game farm animals or intends to employ a person who has those necessary skills; and

(d) the application has not been denied under this section or issued with stipulations under subsection (3).

(3) An application for a game farm license may be denied in its entirety or issued with stipulations if necessary to prevent public safety hazards or significant negative impacts to Montana's wildlife resources. Denial of an application or stipulations attached to a game farm license must be based on

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one or more of the following potential impacts ascribed to the physical location of the proposed game farm:

(a) substantial loss or destruction of critical seasonal game animal habitat or habitat of federally designated threatened or endangered species under the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., including hut not limited to ~~traditional~~ *critical* breeding, birthing, rearing, and wintering areas;

(b) blockage or disruption of major traditional seasonal migration corridors or major travel routes;

(c) unacceptable threat of introduction or transmission of serious diseases or parasites to native wildlife populations, as determined by the state veterinarian appointed pursuant to 81-1-301;

(d) unacceptable threat of escape of captive game farm animals and establishment of feral populations tbat would result in habitat damage or competition with or genetic pollution of native wildlife populations;

(e) the creation of a significant threat to the safety of the general public and surrounding landowners by the shooting of game farm animals.

(4) If the department determines that it will propose, within the time allowed under 87-4-409(3), to deny a game farm license or issue a license with stipulations, the applicant must be given an opportunity to make changes to the application within 30 days of receipt of the department's written determination in order to mitigate or correct any problems or deficiencies. The department shall reconsider the application with the proposed changes within 30 days of receipt of changes to the application before granting, proposing to deny, or proposing to issue the license with stipulations.

(5) An applicant may request that the commission review a department proposal to deny a game farm license or to issue a license with stipulations by petitioning the commission for review within 10 days of the department's proposed decision. The commission shall decide whether to grant the license, propose to deny the license, or issue the license with stipulations. The commission's decision then becomes the department's proposed decision, subject to an opportunity for hearing under 87-4-428.

(6) The department shall by rule establish:

(a) criteria for the classification of amendments to an existing license as major or minor; and

(b) an expeditious amendment process for minor amendments."

Section 13. Game farm advisory council — appointment of members — duties. (1) There is a game farm advisory council to advise the department and the department of livestock on the administration of game farms in this state.

(2) The game farm advisory council is composed of five members, appointed by the governor as follows:

(a) one member of the board of livestock or the department of livestock;

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(b) one member of the fish, wildlife, and parks commission or the department;

(c) one member who is a representative of the game farm industry;

(d) one member who is a veterinarian licensed to practice veterinary medicine in this state; and

(e) one member who is a representative of the sportspersons of Montana.

(3) Members of the game farm advisory council shall serve 2-year terms. A member may serve one additional consecutive 2-year term.

(4) The game farm advisory council is attached to the department and the department of livestock in an advisory capacity only, as defined in 2-15-102. The department and the department of livestock shall provide staff support and assistance necessary for the council to perform its functions.

(5) Council members are not entitled to compensation or travel expenses as provided in 2-15-122.

Section 14. Codification instruction. [Section 13] is intended to be codified as an integral part of Title 87, chapter 4, part 4, and the provisions of Title 87, chapter 4, part 4, apply to [section 13].

Section 15. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 504

[SB 402]

AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; ALLOWING THE DEPARTMENT TO ENFORCE ORDERS FOR PERIODIC PAYMENTS OF HEALTH OR MEDICAL NEEDS OR ENROLLMENT IN HEALTH OR MEDICAL INSURANCE PLANS; AMENDING SECTIONS 33-22-1202, 40-4-204, 40-4-208, 40-5-201, 40-5-208, AND 40-6-116, MCA; REPEALING SECTIONS 40-5-440, 40-5-441, AND 40-5-442, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is appropriate to draft a bill specifically to present proposed program improvements for medical support enforcement in a single, comprehensive bill that promotes the needs of legislative energy, efficiency, and economy by limiting the number of possible bills and by reducing the need for hearings and readings on those bills; and

WHEREAS, parents should be held responsible for providing medical care for their children, whether or not the parents voluntarily do so.

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STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to the department of social and rehabilitation services to adopt rules for expedited procedures.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 25] may be known and cited as the "Medical Support Reform Act".

Section 2. Purpose. The purpose of [sections 1 through 25] is to promote the health and medical care of children and to conserve the expenditure of public assistance funds by ensuring that children have access to reasonable health insurance coverage or a health benefit plan provided by their parents, who are primarily responsible for their support.

Section 3. Scope. [Sections 1 through 25] do not expand any coverage available to any individual under any health insurance coverage or a health benefit plan required under federal law or Title 33, chapter 22, though [sections 1 through 25] may expand the class of children who may he eligible for individual insurance or health benefit plan coverage due to a duty of support owed to them by their parents.

Section 4. Definitions. For purposes of [sections 1 through 25], the following definitions apply:

(1) "Child" means an individual, whether over or under 18 years of age, to whom or on whose behalf a legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled or eligible for enrollment under a health benefit plan or individual insurance policy.

(2) "Child support guidelines" means guidelines adopted under the provisions of 40-5-209.

(3) "COBRA" means the federal Consolida ɔd Omnibus Budget Reconciliation Act of 1985, under which dependent children of employees may continue to receive, for a limited time under specific circumstances, health plan coverage after termination of employment.

(4) "Department" means the department of social and rehabilitation services as provided for in 2-15-2201.

(5) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans, other than public assistance programs, that provides medical care or benefits for a child. The term includes but is not limited to a health maintenance organization, self-funded group, medical or health services corporation, or similar plan.

(6) "Individual insurance" means health or medical insurance coverage other than a group health benefit plan or public assistance that is or may be provided individually for a child.

(7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness, or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose of affecting any structure or function of the body.

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(8) "Medical support order" means a judgment, decree, or order, including approval of a settlement agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and that complies with the requirements of [sections 1 through 25].

(9) "Obligated parent" means the parent who is required by a medical support order to provide for the medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

(10) "Parent" means a father or mother and includes a child's guardian or other adult caretaker having lawful charge of the child.

(11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer, trustee, political subdivision, state agency, or any agent thereof who pays income to a parent on a periodic basis, who has or provides individual insurance or a health benefit plan, and who is subject to the jurisdiction of this state under Rule 4B of the Montana Rules of Civil Procedure.

(12) "Plan administrator" means the person or entity that assesses and collects premiums, accepts and processes claims, and pays benefits.

(13) "Primary parent" means the parent with whom the child resides for the most 24-hour periods in a plan year.

(14) "Qualified medical child support order" means an order that meets the requirements of 29 U.S.C. 1169.

(15) "Third-party custodian" means an agency or person other than a parent who:

(a) is authorized by legal process to have physical custody of a child;

(b) has actual physical custody of a child with the written consent of the parent or parents having legal custody of the child; or

(c) has actual physical custody of a child because of the parents' neglect, failure, or inability to provide for the child's support, medical care, and other needs.

(16) "Tribunal" means a court of competent jurisdiction or the department.

Section 5. Establishing medical support orders. (1) In an action or proceeding to establish a child support order, whether temporary or final, or to modify an existing child support order, the tribunal shall also establish a medical support order. In establishing a medical support order, a tribunal shall consider:

(a) the best interests of the child;

(b) the child's present and anticipated needs for medical care;

(c) the financial ability of the parents to pay for individual insurance or a health benefit plan; and

(d) the extent to which an available health benefit plan or individual insurance coverage is subsidized or reduced in cost by an employer or by participation in a plan on a group basis.

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(2) Except as otherwise provided in [sections 1 through 25], a trihunal may not consider a child's eligibility for a public assistance program as a factor in determining a parent's financial ability to afford individual insurance or a health benefit plan.

Section 6. Contents of medical support order. (1) A medical support order may specify terms for individual insurance coverage and, to the extent of options within an available health benefit plan, the terms for plan coverage, including:

(a) minimum required policy limits;

(b) minimum required coverage;

(c) maximum terms for deductibles or required copayments; and

(d) other significant terms.

(2) If a child is already covered by individual insurance or a health benefit plan, if the child does not have existing coverage but coverage can be obtained under a health benefit plan that is available to the primary parent, or if the child does not have existing coverage and coverage for the child under a plan is available to the other parent, then the medical support order must require participation in that plan unless:

(a) the cost of continuing coverage or the cost of the health benefit plan is not reasonable or cost-beneficial; or

(b) another plan or individual insurance is available that will better serve the interests of the parties.

(3) If health benefit plans are available to both parents at a combined cost that is reasonable or cost-beneficial and with benefits that are complementary or compatible as primary and secondary coverage, the medical support order must require both parents to provide coverage for the child.

(4) If, at the time of the medical support order, coverage for the child in a health benefit plan is not available to either parent, the parent other than the primary parent must be required to obtain individual insurance coverage for the child. If the cost of individual insurance is not reasonable or cost-effective:

(a) the parent other than the primary parent must be required to obtain individual insurance or a health benefit plan at such time in the future that it becomes available to that parent at reasonable cost. The requirements in this subsection (4) to obtain a plan are not enforceable if:

(b) the primary parent has obtained individual insurance or a health benefit plan for the child and both parents have agreed in writing to share the costs of maintaining the coverage; or

(c) the other parent persuades the tribunal that the cost of available health benefit plans is not reasonable or cost-beneficial.

(5) This section also applies when a child is placed with a third-party custodian, unless a parent has obtained individual insurance or a plan for the child and both parents have agreed in writing to share the costs of maintaining

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the coverage or a parent persuades the tribunal that tbe cost of available individual insurance and plans is not reasonable or cost-beneficial. For purposes of tbis subsection, the primary parent is considered to be the parent witb whom the child resided for the most 24-hour periods in the 12 months prior to placement with the third-party custodian.

(6) The medical support order must also provide that the cost of individual insurance or the healtb benefit plan, any copayments and deductibles required under the coverage, and all medical expenses for the child that are not covered by individual insurance or the plan must be shared between parents in accordance with the child support guidelines. If tbe order fails to designate each parent's share, each parent is liable for 50% of tbe costs and expenses.

(7) (a) Except as provided in subsection (7)(b), if the cost of individual insurance or a health benefit plan is not reasonable or cost-beneficial or if a plan is not otherwise available and if the child is a recipient of medical assistance under Title XIX of the federal Social Security Act or later becomes a recipient of medical assistance:

(i) when the child is a recipient together with a parent, the medical support order must require the other parent to pay $50 per month;

(ii) when the child is not a recipient with a parent, the medical support order must require each parent to pay $50 per month; and

(iii) when the child is a recipient with both parents, neither parent has an obligation under this subsection (7)(a).

(b) The tribunal may order the parent or parents to pay a greater or lesser amount each month as tbe tribunal finds appropriate to the circumstances.

(c) The amounts ordered to be paid under this subsection (7) must be paid to the department for return to the appropriate state treasury fund to help offset the costs of the medical assistance program.

(8) The costs of providing individual insurance or a health benefit plan may not be used as a direct offset to the child support obligation. However, as provided by the child support guidelines, the costs may be considered in making or modifying a child support order.

(9) (a) Individual insurance or a health benefit plan is presumed to be available at reasonable cost if:

(i) an amount payable for individual insurance or health benefit plan premiums does not exceed 25% of the obligated parent's total parental child support obligation when calculated under the child support guidelines without credit for the medical support obligation; or

(ii) a health benefit plan is available through an employer or other group organization for which the premium is partially or entirely paid by the employer or other group organization.

(b) The presumption under subsection (9)(a) may be rebutted by clear and convincing evidence and the tribunal has the discretion to:

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(i) order individual insurance or health benefit plan coverage when the amount of the premium may be greater than the presumptive amount; or

(ii) not order coverage when the amount of the premium is less than the presumptive amount.

Section 7. Mandatory provisions of medical support order. (1) Unless the tribunal expressly specifies otherwise, a medical support order must include terms directed toward the provisions of [section 6(2) through (9)], even though a provision contained in those subsections may not apply to the parent's circumstances at the time the order is entered. The terms may be established as alternatives or contingencies that provide that if circumstances later change, the health needs of the child will continue to be met under one of the subsections without need for modification of the medical support order or other action by the tribunal that issued the order or any other tribunal of competent jurisdiction.

(2) If circumstances change and a parent believes that corresponding changes in costs are not reasonable or cost-beneficial, the parent may move to petition any appropriate tribunal for relief.

(3) If a health benefit plan is provided through an employer, union, or other group, the medical support order must also include provisions necessary to entitle the order to recognition as a qualified medical child support order.

Section 8. Persistence and duration of obligation. (1) A parent's obligation to provide for medical care of a child ceases only when the parental obligation to support a child terminates under law.

(2) The obligations to provide medical care for a child, provide financial child support, and provide or comply with visitation and custody arrangements are independent of each other, and the failure or inability to provide one or more does not reduce one of the others.

(3) A guardian or caretaker who is not the child's father or mother may not be compelled to support the child or be held liable for the child's expenses, except to the extent that the guardian or caretaker has voluntarily agreed in writing to assume the responsibility.

Section 9. Effect of order on health benefit plans. (1) The duties and responsibilities under a plan pursuant to [sections 1 through 25] apply equally to a union or employer that serves as the administrator of a plan for a parent who is a member or employee.

(2) A copy of a medical support order requiring enrollment of a child in a health benefit plan may be submitted to the plan administrator by either parent, by the department, or by a third-party custodian. The party submitting the order shall submit the child's name and birth date and the names and mailing addresses of the parents. If the child is a recipient of public assistance, the party submitting the order shall also submit the address of the department. If there is a third-party custodian of the child, the address of the third-party custodian must also be submitted.

(3) Presentation of the medical support order to the plan administrator authorizes each parent, the department, if the department has interest, or the

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third-party custodian to receive pertinent notices from the plan administrator and to freely communicate and generally interact with the plan administrator in all respects regarding the child's benefits as fully and effectively as if the obligated parent were to do so personally.

(4) If a medical support order requires the child to be enrolled in a health benefit plan, presentation of the order to the plan administrator binds the plan to enroll the child in the plan as provided by [sections 1 through 25].

(5) If a health benefit plan is available through the obligatod parent's employer or other payor of income, presentation of the medical support order to the payor binds the payor to enrollment of the child in the plan and to automatically deduct premium payments required by the plan from the obligated parent's income and remit them to the plan provider for as long as the obligated parent is eligible for coverage.

(6)(a) Ambiguities and discrepancies in an order may not be used to unreasonably or unnecessarily delay health benefit plan coverage for a child.

(b) If more than one plan is available to an obligated parent and the medical support order fails to specify a plan or combination of benefits to be provided for a child or if there has been a change in plans due to a change in employment of the obligated parent or for some other reason, the parties and the department shall apply the medical support order so as to provide the child with coverage under a plan that has a reasonable cost and that provides the child with benefits closest to those described in the order.

Section 10. Authorization to enroll and participate in health benefit plan. (1) A plan administrator shall enroll a child when given a medical support order even if the obligated parent fails to execute documents required by the plan. The parents, the department, and a third-party custodian may release to a plan provider, employer, union, or other group any information necessary to obtain or enforce medical support or to facilitate the preparation, submission, processing, verification, or payment of claims.

(2) The signature of either parent, of an authorized representative of the department, or of a third-party custodian authorizes the plan to receive and process claims and exercise any available options for the continuation or extension.

Section 11. Authorization to cure nonpayment of health benefit plan premium. In the case of an actual or threatened adverse action that would reduce or terminate plan benefits because of nonpayment of premium or insufficient payment of premium, the other parent, the department, or the third-party custodian may advance the cost of necessary premiums and keep benefits continually in force for the child. The advance may be entered as a judgment for unpaid child support in favor of the advancing party and against the obligated parent.

Section 12. Obligations of health benefit plan. (1) Upon receipt of a medical support order requiring a parent to provide coverage for a child, the administrator of a health benefit plan who receives the order shall accept the order as a valid authorization to enroll or provide benefits to the child. The

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health benefit plan may rely upon the face of the order and need not inquire as to its legal sufficiency.

(2) A plan administrator shall give the nonobligated parent, the department, whenever public assistance is paid to the child, or a third-party custodian all notices and correspondence from the plan and allow them to freely communicate and interact with the plan in all respects regarding the child's benefits as fully and effectively as if done by the obligated parent.

(3) A copy of the medical support order must be accepted by the plan administrator as a request and application of the eligible obligated parent requesting that new or continued benefits, including continuation coverage available under COBRA, be provided for the child. As soon as practical and no later than 30 days after receipt of the order or upon the obligated parent obtaining eligibility, the child must be enrolled under the plan as an individual entitled to available benefits. Enrollment may not be delayed until an open enrollment period.

(4) If a plan is provided by an employer or other payor of income, the payor shall deduct the necessary premiums, if any, from the income of the obligated parent and remit the premiums to the plan as provided in [section 13].

(5) Within 30 days after receipt of a copy of a medical support order, the health benefit plan shall give written notice to both parents, to the department, and to any third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone numbers of the offices where further information can be obtained and where changes of address and other updated information should be submitted.

(6) If coverage is transferred to a different plan, within 30 days of transfer, the new plan shall provide written notice to both parents, to the department, whenever public assistance is paid for the child, or to the third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone numbers of the offices where further information can be obtained and where changes of address and other updated information should be submitted.

(7) A plan administrator may not terminate a child's coverage unless:

(a) written evidence shows that the medical support order is no longer in effect, that the child will be enrolled in another health benefit plan, or that individual insurance is provided;

(b) the employer, union, or other group eliminates coverage for all members or employees;

(c) the plan is available through the obligated parent's employer or other payor of income and the obligated parent's employment or right to receive income from the payor is terminated and continued coverage under COBRA is not available or the time for such coverage is expired; or

(d) the plan is available through the obligated parent's employer or other payor of income, the amount of the premium or the premium together with child support exceeds the limits in this section, and the other parent, the department, or the third-party custodian has not cured the insufficiency under [section 11].

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Section 13. Obligation of payor. (1) Upon receipt of a medical support order, a payor providing a health benefit plan shall withhold from the obligated parent's income an amount equal to the required premium, if any, and apply the withheld amount to the plan premium, except that amounts withheld may not exceed the maximum amount permitted under the federal Consumer Credit Protection Act. If the premium exceeds the maximum, the payor may not withhold the excess. If the premium, together with child support to be withheld, exceeds the maximum, child support has priority and the payor may not withhold the part of the premium that is in excess of the maximum.

(2) A medical support order has priority over garnishment of the income of the obligated parent for any purpose, except child support.

(3) (a) The payor shall continue withholding premiums when an obligated parent resumes employment following any break in service, layoff, leave of absence, or other similar circumstance.

(b) Upon the termination of employment, extended layoff, or any other break in service that causes coverage under a health benefit plan to cease, the payor shall immediately notify the other parent and the department or the third-party custodian, if either submitted the medical support order or submitted a written notice of interest to the plan.

(4) (a) A payor who is an employer may not discharge, refuse to employ, or take other disciplinary action against an obligated parent solely because of the issuance of a medical support order.

(b) The obligated parent has the burden of proving that the issuance of the medical support order was the sole reason for the employer's action.

(c) A payor knowingly violating this section is subject to the contempt powers of the tribunal issuing the medical support order. The tribunal may, in addition, impose a civil penalty of not more than $150.

Section 14. Obtaining information. Upon the request of either of the child's parents, the department, or a third-party custodian, a health benefit plan shall provide information about the child's health benefit coverage, including but not limited to:

(1) a description of the benefits and options available under the plan and summaries of the terms and costs of all plans and options for which the child is eligible;

(2) names and addresses of the employer, union, plan, or other entities involved in administering the plan;

(3) identification cards or other methods for access to coverage, including but not limited to numbers, codes, or other references applicable to the plan or to the group through which the child participates;

(4) claims received or paid on behalf of the child, including the dates and amounts of payments and the names and addresses of parties who have submitted claims or received payment for claims; and

(5) other information relevant to the preparation, submission, processing, or verification of claims.

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Section 15. Paying claims. Payment for a medical claim assigned to the department must be to the department. If a medical claim is not assigned to the department and the claim is submitted by a parent or a third-party custodian, payment must be to the health service provider involved. Payment may be to the parent or third-party custodian submitting the claim if there is written evidence of prepayment to the health service provider by that parent or third-party custodian.

Section 16. Newborn children. A health benefit plan must provide the coverage required by 33-22-301 to a newborn child covered by [sections 1 through 25].

Section 17. Adopted children — preexisting conditions. A health benefit plan shall provide the coverage required by 33-22-130 to a child placed for adoption.

Section 18. Nonexclusion — nondiscrimination by health benefit plan. A health benefit plan may not deny or limit enrollment of an obligated parent's child or discriminate against a child because:

(1) the child is not claimed as a dependent on the obligated parent's state or federal income tax return or considered as a dependent for tax purposes;

(2) the child was born out of wedlock;

(3) the child does not reside with the obligated parent;

(4) the child does not reside in the health plan's service area. A plan that provides medical care at particular locations or geographic areas shall also provide comparable benefits for a child whose residence or location is elsewhere.

(5) the natural child of the obligated parent has a preexisting condition, unless the plan does not provide for enrollment or provides only for limited enrollment of children with preexisting conditions.

Section 19. Medical assistance eligibility. A health benefit plan may not use information pertaining to medical assistance eligibility under Title XIX of the federal Social Security Act as a factor in enrolling a child in a plan or in making payments for benefits on behalf of the covered child. A health benefit plan may not impose any restrictions or requirements on recipients of medical assistance or the department different from those applicable to any other plan participant.

Section 20. Void health benefit plans. A health benefit plan provision that denies or restricts coverage for a child in violation of a provision of [sections 15 through 18] is void as against public policy.

Section 21. Penalty imposed by tribunal. (1) In addition to any other penalty provided by [sections 1 through 25] or other law, a tribunal, after a hearing, may impose a civil penalty not to exceed $25 for each day that a parent, health benefit plan, employer, union, or other payor is found to have knowingly violated a medical support order or a provision of or a rule adopted under [sections 1 through 25].

(2) The civil penalty must be deposited as provided in [section 13].

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(3) Imposition of a civil penalty under this section may be appealed if the tribunal is a court or may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

Section 22. Duties of parents — consequences of noncompliance. (1) An obligated parent shall promptly execute and deliver to the provider of individual insurance, to a health benefit plan, or to another proper party all forms and instruments necessary to ensure the child's timely enrollment and continuous participation in any individual insurance or plan ordered by the medical support order. An obligated parent shall timely submit claims for processing, verification, and payment. Intentional delay or interference with enrollment or with the timely submission for processing, verification, and payment of a claim is punishable as provided in [section 21] and by an award of costs and attorney fees to an opposing party.

(2) An obligated parent shall provide the other parent, the department, and the third-party custodian with identification cards or other methods for access to coverage, including but not limited to numbers, codes, or other references applicable to the individual insurance, health benefit plan, or group through which the child receives coverage. Intentional delay or failure to provide information is punishable as provided in [section 21] and by an award of costs and attorney fees to an opposing party.

(3) If a party receives a reimbursement payment from individual insurance or from a health benefit plan but is not the party who has paid or is paying the underlying bill of the health service provider, the party receiving the payment shall promptly pay over the proceeds to the proper party. In addition to any applicable penalty for theft, conversion, civil contempt, or other wrongdoing, the amount of the payment may be entered as a judgment in favor of the proper party and against the party failing to promptly pay over the reimbursement.

(4) An obligated parent who defaults on a medical support order by failing to obtain individual insurance or a health benefit plan or who permits the individual insurance or plan coverage to lapse without securing a comparable replacement is liable for all of the child's medical expenses and shall indemnify the other parent, the department, or the third-party custodian for the cost of obtaining health benefit coverage and for all medical expenses of the child. The obligated parent may be relieved of liability by proving to the satisfaction of the tribunal that:

(a) no reasonable-cost or cost-beneficial individual insurance coverage or health benefit plan was available for the child during the period of time involved and the other parent, the department, or the third-party custodian has received notice of the nonavailability;

(b) the individual insurance coverage or plan ceased to be available for reasons wholly unrelated to the conduct of the obligated parent, replacement coverage has not been available, and timely written notice of the nonavailability has been given to the other parent, the department, or the third-party custodian; or

(c) the other parent or third-party custodian has obtained health coverage for the child and all parties have entered into an enforceable written agreement to share the costs of the coverage.

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(5) An obligated parent who provides individual insurance coverage or a health benefit plan that is deficient under the requirements of the medical support order is liable, including liability by indemnification, for all of the child's medical expenses that should have been covered but were not and for the cost to the other parent, the department, or the third-party custodian of obtaining coverage that complies with the order. The obligated parent may be relieved of liability by proving to the satisfaction of the trihunal that:

(a) the coverage provided for the child has been the best available during the periods of time involved and timely written notice regarding the coverage available was given to the other parent, the department, or the third-party custodian;

(b) benefits have been reduced for reasons wholly unrelated to the conduct of the obligated parent, better coverage has not been available, and timely written notice has been given to the other parent, the department, or the third-party custodian; or

(c) the other parent or the third-party custodian has obtained coverage for the child and all parties have entered into an enforceable written agreement to share the costs of the coverage.

(6) Any liability for medical costs and expenses incurred under this section may be entered as a judgment for unpaid support in favor of the party or agency paying the same and against the obligated parent.

(7) The consequences of noncompliance with a medical support order apply, to the extent possible, to a judgment, decree, or support order that requires a parent to obtain medical or health insurance coverage for a child or to pay for a child's medical care and that was entered:

(a) by a tribunal prior to enactment of [sections 1 through 25]; or

(b) by a court or administrative agency of competent jurisdiction in another state or territory.

Section 23. Health coverage — notice of intent to purchase. (1) The department or a court on request of the department may issue an order requiring the obligated parent to appear and show cause why an order should not be issued permitting the department to purchase individual insurance or health benefit plan coverage for the obligated parent's child and requiring recovery of the premium from the obligated parent if the tribunal finds that:

(a) a medical support obligation has been established by order of a tribunal;

(b) the obligated parent has become delinquent by failing to provide individual insurance or a health benefit plan or lets the individual insurance or health benefit plan lapse;

(c) there is no payor to whom an order of enrollment under [section 12] applies;

(d) the child is currently eligible for medical assistance benefits under Title XIX of the federal Social Security Act, as amended; and

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(e) other individual insurance or a health benefit plan is available for the child and can be purchased at a reasonable cost.

(2) Prior to issuing or requesting an order to show cause, the department shall give the obligated parent notice of the intent to purchase coverage under this section and an opportunity to enroll the child in individual insurance or a health benefit plan within 30 days after notice is received by the obligated parent.

(3) If the obligated parent provides written proof within the 30 days after receipt of the notice that the child is enrolled in individual insurance or a health benefit plan, no further action may be taken by the department.

(4) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule upon the issues. The proceeding must be dismissed if the tribunal finds that the obligated parent has enrolled the child in individual insurance or a health benefit plan or that the individual insurance or plan that the department intends to purchase is not reasonable.

(5) A health benefit plan purchased under this section may be continued by the department until:

(a) the child is no longer eligible for medical assistance benefits;

(b) the obligated parent is no longer responsible under the law for the medical needs of the child; or

(c) the obligated parent provides written proof that the child has been enrolled in individual insurance or another adequate health benefit plan.

Section 24. Expedited enforcement procedures. (1) A parent, the department, or the third-party custodian may apply to the court for expedited enforcement procedures under [sections 1 through 25]. If the child receives medicaid, a parent or third-party custodian may apply to the department for and the department may on its own motion use expedited enforcement procedures under [sections 1 through 25].

(2) Upon receipt of an application, the tribunal may issue an order requiring the obligated parent to appear and show cause why an order, penalty, fine, or any combination should not be determined, assessed, and entered under one or more provisions of [sections 1 through 25]. The obligated parent may appear at the hearing or submit an affidavit asserting the obligated parent's position and defense. The show cause order must be issued if the tribunal finds that:

(a) a medical support obligation has been established by order of a tribunal or by a court or administrative agency of another state, territory, or Indian reservation;

(b) the obligated parent is liable for medical costs and expenses or premium payments under [sections 1 through 25];

(c) a parent receives a reimbursement payment from individual insurance or a health benefit plan and fails to promptly turn the payment over to the party who has paid or is paying the underlying bill of the health service provider;

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(d) a parent is delinquent in paying to the other parent, the department, or a third-party custodian the parent's share of:

(i) copayments and deductibles required under the individual insurance or plan; or

(ii) costs and expenses not covered by individual insurance or a health benefit plan; or

(e) there are fines, penalties, or other financial sanctions that may be imposed under [sections 1 through 25].

(3) Prior to applying for expedited enforcement, the applicant shall give the obligated parent notice of the claim under [sections 1 through 25]. The obligated parent may pay the claim within 30 days after receiving the notice. A copy of the notice must he given to the other parent, to the department, if the department is not the applicant or the tribunal hearing the matter and if public assistance is paid for the child, or to the third-party custodian. The other parent, the department, or the third-party custodian may participate in the proceedings as a party.

(4) An application for expedited enforcement may be based on any credible statements or evidence presented to the tribunal, including the sworn affidavit of:

(a) a health care provider who has provided care or benefits for the child;

(b) an authorized representative of the department, the health benefit plan, or the individual insurer;

(c) either parent of the child; or

(d) the third-party custodian of the child.

(5) The order to show cause must inform the obligated parent and any other party of the party's right to respond by affidavit. An affidavit may include written proof of payment. A hearing must be scheduled within 15 days after the date of service of the order on the obligated parent. If an affidavit with written proof of payment is not received by the tribunal within 15 days and the obligated parent does not appear at the hearing, judgment may be entered for the relief requested. If an affidavit with written proof of payment is received but the obligated parent does not appear at the hearing, the tribunal may resolve the issues on the basis of credible documents and affidavits submitted.

(6) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule upon the issues. The proceeding must be dismissed if the tribunal finds written proof of payment of the liability and the amount of the liability is not contested by a party to the proceedings.

(7) If the tribunal finds the obligated parent liable, the tribunal shall enter the amount of the liability as an award against the liable parent. If requested to do so, the tribunal may make an award specifically in favor of a health care provider, health benefit plan, or individual insurer to the extent that an unsatisfied bill of the health care provider, health benefit plan, or individual insurer is part of the unsatisfied medical support liability involved. If the tribunal finds that the conduct, claim, or response of a party was frivolous or in

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bad faith, the tribunal may impose sanctions against the party including an award of costs and attorney fees.

(8) Awards under this section may be collected by any remedy available for the collection of delinquent child support, but claims for current or past-due child support have priority.

(9) An award under this section is a final order and may be appealed if the tribunal is a court or may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

Section 25. Rulemaking authority. The department may adopt rules to implement [sections 1 through 25].

Section 26. Section 33-22-1202, MCA, is amended to read:

"33-22-1202. Limited benefit disability insurance policies authorized. (1) Insurers and health service corporations may issue limited benefit disability insurance policies that do not provide mandated health care coverage as required in 33-22-111, 33-22-114, 33-22-131, 33-22-229, 33-22-301, 33-22-302, 33-22-304, 33-22-504, 33-22-506, 33-22-509, 33-22-703, 33-22-1002, 33-30-1001, 33-30-1003, 33-30-1004, 33-30-1008, 33-30-1011, 33-30-1013, or any other provision enacted after January 1, 1991, unless the provision specifically mandates coverage for policies issued under this part.

(2) Limited benefit disability insurance policies may be issued only to the following persons:

(a) employers who:

(i) employ 20 or fewer employees working at least 20 hours per week; and

(ii) have been in business in the state for at least 12 months and have not contributed, within the preceding 12 months, to payment of any premiums for disability insurance on behalf of an employee;

(b) disabled or injured workers and their families;

(c) unemployed individuals and their families;

(d) self-employed individuals and their families; and

(e) a parent, or the department of social and rehabilitation services on behalf of the parent, who is ordered by a court or administrative authority of this or another state or who is required under 40-5-208~~(1)(b)~~ to provide health insurance coverage for a child if health insurance coverage is not available through employment or a union. This subsection (e) applies only to orders or modifications of orders issued after July 1, 1991, by a court or administrative authority.

(3) The insurer or health service corporation may establish terms and conditions for copayments and deductibles.

(4) The insurer or health service corporation issuing a limited benefit disability insurance policy shall provide the insured individual with a written disclosure statement, separate from the insurance policy, certificate, or evidence

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of coverage, stating in clear and understandable language and format which mandatory coverages and providers are not covered by the policy and what coverage is provided by the policy.

(5) Limited benefit disability insurance policies must provide coverage in accordance with the minimum requirements set forth in 33-22-1203."

Section 27. Section 40-4-204, MCA, is amended to read:

"**40-4-204. Child support — orders to address health insurance — withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate

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in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each *temporary or final* district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a ~~provision addressing health insurance coverage in the following cases:~~

~~(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.~~

~~(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.~~

~~(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.~~

~~(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.~~

~~(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation~~ *medical support order as provided for in [sections 1 through 25].*

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to

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include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(6) For the purposes of income withholding under subsection (5), every district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) ~~If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.~~

~~(8)~~ Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

~~(9)(a)~~*(8) (a)* A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

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(b) A judgment, decree, or order that omits the provision required by subsection ~~(9)(a)~~ *(8)(a)* is subject to the requirements of subsection ~~(9)(a)~~ *(8)(a)* without need for an amendment to the judgment, decree, or order or for any further action by the court."

Section 28. Section 40-4-208, MCA, is amended to read:

"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; or

(iii) upon application by the department of social and rehabilitation services, whenever the department of social and rehabilitation services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(c) The nonexistence of a medical support order as defined in [section 4] or a violation of a medical support order justifies an immediate modification of child support in order to:

(i) provide for the actual or anticipated costs of the child's medical care;

(ii) provide or maintain a health benefit plan or individual health insurance coverage for the child; or

(iii) eliminate any credit for a medical support obligation when it has been permitted or used as a credit in the determination of the child support obligation.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

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(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Provisions for the support of a child are terminated by emancipation of the child or the child's graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree. Provisions for the support of a child do not terminate upon the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

Section 29. Section 40-5-201, MCA, is amended to read:

"**40-5-201. Definitions.** As used in this part, the following definitions apply:

(1) "Alleged father" means a man *person* who is alleged to have engaged in sexual intercourse with a child's mother during a possihle time of conception of the child or a man *person* who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, any person under 19 years of age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) ~~Child~~ *The term* may not be construed to limit the ahility of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of social and rehabilitation services.

(4) "Director" means the director of the department of social and rehabilitation services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the purposes of this chapter.

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(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide *for the medical, health, and* support ~~to~~ *needs of* a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder."

Section 30. Section 40-5-208, MCA, is amended to read:

"40-5-208. Medical support — obligation enforcement —sanctions. (1) ~~(a)~~ In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the ~~department shall require the obligor to obtain and maintain health insurance coverage for each child if health insurance coverage is available through the obligor's employment or other group health insurance~~ plan *support order must include a medical support order as defined in [section 4].* ~~The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section.~~

~~(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:~~

~~(i) an order requiring the obligee to maintain health insurance coverage;~~

~~(ii) an agreement that the obligee will maintain health insurance coverage; or~~

~~(iii) a failure or omission of the court order or modification of an order to require health insurance coverage.~~

(2) ~~(a)~~ If the department is providing ~~child support enforcement~~ *IV-D* services ~~and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage~~ for a child, the department shall also enforce ~~the health insurance obligation.~~ *any order issued by a court or administrative agency of competent jurisdiction that:*

(a) requires the obligor to make payments for the health or medical needs of the child, whether expressed in monthly dollar amounts or in a lump-sum dollar amount. The department shall apply the same enforcement remedies as are available for the enforcement of child support as if those remedies expressly applied to medical or health obligations.

(b) requires the obligor to enroll a child in a health benefit plan or individual insurance as defined in [section 4]. The department may take action to enforce the order under the provisions of [sections 1 through 25] or may impose any other appropriate remedy.

~~(b)~~*(3) (a)* ~~To ensure that health insurance coverage is available for the child, the obligor~~ *To permit the department to determine whether enforcement action is necessary, if the obligor is required to enroll the child in a health benefit plan or individual insurance,* upon written request by the department, *the obligor* shall provide the name of the *individual* insurance carrier *or health benefit plan*, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

(b) Failure of the obligor to provide the requisite information to the department may be punished as a contempt under 40-5-226.

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~~(3)(a) The department may issue a notice commanding the obligor to appear at a hearing held by the department and show cause why a sum of not more than $100 should not be assessed for each month health insurance coverage is not secured or maintained if the department determines an obligor has failed to:~~

~~(i) obtain or maintain health insurance coverage as required under this section; or~~

~~(ii) provide information required under this section.~~

~~(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage has not been obtained or maintained or that the obligor has failed to provide the information required, the department may assess against the obligor not more than $100 for each month health insurance coverage has not been obtained or maintained or for each month information has not been provided. The amounts may be enforced by any administrative remedy available to the department for the enforcement of child support obligations, including warrant for distraint provided for in 40-5-247 and income withholding provided for in Title 40, chapter 5, part 4.~~

~~(4) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.~~

(4) If the department is providing services for a child and a child support order or modification of a child support order does not include a medical support order as defined in [section 4] or fails to include any other provision for the health and medical needs of the child:

(a) upon notice to the obligor, the obligor shall enroll the child in a health or medical insurance plan available to the obligor through an employer or other group for which the premium is partially or entirely paid by the employer or other group; and

(b) the obligor shall continue enrollment of the child in the plan until:

(i) a medical support order is entered;

(ii) the obligor can demonstrate to the department that the cost of providing coverage is not reasonable;

(iii) the obligor's employment or membership in the group has terminated and the plan is no longer available to the obligor;

(iv) the employer or group eliminates coverage for all employees or members; or

(v) the department ceases to provide services for the child.

(c) If the obligor fails to enroll a child in a health or medical insurance plan under this subsection (4) or lets coverage lapse, the failure or lapse may be punished as a contempt under 40-5-226. A contempt may not be found if the obligor shows that the cost of providing coverage for the child is not reasonable.

~~(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid.~~"

Section 31. Section 40-6-116, MCA, is amended to read:

"**40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

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(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order, *whether temporary or final,* concerning child support and each modification of a judgment or order for child support must include a ~~provision addressing health insurance coverage in the following cases:~~ *medical support order as defined in [section 4].*

~~(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.~~

~~(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.~~

~~(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.~~

~~(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.~~

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

~~(10) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.~~

~~(11)~~*(10)* Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order."

Section 32. Codification instruction. [Sections 1 through 25] are intended to be codified as an integral part of Title 40, and the provisions of Title 40 apply to [sections 1 through 25].

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Section 33. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 34. Repealer. Sections 40-5-440, 40-5-441, and 40-5-442, MCA, are repealed.

Section 35. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 505

[SB 406]

AN ACT REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO GRANT CLOSURE TO NONCOMMERCIAL FARM AND RESIDENTIAL UNDERGROUND STORAGE TANKS THAT ARE 1,100 GALLONS OR LESS IN CAPACITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Closure of tanks under section 1, Chapter 641, Laws of 1993. (1) The department shall indicate in all relevant files that an underground storage tank removed from the ground or closed in-place in accordance with section 1, Chapter 641, Laws of 1993, is determined fully and finally closed by the department.

(2) Underground storage tank systems determined closed under this section are exempt from environmental review by the department unless the department receives substantial evidence of a release that poses a current or potential threat to human health or the environment.

Section 2. Codification instruction. [Section 1] is intended to he codified as an integral part of Title 75, chapter 11, part 2, and the provisions of Title 75, chapter 11, part 2, apply to [section 1].

Approved April 14, 1995

CHAPTER NO. 506

[SB 423]

AN ACT REVISING CERTAIN SCHOOL FINANCE LAWS; CHANGING THE STATUS OF SCHOOL DISTRICT GENERAL BONUS PAYMENTS IN DETERMINING GENERAL FUND BALANCE OPERATING RESERVE FUNDS; ALLOWING RURAL SCHOOL DISTRICTS TO NEGOTIATE FOR VOLUNTARY IMPACT PAYMENTS TO THE DISTRICT BUILDING FUND TO COVER DEVELOPMENT IN THE DISTRICT; AMENDING SECTIONS 20-9-104, 20-9-508, AND 76-3-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-104, MCA, is amended to read:

"20-9-104. General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353, except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, balance to the impact aid fund established in 20-9-514.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) For fiscal year 1994 and subsequent fiscal years, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount received:

(a)*(i)* in settlement of tax payments protested in a prior school fiscal year;

~~(b)~~*(ii)* in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

~~(c)~~*(iii)* in delinquent taxes from a prior school fiscal year~~.~~*; or*

(b) any amount a district was entitled to as a general bonus payment prior to July 1, 1994.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less."

Section 2. Voluntary rural residential impact payments. (1) The trustees of a rural school district may negotiate with a real estate developer or subdivision developer in the school district to voluntarily contribute an impact payment to the district's building fund. The maximum amount of the payment that the trustees may accept must be based upon the number of pupils reasonably expected to move into the district because of the real estate development or subdivision development. Negotiations and any resulting contributions must be voluntary.

(2) For the purposes of this section, "rural school district" means a school district in which a majority of the pupils in the district reside outside the limits of any incorporated city or town.

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Section 3. Section 20-9-508, MCA, is amended to read:

"**20-9-508. Building fund.** (1) The trustees of any district shall establish or credit the building fund whenever ~~such~~ *the* district:

(a) issues and sells bonds under the school district bonding provisions of this title for purposes other than refunding bonds of the district;

(b) receives federal money for the express purpose of building, enlarging, or remodeling a school building or other building of the district;

(c) sells property of the district in accordance with the law authorizing ~~such~~ *the* sale;

(d) receives money as an insurance settlement for the destruction of any property or portion of property insured by the district;

(e) earns interest from the investment of building fund ~~moneys~~ *money* under the provisions of 20-9-213(4), except *that* interest earned from the investment of bond moneys *money* under the provisions of 20-9-435 shall *must* be credited to a fund in accordance with ~~such~~ *that* section; or

(f) receives any other moneys *money, including payments made by a developer under the provisions of [section 2],* for the express purpose of building, enlarging, or remodeling a school building or other building of the district.

(2) The financial administration of the building fund shall *must* be in accordance with the financial administration provisions of this title for a nonbudgeted fund and shall *must* provide for a separate accounting of the ~~moneys~~ *money* realized by each bond issue or by each construction project financed by a federal grant of ~~moneys~~ *money*. Any other ~~moneys~~ *money deposited* to the credit of this fund shall *must* be expended for building, enlargement, remodeling, or repairing of buildings of the district at the discretion of the trustees.

(3) ~~Moneys~~ *Money* credited to the building fund under the provisions of subsection (1)(a) ~~of this section~~ shall *must* be expended for the express purpose or purposes authorized by the bond proposition approved at the election authorizing the issuance of ~~such~~ *the* bonds. Any money realized by the sale of bonds and remaining to the credit of the building fund after the full accomplishment of the purpose for which the bonds were sold shall *must* be transferred to the debt service fund to be used for the redemption of *the* bonds ~~of such issue~~.

(4) ~~Moneys~~ *Money* credited to the building fund under the provisions of subsection (1)(b) ~~of this section~~ shall *must* be expended for the express purpose or purposes authorized by the federal government in granting ~~such moneys~~ *the money*."

Section 4. Section 76-3-601, MCA, is amended to read:

"**76-3-601. Submission of preliminary plat for review.** (1) Except ~~where~~ *when* a plat is eligible for summary approval, the subdivider shall present to the governing body or *to* the agent or agency designated thereby *by the governing body* the preliminary plat of the proposed subdivision for local review. The

preliminary plat ~~shall~~ *must* show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat ~~shall~~ *must* be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat ~~shall~~ *must* be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. *If the proposed subdivision is situated within a rural school district, as described in [section 2], the county governing body shall provide an informational copy of the preliminary plat to school district trustees.*

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) ~~This section and~~ *The provisions of* 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 *and this section* do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 5. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [section 2].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 15, 1995

CHAPTER NO. 507

[HB 136]

AN ACT REVISING THE METHOD OF CONTRACTING FOR COUNTY PRINTING; AND AMENDING SECTIONS 7-5-2401, 7-5-2403, 7-5-2404, 7-5-2405, 7-5-2411, 7-5-2412, AND 7-5-2413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2401, MCA, is amended to read:

"7-5-2401. Purpose of part. The purpose of this part is to ~~require~~ *provide:*

(1) for the board of county printing to set maximum prices ~~which~~ *that* may be charged for county ~~printing and~~ legal advertising*; and*

(2) for the purchase of county printed forms and materials."

Section 2. Section 7-5-2403, MCA, is amended to read:

"7-5-2403. Meetings of board of county printing. The board shall meet ~~annually~~ *when ordered by the governor or requested by a majority of the board members."*

Section 3. Section 7-5-2404, MCA, is amended to read:

"7-5-2404. Establishment of maximum prices. (1) The board shall adopt and publish a schedule of maximum prices to be charged for county ~~printing and~~ legal advertising. ~~The prices shall be the full prices to be charged and shall include the paper stock specified, completion of all printing and other work, and delivery to the county courthouse.~~

(2) The board shall conduct hearings when required to determine maximum rates for county ~~printing~~ *legal advertising*. Notice of ~~intention to hold a~~ *the* hearing ~~shall be published at least 30 days before the date set for the hearing in a newspaper published in Helena, and a copy shall be mailed to each board of county commissioners~~ *must be mailed to the Montana association of counties and the Montana newspaper association*.

(3) The board shall deliver, free of charge, to each board of county commissioners in this state a copy of every schedule of maximum prices adopted by the board within 30 days of its publication, together with a notice of the date fixed by the board when the prices will be effective.

(4) The county commissioners shall require each establishment that prints county legal advertising to verify that:

(a) the legal advertisement was published on the dates ordered by the county and in the style set by the board; and

(b) the price was not in excess of the maximum price set by the board.

(5) The board may not establish maximum prices for printed county forms."

Section 4. Section 7-5-2405, MCA, is amended to read:

"7-5-2405. Adoption of printing standards. The board shall adopt necessary standards for ~~sizes, weights, and grades of paper stock, which shall conform to the uniform scale of sizes, weights, and grades used by paper manufacturers, and for sizes and types of printing, ruling, and binding, which shall conform as nearly as possible to the ordinary standards in use in the printing industry. For this purpose, reference may be made to established standards or publications used in this state, and the board may provide for the adoption of a standard list for those items not covered by the prices, regulations, or standards published by the board~~ *typeface, type size, type style, and type leading for county legal advertising."*

Section 5. Section 7-5-2411, MCA, is amended to read:

"7-5-2411. County printing contract. (1) The county commissioners shall contract for all ~~the printing for the county, including~~ advertising required by law and all printed forms required by the county~~, at a rate not exceeding that~~

~~set by the board~~. The advertising required by law shall *must* be awarded to a newspaper that:

(a) is published in the county;

(b) has general bona fide and paid circulation with the second-class mailing privilege; and

(c) has been published continuously ~~for~~ at least once a week in the county for the 12 months preceding the awarding of the contract.

(2) ~~(a) The county commissioners may separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only. The legal advertising contract shall be let to a legally qualified newspaper. The other contract shall provide for all printed forms, materials, and supplies required by the county.~~

~~(b) The contract for printed forms, materials, and supplies referred to in subsection (2)(a) or subsection (2)(c) shall be let:~~

~~(i) to a commercial printing establishment or establishments, as the case may be, which has been in business in the county for at least 1 year and whose competitive bid is not more than 5% higher than that of the lowest responsible commercial printing establishment bidder doing business outside the county; or~~

~~(ii) if no establishment qualifies under subsection (2)(b)(i), to the lowest responsible commercial printing establishment bidder~~ *Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job.*

~~(c) Contracts for printed forms, materials, and supplies may be awarded on an annual basis or may be awarded for a specific printing job.~~

(3) *(a)* ~~A contract may not call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.~~ *The county clerk and recorder shall maintain a list of willing bidders for county printing and shall notify the printing establishments on the list of any call for bids.*

(b) A printing establishment must be added to the county clerk and recorder's list when the clerk and recorder receives a written request from the printing establishment.

(c) The county clerk and recorder may delete the name of any printing establishment from the list if it has not submitted a bid during the previous 365 days.

~~(4) Nothing in this part shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this part or to let contracts at prices less than the maximum fixed by the board of county printing.~~"

Seetion 6. Section 7-5-2412, MCA, is amended to read:

"7-5-2412. Details relating to printing contract. (1) The ~~contract shall be let to the printing establishment that in the judgment of the~~ *contract must be let to the printing establishment that in the judgment of the* county

commissioners ~~shall~~ *is the most suitable for performing the work. The county commissioners shall require a contractor to perform the county printing contract subject to the requirements of Title 18, chapter 1, part 2* ~~be most suitable for performing said work. The county commissioners shall require of any contractor to do such county printing a good and sufficient deposit in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties and conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this part and the terms of such contract.~~

~~(2) Nothing in this part shall be construed so as to compel the acceptance of unsatisfactory work.~~

(2) This part may not be construed to compel the acceptance of unsatisfactory work.

(3) ~~Such~~ *The term of a* contract for *county* printing *or county legal advertising* ~~shall extend for~~ *may not exceed* a period of ~~not more than~~ 2 years. ~~Any printing establishments doing business in the county which may receive any contract for printing under this part and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the county if such is available and, if not, within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor.~~"

Section 7. Section 7-5-2413, MCA, is amended to read:

"**7-5-2413. Competitive bids required.** The board of county commissioners shall call for competitive bids from persons or firms qualified to bid on county printing, *or for county legal advertising if there is more than one legally qualified newspaper in the county,* under the terms of this part."

Approved April 21, 1995

CHAPTER NO. 508

[HB 460]

AN ACT ESTABLISHING A BLUE RIBBON TELECOMMUNICATIONS TASK FORCE TO EXAMINE MONTANA'S TELECOMMUNICATIONS INFRASTRUCTURE AND TO MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE TO ENSURE THE IMPLEMENTATION OF POLICIES, PRACTICES, AND STATUTES REGARDING ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT; PROVIDING A GENERAL FUND APPROPRIATION; AUTHORIZING ADDITIONAL SPENDING OF NONGENERAL FUND REVENUE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, telecommunications services are integral to every aspect of our lives, including health, education, and safety, to each business, and to each public program and service; and

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WHEREAS, access to advanced telecommunications services is essential to ensure continued economic growth, Montana's competitive position in the global market, and a superior quality of life for Montanans; and

WHEREAS, a robust, competitive telecommunications marketplace is most likely to provide the advanced telecommunications services Montana requires to ensure Montana's competitive advantage in the global economy, foster the creation of new, higher-paying jobs for Montanans, bring the benefits promised by the Information Age to all Montanans, and continue Montana's commitment to universal service; and

WHEREAS, advanced telecommunications services are critical to providing a quality education for Montana's students and ensuring their technical literacy; and

WHEREAS, as we Montanans approach the 21st century, our vision for the state and its use of advanced telecommunications services includes an environment in which:

(1) consumers enjoy the benefits of greater choices among high-quality, affordable telecommunications products and services that respond to the diverse demands of the state's growing population;

(2) businesses enjoy heightened productivity by choosing freely from a rich menu of improved telecommunications products and services, ranging from basic telephone service to the most sophisticated high-speed services;

(3) telecommunications services increase access to and improve the quality, efficiency, and service delivery costs of vital services, such as education and health care, for all; and

(4) the people of the state, regardless of social or economic circumstances, enjoy ready access to, and knowledge of, the fundamental telecommunications services necessary to participate in the changing social and commercial fabric of Montana, the nation, and the world.

Be it enacted by the Legislature of the State of Montana:

Section 1. Task force — purpose and scope. (1) There is a blue ribbon telecommunications task force (task force) to examine Montana's telecommunications infrastructure. The task force shall recommend policies, practices, and statutory changes that are required to meet customer needs, remove barriers, enhance competitiveness and economic development, and identify ways of securing other identified values and benefits. The task force shall examine but not limit itself to:

(a) current and anticipated trends in telecommunications technologies and services and their impact on the economic health and general well-being of all Montana citizens;

(b) ways of defining "basic telecommunications service" in a competitive environment, addressing consumer protection regarding availability, subsidies from other services and providers, and access by low-income consumers and consumers with special needs;

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(c) ways of defining "telecommunications infrastructure and services" and the evolving role of telecommunications providers;

(d) ways of defining "universal service", the extent to which it has been achieved, and its role in a competitive telecommunications environment;

(e) policies regarding extended local calling areas;

(f) strategies to promote the development and transition to a fully competitive telecommunications marketplace;

(g) current and alternative forms of regulation for telecommunications providers and the role of state regulation in light of new federal legislation;

(h) policies, practices, and statutes that create barriers and disincentives to invest in telecommunications deployment and use;

(i) ways to stimulate private sector deployment of enhanced telecommunications services;

(j) ways to ensure that Montana's K-12 and university educational system and public libraries have access to advanced telecommunications services; and

(k) ways to ensure that Montana's health care systems have access to advanced telecommunications services.

(2) The task force is allocated to the department of administration for administrative purposes only as provided in 2-15-121.

Section 2. Membership — appointments — vacancies. (1) The task force is composed of the following members:

(a) 11 members, appointed by the governor, who are broadly representative of telecommunications users and providers in Montana;

(b) two members of the senate, one from each political party, appointed by the committee on committees of the senate; and

(c) two members of the house of representatives, one from each political party, appointed by the speaker of the house.

(2) Task force members must be appointed and designated no later than September 1, 1995.

(3) The presiding officer must be selected by a majority vote of the members of the committee.

(4) A vacancy occurring on the task force must be filled in the same manner as the original appointment.

Section 3. Remuneration. (1) Each member of the task force, except the legislative members, is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

(2) Each legislative member is entitled to compensation as provided in 5-2-301 and 5-2-302, as applicable.

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(3) In addition to the expenditures in subsections (1) and (2), task force funds may be spent for staff support, contracted services, and other expenses required to fulfill the purpose and needs of the task force.

Section 4. Meetings — report to governor and legislature. (1) The task force shall meet by October 1, 1995, and at the request of the presiding officer thereafter.

(2) The task force shall submit its findings and recommendations to the governor and the legislature on or before September 1, 1996.

Section 5. Gifts and grants. The task force may accept payments, contributions, gifts, and grants, in money or otherwise, for the purposes set forth in [section 1]. All payments, monetary contributions, gifts, and grants received by the task force must be deposited in an account in the state special revenue fund provided for in [section 6].

Section 6. Special revenue account. There is an account in the state special revenue fund. The account consists of all payments, monetary contributions, gifts, and grants received by the task force.

Section 7. Appropriation — funding. (1) For the purposes of [sections 1 through 6], there is appropriated to the department of administration:

(a) $20,000 from the general fund; and

(b) $175,000 from the account provided for in [section 6].

(2) The appropriations provided for in subsection (1) are biennial appropriations.

(3) As provided in 17-2-108, the task force, to the extent possible, shall expend revenue appropriated in subsection (1)(b) before expending general fund money appropriated in subsection (1)(a).

(4) Funds appropriated to the department of administration pursuant to subsection (1) but not expended prior to June 30, 1997, revert to the general fund.

Section 8. Effective date. [This act] is effective July 1, 1995.

Section 9. Termination. [This act] terminates June 30, 1997.

Approved April 21, 1995

CHAPTER NO. 509

[SB 83]

AN ACT GENERALLY REVISING LAWS CONCERNING DEDICATED REVENUE AND STATUTORY APPROPRIATIONS; AMENDING SECTIONS 2-7-514, 3-5-901, 3-10-601, 15-24-925, 15-25-111, 15-25-122, 15-35-108, 15-60-102, 15-60-210, 15-70-101, 15-70-102, 15-71-104, 17-1-501, 17-1-502, 17-1-503, 17-1-504, 17-1-505, 17-2-111, 17-5-704, 17-6-409, 17-7-502, 19-8-504, 20-4-109, 20-5-324, 20-7-420, 20-7-504, 20-7-506, 20-7-605, 20-9-166, 20-9-331,

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20-9-333, 20-9-342, 20-9-343, 20-9-346, 20-9-360, 20-9-361, 23-2-507, 23-2-644, 23-2-807, 23-2-823, 23-4-202, 23-7-202, 23-7-402, 27-12-206, 39-71-2501, 39-71-2503, 39-71-2504, 46-18-235, 52-6-105, 61-2-107, 61-3-502, 61-4-112, 61-5-121, 61-8-204, 61-10-126, 61-10-148, 61-10-225, 61-10-226, 75-5-634, 75-5-635, 75-6-109, 75-6-114, 75-6-115, 76-15-530, 77-1-808, 77-1-809, 77-1-810, 80-11-310, 82-4-426, 82-11-149, 87-1-114, 90-1-108, 90-6-201, 90-6-202, 90-6-205, 90-6-207, AND 90-6-212, MCA; REPEALING SECTIONS 15-25-123, 23-1-131, 60-2-224, AND 75-5-507, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-514, MCA, is amended to read:

"**2-7-514. Filing of audit report and financial report.** (1) Completed audit reports must be filed with the department. Completed financial reports must be filed with the department as provided in 2-7-503(1). The state superintendent of public instruction shall file with the department a list of school districts subject to audit under 2-7-503(3). The list must be filed with the department within 6 months after the close of the fiscal year.

(2) At the time *that* the financial report is filed or, in the case of a school district, when the audit report is filed with the department, the local government entity shall pay to the department a filing fee. The department shall charge a filing fee to any local government entity required to have an audit under 2-7-503, which fee must be based upon the costs incurred by the department in the administration of this part. Notwithstanding the provisions of 20-9-343, the filing fees for school districts required by this section must be ~~paid by the superintendent of public instruction from the state equalization aid account~~ *paid by the office of public instruction*. The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts.

(3) Copies of the completed audit and financial reports must be made available by the department and the local government entity for public inspection during regular office hours.

(4) The department is authorized under this part to charge a surcharge on the filing fee to generate the necessary revenue to repay the general fund loan over a 5-year period. (Subsection (4) terminates June 30, 1997—sec. 31, Ch. 489, L. 1991.)"

Section 2. Section 3-5-901, MCA, is amended to read:

"**3-5-901. State assumption of certain district court expenses.** (1) The state shall, to the extent that revenue is available under 61-3-509, fund the following district court expenses in criminal cases only:

(a) salaries of court reporters;

(b) transcripts of proceedings;

(c) witness fees and necessary expenses;

(d) juror fees;

(e) indigent defense; *and*

~~(f) expenses of the appellate defender commission and the office of appellate defender; and~~

~~(g)~~*(f)* psychiatric examinations.

~~(2) The revenue received under 61-3-509 is statutorily appropriated, as provided in 17-7-502, to the supreme court for funding the expenses listed in subsection (1) and the costs of administering this section.~~

(2) If the revenue received under 61-3-509 exceeds the amount appropriated by the legislature to fund the expenses of the appellate defender program and the cost of administering this section, the excess amount is statutorily appropriated, as provided in 17-7-502, to the supreme court to fund the expenses described in subsections (1)(a) through (1)(f).

(3) If money appropriated for the expenses listed in subsection (1):

(a) exceeds the amount necessary to fully fund those expenses, ~~the excess amount~~ *up to $500,000 of the excess amount must be used for youth court and probation foster care placements if the department of family services certifies to the supreme court that appropriations for youth court and probation foster care placements will be inadequate to fund those costs and remaining excess amounts* must be used for district court grants as provided in 7-6-2352; or

(b) is insufficient to fully fund those expenses, ~~the appellate defender commission and the office of appellate defender must be funded first and~~ the county is responsible for payment of the balance.

(4) Money deposited in the state general fund in fiscal year 1992, as provided in 61-3-509, that is in excess of the legislative appropriation is statutorily appropriated, as provided in 17-7-502, to the supreme court for district court and courts of limited jurisdiction automation purposes during the 1995 biennium. (Subsection (4) terminates July 1, 1995—sec. 7, Ch. 330, L. 1993.)"

Section 3. Section 3-10-601, MCA, is amended to read:

"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees. (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer *for deposit in the state general fund*; and

(b) 50% to the county general fund.

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~~(4) The state treasurer shall distribute money received under subsection (3) as follows:~~

~~(a) 44.81% to the state general fund;~~

~~(b) 9.09% to the fish and game account in the state special revenue fund;~~

~~(c) 11.76% to the state highway account in the state special revenue fund;~~

~~(d) 16.93% to the traffic education account in the state special revenue fund;~~

~~(e) 0.57% to the department of livestock account in the state special revenue fund;~~

~~(f) 15.9% to the crime victims compensation account in the state special revenue fund; and~~

~~(g) 0.94% to the department of family services special revenue account for the battered spouses and domestic violence grant program.~~"

Section 4. Section 15-24-925, MCA, is amended to read:

"**15-24-925. Reimbursement to county — transmission of taxes from county to state treasurer.** (1) The county treasurer may withhold 2% of the money received under 15-24-921 as reimbursement to the county for the collection of the levy on livestock.

(2) Except for the amount withheld under subsection (1), the taxes levied and the money collected pursuant to the provisions of 15-24-922 ~~shall~~ *must* be transmitted to the state treasury by the county treasurer of each county, as provided in 15-1-504, but not later than July 1 following assessment. The county treasurer shall designate the amount received from the tax levied on sheep and the amount received from the tax levied on all other livestock and shall specify the separate amounts in ~~his~~ *the* report to the state treasurer. The money, when received by the state treasurer, ~~shall~~ *must* be deposited *in an account in the special revenue fund* to the credit of the department of livestock. *The money in the account must be kept separate from other funds received by the department of livestock.*"

Section 5. Section 15-25-111, MCA, is amended to read:

"**15-25-111. Tax on dangerous drugs.** (1) There is a tax on the possession and storage of dangerous drugs. Except as provided in 15-25-112, each person possessing or storing dangerous drugs is liable for the tax. The tax imposed is determined pursuant to subsection (2). The tax is due and payable on the date of assessment. The department shall add an ~~administration~~ *administrative* fee of 5% of the tax imposed pursuant to subsection (2) to offset costs incurred in assessing value, in collecting the tax, and in any review and appeal process. *The administrative fee must be deposited in the state general fund.*

(2) With the exception that the tax on possession and storage of less than 1 ounce, 1 gram, or 100 micrograms of dangerous drugs must be that set forth below for 1 ounce, 1 gram, or 100 micrograms, the tax on possession and storage of dangerous drugs is the greater of:

(a) 10% of the assessed market value of the drugs, as determined by the department; or

(b) (i) $100 per ounce of marijuana, as defined in 50-32-101, or its derivatives, as determined by the aggregate weight of the substance seized;

(ii) $250 per ounce of hashish, as defined in 50-32-101, as determined by the aggregate weight of the substance seized;

(iii) $200 per gram of any substance containing or purported to contain any amount of a dangerous drug included in Schedule I, pursuant to 50-32-222(1), (2), (4), and (5), or Schedule II, pursuant to 50-32-224(1) through (4), as determined by the aggregate weight of the substance seized;

(iv) $10 per 100 micrograms of any substance containing or purported to contain any amount of lysergic acid diethylamide (LSD) included in Schedule I, pursuant to 50-32-222(3), as determined by the aggregate weight of the substance seized;

(v) $100 per ounce of any substance containing or purported to contain any amount of an immediate precursor as defined under Schedule II, pursuant to 50-32-224(5), as determined by the aggregate weight of the substance seized; and

(vi) $100 per gram of any substance containing or purported to contain any amount of dangerous drug not otherwise provided for in this subsection (2).

(3) The tax imposed under this section may be collected before any state or federal fines or forfeitures have been satisfied."

Section 6. Section 15-25-122, MCA, is amended to read:

"**15-25-122. Disposition of proceeds.** The department shall, in accordance with the provisions of 15-1-501(6), transfer all taxes collected pursuant to this chapter, less the administrative fee authorized in 15-25-111(1), as follows:

(1) one-third of the tax to the credit of the department of family services to be used for the youth evaluation program and chemical abuse aftercare programs; and

(2) the remaining two-thirds of the tax proceeds as follows:

(a) one-half to the department of justice to be used:

(i) for grants to youth courts to fund chemical abuse assessments; and

(ii) for grants to counties to fund services for the detention of juvenile offenders in facilities separate from adult jails, as authorized in 41-5-1002; and

(b) one-half to the ~~account created by 44-12-206(3)~~ *state general fund* if a state government law enforcement agency seized the drugs. If a local government law enforcement agency seized the drugs, then that amount must be credited to the treasurer or finance officer of the local government, be deposited in its general fund, and be used to enforce drug laws."

Section 7. Section 15-35-108, MCA, is amended to read:

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"**15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(1) ~~To~~ *Fifty percent of total coal severance tax collections must be allocated to* the trust fund created by Article IX, section 5, of the Montana constitution; ~~50% of total coal severance tax collections~~. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to tbe state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 0% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) beginning July 1, 1993, and ending June 30, 1995, 3 1/3% to a special revenue account to be used by the department of fish, wildlife, and parks for the

stabilization and preservation of historic and cultural sites within the state park system;

(l) all other ~~revenues~~ *revenue* from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. (Terminates June 30, 1995—sec. 4, Ch. 536, L. 1993.)

15-35-108. (Effective July 1, 1995) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(1) ~~To~~ *Fifty percent of total coal severance tax collections must be allocated to* the trust fund created by Article IX, section 5, of the Montana constitution~~, 50% of total coal severance tax collections~~. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after ~~allocation to the trust~~ fund *the allocations* under ~~subsection~~ *subsections* (1) *and (2)* are allocated in the following percentages of the remaining balance:

(a) ~~17 1/2%~~ *22%* to the credit of the ~~local impact~~ *an* account~~. Unencumbered funds remaining in the~~ *state special revenue fund to be allocated by the legislature for* local ~~impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state~~.

~~(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;~~

~~(c) 1% to the state special revenue fund to the credit of the~~ *impacts,* county land planning, *provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking,* ~~account~~ *conservation districts, and the Montana Growth Through Agriculture Act*~~;~~. *Any cash balance that is unspent at the end of each fiscal year must be deposited in the general fund.*

~~(d)~~*(b)* 1 1/4% to the credit of the renewable resource development bond fund;

~~(e)~~*(c)* 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

~~(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;~~

~~(g) 1/2 of 1% to the state special revenue fund for conservation districts;~~

~~(h)~~*(d)* 1 1/4% to the debt service fund type to the credit of the renewable resource loan debt service fund;

~~(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;~~

~~(j)~~*(e)* 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund ~~shall~~ *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

~~(k)~~*(f)* all other ~~revenues~~ *revenue* from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. (Terminates July 1, 2003—sec. 4, Ch. 191, L. 1991.)

15-35-108. (Effective July 1, 2003) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(1) ~~To~~ *Fifty percent of total coal severance tax collections must be allocated to* the trust fund created by Article IX, section 5, of the Montana constitution~~, 50% of total coal severance tax collections~~. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) ~~17 1/2%~~ *22%* to the credit of ~~the local impact~~ *an* account~~. Unencumbered funds remaining~~ in the *state special revenue fund to be allocated by the legislature for* local ~~impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.~~

~~(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;~~

~~(c) 1% to the state special revenue fund to the credit of the~~ *impacts,* county land planning, *provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking,* ~~account~~ *conservation districts, and the Montana Growth Through Agriculture Act*~~;~~. *Any cash balance that is unspent at the end of each fiscal year must be deposited in the general fund.*

~~(d)~~*(b)* 1 1/4% to the credit of the renewable resource development bond fund;

~~(e)~~*(c)* 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

~~(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;~~

~~(g) 1/2 of 1% to the state special revenue fund for conservation districts;~~

~~(h)~~*(d)* 1 1/4% to the debt service fund type to the credit of the renewable resource loan debt service fund;

~~(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;~~

~~(j)~~*(e)* 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall *must* be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

~~(k)~~*(f)* all other ~~revenues~~ *revenue* from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 8. Section 15-60-102, MCA, is amended to read:

"**15-60-102. Utilization fee for bed days in nursing facilities.** A nursing facility in the state shall pay to the department of revenue a utilization fee in the amount of ~~$2 for each bed day in the facility during fiscal year 1994 and~~ $2.80 for each bed day in the facility ~~during fiscal year 1995 and each year thereafter~~. The fees collected must be deposited in the ~~nursing facility state special revenue account established in 15-60-210~~ *general fund*."

Section 9. Section 15-60-210, MCA, is amended to read:

"**15-60-210. Disposition of fee ~~—nursing facility account~~.** ~~(1)~~ All proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 15-1-501(6), be deposited in the ~~nursing facility state special revenue account established in subsection (2)~~ *general fund*.

~~(2) There is a nursing facility account in the state special revenue fund. The purpose of the account is to provide a continuing source of revenue for nursing facility reimbursements as appropriated by the legislature.~~"

Section 10. Section 15-70-101, MCA, is amended to read:

"**15-70-101. Disposition of funds.** All taxes~~, interest, and penalties~~ collected under this chapter~~, except those collected by a justice's court,~~ must, in accordance with the provisions of 15-1-501(6), be placed in *a highway revenue account in* the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must, in accordance with the provisions of 15-1-501(6), be paid by the department of transportation from the state special revenue fund to the cities, towns, and counties.

(1) *The amount of* $16,766,000 of the ~~funds~~ *taxes* collected under this chapter~~, except those collected by a justice's court,~~ is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) *The amount of* $54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;.

(b) *The amount of* $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;.

(c) *The amount of* $10,389,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds allocated by this section to counties, cities, and towns must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the federal-aid primary or secondary highway system or urban extensions to those systems, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(3) All funds allocated by this section to counties, cities, and towns must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(4) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined by the last preceding official federal census.

(5) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, and counties to furnish to the department of transportation a yearly certified

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statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(6) Except by a town or third-class city as provided in subsection (2), the funds authorized by this section may not be used for the purchase of capital equipment.

(7) Funds authorized by this section must be used for construction and maintenance programs ~~only~~."

Section 11. Section 15-70-102, MCA, is amended to read:

"**15-70-102. Allocation of funds — participation in railroad grade crossing protection.** (1) The ~~sum of $100,000~~ *amount determined necessary* may be allocated from the state special revenue fund, ~~state~~ highway *revenue* account, ~~for the fiscal year ending June 30, 1973, and so much~~ for each succeeding fiscal year as ~~may be necessary to reimburse the fund~~ for expenditures and commitments made ~~and to maintain the fund at $100,000 at the beginning of each fiscal year thereafter,~~ for participation by the department of transportation with railroads in construction of railroad grade crossing protection on any public highway or road, except those designated on the interstate, primary, or urban systems within the state. The department of transportation shall select those grade crossings in the state ~~which~~ *that*, in the opinion of the department, are most in need of additional crossing protection and shall finance the cost ~~thereof~~ *of the improvements* solely from this fund.

(2) Signal protection provided under ~~the fund shall be~~ *this section is* limited to electric or automatic flashing lights or gates, depending on the amount and nature of the hazards present at the crossing, and participation in construction of such *the* signals shall *must* be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on federal-aid roads within the state.~~, provided, however, the fund shall~~ *The account may* not be used for protection of grade crossings on the secondary system where the protection is considered necessary and *when* the cost ~~thereof~~ is financed in part with federal-aid highway funds.

(3) In addition to the funds allocated, counties and cities may authorize the use of funds available to said counties and cities under the provisions of 15-70-101 for participation of *in the* installation in grade crossing protection within the county or city."

Section 12. Highway nonrestricted account. There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501(6), be placed in the highway nonrestricted account.

Section 13. Section 15-71-104, MCA, is amended to read:

"**15-71-104. Disposition of funds.** All taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be placed in the *highway revenue account,* state special revenue fund, to the credit of the department of transportation."

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Section 14. Section 17-1-501, MCA, is amended to read:

"17-1-501. Legislative findings. (1) The legislature finds that provisions for dedicating state revenue *and statutorily appropriating funds* have increased in number, reduce legislative control over state spending, complicate the state funding structure, and increase the effort required to budget, appropriate, and monitor public funds. The dedication *and statutory appropriation* of funds ~~results~~ *result* in the inability of the legislature to practically and systematically conduct reasoned prioritization of programs or funds.

(2) It is the intent of the legislature, by establishing ~~a system~~ *criteria* for the review and evaluation of revenue dedication provisions, to ensure that provisions for revenue dedication:

(a) are based on sound principles of revenue dedication *as described in [section 19]*;

(b) reflect present circumstances and legislative priorities for state spending; and

(c) are terminated when they *are* no longer are necessary or appropriate*; and*

(d) are subject to the same legislative scrutiny as programs or activities funded from the general fund.

(3) It is the intent of the legislature, by establishing criteria for the review and evaluation of statutory appropriation provisions, to ensure that provisions with statutory appropriations:

(a) reflect present circumstances and legislative priorities for state spending;

(b) are terminated when they are no longer necessary or appropriate; and

(c) are subject to the same legislative scrutiny as other appropriations."

Section 15. Section 17-1-502, MCA, is amended to read:

"17-1-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrative costs" includes:

(a) personal services;

(b) operating expenses, such as travel, supplies, and communication costs; and

(c) capital expenses, such as equipment, building costs, and real property costs.

(2) (a) "Continuing and reliable source of revenue" means a revenue source for which an agency forecasts an annual level of collections based upon historical data and prepares a budget for expenditures commensurate with the level of collections. Collections may not change significantly on an annual basis.

(b) The term does not include revenue:

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(i) that an agency will receive only as a result of an occurrence that is not a routine part of agency operations;

(ii) that will vary significantly on an annual basis; or

(iii) that is unable to be included in the agency budget because of the erratic nature of receipt.

~~(1)~~*(3)* "Dedicated revenue provision" means an administrative or legislative action that allocates the revenue from a tax, fee, assessment, or other source to an account in the state special revenue fund *as described in 17-2-102.*

(4) "General revenue source" means a source of revenue not governed by established or implied restrictions based on the source or limited use of the revenue. The term includes taxes, interest earnings, investment earnings, fines, and forfeitures.

~~(2)~~*(5)* "State special revenue fund" means a fund in the state treasury consisting of money from state sources that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government, as provided in 17-2-102."

Section 16. Section 17-1-503, MCA, is amended to read:

"**17-1-503. Transfer of fund balances to general fund.** *(1)* ~~On April 29, 1993, the~~ *The* balance remaining in each special revenue account terminated pursuant to legislative review must be deposited in the general fund.

(2) If the legislative finance committee concurs, the department may transfer the unobligated balance in a special revenue account to the general fund based upon the survey conducted pursuant to 17-2-111."

Section 17. Section 17-1-504, MCA, is amended to read:

"**17-1-504. Effect of termination.** (1) If the legislature has appropriated ~~the revenue from an account provided for in 15-1-501, 20-9-343, and 31-1-602~~ *revenue from sources de-earmarked by the legislature*, the appropriation is considered to have been made from the general fund.

(2) All assets, liabilities, and fund balances of accounts terminated ~~by 15-1-501, 20-9-343, and 31-1-602~~ *by the legislature* accrue to the general fund."

Section 18. Section 17-1-505, MCA, is amended to read:

"**17-1-505. ~~Legislative review and report~~ *Review of dedicated revenue provisions.*** (1) Each interim, the legislative finance committee shall review each dedicated revenue provision not exempted under subsection ~~(3)~~*(4)* and ~~review statutory appropriations assigned by the legislature~~ *the principles of revenue dedication set forth in [section 20] to ensure that legislative policy is clearly stated. The committee shall also carry out the review prescribed by subsection (4).*

(2) The ~~review conducted by the committee must include an evaluation of~~ ~~the~~ *legislature recognizes that* dedicated revenue ~~provision, based on whether it:~~ *provisions are subject to review by:*

(a) the office of budget and program planning in the development and implementation of the executive budget and analysis of legislation;

(b) the office of the legislative fiscal analyst in analyzing the executive budget;

(c) the legislative council in drafting legislation;

(d) the legislative auditor in auditing agencies; and

(e) the department of administration in performing the functions provided for in 17-2-106 and 17-2-111.

(3) To avoid unnecessary use of dedicated revenue provisions, the entities listed in subsection (2) shall, in the course of current duties, consider the principles in [section 20] and the criteria listed in this subsection for each new or existing dedicated revenue provision. A dedicated revenue provision should not give a program or activity an unfair advantage for funding. The expenditures from a dedicated revenue provision must be based on requirements for meeting a legislatively established outcome. Statutorily mandated programs or activities funded through dedicated revenue provisions from general revenue sources must be reviewed to the same extent as programs or activities funded from the general fund. The use of a dedicated revenue provision may be justified if it satisfies one or more of the following:

(a) *The program or activity funded* provides direct benefits for those who pay the dedicated tax, fee, or assessment, *and the tax, fee, or assessment is commensurate with the costs of the program or activity*;.

(b) *The use of the dedicated revenue provision* provides special information or other advantages that could not be obtained if the revenue were allocated to the general fund;.

(c) ~~provides~~ *The dedicated revenue provision provides* program funding at a level equivalent to the expenditures established by the legislature;.

(d) *The dedicated revenue provision* involves collection and allocation formulas that are appropriate to the present circumstances *and current priorities* in state government;.

(e) impairs *The dedicated revenue provision does not impair* the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending;.

(f) *The dedicated revenue provision* results in an ~~inappropriate~~ *an appropriate projected* ending fund balance;.

(g) *The dedicated revenue provision* fulfills a continuing, legislatively recognized need;~~, and~~.

(h) ~~results~~ *The dedicated revenue provision does not result* in accounting or auditing inefficiency.

~~(3)~~*(4)* The committee shall establish procedures to facilitate ~~the~~ *a biennial* review and evaluation ~~required by this section~~ *of dedicated revenue provisions*. ~~Each interim, the committee shall attempt to propose measures that will reduce dedicated revenue to an amount that is less than one-third of all state revenue.~~

If the review determines that the revenue dedication is constitutionally mandated, is for deht service, funds emergency services, or is a user fee that is designed to provide direct benefits for those who pay the dedicated tax, fee, or assessment in an amount commensurate with the benefits provided, the revenue dedication ~~does not need a~~ *may be exempt from* future review.

~~(4)~~*(5)* Upon completion of the review, the committee shall report a summary of its findings to the legislature, including its recommendation of termination or extension, with or without modification, of the dedicated revenue provision. The summary must include the purpose of the revenue dedication, the source of funding, the activity funded, the number of personnel associated with the activity, and any balance in the dedicated revenue fund. The summary must state the reason why the revenue dedication is exempt from future review.

~~(5) The committee shall review statutory appropriations to determine if the appropriation should be made by a legislative appropriation. During the 1995 biennium, the committee shall review the statutory appropriation of administrative costs in 75-11-313.~~"

Section 19. Principles of revenue dedication. (1) It is the policy of the legislature that a revenue source not be dedicated for a specific purpose unless one or more of the following conditions are met:

(a) The person or entity paying the tax, fee, or assessment is the direct beneficiary of the specific activity that is funded by the tax, fee, or assessment; the entire cost of the activity is paid by the beneficiary; and the tax, fee, or assessment paid is commensurate with the cost of the activity, including reasonable administrative costs.

(b) There is an expectation that funds donated by a person or entity will he used for a specified purpose. Grants from private or public entities are considered donations under this subsection.

(c) There is a legal basis for the revenue dedication. A legal basis is a constitutional mandate, federal mandate, or statutory requirement in which a source of funds is designated for a specific purpose.

(d) There is a recognized need for accountability through a separation of funding from the general fund consistent with generally accepted accounting principles.

(2) The total funding for a program is a legislative budget and policy issue for which a dedicated revenue provision may not be justified if:

(a) a general fund appropriation is needed to supplement the dedicated revenue support for the program or activity; or

(b) dedicating a revenue source or portion of a revenue source diverts funds that could be considered a general revenue source.

(3) In the consideration of the general appropriations act for each biennium, the legislature shall determine the appropriateness of dedicating revenue to a program or activity under conditions described in subsection (2). The office of budget and program planning shall describe the occurrence in its presentation of the executive budget, and the legislative fiscal analyst shall highlight the

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issue in the budget analysis and for the appropriations subcommittee considering the revenue dedication.

Section 20. Review of statutory appropriations. (1) Each interim, the legislative finance committee shall review the criteria set forth in subsection (4) to ensure that legislative policy is clearly stated concerning the use of statutory appropriations.

(2) Each biennium, the office of budget and program planning and the legislative fiscal analyst shall, in development and analysis of the executive budget, identify instances in which statutory appropriations in current law do not appear consistent with the criteria set forth in subsection (4).

(3) As part of each agency audit, the legislative auditor shall review statutory appropriations to the agency and report instances in which they do not appear consistent with the criteria set forth in subsection (4).

(4) The review of statutory appropriations must determine whether a statutory appropriation meets the requirements of 17-1-505. A statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs.

(5) The office of budget and program planning shall, consistent with the review provisions in this section, review each piece of legislation that proposes to create or amend a statutory appropriation. Its findings concerning the statutory appropriation must be contained in the fiscal note accompanying that legislation.

Section 21. Section 17-2-111, MCA, is amended to read:

"17-2-111. Review *Survey* of state special revenue accounts and proprietary accounts — report ~~—transfer of funds.~~ ~~(1)~~ Each biennium, the department ~~of administration~~ shall ~~examine~~ *conduct a survey of* all state special revenue accounts ~~and proprietary accounts as required by this section and report the findings and recommendations~~ *not exempt under 17-1-505 and coordinate with the legislative finance committee to provide information necessary to complete the review required by 17-1-505. The department shall provide the survey information* to the legislative finance committee not later than June *February* 1 of the year preceding a regular session of the legislature.

~~(2) The department shall examine restrictions against the transfer of unobligated balances in state special revenue accounts to the general fund. If such restrictions are considered unnecessary by the department and if they may be eliminated by administrative action, the department shall to the fullest extent possible eliminate such restrictions and require the transfer of unobligated balances in the accounts to be made to the general fund, either on an annual or biennial basis. If administrative action is unavailable, the department shall make recommendations for legislative action.~~

~~(3) The department shall examine all state special revenue accounts and proprietary accounts to determine if they should continue to exist or be eliminated or modified to provide better program oporation or fiscal control. In conducting the examination, the department shall consider whether an account:~~

~~(a) is accurately classified as a state special revenue account or proprietary account;~~

~~(b) is required by the Montana constitution or by statute;~~

~~(c) operates in compliance with the statutes that established the program;~~

~~(d) receives an amount of revenue that is equal to or close to the expenditure required for the activity funded by the account;~~

~~(e) allows the funded program to operate without supplemental general funds; and~~

~~(f) has any restrictions against the transfer of unobligated balances in the account to the general fund.~~"

Section 22. Section 17-5-704, MCA, is amended to read:

"**17-5-704. Investment of funds.** Money in the coal severance tax bond fund, the coal severance tax permanent fund, the coal severance tax income fund, and the coal severance tax school bond contingency loan fund must be invested in accordance with the investment standards for coal severance tax funds. Income and earnings from all funds a~~re statutorily appropriated, as provided in 17-7-502, as follows:~~

~~(1) 15% to the state equalization aid account; and~~

~~(2) 85% to~~ *must be deposited in* the state general fund."

Section 23. Section 17-6-409, MCA, is amended to read:

"**17-6-409. Authority to accept funds ~~— statutory appropriation —~~ funding authorization.** (1) The department may accept grants, donations, and other private and public income, including payments of interest on loans made by the department under the provisions of this part and fees charged by the department. The department shall deposit all money received under this section in the microbusiness finance program administrative account established in 17-6-407.

(2) The money in the microbusiness finance program administrative account ~~is statutorily appropriated to the department, as provided in 17-7-502,~~ *may be appropriated* for the purposes stated in this part."

Section 24. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(h) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; ~~15-25-123;~~ 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; ~~17-5-704;~~ 17-5-804; 17-6-101; 17-6-201; ~~17-6-409;~~ 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; ~~20-4-109;~~ 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; ~~23-2-823;~~ 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; ~~27-12-206;~~ 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; ~~61-2-107;~~ 67-3-205; 75-1-1101; ~~75-5-507;~~ 75-5-1108; 75-11-313; 76-12-123; ~~77-1-808;~~ 80-2-103; 80-2-222; 80-4-416; ~~80-11-310;~~ 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 25. Section 19-8-504, MCA, is amended to read:

"**19-8-504. State's contribution.** ~~(1) To fund the employer's portion of the normal cost of benefits under this chapter, each~~ *Each* month, the state treasurer shall pay to the pension trust fund:

~~(a)~~ out of the department of fish, wildlife, and parks funds, a sum equal to ~~7.15%~~ *8.15%* of all members' salaries; ~~and~~.

~~(b) out of the funds collected as fines and forfeited bonds under the provisions of 87-1-601(1) through (5) or funds distributed under 3-10-601(4), an amount equal to 1% of all members' salaries.~~

~~(2) In addition to the contributions provided in subsection (1), the state treasurer shall pay to the pension trust fund the balance of the funds distributed to the fish and game account pursuant to 3-10-601 until the unfunded liability in the pension trust fund is fully paid and a verification statement to that effect is given to the state treasurer by the board.~~"

Section 26. Section 20-4-109, MCA, is amended to read:

"**20-4-109. Fees for teacher and specialist certificates.** (1) A person applying for the issuance or renewal of a teacher or specialist certificate shall

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pay a fee not to exceed $6 for each school fiscal year that the certificate is valid. In addition to this fee, a person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of $6. The fees must be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the state special revenue fund account, created in subsection (2), to he used in the following manner:

(a) $3 for expenses of the certification standards and practices advisory council created in 2-15-1522;

(b) $3 to the board of public education to be used by the certification standards and practices advisory council for research in accordance with the duties of the council provided for in 20-4-133.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account. ~~The money in the account to be used for the purposes of subsection (1)(b) is statutorily appropriated, as provided in 17-7-502, to the board of public education for use by the certification standards and practices advisory council.~~"

Section 27. Section 20-5-324, MCA, is amended to read:

"**20-5-324. Tuition report and payment provisions.** (1) At the close of the school term of each school fiscal year and before July 15, the trustees of a district shall report to the county superintendent:

(a) the name and district of residence of each child who is attending a school of the district under an approved mandatory out-of-district attendance agreement;

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each reported child; and

(d) the names, districts of attendance, and amount of tuition to be paid by the district for resident students attending public schools out of state.

(2) The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.

(3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to the superintendent of public instruction, who shall determine the total ~~foundation amount~~ *per-ANB entitlement* for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

(4) Notwithstanding the requirements of subsection (5), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

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(5) Except as provided in subsection (6), when a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(6) When a child has mandatory approval under the provisions of 20-5-321, the tuition and transportation obligation for an elementary school child attending a school outside of the child's county of residence must be financed by the county basic tax for elementary districts, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the county of residence by the county basic tax for high school districts, as provided in 20-9-333, for the child's county of residence.

(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate basic county tax account provided for in 20-9-334 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of public instruction shall reimburse the district of residence ~~from the state equalization account~~ for the ~~foundation amount~~ *per-ANB entitlement* determined in subsection (3).

(9) (a) Any tuition receipts received under the provisions of Title 20, chapter 7, part 4, or 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget."

Section 28. Section 20-7-420, MCA, is amended to read:

"20-7-420. Residency requirements — financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's ~~last known~~ *last-known* district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 for a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child with disabilities who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from ~~the state equalization aid account~~ *available funds*. However, the amount spent from ~~the state equalization aid account~~ *available funds* for this purpose may not exceed $500,000 during any biennium.

(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education and related services and is placed by a state agency in an out-of-state private residential facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402.

(5) A state agency that makes a placement of a child with disabilities is responsible for the financial costs of room and board and the treatment of the child."

Section 29. Section 20-7-504, MCA, is amended to read:

"20-7-504. State traffic education account — proceeds earmarked for the account. (1) There is a traffic education account in the treasury of the state of Montana.

(2) ~~Money paid into the account pursuant to 3-10-601 must be distributed to approved traffic education courses as provided in 20-7-506.~~

~~(3)~~ Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 20-7-513 and 20-7-514 and must be available to support only approved motorcycle safety training courses, appropriate motorcycle safety instructor training, and other related motorcycle safety training activities."

Section 30. Section 20-7-506, MCA, is amended to read:

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"**20-7-506. Annual allocation and distribution of traffic education account proceeds.** *(1)* ~~The~~ *Subject to the provisions of subsection (2), the* superintendent of public instruction shall annually order the distribution of all ~~moneys~~ *money* in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education ~~moneys~~ *money* must be based on the distribution policy promulgated by the superintendent of public instruction, provided that the reimbursements to districts must be based upon tbe number of pupils who, in a given school fiscal year, complete an approved traffic education course, including both the classroom instruction and behind-the-wheel driving.

(2) Before the funds in the traffic education account are disbursed, there must be appropriated to the superintendent of public instruction funds to administer the statewide traffic education program for eligible, young, novice drivers. The administration may include:

(a) supervision and assessment of approved traffic education courses;

(b) preparation for teachers of traffic education;

(c) development, printing, and distribution of essential instructional materials for traffic education; and

(d) any other activities considered necessary by the superintendent of public instruction, provided that the money is available only to support traffic education for young, novice drivers."

Section 31. Section 20-7-605, MCA, is amended to read:

"**20-7-605. Notification and processing of complaint against a licensed textbook dealer.** (1) A district or county superintendent shall notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(a) offering to sell textbooks at a higber price than the listed uniform sales price filed with the superintendent of public instruction;

(b) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or

(c) in any other way performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

(2) Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. If the superintendent of public instruction finds that the licensed textbook dealer has violated any provision of this section and the dealer fails to rectify ~~his~~ *the* error within 30 days of the notification of the finding of a violation, ~~he~~ *the dealer* shall forfeit ~~his~~ *the dealer's* surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount ~~so~~ recovered ~~shall~~ *must* be paid into the state ~~public school equalization aid account~~ *general fund.*"

Section 32. Section 20-9-166, MCA, is amended to read:

"20-9-166. State financial aid for budget amendments. Whenever a final budget amendment has been adopted for the general fund or the transportation fund to finance the cost of an amendment resulting from increased enrollment, the trustees may apply to the superintendent of public instruction for an increased payment from the state ~~public school equalization aid account~~ for the BASE funding program or for state transportation reimbursement, or both. The superintendent of public instruction shall adopt rules for the application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with 20-9-314 and this section. When the superintendent of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of state aid from the state ~~public school equalization aid account~~ or the state transportation reimbursement that will be made available to the applicant district because of the increase in enrollment. The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made."

Section 33. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax and other ~~revenues~~ *revenue* for county equalization of the elementary district BASE funding program. (1) The county commissioners of each county shall levy an annual basic tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state ~~special revenue~~ *general* fund~~, state equalization aid account,~~ in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state ~~special revenue~~ *general* fund~~, state equalization aid account,~~ immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

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(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204."

Section 34. Section 20-9-333, MCA, is amended to read:

"**20-9-333. Basic special levy and other ~~revenues~~ *revenue* for county equalization of high school district BASE funding program.** (1) The county commissioners of each county shall levy an annual basic special tax for high schools of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state ~~special revenue~~ *general* fund~~, state equalization aid account,~~ in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state ~~special revenue~~ *general* fund~~, state equalization aid account,~~ immediately upon occurrence of a surplus balance and each subsequent month

thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204."

Section 35. Section 20-9-342, MCA, is amended to read:

"20-9-342. **Deposit of interest and income ~~moneys~~ *money* by state board of land commissioners.** The state board of land commissioners shall annually deposit the interest and income ~~moneys~~ *money* for each calendar year into the state ~~special revenue~~ *general* fund for state equalization aid~~, provided for by 20-9-343,~~ by the last business day of February following the calendar year in which the ~~moneys were~~ *money was* received."

Section 36. Section 20-9-343, MCA, is amended to read:

"20-9-343. **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means ~~the account in the state special revenue fund that receives~~ revenue as required in this section ~~plus any legislative appropriation of money from other sources~~ for:

(a) distribution to the public schools for the purposes of payment of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid, state reimbursement for school facilities, and matching funds for the systemic initiative for Montana mathematics and science grant;

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 per biennium; and

(c) the Montana educational telecommunications network as provided in 20-32-101.

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(2) The superintendent of public instruction may spend *throughout the biennium* funds appropriated ~~from the state equalization aid account as required~~ for the purposes of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), and the Montana educational telecommunications network~~, throughout the biennium, and for the biennium beginning July 1, 1993, equipment purchases that qualify as the state match for the systemic initiative for Montana mathematics and science grant~~.

(3) The following must be paid into the state ~~equalization aid account~~ *general fund* for the public schools of the state:

~~(a) money allocated to state equalization from the collection of the severance tax on coal;~~

~~(b) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;~~

~~(c)~~ interest and income money described in 20-9-341 and 20-9-342;

~~(d) money received from the state equalization aid levy under 20-9-360;~~

~~(e) income from the lottery, as provided in 23-7-402;~~

~~(f) the surplus revenues collected by the counties for BASE funding program support according to 20-9-331 and 20-9-333;~~ and

~~(g)~~*(b)* investment income earned by investing ~~money in the state equalization aid account in the state special revenue fund~~ *interest and income money described in 20-9-341 and 20-9-342*.

~~(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.~~

~~(5) Any surplus revenue in the state equalization aid account at the end of a fiscal year must be transferred to the general fund.~~"

Section 37. Section 20-9-346, MCA, is amended to read:

"**20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution.** The superintendent of public instruction shall administer the distribution of the state and county equalization aid by:

(1) establishing the annual entitlement of each district and county to state and county equalization aid, based on the data reported in the retirement and general fund budgets for each district that have been duly adopted for the current school fiscal year and verified by the superintendent of public instruction;

(2) for the purposes of state reimbursements for school facilities, limiting the distribution ~~from the state equalization aid account to no more than $1 million for the school fiscal year ending June 30, 1994, and~~ to no more than $2 million for the biennium ending June 30, 1995, to the districts that are eligible under the provisions of 20-9-366 through 20-9-371 by:

(a) determining by May 1 of each school fiscal year the number of mills levied in each district for debt service on bonds that were issued as provided in 20-9-370(2)(b)(i) or (2)(b)(ii) and that qualify for guaranteed tax base aid under the provisions of 20-9-366 through 20-9-369 and 20-9-370;

(b) based on the limitation of state equalization aid available for debt service purposes in this subsection (2), determining the percentage of state equalization aid that each eligible district must receive for the school fiscal year;

(c) distributing that amount to each eligible district for reducing the property tax for the debt service fund for the ensuing school fiscal year; and

(d) at the end of the school fiscal year ending June 30, 1994, determining whether there is an unused portion of the amount of state equalization aid appropriated in this subsection (2) to be carried into the next school fiscal year for the purposes of this subsection (2);

(3) distributing by electronic transfer the BASE aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county *for county equalization* or *to the county treasurer of the* county where the district is located *for BASE aid*, in accordance with the distribution ordered by the board of public education;

(4) keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for BASE aid of the districts of the state;

(5) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(6) reporting to the office of budget and program planning as provided in 17-7-111:

(a) the figures and data available concerning distributions of state and county equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization."

Section 38. Section 20-9-360, MCA, is amended to read:

"**20-9-360. State equalization aid levy.** (1) There is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under

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23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204. Except as provided in subsection (2), proceeds of the levy must be remitted to the state treasurer and must be deposited to the credit of the state ~~special revenue~~ *general* fund for state equalization aid to the public schools of Montana.

(2) For the benefit of each municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, the state treasurer shall distribute each fiscal year from the state equalization aid levy to the municipality the amount, if any, equal to the product of the incremental taxable value of the urban renewal area times the reduced school levy for the area, each calculated for the fiscal year. The reduced school levy for a fiscal year is the difference between the aggregate amount of all property tax levies for school purposes in the urban renewal area, expressed in mills, in the fiscal year ended June 30, 1989, and the aggregate amount of all property tax levies for school purposes in the area or the district, expressed in mills, in the fiscal year, including the state equalization aid levy. The state treasurer shall distribute the amounts to municipalities in two equal installments on December 31 and June 30 of the fiscal year."

Section 39. Section 20-9-361, MCA, is amended to read:

"**20-9-361. State and county equalization revenue — statutory appropriation.** *(1)* Revenue received in support of ~~state and~~ county equalization under the provisions of 20-9-331~~;~~ *and* 20-9-333~~, and 20-9-343~~ is ~~statutorily appropriated, as provided in 17-7-502, to:~~

~~(1) the superintendent of public instruction~~ to be used for county equalization and ~~state equalization~~ aid for the public schools, as provided by law, and must be accounted for in accordance with generally accepted accounting principles~~; and~~.

(2) *Revenue received from the state equalization aid levy for a municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, is statutorily appropriated, as provided in 17-7-502, to* ~~counties~~ *be distributed* as provided in 20-9-360(2)."

Section 40. Section 23-2-507, MCA, is amended to read:

"**23-2-507. Penalty.** (1) Violations of any section of this part, except 23-2-526(3), unless otherwise specified ~~shall be~~ *are* a misdemeanor and *shall* be punishable by *a* fine of not less than $15 or more than $500 or ~~by~~ imprisonment up to 6 months, or by both ~~such fine and imprisonment~~. All fine and bond forfeitures, except those paid to a justice's court, ~~shall~~ *must* be transmitted to the state treasurer, who shall deposit ~~such~~ *the* fines and forfeitures in the ~~motorboat account of a special revenue~~ *general* fund. ~~The moneys shall be used only by the department for enforcement of this part, as amended.~~

(2) If 23-2-525(4) is violated, 46-18-241 through 46-18-249 apply, except that the sentencing court shall order restitution and shall do so regardless of the court's disposition of the violator."

Section 41. Section 23-2-644, MCA, is amended to read:

"23-2-644. ~~Use~~ *Deposit* of funds from fines and forfeitures. All fines and forfeitures collected under 23-2-601 through 23-2-644 relating to snowmobiles, except those collected by a justice's court, ~~shall~~ *must* be transmitted to the state treasurer, who shall deposit ~~such~~ *the* fines and forfeitures in the state ~~special revenue~~ *general* fund. ~~to the credit of the department to be used only for snowmobile safety and education.~~"

Section 42. Section 23-2-807, MCA, is amended to read:

"23-2-807. Penalty — disposition. (1) The failure to display a current decal indicating that the fee in lieu of tax, registration fees, decal fees, and, when applicable, taxes on licensed vehicles have been paid on the off-highway vehicle for the current year as provided in 23-2-804 is a misdemeanor punishable by a fine of $50.

(2) All fines collected under this section must be transmitted to the state treasurer, who shall deposit the money in the ~~account created under 23-2-804(3)~~ *state general fund*. ~~Fifty percent of this money and the interest earned on it must be used for off-highway vehicle safety and education. The remaining 50% of the money and the interest earned on it must be used for enforcement.~~"

Section 43. Section 23-2-823, MCA, is amended to read:

"23-2-823. Off-highway vehicle safety education training program —appropriation. (1) There is an off-highway vehicle safety education training program. ~~Beginning October 1, 1994, the~~ *The* department of fish, wildlife, and parks shall coordinate the program as funds are available.

(2) ~~Beginning October 1, 1994, the~~ *The* department of justice shall transfer to the department of fish, wildlife, and parks all money available for the program under 23 U.S.C. 402.

(3) There is an account in the federal special revenue fund in which all money received for the administration of the off-highway vehicle safety education training program must be deposited. ~~The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of fish, wildlife, and parks for the administration of the program.~~"

Section 44. Section 23-4-202, MCA, is amended to read:

"23-4-202. Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, ~~and~~ *or* a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which they officiate may exclude from racecourses in this state a person whom the board considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid

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application for relicensure for a 2-year period. *Fines collected under this subsection must be deposited in the general fund.*

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed ~~herein~~ *under this chapter*. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of *a* summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 2% of exotic wagering on races, including simulcast races, to be used as a bonus for owners pursuant to 23-4-304(2)~~, and up~~. *Up* to 30% of the amount set aside may be used to defray administrative costs ~~which shall be~~ in addition to the 20% already withheld under 23-4-302~~;~~.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; and

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

Section 45. Section 23-7-202, MCA, is amended to read:

"**23-7-202. Powers and duties of commission.** The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and ~~his~~ *the* staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) maximize the net revenue paid to the ~~superintendent of public instruction~~ *state* ~~and to the board of crime control~~ under 23-7-402 and ensure that all policies and rules adopted further revenue maximization;

(4) subject to 23-7-402(1), determine the percentage of the money paid for tickets or chances to be paid out as prizes;

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(5) determine the price of each ticket or chance and the number and size of prizes;

(6) provide for the conduct of drawings of winners of lottery games;

(7) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(8) study and may enter into agreements with other lottery states to offer lottery games;

(9) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(10) adopt rules relating to lottery staff sales incentives or bonuses and sales agents' commissions and any other rules necessary to carry out this part."

Section 46. Section 23-7-402, MCA, is amended to read:

"**23-7-402. Disposition of revenue.** (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. ~~Except for the amount required to be paid under subsection (5), net~~ *Net* revenue must be paid *transferred* quarterly from the enterprise fund established by 23-7-401 to the ~~superintendent of public instruction~~ *state general fund* ~~for distribution as state equalization aid to the public schools of Montana as provided in 20-9-343. The net revenue is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction.~~

(4) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the ~~budget~~ office *of budget and program planning*.

~~(5) (a) An amount equal to 9.1% of the net revenue derived under subsection (3), but not to exceed $1 million in any fiscal year, must be paid to the board of crime control.~~

~~(b) All money paid to the board of crime control under this subsection (5) must be used to fund state grants to counties for youth detention services and to cover the costs of administering the grant program as authorized in 41-5-1002. The grants are statutorily appropriated, as provided in 17-7-502, to~~

~~the board of crime control. The costs of administering the grant program must be paid pursuant to a legislative appropriation.~~"

Section 47. Section 27-12-206, MCA, is amended to read:

"**27-12-206. Funding.** (1) There is an account in the state special revenue fund. Money from the assessments levied under this section must be deposited in the account. ~~The money in the account is statutorily appropriated, as provided in 17-7-502, to the director to be used to administer this chapter.~~

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year, not required for the administration of this chapter, must be retained ~~by the director~~ *in the account* and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date the chiropractic physician's annual renewal fee under 37-12-307 is due. An unpaid assessment bears a late charge fee of $25. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of commerce has under 37-12-307 with *regard to* a chiropractic physician's annual license fee."

Section 48. Section 39-71-2501, MCA, is amended to read:

"**39-71-2501. Definitions.** As used in this part, the following definitions apply:

(1) "Account" means the workers' compensation bond repayment account established in 39-71-2504.

~~(1)~~*(2)* "Department" means the department of revenue provided for in 2-15-1301.

~~(2)~~*(3)* "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

~~(3)~~*(4)* (a) "Employer" means, except as provided in subsection ~~(3)(b)~~ *(4)(b)*, the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.

(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term employer means the person who has control of the payment of wages.

~~(4)~~*(5)* "Employer's payroll" means wages paid for each of the calendar quarters ending March 31, June 30, September 30, and December 31.

~~(5)~~*(6)* "State fund" means the state compensation insurance fund.

~~(5)~~*(7)* "Tax" means the workers' compensation old fund liability tax provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~(7) "Tax account" means the workers' compensation tax account created by 39-71-2504.~~

(8) "Wages" means all remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (8)(a), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection (8)(a)(i), by the employer in the performance of service during the preceding calendar quarter;

(b) for services not in tbe course of the employer's trade or business, to the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at tbe request of and for the convenience of the employer;

(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club activities;

(d) as wages or compensation, the taxation of which is prohibited by federal law."

Section 49. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding week.

(b) There is imposed on each employee, except workers engaged in the rail industry who are under the jurisdiction of the federal railroad administration, United States department of transportation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages in the preceding calendar quarter.

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(c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager.

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and *is* dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

(g) Each employer shall maintain the records the department requires concerning the old fund liability tax. Tbe records are subject to inspection by the department and its employees and agents during regular business hours.

(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section.

(2) All collections of the tax must be deposited as received in the ~~tax~~ account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter ~~and in addition~~. *The employer* shall *also* remit withholdings for employees' old fund liability taxes at the same time.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings for employees' old fund liability taxes at the same time.

(c) Tax payments required by subsections (1)(a) and (1)(b) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(d) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the ~~workers' compensation tax~~ account provided *for* in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall~~, on July 1, 1991, or as soon after that date as possible,~~ give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, *that are* not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

Section 50. Section 39-71-2504, MCA, is amended to read:

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"39-71-2504. Workers' compensation ~~tax~~ *bond repayment* account. (1) There is a workers' compensation ~~tax~~ *bond repayment* account in the ~~state special revenue~~ *enterprise* fund. ~~The workers' compensation tax account consists of a tax account and a workers' compensation bond repayment account.~~

(2) All collections of the tax imposed under 39-71-2503~~,~~ *and the* interest and penalties on the tax~~, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989,~~ must, in accordance with the provisions of 15-1-501(6), be deposited in the workers' compensation ~~tax~~ *bond repayment* account. All money deposited in the ~~workers' compensation tax account must be credited to the~~ workers' compensation bond repayment account *must be retained in the account* to the extent necessary to pay the principal of and *the* redemption premium and interest due on workers' compensation bonds issued under 39-71-2354 and 39-71-2355 and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation bond repayment account ~~must be credited to the tax account within the workers' compensation tax account and~~ is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 51. Section 46-18-235, MCA, is amended to read:

"46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 ~~shall~~ *must* be paid:

(1) by a district court to the county general fund of the county in which the court is held, except that:

(a) if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid to the state for deposit into the state general fund to the extent *that* the expenses were paid by the state; *and*

(b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, the court may order the money paid into the drug forfeiture account maintained under 44-12-206 for the law enforcement agency ~~which~~ *that* made the arrest from which the conviction and fine arose; and

~~(c) if the fine was imposed for a violation of 45-5-206, 50% of the amount collected must be deposited in the state special revenue fund for use of the department of family services in the battered spouses and domestic violence grant program created by 52-6-101; and~~

(2) by a justice's court pursuant to 3-10-601."

Section 52. Section 52-6-105, MCA, is amended to read:

"52-6-105. Funding. (1) Revenue from the marriage license fee~~;~~ *and* the fee collected for filing a declaration of marriage without solemnization~~, and the portion of fines allocated to this program by 46-18-235~~ is the primary source of funding for the battered spouses and domestic violence program. The disposition of the marriage license fee is as established in 25-1-201.

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions."

Section 53. Section 61-2-107, MCA, is amended to read:

"**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of $100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) ~~(a)~~ The department shall deposit the fees collected under subsection (1) in the general fund. One-half of the fees must be appropriated and used for funding county drinking and driving prevention programs as provided in 61-2-108. ~~For each fiscal year, an amount up to $50,000 of the money from the fees remaining in the general fund after appropriation for those programs is statutorily appropriated, as provided in 17-7-502, to the department to purchase and maintain equipment used to analyze breath for the presence of alcohol.~~

~~(b) On or before June 30, 1994, the department shall transfer to the general fund the balance of the driver's license reinstatement fee state special revenue account.~~"

Section 54. Section 61-3-502, MCA, is amended to read:

"**61-3-502. Sales tax on new motor vehicles — exemptions.** (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when the purchaser applies for an original Montana license through the county treasurer. *For purposes of this section, "new motor vehicle" means a new motor vehicle for which original registration is sought or a motor vehicle previously furnished without charge by a dealer to a school district for use in a state-approved traffic education program, whether or not titled by the dealer or the school district, and for which original registration is sought.*

(2) Except as provided in subsections (4) and (5), the sales tax is:

(a) 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 1/8% of the list price during the second quarter of the year;

(c) 3/4 of 1% during the third quarter of the year;

(d) 3/8 of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

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(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.

(6) The proceeds from this tax must be remitted to the state treasurer every 30 days for credit to the ~~state~~ highway *nonrestricted* account of the state special revenue fund. The county treasurer shall retain 5% of the taxes collected to pay for the cost of administration.

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) ~~(a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.~~

~~(b)~~ A motor vehicle may not be registered or licensed ~~under the provisions of this subsection~~ unless the application for registration is accompanied by a statement of origin ~~to be~~ *that is* furnished by the dealer selling the vehicle~~,~~ ~~showing~~ *and that shows* that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person, firm, corporation, or association ~~that is not~~ *other than* a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from *the provisions of* subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where *when* those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from *the provisions of* subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from *the provisions of* subsection (1)*:*

(i) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only~~,~~*;* and

(ii) in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business."

Section 55. Section 61-4-112, MCA, is amended to read:

"**61-4-112. New motor vehicles — transfers by dealers.** (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a sticker as prescribed in 61-4-111(1)(a) for transfers of used motor vehicles and retain a copy of the sticker;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the sticker issued under subsection (1)(a);

(ii) an application for certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a statement of origin as prescribed in 61-3-502(8)~~(b)~~.

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of ownership and certificate of registration together with a statement of lien as provided in 61-3-202."

Section 56. Section 61-5-121, MCA, is amended to read:

"**61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial driver's licenses provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404.

(h) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the general fund.

(d) The amount of ~~8.75%~~ *26.25%* of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of ~~62.5%~~ *54.55%* of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

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(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a) and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

Section 57. Section 61-8-204, MCA, is amended to read:

"**61-8-204. Reward for information on injury to or removal of sign or marker.** Upon conviction under the provisions of 61-8-713, ~~any~~ *a* person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person ~~shall~~ *must* be paid a reward from the ~~state~~ highway *nonrestricted* account in the state special revenue fund in the sum of $100."

Section 58. Section 61-10-126, MCA, is amended to read:

"**61-10-126. Deposit of fees.** All fees collected under 61-10-101 through 61-10-125 shall *must* be forwarded to the state treasurer for deposit in the ~~state~~ highway *nonrestricted* account in the state special revenue fund."

Section 59. Section 61-10-148, MCA, is amended to read:

"**61-10-148. Disposition of fines and forfeited bonds.** (1) Except as provided in 61-12-701 and subsection (2) *of this section*, one-half of all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the state treasurer for deposit in the ~~state~~ highway *nonrestricted* account in the state special revenue fund. The remaining half, less the deductions required by law, must be deposited in the county road fund. This subsection does not apply to fines and forfeited bonds paid to justices' courts.

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(2) If the apprehension or arrest was for a violation of Title 61, chapter 10, and if the offense occurred on a road or highway not included under *the provisions of* 60-2-128 and 60-2-203, all money collected as fines and forfeited bonds must be distributed to the county treasurer for deposit in the county road fund."

Section 60. Section 61-10-225, MCA, is amended to read:

"**61-10-225. Disposition of fees collected by county treasurer.** At the time of collecting the fees provided for in 61-10-222, each county treasurer shall retain 5% of the fees ~~collected by him~~ for the cost of administration and for deposit in the general fund of the county. The remaining 95% ~~shall~~ *must* be remitted monthly to the state treasurer for deposit to the credit of the department of transportation *in the highway revenue account*. The remittance ~~shall~~ *must* be made on forms furnished to the county treasurer by the department."

Section 61. Section 61-10-226, MCA, is amended to read:

"**61-10-226. Deposit of state highway money.** (1) ~~Any reference to the state highway fund means the state highway account in the state special revenue fund.~~

~~(2)~~ Money received for the use of the department from the receipt or transfer of GVW license fees, as provided by law, or from other state sources ~~shall~~ *must* be deposited in the *highway revenue account in the* state special revenue fund to the credit of the department.

~~(3)~~*(2)* Money received from the federal government or other agencies ~~shall~~ *must* be deposited in a federal or state special revenue fund to the credit of the department.

~~(4)~~*(3)* Money collected for tbe department as authorized by law ~~shall~~ *must* be credited to ~~such~~ *the appropriate* fund ~~or funds~~ by the state treasurer.

~~(5)~~*(4)* Money received from the counties shall *must* be deposited in the *appropriate account in the* state special revenue fund to the credit of the department."

Section 62. Section 75-5-634, MCA, is amended to read:

"**75-5-634. Disposition of fines and civil penalties.** ~~(1) Except as provided in subsections (2) and (3), fines~~ *Fines* and civil penalties collected *under this chapter*, except those collected in a justice's court, must be deposited into the ~~water quality rehabilitation account provided in 75-5-507~~ *state general fund*.

~~(2) A maximum of $20,000 in fines and civil penalties may be deposited in the water quality rehabilitation account in any fiscal year. Fines and penalties in excess of $20,000 must be deposited in the general fund.~~

~~(3) Whenever the amount of money in the water quality rehabilitation account exceeds $100,000, all subsequent fines and civil penalties must be deposited in the general fund.~~"

Section 63. Section 75-5-635, MCA, is amended te read:

"75-5-635. Costs and expenses — recovery by department —~~deposit in water quality rehabilitation account.~~ (1) In a civil action initiated by the department under this chapter, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey ~~which~~ *that* led to the establishment of the violation and any expense incurred by the state in removing, correcting, or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

(2) Any costs and expenses recovered by the department under *the provisions of* subsection (1) ~~for actions that the department financed with money from the water quality rehabilitation account authorized in 75-5-507~~ must be deposited in the ~~water quality rehabilitation account~~ *state general fund.*"

Section 64. Section 75-6-109, MCA, is amended to read:

"75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or ~~his~~ *the violator's* agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time~~, which~~. *The time period* must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) An action initiated under this part may include an administrative penalty not to exceed $500 for each day of violation. Administrative penalties collected under this section must be deposited in the ~~public drinking water special revenue~~ *state general* fund ~~established in 75-6-115~~.

(7) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

Section 65. Section 75-6-114, MCA, is amended to read:

"**75-6-114. Civil penalty.** (1) A person who violates this part or a rule, order, or condition of approval issued under this part is subject to a civil penalty not to exceed $10,000.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) Civil penalties collected pursuant to this section must be deposited in the ~~public drinking water special revenue~~ *state general* fund ~~established in 75-6-115~~."

Section 66. Section 75-6-115, MCA, is amended to read:

"**75-6-115. Public drinking water special revenue fund.** (1) There is a public drinking water special revenue fund within the state special revenue fund established in 17-2-102. ~~There are established in the public drinking water special revenue fund an operator training account and a public drinking water program account.~~

(2) There must be credited to:

~~(a) the operator training account all administrative and civil penalties collected under 75-6-109 and 75-6-114; and~~

~~(b)~~ the public drinking water ~~program account revenues~~ *special revenue fund the revenue* from fees assessed, collected, and allocated pursuant to 75-6-108.

~~(3) Funds from the operator training account may be used only to finance public water supply system and public sewage system operator training programs.~~

~~(4)~~ Funds from the public drinking water ~~program account~~ *special revenue fund* may be used only to pay department costs in implementing the public drinking water supply program, as described in this part."

Section 67. Section 76-15-530, MCA, is amended to read:

"**76-15-530. Conservation district account *appropriations* — administration.** (1) ~~There is a conservation district account in the state special revenue fund of the state treasury. Money is paid into this account under 15-35-108.~~ The state treasurer shall draw warrants payable from ~~this account~~ *appropriations of allocations authorized as provided under 15-35-108* on order from the department of natural resources and conservation.

(2) The department of natural resources and conservation shall administer the conservation district ~~account~~ *appropriations referred to in subsection (1).*

The money ~~shall~~ *must* be distributed ~~from the account~~ to the conservation districts on the basis of need. A conservation district may submit an application to the department of natural resources and conservation for a grant of funds for purposes that conservation districts are authorized to perform.

(3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.

(4) The department of natural resources and conservation may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants."

Section 68. Section 77-1-808, MCA, is amended to read:

"**77-1-808. State lands recreational use account.** (1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue received from the recreational use license established by 77-1-802;

(b) all revenue received from the imposition of fines under 77-1-801 and 77-1-806 and from civil penalties imposed pursuant to 77-1-804; and

(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money deposited in the state lands recreational use account ~~is statutorily appropriated, as provided in 17-7-502, and~~ must be used by the department for the following purposes:

(a) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

(b) assistance in weed control management necessary as a result of recreational use of state lands;

(c) protection of the resource value of the trust assets; and

(d) administration and management for the implementation of recreational use of state lands."

Section 69. Section 77-1-809, MCA, is amended to read:

"**77-1-809. Compensation for damage to improvements, growing crops, or livestock.** A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall ~~either~~ grant, modify, or deny the claim. The department,

by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from *appropriations from* the state lands recreational use account established by 77-1-808, and the liability of the department for damage payments is limited to the ~~existing balance of the account~~ *available appropriation*. Claim applications are to be considered in the order they are received."

Section 70. Section 77-1-810, MCA, is amended to read:

"**77-1-810. Weed control management.** (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from *appropriations from* the state lands recreational use account pursuant to 77-1-808."

Section 71. Section 80-11-310, MCA, is amended to read:

"**80-11-310. Deposit and disbursement of funds — records — investment.** (1) As soon as possible after receipt, all money received by the department from the assessment levied under 80-11-307 and all other money received ~~shall~~ *must* be deposited in the state special revenue fund.

(2) All money referred to in subsection (1) ~~is statutorily appropriated, as provided in 17-7-502,~~ *may be appropriated* to the committee and may be used only for the payment of expenses incurred in carrying out the provisions of this part. The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121; however, the costs charged must have a substantial relationship to the cost of services supplied.

(3) Money received under ~~this section,~~ 80-11-312, ~~and~~ 80-11-313, *and this section that is* not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2.

(4) Money received under ~~this section,~~ 80-11-312, ~~and~~ 80-11-313, *and this section* ~~is~~ *may be* appropriated to the committee for the purposes of this part."

Section 72. Section 82-4-426, MCA, is amended to read:

"**82-4-426. Reclamation of land on which bond forfeited.** In keeping with the provisions of this part, the board may reclaim any affected lands with respect to which a bond has been forfeited. *If the amount of the forfeited bond exceeds the cost of reclamation, the excess must be deposited in the state general fund.*"

Section 73. Section 82-11-149, MCA, is amended to read:

"**82-11-149. Civil penalties.** (1) A person is guilty of a misdemeanor and is subject to a civil penalty of at least $75 and not more than $10,000 a day for

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each violation if that person violates any rule or order of the board or a provision of this chapter. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The board, or the attorney general upon request of the board, shall institute and maintain any enforcement proceedings in the name of the state.

(4) Civil penalties collected pursuant to this section must be deposited in the state general fund."

Section 74. Section 87-1-114, MCA, is amended to read:

"87-1-114. **Disposition of proceeds.** All money collected by a court pursuant to 87-1-111 through 87-1-113 must be remitted to the state treasurer for deposit in the state ~~special revenue~~ *general* fund ~~as provided in 87-1-601(1). If restitution is ordered out of a forfeited bond or bail, any balance of bond or bail money must be disposed of as provided in 87-1-601(4).~~"

Section 75. Section 90-1-108, MCA, is amended to read:

"90-1-108. **County land planning assistance.** (1) The department of commerce shall annually distribute the funds appropriated to it ~~from the~~ *for* county land planning ~~account~~. Each county ~~shall~~ *must* be allotted ~~$3,000. After this disbursement has been made,~~ *an equal percentage of the funds, up to $3,000. After this disbursement has been made,* 40% of the ~~balance in the account shall be apportioned to the counties~~ *balance of the funds must be apportioned among the counties* according to the ratio of each county's land area to the total land area of the state and 60% of the ~~balance~~ *balance of the funds* ~~shall be apportioned to the counties~~ *must be apportioned among the counties* according to each county's portion of the total population of the state. If a multijurisdictional planning board has been established in the county, it may receive and expend part or all of the funds allocated to that county.

(2) Counties, cities, or joint planning boards receiving funds under this section shall use ~~such~~ *the* funds for land planning purposes, which include but are not limited to comprehensive planning, economic development planning, and capital improvements planning.

(3) At the end of each fiscal year, ~~every~~ *each* local governing body and planning agency receiving funds under this section shall provide an accounting of how the money was spent, in a form acceptable to the department of commerce. ~~Surplus funds may be accumulated and rebudgeted for the purposes stated in subsection (2), except that funds rebudgeted by a local governing body or planning agency may not exceed the total revenue received under subsection (1) in the year immediately prior to the budget year. Any excess funds shall revert to the state special revenue fund for state equalization aid to public schools of the state at the end of each odd numbered fiscal year, beginning in June 1991.~~"

Section 76. Section 90-6-201, MCA, is amended to read:

"90-6-201. **Purpose.** The purposes of this part are to assist local governmental units which *that* have been required to expand the provision of

public services as a consequence of large-scale development of coal mines and coal-using energy complexes, to assist in the construction and reconstruction of designated portions of highways ~~which~~ *that* serve the area affected by ~~such~~ *the* large-scale development, to support county land planning, and to ~~invest a portion of the tax revenue from coal mines in a permanent fund, the income from which shall be used for the~~ support of public schools throughout the state."

Section 77. Section 90-6-202, MCA, is amended to read:

"**90-6-202. Accounts *Account* established.** ~~(1) There is within the state special revenue fund a local impact account. Moneys are payable into this account under 15-35-108. The state treasurer shall draw warrants from this account upon order of the coal board.~~

~~(2)~~ There is within the state special revenue fund a coal area highway improvement account."

Section 78. Section 90-6-205, MCA, is amended to read:

"**90-6-205. Coal board — general powers.** The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from ~~the local impact account~~ *available funds*;

(4) consider applications for loans from ~~the local impact account~~ *available funds* for periods and interest rates to be determined by the board; and

(5) award grants and loans, subject to 90-6-207, from ~~the local impact account~~ *available funds*:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities ~~which~~ *that* are needed as a direct consequence of coal development; and

(b) notwithstanding the provisions of 90-6-207, to the department of transportation established in 2-15-2501 to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206."

Section 79. Section 90-6-207, MCA, is amended to read:

"**90-6-207. Priorities for impact grants.** (1) The department of commerce shall annually designate:

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(a) each county, incorporated city and town, school district, and other governmental unit that has had or expects to have as a result of the impact of coal development a net increase in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of state lands for a project within the county that will establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce determines will commence production within 2 years;

(ii) the department of commerce has determined that the production of an existing mine will increase by at least 1 million tons a year and that the new or expanded production will commence within 2 years of the designation;

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

(iv) a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of natural resources and conservation for a new steam-generating or other new coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 2 years of the designation;

(c) each local governmental unit located within 100 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i), (1)(b)(ii), or (1)(b)(iv); and

(d) each local governmental unit in which:

(i) a mine that has produced 300,000 tons or more of coal a year and has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) (a) Except as provided in 90-6-205(5)(b), beginning July 1, 1993, and ending June 30, 1995, the coal board may not award more than 20% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local

governmental units other than those governmental units designated under subsection (1).

(b) Except as provided in 90-6-205(5)(b), beginning July 1, 1995, and thereafter, the coal board may not award more than 10% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1).

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth problems.

(6) All funds ~~placed in the local impact account established~~ *appropriated* under this part are ~~subject to appropriations by the legislature~~ for use related to local impact.

(7) All designations made under this section must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the hasis for a designation is contributing sufficient tax revenue to the designated government unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local governmental units continue to be eligible for coal impact grants and loans of not more than 20% and beginning July 1, 1995, not more than 10% of the funds appropriated to the coal board for grants and loans in circumstances in which:

(a) an impact exists in a community or area directly affected by the operation of a coal mine or mines; or

(b) tax revenue is not available to mitigate the impact due to the closure of a mine or facility."

Section 80. Section 90-6-212, MCA, is amended to read:

"90-6-212. ~~Local impact account — disposition~~ *Disposition* of loan repayments, ~~interest, and unexponded balances.~~ ~~(1)~~ The money derived

from loans made pursuant to this part, including interest ~~thereon~~ *on loans*, must be deposited to the credit of the ~~local impact account created in 90-6-202~~ *state general fund.*

~~(2) The unexpended money in~~ " ~~e local impact account must be invested by the board of investments as provided by statute. Interest and earnings must be deposited to the credit of the state special revenue fund for state equalization aid to public schools of the state.~~

~~(3) The unexpended balance in the local impact account at the end of each fiscal year must be deposited to the credit of the state special revenue fund for state equalization aid to public schools of the state.~~"

Section 81. Coordination. (1) Effective on passage and approval, agencies whose budgets are affected shall submit amendments to House Bill No. 2 to reflect the proper funding of activity.

(2) If House Bill No. 248 is passed and approved and if it includes an amendment to 61-5-121 that changes the percentage of driver's license fee receipts to be distributed to the state traffic education account or to the general fund, then the amendments to 61-5-121 contained in House Bill No. 248 are void and are superseded by the amendments to 61-5-121 contained in [this act].

Section 82. Repealer. Sections 15-25-123, 23-1-131, 60-2-224, and 75-5-507, MCA, are repealed.

Section 83. Codification instructions. (1) [Section 12] is intended to be codified as an integral part of Title 15, chapter 70, and the provisions of Title 15, chapter 70, apply to [section 12].

(2) [Sections 19 and 20] are intended to be codified as an integral part of Title 17, chapter 1, part 5, and the provisions of Title 17, chapter 1, part 5, apply to [sections 19 and 20].

Section 84. Effective dates. (1) [Section 81 and this section] are effective on passage and approval.

(2) Except as provided in subsection (1), [this act] is effective July 1, 1995.

Approved April 21, 1995

CHAPTER NO. 510

[SB 181]

AN ACT REVISING THE DEFINITION OF "UNZONED COMMERCIAL OR INDUSTRIAL AREA" AS APPLIED TO OUTDOOR ADVERTISING; REVISING THE LIMITATIONS ON CERTAIN OUTDOOR ADVERTISING SIGNS; REVISING THE FEES FOR CERTAIN SIGN PERMITS; AMENDING SECTIONS 75-15-103, 75-15-105, 75-15-111, 75-15-113, AND 75-15-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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STATEMENT OF INTENT

A statement of intent is required for this bill because the highway commission is directed in 75-15-122 to adopt rules relating to the fees charged for the issuance and renewal of certain permits for outdoor advertising signs. It is anticipated that the department will adopt fees commensurate with the costs of administering and enforcing the issuance and renewal of the sign permits.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-15-103, MCA, is amended to read:

"**75-15-103. Definitions.** As used in this part, the following definitions apply:

(1) "Commercial or industrial activities" means for purposes of subsection (14) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities ~~shall be~~ *are* considered commercial or industrial:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence;

(e) railroad tracks and minor sidings;

(f) activities more than 660 feet from the nearest edge of the right-of-way.

(2) "Commercial or industrial zone" means an area ~~which~~ *that* is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances, ~~or~~ regulations, or enabling state legislation ~~or state legislation itself~~, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim regulation or map adopted as an emergency measure pursuant to 76-2-206 ~~shall~~ *are* not ~~be considered as~~ covered by this definition.

(3) "Commission" means the highway commission of Montana.

(4) "Department" means the department of transportation.

(5) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as *that* the commission may consider desirable.

(6) "Interchange" or "intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, including the deceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

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(7) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may ~~hereafter~~ be ~~so~~ designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(8) "Maintain" means to allow to exist, subject to the provisions of tbis part.

(9) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure in a state suitable for use.

(10) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure ~~which~~ *that* is designed, intended, or used to advertise or inform and ~~which~~ *that* is visible from any place on the main-traveled way of the interstate or primary systems.

(11) "Primary system" means that portion of connected main highways as officially designated or as may ~~hereafter~~ be ~~so~~ designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(12) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way, by or under public supervision or control, for the convenience of tbe traveling public.

(13) "Secretary" means the secretary of the United States department of transportation.

(14) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance ~~which~~ *that* is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of 600 feet immediately adjacent to the activities ~~and those lands directly opposite on the other side of the highway to the extent of the same dimensions and to a maximum depth of 660 feet when measured from the highway right-of-way; provided those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission.~~

(15) "Urban area" means an urbanized area or place, as designated by the United States bureau of the census, ~~having~~ *that has* a population of 5,000 or more and *that is* within boundaries fixed by the department~~,~~. ~~which~~ *The* boundaries ~~shall as~~ *must at* a minimum encompass the entire urban place designated by ~~said~~ *the* bureau of the census.

(16) "Visible" means capahle of being seen and legible without visual aid by a person of normal visual acuity."

Section 2. Section 75-15-105, MCA, is amended to read:

"**75-15-105. Relaxation of regulations if federal law changed.** In the event the general requirements of Title 23, United States Code, "Highways", or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, tben the commission must *shall* amend or cbange ~~such~~ *the* rules that it may

have adopted to come into conformity with the federal law, rule, and regulation; ~~however, in no event shall this part become more restrictive than is indicated herein by said federal action.~~"

Section 3. Section 75-15-111, MCA, is amended to read:

"**75-15-111. Outdoor advertising prohibited in proximity to highway — exceptions.** (1) Outdoor advertising may not be erected or maintained ~~which~~ *that* is within 660 feet of the nearest edge of the right-of-way and ~~which~~ *that* is visible from any place on the main-traveled way of an interstate or primary system, except:

(a) directional and other official signs and notices, which signs and notices include but are not limited to signs and notices pertaining to natural wonders and scenic and historical attractions, as authorized or required by law;

(b) signs, displays, and devices advertising the sale or lease of property upon which they are located;

(c) signs, displays, and devices advertising activities conducted on the property upon which they are located;

(d) signs, displays, and devices located in areas ~~which~~ *that* are zoned industrial or commercial by a bona fide state, county, or local zoning authority;

(e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas ~~shall~~ *must* be determined from actual land uses and by agreement between the department and the secretary and defined by rules adopted by the commission. The exception granted by this subsection ~~shall~~ *is limited to two signs and may* not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months.

(f) signs or displays advertising the cultural exhibits of nonprofit historical or arts organizations if the signs or displays conform with the standards provided in Title 23, Code of Federal Regulations, section 750, subpart B; or

(g) signs that are consistent with the policy of this state and with the national policy set forth in 23 U.S.C. 131 and the regulations promulgated ~~thereunder~~ *under 23 U.S.C. 131* and that are designed to provide information in the specific interest of the traveling public as provided in 60-5-504, 60-5-505, 60-5-511 through 60-5-513, and 60-5-519 through 60-5-521.

(2) Outdoor advertising authorized under subsections *(1)*(a), *(1)*(d), and *(1)*(e) ~~of (1) of this section shall~~ *must* conform with standards contained in and ~~shall~~ *must* bear permits required in rules ~~which~~ *that* are adopted by the commission and this part.

(3) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area if ~~such~~ *the* outdoor advertising is or was erected with the purpose of its message being read from ~~such~~ *the* main-traveled way and visible from such *the* main-traveled way unless such *the* outdoor advertising meets the criteria of subsections *(1)*(a), *(1)*(b), or *(1)*(c) ~~of (1) of this section~~. ~~Should such~~ *If the* outdoor advertising ~~meet~~ *meets* said *that* criteria, it ~~shall~~ *must*

conform with standards contained in rules ~~which~~ *that* are adopted by the commission and *with* this part.

(4) An outdoor advertising structure in an unzoned commercial or industrial area that is lawfully in existence on [the effective date of this act], that meets the size requirements in 75-15-113, but that exceeds the restrictions in subsection (1)(e) of this section:

(a) must be classified as nonconforming by the department;

(b) may not be increased in size;

(c) may be maintained each year if the value of the materials used in the maintenance does not exceed 75% of the value of all of the materials required to replace the sign new; and

(d) may be replaced, if damaged, at up to and including 100% of its replacement cost."

Section 4. Section 75-15-113, MCA, is amended to read:

"75-15-113. Standards for permitted advertising. Except for outdoor advertising beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area, outdoor advertising permitted under ~~subsections (1)(d) and (1)(e) of~~ 75-15-111*(1)(d) and (1)(e)* ~~shall~~ *must* conform to the following requirements:

(1) Signs may not be erected or maintained ~~which~~ *that* exceed ~~1,200~~ *672* square feet in area, including border and trim but excluding base or apron, supports, and other structural members.

(2) ~~Maximum length, 60~~ *Signs may not exceed 48* feet *in length*.

(3) ~~Maximum height, 40~~ *The maximum height of the sign structure, including the sign face, is 30 feet, measured at a right angle from the surface of the roadway at the centerline of the interstate or primary highway.* ~~feet as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.~~

(4) No more than two facings visible and readable from the same direction on the main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither ~~shall~~ *may* exceed 325 square feet.

(5) Double-faced, back-to-back, and V-type signs ~~shall be~~ *are* considered as *to be* a single sign or structure.

(6) ~~Where~~ *When* two or more faces, back to back, are supported by separate structures, each ~~shall be~~ *is* considered *to be* a single sign.

(7) No two signs ~~shall~~ *may* be spaced less than 500 feet apart adjacent to an interstate highway or limited-access primary highway, except that signs may be erected closer than 500 feet if they are separated by buildings or other obstructions in ~~such~~ a manner that only one sign facing located within the ~~above~~ *500-foot* spacing distance is visible from the highway at any one time.

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(8) Signs may not be located within 500 feet of any of the following ~~which~~ *that* are adjacent to the highway unless the signs are in an incorporated area:

(a) public parks;

(b) public forests;

(c) public playgrounds;

(d) scenic areas designated as such by the department or other state agency having and exercising this authority;

(e) cemeteries.

(9) A sign may not be located on an interstate highway or freeway within 500 feet of an interchange or intersection at a grade or rest area. The 500 feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way.

(10) Signs may be illuminated, subject to the following restrictions:

(a) Signs ~~which~~ *that* contain, include, or are illuminated by a flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs ~~which~~ *that* are not effectively shielded as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or federal-aid primary highway, ~~or which~~ *that* are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or ~~which~~ *that* otherwise interfere with a driver's operation of a motor vehicle are prohibited.

(c) A sign may not be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device, or signal.

(11) The location of sign structures situated on the primary highways between streets, roads, or highways entering or intersecting the main-traveled way ~~shall~~ *must* conform to the following minimum spacing criteria:

(a) ~~Where~~ *When* the distance between centerlines of intersecting streets or highways is less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted between the intersecting streets or highways.

(b) ~~Where~~ *When* the distance between centerlines of intersecting streets or highways is 1,000 feet or more, minimum spacing between sign structures ~~shall~~ *must* be 300 feet."

Section 5. Section 75-15-122, MCA, is amended to read:

"75-15-122. Permits required — identification tags — preexisting structures — *fees*. (1) *(a)* A sign authorized by ~~subsections (a), (d), and (e) of~~ 75-15-111(1)*(a), (1)(d), and (1)(e)* may not be constructed or maintained without a permit. Applications for permits ~~shall~~ *must* be made to the department on forms furnished by it. The department ~~shall~~ require reasonable information to be furnished, including a statement that the owner or occupant of the land has

consented to the erection or maintenance of the sign on the land. A permit must be obtained for each sign, and the application for the permit must be accompanied by an *a nonrefundable,* initial fee ~~of~~ ~~$6~~.

~~(2)~~*(b)* Permits ~~shall~~ *must* be issued for 3 years, assigned a permit number, and renewed every 3 years ~~thereafter~~ *after issuance* upon payment of ~~$3~~ *a fee* without the filing of a new application. All fees received ~~shall~~ *must* be paid into the highway account in the state special revenue fund.

(c) The fees described in subsections (1)(a) and (1)(b) are to be determined by the square footage of the sign face and established, by rule, by the commission to cover the costs of administering and enforcing this section.

~~(3)~~*(2)* The department shall issue with each new permit a permanent identification tag not larger than 36 square inches ~~which shall~~ *that must* be affixed to the sign in a position readily visible from the highway.

~~(4)~~*(3)* Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits ~~shall thereafter~~ *must* be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

~~(5)~~*(4)* Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for outdoor advertising lawfully in existence on June 23, 1971, and made nonconforming by virtue of 75-15-111(3), and the permits ~~shall thereafter~~ *must* be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 21, 1995

CHAPTER NO. 511

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1995; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO FISCAL YEAR 1996; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [this act] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it is appropriated upon conclusion of the final fiscal year for which its expenditure is authorized by [this act].

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Section 2. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 3. Appropriations. The following money is appropriated, subject to the terms and conditions of [this act]:

Agency and Program	FY	Amount	Fund
DEPARTMENT OF TRANSPORTATION			
Transportation Planning Program			
Coordination Study	1995	$80,000	Federal Special
Transportation Planning Program			
Metro Planning Org. Grants	1995	24,000	State Special
	1995	96,000	Federal Special
DEPARTMENT OF ADMINISTRATION			
Central Mail Program			
Increased Mail Volume	1995	326,748	Proprietary
DEPARTMENT OF REVENUE			
Natural Resources and Corporate Tax Division			
Audit Settlement Costs	1995	12,500	Federal Special
DEPARTMENT OF LABOR AND INDUSTRY			
Job Service Division			
Nontrad Occup Grant	1995	218,604	Federal Special
One-Stop Career Center SYS	1995	199,780	Federal Special
TAA Additional Authority	1995	1,170,288	Federal Special
Profiling System-JSD	1995	117,500	Federal Special
Unemployment Insurance Division			
Labor Cert-Non Ag	1995	47,500	Federal Special
Profiling System	1995	184,646	Federal Special

All remaining fiscal year 1994 and fiscal year 1995 federal budget amendment authority for the one-stop career center SYS, TAA additional authority, champion grant, Superior EDWAA-JSD, profiling system-JSD,

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profiling system, nontrad occup grant, lahor cert-non ag, and onsite consultation and inspection is authorized to continue into fiscal year 1996. All remaining fiscal year 1994 and fiscal year 1995 state special budget amendment authority for the champion displaced workers and the match for onsite grant is authorized to continue into fiscal year 1996.

DEPARTMENT OF FAMILY SERVICES

Program Management Division

IV-B Family Preservation	1995	320,101	Federal Special
Crisis Nursery Project	1995	200,000	Federal Special
Refugee Targeted Assist Grant	1995	150,000	Federal Special

All remaining fiscal year 1995 federal budget amendment authority for IV-B family preservation, crisis nursery project, and refugee targeted assistance is authorized to continue into fiscal year 1996.

DEPARTMENT OF STATE LANDS

Central Management Division

Air Operations - Fire Costs	1995	144,572	Proprietary

Land Administration Division

Crow Exchange	1995	25,000	Federal Special

DEPARTMENT OF LIVESTOCK

Predator Control	1995	60,000	State Special

All remaining fiscal year 1995 state special budget amendment authority for predator control is authorized to continue into fiscal year 1996.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Water Resources Division

Beaverhead Ground Water	1995	24,705	Federal Special

All remaining fiscal year 1995 federal budget amendment authority for the Beaverhead ground water study is authorized to continue into fiscal year 1996.

DEPARTMENT OF AGRICULTURE

Agricultural Development Division

Wheat and Barley Research	1995	222,500	State Special

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CRIME CONTROL DIVISION

Justice System Support Services

Brady Act CHRI	1995	600,000	Federal Special
Violence Against Women Act	1995	500,000	Federal Special

All remaining fiscal year 1995 federal budget amendment authority for the Brady Act CHRI, the Violence Against Women Act, juvenile justice, Title V delinquency prevention, statistical analysis center (SAC) grants, victim assistance, drug enforcement, and drug education is authorized to continue into fiscal year 1996.

DEPARTMENT OF JUSTICE

Law Enforcement Services Division

Marijuana Eradication	1995	65,000	Federal Special

Forensic Science Division

Forensic Science Equipment	1995	13,755	Federal Special

All remaining fiscal year 1995 federal budget amendment authority for the accident records improvement project, in-car video equipment, driving under the influence (DUI) equipment, mobile data demonstration, marijuana eradication, and digitizing of driver records is authorized to continue into fiscal year 1996.

MONTANA ARTS COUNCIL

Hokkaido Exchange	1995	6,500	State Special
C&A Carryforward	1995	65,000	State Special
MAC Admin & Programs	1995	59,877	Federal Special
NEA/Tribal Colleges	1995	45,990	Federal Special
Local Arts Agency	1995	58,720	Federal Special

All remaining fiscal year 1995 state special budget amendment authority for the Hokkaido exchange and C&A carryforward 92/93 is authorized to continue into fiscal year 1996.

All remaining fiscal year 1995 federal budget amendment authority for the MAC admin & programs, NEA/tribal colleges, folk arts exhibition, NEA/local technical assistance to rural arts initiative, NEA/folklife apprenticeships, NEA/SRDC/Blackfeet, dance on tour, and local arts agency/other and salary support is authorized to continue into fiscal year 1996.

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STATE LIBRARY COMMISSION

State Library Commission

Literacy - Montana Reads	1995	8,390	Federal Special

All remaining fiscal year 1995 federal budget amendment authority for the literacy-Montana reads program and the literacy resource center is authorized to continue into fiscal year 1996.

MONTANA HISTORICAL SOCIETY

Museum Program

IMS-BA-Art Storage	1995	25,000	Federal Special

All remaining fiscal year 1995 federal budget amendment authority for institute of museum services is authorized to continue into fiscal year 1996. All remaining fiscal year 1995 proprietary budget amendment authority for the photographs enterprise program is authorized to continue into fiscal year 1996.

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

Corrections Program

Ind. Complex	1995	300,000	Proprietary

Chemical Dependency

Assess Studies	1995	148,914	Federal Special
ADAD Communities	1995	165,000	Federal Special

All remaining fiscal year 1995 federal budget amendment authority for the needs assessment studies ADAD grant is authorized to continue into fiscal year 1996.

DEPARTMENT OF MILITARY AFFAIRS

Army National Guard

GuardCare Program	1995	50,000	Federal Special

Air National Guard

Firefighter Settlement	1995	690,000	Federal Special
Air Security	1995	81,000	Federal Special

Disaster Coordination Response

DES Conference	1995	10,000	State Special

Veterans' Affairs			
Veterans' License Plates	1995	7,000	State Special
Plot Allowance	1995	2,500	State Special
Cemetery Donations	1995	8,290	State Special

All remaining fiscal year 1995 federal budget amendment authority for the firefighter settlement is authorized to continue into fiscal year 1996.

MONTANA SCHOOL FOR THE DEAF AND BLIND			
Education			
IDEA Pt B Grant	1995	40,154	Federal Special
OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION			
School to Work Grant	1995	177,777	Federal Special
UNIVERSITY OF MONTANA - MISSOULA			
Additional Tuition	1995	275,000	Other
COLLEGE OF TECHNOLOGY, UNIVERSITY OF MONTANA - MISSOULA			
Additional Tuition	1995	25,000	Other
WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA			
Additional Tuition	1995	29,141	Other
MONTANA STATE UNIVERSITY - BOZEMAN			
Additional Tuition	1995	850,000	Other
MONTANA STATE UNIVERSITY - BILLINGS			
Additional Tuition	1995	123,000	Other
COLLEGE OF TECHNOLOGY, MONTANA STATE UNIVERSITY - GREAT FALLS			
Additional Tuition	1995	90,000	Other
AGRICULTURAL EXPERIMENT STATION			
Additional Hatch Funds	1995	15,558	Federal Special

All remaining fiscal year 1995 federal special and other budget amendment authority for units of the Montana university system is authorized to continue into fiscal year 1996.

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Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 25, 1995

CHAPTER NO. 512

[HB 6]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AMENDING SECTION 1, CHAPTER 613, LAWS OF 1993; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from renewable resource grant and loan state special revenue account. (1) Because the legislature cannot appropriate individual grants to private entities, there is appropriated to the department of natural resources and conservation $100,000 from the renewable resource grant and loan program state special revenue account during the 1997 biennium for grants to private persons for renewable resource projects pursuant to the provisions of Title 85, chapter 1, part 6. Tbis appropriation is from money available in the renewable resource grant and loan state special revenue account for grants.

(2) There is appropriated to the department of natural resources and conservation up to $125,000 to be used for emergency projects from the money available in the renewable resource grant and loan state special revenue account for grants. If these funds are not needed for emergencies, they may be used for grants approved in subsection (4).

(3) There is appropriated to the department of natural resources and conservation all other funds that are not appropriated under subsections (1) and (2) and that are available for grants to political subdivisions and local government entities from the renewable resource grant and loan state special revenue account during the 1997 biennium. The funds appropriated in this section must be awarded by the department of natural resources and conservation to tbe named entities for the described purposes and in the described grant amounts set out in subsection (4), subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewable resource grant and loan program January 1995 report to the 54th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (4), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects further down the priority list that would not otherwise receive funding. Any grants that are funded by the reclamation and development grants program may not be funded under [sections 1 through 4].

(4) The following are tbe prioritized grant projects:

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RENEWABLE RESOURCE GRANT AND LOAN PROGRAM	Recommended Funding
Applicant/Project	Grant Amount
Fallon County	$31,743
(Lower Baker Spillway Construction and Cleaning)	
Conrad, City of	50,000
(Reconstruct Outlet Conduit on Lake Francis East Dam)	
Lewistown, City of	100,000
(Water System Improvements)	
Department of Natural Resources and Conservation *	47,919
(Deadman's Basin Water Quality Improvement Project)	
Montana Tech of the University of Montana *	84,560
(Ground Water Protection and Education, Rural Schools)	
Greenfields Irrigation District *	50,000
(Main Canal Flow Control System)	
Lewis and Clark County *	100,000
(Helena Area Bedrock Aquifer Assessment)	
Missoula County *	100,000
(Conservation of Riparian Areas Model Project)	
Thompson Falls, City of	51,820
(Water Engineering Study)	
Bozeman, City of	50,000
(Separator Waste Collection Facility)	
Governor's Office - Flathead Basin Commission *	100,000
(Flathead Lake-Watershed Management Plan)	
Department of Natural Resources and Conservation *	100,000
(Flint Creek Return Flow Study)	
Butte-Silver Bow Local Government	100,000
(Big Hole River Water Transmission Line Replacement)	
Montana Tech of the University of Montana	95,422
(Hydrologic Evaluation, Florence and Seeley Lake)	
Chouteau and Fergus Counties *	50,000
(PN Bridge - Campground)	
Libby Area Conservancy District	35,000
(Libby-Granite-Cherry Creek Flood Control Plan)	
Department of Fish, Wildlife, and Parks *	100,000
(Assessment of Aquatic Resources in the Blackfoot Basin)	

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Hysham, Town of	50,000
(Sewer System Improvements)	
Fairview, Town of	100,000
(Water System Improvements)	
Madison Conservation District	25,000
(Willow Creek Water Resource Management System)	
Manhattan, Town of	50,000
(Manhattan Water System)	
Granite Conservation District *	64,740
(Upper Clark Fork River Basin Water Management Plan)	
Jackson Water and Sewer District	25,000
(Geothermal Development Feasibility Study)	
Sun River Water Users Association	50,000
(Sun River Water System)	
Lincoln Lewis and Clark Sewer District	15,000
(Lincoln Wastewater System Study and Upgrade)	
Department of Natural Resources and Conservation	
Water Resources Division	
(Fort Peck Rural Water District)	30,000
Department of Natural Resources and Conservation	
(North Central Regional Pipeline)	30,000

(5) For grant projects for which the department of natural resources and conservation has also recommended a loan, the authorization for the loan is contained in House Bill No. 8.

(6) The funding provided to the projects approved in this section and identified with an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of health and environmental sciences.

(7) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 1997 biennium pursuant to 17-7-302.

Section 2. Condition of grants. Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report submitted to the 54th legislature for the 1997 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Conditions for grants. Notwithstanding the conditions described in [section 2], grant funds are disbursed in the order of priority listed in [section 1] as resource indemnity trust account interest income revenue is received. A project approved by [section 1] is not entitled to receive grant funds that are not collected and allocated to the renewable resource grant and loan program state special revenue account.

Section 4. Appropriations established. (1) For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from prior bienniums are reauthorized for completion of contract work.

(2) Any funds in excess of the amount appropriated for grants under [sections 1 through 3] are available for appropriation for authorized purposes from the renewable resource grant and loan state special revenue account.

Section 5. Section 1, Chapter 613, Laws of 1993, the appropriations for water development and renewable resource developments programs, on page 2528, Laws of 1993, is amended to read:

~~"TOWN OF HOT SPRINGS~~

~~Camas Therapy Center 150,000"~~

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective dates. (1) [Sections 2 through 6] and this section are effective on passage and approval.

(2) [Section 1] is effective July 1, 1995.

Approved April 25, 1995

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CHAPTER NO. 513

[HB 24]

AN ACT REVISING CERTAIN PROCEDURES FOR APPOINTMENTS TO INTERIM JOINT SUBCOMMITTEES; AMENDING SECTION 5-5-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislative Council is assigned the responsibility of effectively and efficiently utilizing the staff and financial resources within its purview; and

WHEREAS, the Legislative Council is also assigned the responsibility of determining priorities for interim studies to be conducted by interim joint subcommittees; and

WHEREAS, the Legislative Council has diligently considered ways of improving certain procedures, including the appointment of members to interim joint subcommittees.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-211, MCA, is amended to read:

"5-5-211. **Appointment and composition of joint subcommittees.** *(1)* Senate joint subcommittee members shall *must* be appointed by the committee on committees.

(2) House joint subcommittee members ~~shall~~ *must* be appointed by the speaker *of the house.*

(3) Unless otherwise indicated by the legislative council, all appointments to joint subcommittees must be made within 30 days after the presiding officer of the committee on committees and the speaker of the house have been notified that an interim joint subcommittee has been created.

(4) ~~No~~ *A* legislator may *not* serve on more than two interim joint subcommittees.

(5) The composition of each subcommittee *must be as follows:*

(a) four members of the house, no more than two of whom may be of one political party; and

(b) four members of the senate, no more than two of whom may be of one political party. ~~shall be as follows:~~

~~(1) four members of the house, no more than two of whom may be of one political party;~~ and

~~(2) four members of the senate, no more than two of whom may be of one political party.~~"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 25, 1995

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CHAPTER NO. 514

[HB 68]

AN ACT GENERALLY REVISING INDUSTRIAL SAFETY LAWS; TRANSFERRING THE LICENSING OF CONSTRUCTION BLASTERS, BOILER AND STEAM ENGINE OPERATORS, AND CRANE AND HOIST OPERATORS TO THE DEPARTMENT OF COMMERCE FROM THE DEPARTMENT OF LABOR AND INDUSTRY; AUTHORIZING THE DEPARTMENT OF COMMERCE TO ESTABLISH APPROPRIATE TRAINING COURSES; CLARIFYING BOILER ENGINEER EXPERIENCE REQUIREMENTS; ESTABLISHING A NEW CLASS OF LICENSE FOR SEASONAL AGRICULTURAL PURPOSES; TRANSFERRING LICENSURE FUNCTIONS OF THE FIRE PREVENTION AND INVESTIGATION PROGRAM FROM THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF COMMERCE; TRANSFERRING BOILER SAFETY AND INSPECTIONS FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE DEPARTMENT OF COMMERCE; REQUIRING SAFETY COMPLIANCE LANGUAGE TO BE EXPRESSLY STATED IN THE CONTRACT BETWEEN A CONTRACTOR AND A GOVERNMENTAL ENTITY; IMPOSING A FEE FOR ALL BOILER INSPECTIONS; ELIMINATING HEARING OR COMPLAINT REQUIREMENTS PRIOR TO THE DEPARTMENT ORDERING WORKPLACE SAFETY IMPROVEMENTS; AMENDING SECTIONS 37-72-101, 39-71-201, 50-5-115, 50-39-101, 50-39-102, 50-39-103, 50-39-104, 50-39-106, 50-39-107, 50-71-103, 50-71-323, 50-74-101, 50-74-219, 50-74-303, 50-74-304, 50-74-305, 50-74-307, 50-74-309, 50-74-312, 50-74-314, 50-74-317, 50-76-102, 50-76-103, 50-76-104, 50-76-106, AND 50-76-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-72-101, MCA, is amended to read:

"37-72-101. Construction blasting restrictions — license required — definitions — exemptions. (1) No *A* person may *not* engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of ~~labor and industry~~ *commerce*;

(d) "explosive" has the meaning given in 61-1-506.

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(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection ~~must~~ *shall* comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under ~~and implementing~~ 82-4-231(10)(e)."

Section 2. Section 39-71-201, MCA, is amended to read:

"39-71-201. **Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department *and the boiler inspections the department of commerce* must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department *and for the administrative expenses of the department of commerce for the purposes of 50-74-101*:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for ~~inspection of boilers and issuance of licenses to operating engineers~~ *inspection of boilers* as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $200. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501

through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon claim therefor."

Section 3. Section 50-5-115, MCA, is amended to read:

"**50-5-115. Receiverships.** (1) If receivership has not already been instituted under medicaid or medicare, upon notice to the facility, the department may file a complaint in district court for receivership under any of the following conditions in addition to applicable conditions listed in 27-20-102:

(a) a facility is operating without a license and residents are in danger of serious physical or mental harm;

(b) a facility intending to close has not made arrangements within 30 days before closure for the orderly transfer of residents;

(c) a facility is abandoned by an owner; or

(d) a life threatening situation exists for the residents of the facility.

(2) If the department believes *or has received notice from the department of justice that* there is an emergency that presents or might present an immediate and serious threat to the health or safety of patients or residents of a facility, a receiver may be appointed by the court upon an ex parte application by the department. If a receiver is appointed upon an ex parte application, notice must be given by the department to the facility within 24 hours of issuance of the receivership order and a hearing must be offered the facility by the court within 10 days of issuance of the order to determine whether the order will be continued.

(3) The department shall maintain a list of persons qualified to act as receivers.

(4) The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20, parts 2 and 3.

(5) Whenever possible, receivers must be paid from the income of the facility;. ~~however~~ *However*, receivers may be paid from the patient protection account provided for in 50-5-232. The court shall direct the amount of payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to discharge any obligation of the entity making the payments owed to the facility.

(6) The powers and duties of the receiver include:

(a) the duty to protect the health, welfare, and safety of the residents;

(b) the power to hire, discipline, and fire staff;

(c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

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(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by 27-20-302."

Section 4. Section 50-39-101, MCA, is amended to read:

"**50-39-101. License and endorsements required.** (1) A person or entity shall obtain a license from the department of ~~justice~~ *commerce* before engaging in the business of servicing fire extinguishers or before engaging in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems. Each individual, except an apprentice, employed by the licensee to perform services under the license ~~must~~ *shall* obtain from the department an endorsement to sell, service, or install:

(a) fire alarm systems;

(b) special agent fire suppression systems; or

(c) fire extinguishing systems.

(2) The license and endorsement or endorsements must be prominently displayed at the business premises, and copies must be carried by the person conducting each installation or servicing and must be shown to anyone requesting to see them.

(3) It is a misdemeanor te knowingly or purposely service a fire extinguisher or sell, service, or install a fire alarm system, special agent fire suppression system, or fire extinguishing system without the required license and endorsement."

Section 5. Section 50-39-102, MCA, is amended to read:

"**50-39-102. Application for license and endorsements.** (1) An application for a license and any endorsements must be made on a form prescribed by the department of ~~justice~~ *commerce*.

(2) The department shall annually issue a license and endorsement to an applicant who:

(a) submits satisfactory proof that the applicant is properly equipped and staffed to provide the sales or services to be licensed and endorsed; and

(b) submits satisfactory proof that the applicant is insured to engage in the business covered by the license and endorsement or endorsements.

(3) The department shall:

(a) issue an endorsement to an applicant who scores a passing grade on an examination devised or approved by the department; and

(b) annually renew the endorsement upon payment of the endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department."

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Section 6. Section 50-39-103, MCA, is amended to read:

"**50-39-103. Inspections, examinations, and hearings authorized.** ~~The~~ *When requested by the* department of ~~justice~~ *commerce* ~~may~~, *the department of justice shall* conduct inspections~~,~~ *of the applicant's business facilities and shall report to the department of commerce the results of its inspection. The department of commerce may consider the inspection report and conduct* examinations~~,~~ or hearings to determine an applicant's qualifications."

Section 7. Section 50-39-104, MCA, is amended to read:

"**50-39-104. Violations and penalties.** The department of ~~justice~~ *commerce* may deny, revoke, suspend, or refuse to renew a license or endorsement for falsification of an application or for a violation of this part or a rule promulgated by the department under 50-39-107."

Section 8. Section 50-39-106, MCA, is amended to read:

"**50-39-106. Deposit of fees.** The fees collected under 50-39-105 must be deposited in an account in the state special revenue fund to the credit of the department of ~~justice~~ *commerce* and appropriated to the ~~department~~ *department of commerce and the department of justice* to administer this part."

Section 9. Section 50-39-107, MCA, is amended to read:

"**50-39-107. Rulemaking authority.** The department of ~~justice~~ *commerce* may adopt rules to implement this part."

Section 10. Section 50-71-103, MCA, is amended to read:

"**50-71-103. ~~Public contractors~~ *Contractors* subject to chapter — *contract provision required.*** ~~Every~~ *(1) A* contractor performing services for the state or any *of its* political ~~subdivision thereof shall be~~ *subdivisions is* required to comply with the safety rules, codes, and provisions of this chapter as a part of ~~his~~ *the* contract.

(2) The requirement imposed by subsection (1) must be expressly stated in a contract between a contractor and a governmental entity."

Section 11. Section 50-71-323, MCA, is amended to read:

"**50-71-323. Order directing additions, repairs, and improvements, *or changes.*** (1) Whenever the department, after ~~a hearing had upon its own motion or upon complaint~~ *an inspection and a closing conference with an employer and an employee representative*, finds that an employment or place of employment is not safe or that the practices, ~~or~~ methods, ~~or~~ operations, or processes ~~employed or~~ used ~~in connection therewith~~ *by the employer* are unsafe or do not afford adequate protection to the life and safety of ~~the~~ employees in ~~such employments and~~ *the employment or* place of employment, the department shall ~~make and enter and serve such~~ *issue an* order ~~relative thereto as may be necessary to render such~~ *outlining the unsafe or inadequate practices, methods, operations, or processes currently used and directing additions, repairs, improvements, or changes in the* employment or place of employment ~~safe and~~ *that are necessary to* protect the life and safety of employees in ~~such~~ *the* employment ~~and places~~ *or place* of employment.

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(2) The department may in the order direct that ~~such~~ additions, repairs, improvements, or changes he made and ~~such~~ *that* safety devices and safeguards be furnished, provided, and used ~~as~~ *that* are ~~reasonably required~~ *necessary* to ~~render such~~ *ensure a safe* employment or ~~places~~ *place* of employment ~~safe in the manner and~~ within the time specified in the order."

Section 12. Section 50-74-101, MCA, is amended to read:

"**50-74-101. ~~Department~~ *Definition — department* to formulate rules.** *(1) As used in this chapter, the term "department" means the department of commerce.*

(2) The department shall ~~formulate~~ *adopt* definitions and rules for the safe construction, installation, operation, inspection, and repair of equipment covered by this chapter. The definitions and rules ~~so formulated shall~~ *must* follow generally accepted nationwide engineering standards as puhlished by the American society of mechanical engineers."

Section 13. Section 50-74-219, MCA, is amended to read:

"**50-74-219. Fee for special inspection.** Whenever~~, upon request of the owner or operator of any boiler, it is necessary for the~~ *a department* inspector ~~to make a special trip for the inspection of the~~ *inspects a* boiler, ~~the~~ *a* ~~mileage and per diem allowed~~ *fee* ~~by law shall~~ *must* be charged and collected by the department *prior to issuance of an inspection certificate in accordance with the following schedule:*

(1) operating certificate, $20;

(2) internal inspection, $40;

(3) extcrnal inspection:

(a) hot water heating and supply, $15;

(b) steam heating, $20; and

(c) power boiler, $30; and

(4) special inspection, $50 per hour plus expenses."

Section 14. Section 50-74-303, MCA, is amended to read:

"**50-74-303. Engineer's license classifications.** (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into ~~four~~ *five* classes, namely: first-class engineers, second-class engineers, third-class engineers, *agricultural-class engineers* and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into ~~four~~ *five* classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operato all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

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(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of 100 pounds per square inch gauge saturated steam pressure and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) *Agricultural-class engineers are licensed to operate steam boilers that operate not in excess of 150 pounds per square inch saturated steam pressure and that:*

(i) are not operated for more than 6 months of the year; and

(ii) are not operated for purposes other than the harvesting or processing of agricultural products.

(e) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature."

Section 15. Section 50-74-304, MCA, is amended to read:

"**50-74-304. Requirements for engineer's license.** Each applicant for an engineer's license must be physically and mentally capable of performing the required duties and *shall* meet the following minimum requirements for the class of engineer's license for which application is being made:

(1) An applicant for a low-pressure engineer's license must *be 18 years of age or older, must* have at least 3 months' full-time experience in the operation of a boiler in this classification*, under an engineer who holds a valid low-pressure or higher license, is required to* successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and *must* be found ~~to be~~ competent to operate a boiler in this classification *by the department.*

(2) An applicant for an agricultural-class engineer's license must be 18 years of age or older, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification.

~~(2)~~*(3)* An applicant for a tbird-class engineer's license must *be 18 years of age or older, must* have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, *is required to* successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and *must* be found ~~to be~~ competent to operate a boiler in this classification *by the department.*

~~(3)~~*(4)* An applicant for a second-class engineer's license must *be 18 years of age or older and:*

(a) *must* have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, *is required to* successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and *must* be found ~~to be~~ competent to operate a boiler and steam-driven machinery in this classification *by the department*; or

(b) *shall* hold a valid third-class engineer's license, ~~and~~ *must* have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, *is required to* successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and *must* be found ~~to be~~ competent to operate a boiler and steam-driven machinery in this classification *by the department.*

~~(4)~~*(5)* An applicant for a first-class engineer's license must *be 18 years of age or older and*:

(a) *must* have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, *is required to* successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and *must* be found ~~to be~~ competent to operate a boiler and steam-driven machinery in this classification *by the department*;

(b) *shall* hold a valid second-class engineer's license, ~~and~~ *must* have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, *is required to* successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and *must* be found ~~to be~~ competent to operate a boiler and steam-driven machinery in this classification *by the department*; or

(c) *shall* hold a valid third-class engineer's license, ~~and~~ *must* have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, *is required to* successfully ~~passed~~ *pass* a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and *must* be found ~~to be~~ competent to operate a boiler and steam-driven machinery in this classification *by the department.*"

Section 16. Section 50-74-305, MCA, is amended to read:

"**50-74-305. Exceptions to requirements for engineer's license.** Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification holding a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, successfully passing a written examination prescribed by the department, and found ~~to be~~ competent to operate a boiler and steam-driven machinery in that classification ~~shall~~ *by the department must* be granted a license in that classification.

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(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the department may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant ~~having~~ *who has* training in the operation of steam or water boilers and steam macbinery *and* who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other department-approved institution or training program in the classification for which ~~he~~ *the applicant* is applying may, ~~at the discretion of the~~ *pursuant to* department *rule*, be credited with ~~a maximum of 6 months'~~ experience toward a first-, second-, or third-class *or low-pressure* engineer's license."

Section 17. Section 50-74-307, MCA, is amended to read:

"**50-74-307. Requirements for traction licenses.** An applicant for a traction engineer's license must *be 18 years of age or older, must* have at least 6 months' full-time experience in the operation of steam traction engines, *is required to* successfully pass a written examination prescribed hy the department, ~~have passed his 18th birthday,~~ and *must* be found ~~to be~~ competent to operate a traction engine *by the department*."

Section 18. Section 50-74-309, MCA, is amended to read:

"**50-74-309. License fees.** ~~Applicants~~ *An applicant* for *an* engineer's license shall pay ~~fees~~ *a fee* according to the class of license for which application is made, as specified ~~in the following schedule:~~

~~(1) first class $30~~

~~(2) second class $20~~

~~(3) third class $12~~

~~(4) low pressure $ 8~~

~~(5) traction $12~~

~~(6) renewal of license $ 4~~

~~(7) replacement of lost certificate $ 2~~ *by administrative rule, commensurate with program area costs approved by the legislature. All fees must be deposited in the state special revenue fund for the use of the department. The account balance may not exceed one-half of 1 year's approved appropriation without either a reduction in fees or an increase in appropriation approved by the legislature.*"

Section 19. Section 50-74-312, MCA, is amended to read:

"**50-74-312. Review of license rejection.** (1) ~~If any person who has applied~~ *An applicant* for a license under the provisions of this chapter ~~and~~ *whose application* has been rejected ~~feels aggrieved, he~~ may, ~~at any time after the lapse of 10 days and~~ within 45 days after the date of ~~his~~ *the* rejection, ~~in writing~~ set forth ~~the causes of his grievance~~ *in writing any arguments opposing the rejection* and request a ~~department~~ review *by the department*. ~~Such~~ *The* request must be addressed to the department and ~~shall~~ *must* be signed by the ~~rejected~~ applicant.

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(2) Within 2 days after receiving ~~such~~ *the* request, the department shall notify the applicant in writing that on a certain day, ~~which shall~~ not ~~be~~ less than 5 *days* or more than 30 days after ~~the date the department receives~~ *receipt of* the written request, the department shall review and evaluate the application *and any arguments opposing the rejection of the license application.*

(3) The applicant may appear in person at the review ~~if he so desires~~. At least 2 days before the day set for the review, the applicant may designate in writing to the department *of commerce* the name of an engineer holding a valid license of equal or higher grade ~~with~~ *than* the one applied for, and ~~such~~ *the* engineer may ~~present himself in~~ *testify on* behalf of the applicant ~~upon the day and at the hour fixed for~~ *at* the review.

(4) After the review ~~is completed~~, if the department *of commerce* ~~decides~~ *determines* that the applicant is entitled to the ~~license he has applied for~~ *license*, the department shall ~~without delay~~ issue a *the* license. ~~accordingly but, if~~ *If* the department ~~rejects the applicant~~ *affirms the decision to not issue the license*, ~~it is a final rejection and he must not be granted another examination for the space of 45 days after such last rejection, when he may again apply~~ *the applicant is required to reapply to take the license examination,* as provided ~~by~~ *in* 50-74-309 through 50-74-311, *and may not take the examination within 45 days of the final decision to not issue the license.*"

Section 20. Section 50-74-314, MCA, is amended to read:

"**50-74-314. Complaints and revocation of license.** Whenever *a* complaint ~~is made~~ against an engineer ~~holding~~ *who holds* a license *is made alleging* that ~~he,~~ through negligence, want of skill, or inattention to duty~~,~~ *the engineer* permitted ~~his~~ *a* boiler to burn or otherwise become in bad condition or *alleging* that ~~he~~ *the engineer* has been found intoxicated or under the influence of drugs while on duty, it is the duty of the department to make a thorough investigation of the charge and upon satisfactory proof of ~~such~~ *the* charge to revoke the license of the engineer *pursuant to the contested case provisions of the Montana Administrative Procedure Act.*"

Section 21. Section 50-74-317, MCA, is amended to read:

"**50-74-317. When unlicensed person may operate.** (1) In case of accident, sickness, or any unforeseen ~~prevention of the~~ *event that prevents a* licensed engineer, employed by ~~any~~ *an* owner, renter, or user of an engine or boiler, *from performing required duties,* the owner, renter, or user may for 15 days employ any person ~~of the age of~~ 18 years ~~or over whom he may consider~~ *of age or older whom the owner, renter, or user considers* competent to run the engine or boiler.

(2) Although ~~such~~ *the* person ~~so~~ employed may not be the holder of an engineer's license, he *the person* ~~shall~~ *must* have reasonable qualifications acceptable to the department.

(3) ~~The~~ *A* person ~~so~~ employing ~~the~~ *an* unlicensed engineer shall immediately notify the department.

(4) ~~No~~ *An* owner, renter, or user of boilers or steam machinery ~~shall be allowed to so~~ *may not* employ unlicensed engineers for more than 15 days in any ~~one~~ *1* calendar year."

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Section 22. Section 50-76-102, MCA, is amended to read:

"50-76-102. Hoisting engine license required. (1) (a) It is unlawful for ~~any~~ *a* person to operate any hoisting engine driven by any power when used in lowering or boisting personnel or material in industrial operations or on construction projects without first obtaining a license ~~therefor~~ from the department *of commerce*.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section ~~shall~~ apply to the operation of the engines and machinery named ~~herein~~ *in this section*.

(2) First-class hoisting engineers ~~shall~~ *must* he licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers ~~shall~~ *must* be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section ~~shall~~ *do* not apply to hoists and cranes defined in 50-76-103."

Section 23. Section 50-76-103, MCA, is amended to read:

"50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any hoisting equipment, when used in boisting or lowering personnel or material, that has a manufacturer's rating of ~~above~~ *more than* 6 tons ~~and~~ *or* a boom length of more than 25 feet without first obtaining a license from the department *of commerce*. This equipment includes overhead trolley cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 ~~shall apply~~ *applies* to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class hoisting engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b)(i) An applicant for a first-class hoisting engineer's license *must be 18 years of age or older and* ~~shall have~~:

(A) *must have* no less tban 3 years' experience operating equipment requiring a second-class hoisting engineer's license or sball ~~otherwise be shown to be equivalently competent~~ *demonstrate equivalent competency* by examination; *and*

~~(B) passed his 18th birthday; and~~

~~(C)~~*(B) is required to* ~~passed~~ *pass* a written test prescribed by the department *of commerce*.

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(ii) An annual physical exam is required of all licensees.

(c) Second-class hoisting engineers are licensed to operate hoisting equipment with a manufacturer's rating of 6 tons ~~and~~ *or* a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d)(i) ~~Applicants~~ *An applicant* for a second-class hoisting engineer's license *must be 18 years of age or older and* ~~shall~~:

(A) *must* have no less than 2 years' experience in actual operation of hoisting equipment covered by this section or ~~shall otherwise be shown to be equivalently competent~~ *demonstrate equivalent competency* by examination; *and*

(B) *is required to* successfully pass a written examination prescribed by the department *of commerce*~~; and~~

~~(C) have passed their 18th birthday~~.

(ii) An annual physical exam is required of all licensees.

(e) Third-class hoisting engineers are licensed te move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) ~~Applicants~~ *An applicant* for a third-class hoisting engineer's license ~~shall~~ *is required to* successfully pass a written test prescrihed by the department *of commerce* and ~~shall~~ *must* be ~~at least~~ 18 ~~years old~~ *years of age or older* before receiving ~~this~~ *a* license.

(3) The department *of commerce* shall reexamine each licensed engineer or operator every 5 years during the anniversary month of ~~his~~ *the issuance of the* license if the licensee has not worked at the trade for 5 years."

Section 24. Section 50-76-104, MCA, is amended to read:

"**50-76-104. Application and fee for license.** Application for licenses ~~shall~~ *must* be made to the department *of commerce* ~~in the same manner and the~~ *and submitted with the appropriate fee that is set commensurate with the cost of administering this program, to be deposited in the state special revenue fund for use by the department. The* same fee ~~shall~~ *must* he charged as required by law for obtaining a license to operate steam engines, boilers, and steam-driven machinery under chapter 74 of this title."

Section 25. Section 50-76-106, MCA, is amended to read:

"**50-76-106. Revocation of license.** The department *of commerce* may revoke any license issued under this chapter for any of the reasons for which the department *of commerce* may revoke a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title."

Section 26. Section 50-76-110, MCA, is amended to read:

"**50-76-110. Crane inspector.** The department *of commerce* shall employ at least one crane inspector. ~~He~~ *The crane inspector* shall hold a first-class hoisting engineer's license under this chapter for *a minimum of* 1 year and *must* have *a minimum of* 3 years' experience operating cranes."

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Section 27. Effective date. [This act] is effective July 1, 1995.

Approved April 21, 1995

CHAPTER NO. 515

[HB 89]

AN ACT GENERALLY REVISING THE VITAL STATISTICS LAWS TO STANDARDIZE PROCEDURES AND TO CONFORM TO NATIONAL STANDARDS; CLARIFYING THE INFORMATION AVAILABLE FROM THE SYSTEM OF VITAL STATISTICS; REVISING BIRTH REGISTRATION REQUIREMENTS; REVISING PROCEDURES AND CRITERIA FOR ISSUING A DELAYED OR ALTERED BIRTH CERTIFICATE; REVISING THE JUDICIAL PROCEDURE FOR ESTABLISHING THE FACTS OF BIRTH; REVISING THE LAWS GOVERNING CERTIFICATES OF ADOPTION AND ANNULMENT OF ADOPTION; PROVIDING FOR CERTIFICATES OF FOREIGN BIRTH; REVISING THE LAWS FOR CERTIFICATES OF BIRTH FOLLOWING ADOPTION, LEGITIMATION, OR ESTABLISHMENT OF PATERNITY; REVISING STANDARDS FOR PRESERVING VITAL RECORDS; REVISING THE CONTENT OF VITAL RECORDS; AMENDING SECTIONS 37-27-321, 40-8-126, 50-15-101, 50-15-102, 50-15-103, 50-15-111, 50-15-204, 50-15-303, 50-15-403, 50-15-405, AND 50-16-542, MCA; REPEALING SECTIONS 50-15-110, 50-15-112, 50-15-113, 50-15-201, 50-15-205, AND 50-15-206, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of health and environmental sciences authority to adopt administrative rules.

The legislature intends that the rules:

(1) address the process for establishing and maintaining a statewide system of vital statistics and vital records;

(2) define persons who may obtain copies of vital records and the showing necessary to obtain vital records;

(3) establish which persons may prepare or issue certified copies of certificates of birth or vital records;

(4) establish the process and scope of disclosure of information te the public and governmental agencies as well as adequate standards for security and confidentiality of vital records;

(5) establish a system for preservation or disposal of vital records;

(6) establish the process and guidelines for registration of births;

(7) establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth;

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(8) establish forms necessary to track vital statistics by courts or other governmental entities;

(9) establish a system of issuance and maintenance of certificates of birth following adoption, legitimation, or establishment of paternity;

(10) establish a system for issuance and maintenance of records of dissolution or annulment of marriage; and

(11) establish a system for the issuance and maintenance of certificates of adoption and annulment of adoption.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-27-321, MCA, is amended to read:

"**37-27-321. Filing of birth certificate.** (1) When a birth occurs with a licensed direct-entry midwife in attendance, the direct-entry midwife shall prepare and file a birth certificate, as required by ~~50-15-201~~ *[section 11]*, with the department of health and environmental sciences ~~within 30 days of the birth of the newborn~~.

(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under this chapter."

Section 2. Section 40-8-126, MCA, is amended to read:

"**40-8-126. Confidentiality of record and proceedings.** (1) Unless the court ~~shall~~ *orders* otherwise ~~order~~, all hearings held in proceedings under this part ~~shall be~~ *are* confidential and ~~shall~~ *must* be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption ~~shall~~ *must* be kept as a permanent record of the court and withheld from inspection. ~~No~~ *A* person ~~shall~~ *may not* have access to ~~such~~ *the* records, except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; or

(b) as provided in ~~50-15-206~~ *[sections 7 and 8]*.

(3) All files and records pertaining to ~~said~~ *the* adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, the department of family services, or any authorized agencies ~~shall be~~ *are* confidential and *must be* withheld from inspection, except upon order of court for good cause shown or as provided in ~~50-15-206~~ *[sections 7 and 8]*."

Section 3. Section 50-15-101, MCA, is amended to read:

"**50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Dead body" means a ~~lifeless~~ human body or parts of a *human* body from which it reasonably may be concluded that death occurred ~~recently~~.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(5) "Fetal death" means ~~a birth after 20 weeks of gestation, or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery, that is not a live birth~~ *death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.*

(6) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

~~(6)~~*(7)* "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

~~(7)~~*(8)* "Live birth" means the ~~birth of a child who shows evidence of life after being entirely outside the mother~~ *complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.*

~~(8)~~*(9)* "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the lettor of appointment.

~~(9)~~*(10)* "Person in charge of ~~interment~~ *disposition of a dead body*" means a person *who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director licensed under Title 37, chapter 19, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus* ~~who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body~~.

~~(10)~~*(11)* "Physician" means a person legally authorized to practice medicine in this state.

(12) "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

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(13) "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

(14) "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

(15) "Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

~~(11)~~*(16)* "Vital statistics" ~~includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data~~ *means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports.*"

Section 4. Section 50-15-102, MCA, is amended to read:

"**50-15-102. Statewide system of vital statistics to be established.** The department shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, *amending,* and preserving vital statistics *and vital records.*"

Section 5. Section 50-15-103, MCA, is amended to read:

"**50-15-103. Duties of department.** The department shall:

(1) divide the state into registration districts and change districts as necessary;

~~(2) gather, record, use, and preserve vital statistics;~~

~~(3) enforce rules adopted by the department for gathering, recording, using, and preserving vital statistics;~~

~~(4) give instructions and prescribe forms for gathering, recording, preserving, and using vital statistics~~

(2) promulgate rules necessary to implement this chapter;

(3) administer and enforce the provisions of this chapter and rules adopted to implement this chapter;

(4) conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;

(5) prescribe, furnish, and distribute forms required by this chapter or rules adopted pursuant to this chapter or prescribe other means for the transmission of data that will accomplish complete and accurate reporting and registration; and

(6) prepare and publish reports of vital statistics of this state."

Section 6. Section 50-15-111, MCA, is amended to read:

"**50-15-111. Certified copy fee.** (1) The department shall prescribe, *by rule,* a fee ~~of not less than $5~~ for:

(a) a certified copy of certificates or *records;*

(b) a search of files *or records when a copy is not made;*

(c) a copy of information provided for statistieal or administrative purposes as allowed by law;

(d) the replacement of a birth certificate subsequent to adoption, legitimation, paternity determination or acknowledgment, or court order;

(e) filing a delayed registration of a vital event;

(f) the amendment of a vital record, after 1 year from the date of filing; and

(g) other services specified by this chapter or by rule.

(2) Fees received ~~for a certified copy of a certificate or a search of files shall~~ *under subsection (1) must* be deposited in the state special revenue fund to he used by the department for:

(a) the maintenance of indexes to ~~and costs for~~ *vital records;*

(b) the preservation of vital records*; and*

(c) the administration of the system of vital statistics."

Section 7. Copies from system of vital statistics. (1) Except as provided in subsections (4), (6), and (7), the department and county clerk and recorders shall, upon receipt of an application, issue a certified copy or copies of a vital record or a part of a vital record to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstratos that the record is needed for the determination or protection of the individual's personal or property rights. The department shall adopt rules to further define those who may ohtain copies of vital records filed under this chapter.

(2) All applications, forms, and procedures used in the issuance of certified copies of vital records in the state must be uniform and prepared or approved by the department. All certified copies must contain security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection that there have been these changes to the document.

(3) Each copy issued must show the date of registration. Copies issued from amended records must he marked and must show the effective dato of the amendment. Copies issued from delayed records must be marked, must include the dato of registration, and must contain a statement of the evidence used te establish the delayed certificate. A copy issued of a certificate of foreign birth must indicate the fact of foreign birth and the date of birth (if known), must show the actual place of birth, and must state that the certificato is not proof of United States citizenship for the adoptive child.

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(4) A certified copy or other copy of a death certificate containing information or data that would identify any person or institution named in a certificate or report and the cause of death information may not be issued, except as follows:

(a) upon specific request of the spouse, children, parente, or otber next of kin of tbe decedent or their respective authorized representatives, as specified by department rule;

(b) when a documented need for the cause of death te establish a legal right or claim has been demonstrated, as specified by department rule;

(c) when the request for the copy is made by or on behalf of a person or entity that provides monetary benefits to the decedent's survivors or beneficiaries, as may be specified by department rule;

(d) upon specific request by federal, state, or local agencies for research or administrative purposes and when approved for release by the department;

(e) when needed for research activities and approved for release by the department; or

(f) upon receipt by the department of an order directed te the department from a court of competent jurisdiction ordering the release.

(5) A certified copy of a vital record or any part of a vital record, issued in accordance with subsections (1) through (3), must be considered for all purposes the same as the original. The admissibility of a certificate or vital record filed more than 1 year after the event or after a corrective record is filed, of a vital record that has been amended, or of a certificate of foreign birth must be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(6) This section may not be construed te permit disclosure of confidential information contained in a birth certificate for medical or health use or of information for statistical purposes only contained in a certificate of marriage or report of dissolution of marriage unless disclosure is specifically authorized by law for statistical or research purposes or unless ordered by a court.

(7) (a) When the department receives information that a certificate may have been registered through fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that certificate pending issuance of an order after an administrative contested case hearing before the department to determine whether fraud or misrepresentation has occurred.

(b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the registrant's authorized representative and provide the registrant or the representative the opportunity to be heard.

(c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may issue the certificate or copies of the certificate in question.

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(d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not register the certificate unless ordered to do so by a court.

(e) An affected person may appeal the department's decision to the district court as provided in Title 2, chapter 4, part 7.

(8) A person may not prepare or issue any certificate that purports to be an original or certified copy, except as authorized in this chapter or rules adopted to implement this chapter.

(9) The department may, by rule, prescribe details for the hearing and appellate procedures contained in this section.

Section 8. Disclosure of information from vital records or vital reports — rules. (1) It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, it is unlawful for any person to permit inspection of or to disclose information contained in vital records or in vital reports or to copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

(2) The execution of a research agreement that protects the confidentiality of the information provided to a researcher in response to a written request is required for disclosure of information that may identify a person or institution named in any vital record or report. This agreement must be made in compliance with this chapter or rules adopted to implement this chapter. Each agreement must prohibit the release by the researcher of any information that might identify a person or institution, other than releases that may be provided for in the agreement.

(3) This section does not prohibit the release of information or data that does not identify a person or institution named in a vital record or report.

(4) A challenge to a decision of a custedian of vital records to refuse disclosing information from records, as prescribed by this section and rules issued to implement this section, must be made before the department in the case of a county clerk and recorder and to a district court in the case of the department. A challenge before the department must be in the form of a contested case pursuant to the Montana Administrative Procedure Act. An appeal of the department's decision to district court must be made by filing an original action pursuant to the Montana Rules of Civil Procedure.

(5) Immediatoly upon the filing of a record with the department, the fact that a birth or death has occurred or a record of marriage or dissolution of marriage may be released to the public without restriction. Notwitbstanding the restrictions provided in [section 7], complete birth or death records may be released to the public 30 years after the date of birth or death. The department shall adopt rules that provide for the continued safekeeping of the records.

(6) The department may provide the national center for health statistics or a successor agency with copies of records, reports, or data from the system of

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vital statistics that are required for national statistics. The department shall enter into an agreement with the center, indicating the scope of disclosure of information, as required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for statistical or research purposes. The agreement must set forth the financial support to be provided by the center for the collection, processing, and transmission of the records, reports, or data. Upon written request of the center, the department may approve, by amendment to the agreement, additional statistical or research uses of the records, reports, or data supplied under the agreement.

(7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies or data is used solely in the conduct of the agency's official duties. The department shall, upon request by the department of social and rehabilitation services, the department of family services, or a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations.

(8) Subject to this chapter and rules implementing this chapter, the department may, by agreement, transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics outside this state when the records or reports concern residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used, and the agreement must provide instructions concerning proper retention, confidentiality requirements, and disposition of the copies. Copies received by the department from offices of vital statistics in other states must be handled as provided for in this subsection.

Section 9. Preservation of vital records. To preserve vital records, the department may prepare typewritten, photographic, electronic, or other reproductions of certificates, vital records, or reports kept by the department. The reproductions when certified and approved by the department must be accepted as the original records. The department shall maintain original vital records intact and in their original form on file at the department.

Section 10. Content of certificates, records, and reports. (1) In order to promote and maintain nationwide uniformity in the system of vital statistics, the department, in the preparation of the forms of certificates, vital records, or reports required by this chapter or rules adopted under this chapter, may include the elements in forms and the forms recommended by the national center for health statistics for implementing a system of vital statistics.

(2) Each certificato, record, report, and other document required by this chapter must be prepared in a format approved by the department. All vital records must contain the date of filing.

(3) Information required in certificates, forms, records, or reports authorized by this chapter may be filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by the department.

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Section 11. Birth registration. (1) A certificate of birth must be filed as specified in this section with the department for each live birth tbat occurs in this state. Unless otherwise directed by the department, the certificate must be filed within the time prescribed by the department by rule after the birth. The birth certificate must be registered if it has been completed and filed in accordance with this section and rules adopted to implement this section.

(2) If a hirth occurs in a health care facility, the birth certificato must be completed and filed by the attending physician or the physician's designee.

(3) If a hirth occurs in or en route to a health care facility, the person in charge of the facility or the person's authorized designee shall obtain the personal data concerning the newhorn child, prepare the certificate, and certify that the child was born alive at the place, at the time, and on the date stated. Certification may be by signature or hy an approved electronic process. The person referenced in this subsection shall file the certificate as directed in subsection (1). The physician or other person in attendance at the birth shall provide the medical information required by the certificate within 72 hours after the birth.

(4) The department shall, by rule, determine what evidence may be required to establish the facts of birth if the birth occurs at a place other than a health care facility. In accordance with rules promulgated by the department, the certificate must be prepared and filed by one of the following persons in the indicated order of priority in subsections (4)(a) through (4)(e):

(a) the physician or the physician's designee or a midwife licensed pursuant to Title 37, chapter 27, in attendance at or immediately after the birth;

(b) a person in attendance at or immediately after tbe birth;

(c) the father or the mother;

(d) in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or

(e) the local registrar, if 50-15-202 applies.

(5) When a birth occurs on a moving conveyance within the United States and the newborn child is first removed from the conveyance in this state, the birth must be registered in this state hy a person listed in subsection (4) and the place where the child is first removed from the conveyance is considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth must be registered by a person listed in subsection (4) in this state, but the certificato must indicate the actual place of birth insofar as the place can be determined.

(6) For tbe purposes of birth registration, the woman who gives birth to the child is considered to be the mother, unless otherwise provided by state law or determined hy a court of competent jurisdiction prior to the filing of the hirth certificate. Information about the father must he entered as provided in subsection (7).

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(7) (a) If the mother was married at the time of conception or birth or between conception and birth, the name of the husband must be entered on the certificate as the father of the child, unless:

(i) other paternity has been determined by a court of competent jurisdiction;

(ii) the mother and the husband execute joint or separate affidavits attesting that the husband is not the father of the child. Affidavits must be notarized, and signatures of the mother and of the husband must be individually notarized on any joint affidavit. If affidavits are filed, information about the father must be omitted from the certificate.

(iii) the mother executes an affidavit attesting that the husband is not the father and names a putative father, the putative father executes an affidavit attesting paternity, and the husband executes an affidavit denying paternity. Affidavits may be joint or individual or a combination of joint and individual affidavits. Each signature on an affidavit must be individually notarized. If all affidavits are filed, the putative father must be shown as the father on the certificate.

(b) If the mother was not married at the time of conception or birth or between conception and birth, the name of the father may not be entered on the certificate without an affidavit of paternity signed by the mother and the person to be named as the father.

(c) If paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child must be entered on the certificate of birth in accordance with the finding and order of the court.

(d) If the father is not named on the certificate of birth, information about the father may not be entered on the certificate.

(e) Affidavits required under this subsection (7) must be filed with the department.

(8) Either parent of the child, or another informant, shall verify the accuracy of the personal data to be entered on the certificate in order to permit the filing of the certificate within the time prescribed in subsection (1).

(9) A certificate of birth filed after the time prescribed in subsection (1) but within 1 year from the date of birth must be registered by the natural parents, the adoptive parents, or the person having legal custody of the child, on the standard form of live birth certificate in the manner prescribed in this section and by rule. The certificate may not be designated as delayed. The department may require additional evidence in support of the facts of birth.

Section 12. Section 50-15-204, MCA, is amended to read:

"50-15-204. Delayed or amended birth certificate. (1) *(a)* ~~After the time prescribed by the department, a person born in this state may file a birth certificate upon submitting proof as required by the department or by any court.~~ *If a certificate of birth for a person born in this state has not been filed within 1 year of the birth, a delayed certificate of birth may be filed in accordance with rules adopted by the department. A delayed certificate of birth may not be*

registered until the requirements regarding facts pertaining to the delayed certificate, as specified by rule, have been met.

(b) A birth of a person in this state whose name has not been registered within 1 year after the birth must be registered on a delayed certificate of birth form. The delayed certificate must contain the date of registration and a summary statement of the information submitted to explain the delayed registration.

(c) A delayed certificate of birth may not be registered for a deceased person.

(d) The department may not register a delayed certificate of birth if an applicant for a delayed certificate of birth does not submit the minimum documentation required by rule for delayed registration or if the department has cause to question the validity or adequacy of the applicant's sworn statement or the documentation provided to establish the facts and the deficiencies are not corrected. The department shall advise the applicant of the reasons for the refusal to register the delayed certificate of birth. The department shall advise the applicant of the right to seek an order from a court of competent jurisdiction to obtain registration of the delayed certificate of birth as provided in [section 13].

(e) The department may, by rule, provide for the dismissal of an application for registration of a delayed certificate of birth that is not actively pursued.

(2) ~~A person~~ *The department or its designee* may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.

(3) The department shall adopt rules establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records.

~~(3)~~*(4)* If birth certificates ~~are accepted 6 months or more after the time prescribed for filing or~~ are altered by the department after filing, the certificate ~~shall~~ *must* show the date of the ~~delayed filing or~~ alteration and the mark ~~"delayed" or~~ "altered". A summary statement of the evidence in support of the ~~delayed filing or~~ alteration ~~shall~~ *must* be endorsed on the certificate.

~~(4)~~*(5)* The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence."

Section 13. Judicial birth facts procedure. (1) If the department declines to register a certificate of birth under the provisions of 50-15-204 or [section 11], a petition signed and sworn to by the petitioner may be filed with the district court, seeking an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(2) The petition must be made on a form adopted or approved by the department and must allege:

(a) that the person for whom a certificate of birth is sought was born in this state;

(b) that a certificate of birth of the person cannot be found at the department or at the office of the clerk and recorder;

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(c) that diligent efforts by the petitioner have failed to obtain the evidence to establish entitlement to a certificate of birth required in accordance with this chapter and rules adopted pursuant to this chapter;

(d) that the department has declined to file a certificate of birth; and

(e) other allegations as may be required by law.

(3) The petition must be accompanied by all documentary evidence that was submitted to the department in support of the applicant's registration and by a statement of the reasons why the department declined to register the certificate of birth.

(4) The district court shall fix a time and place for hearing the petition and shall give the department 30 days' notice of the hearing. The department through its authorized representative shall appear and testify as a witness in the proceeding if determined necessary by the court.

(5) If the district court finds, from the evidence presented, that the person for whom a certificate of birth is sought was born in this state, it shall make findings as to the date and place of birth, parentage, and other relevant facts and shall issue an order establishing the certificate of birth. The order must include the findings and birth data to be registered, a description of the evidence presented, and the date of the court's action.

(6) The clerk of the court shall forward the order referred to in subsection (5) to the department not later than the 10th calendar day of the month following the month in which it was entered. The order must be registered by the department and constitutes the court-ordered certificate of birth.

Section 14. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in [section 16], a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court has determined the paternity of the person; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment may not be subject to inspection, except upon order of a district court, as provided by rule, or as otherwise provided by state law.

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(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of hirth as provided in rules adopted hy the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificato of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not he open to inspection, except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificato of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificato of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established hy the department, the department may direct that all copies of the original certificato of birth in the custody of any other custodian of vital records in this state either be sealed from inspection or be forwarded to the department for sealing from inspection.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person born in a foreign country who is not a citizen of the United States and who was adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificato of adoption, conforming to the requirements of [section 16], from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificato of adoption, which is not subject to inspection, except upon order of tbe district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section.

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Section 15. Section 50-15-303, MCA, is amended to read:

"50-15-303. Certificates of dissolution of marriage, ~~adoption,~~ *or* declaration *of* invalidity of marriage, ~~or annulment of adoption.~~ Before the 10th day of each month, the clerk of *the* court shall prepare and forward to the department a certificate for each decree of dissolution of marriage, ~~adoption,~~ *or* declaration of invalidity of marriage, ~~or annulment of adoption~~ that became final during the preceding calendar month. Certificatos ~~shall~~ *must* be on forms prescribed by the department."

Section 16. Certificates of adoption or annulment of adoption — report of amended or annulled adoption decree. (1) For each adoption decreed by a district court, the decree must require the clerk of the court to prepare a certificato of adoption on a form prescribed and furnished by the department. The certificate of adoption must include facts that are necessary to locate and identify the date and place of birth of the adopted person or, in the case of a person who was born in a foreign country, evidence from sources determined to be reliable by the district court as to the date and place of birth of the person. The certificate of adoption must also contain information necessary to establish a new certificate of birth for the person adopted and must identify the order of adoption. The clerk of the court shall certify the certificate of adoption.

(2) Information necessary for the clerk of the court to prepare the certificate of adoption must be furnished, by each petitioner for adoption on a form prescribed by the department, at the time that the petition for adoption is filed. A person or agency having knowledge of facts, as described in subsection (1), may be required by the court to supply the court with information necessary to complete the certificate of adoption. The district court may make the provision of the information for the preparation of a certificate of adoption a prerequisite to the issuance of a final decree.

(3) Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report. The report must include the facts that are necessary to identify the original certificate of adoption and the facts amended in the adoption decree that are necessary to properly amend the birth record.

(4) No later than the 16th day of each calendar month or more frequently, as directed by the department, the clerk of the court shall forward to the department certificates of adoption, reports of annulment of adoption, and amendments of decrees of adoption that were entered in the preceding month, together with any related reports required by the department.

(5) When the department receives a certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption for a person born outside this state, the department shall forward the certificate, report, or amendment to the state registrar or the agency charged with registering vital statistics in the state where the person was born.

(6) If the birth of an adopted child occurred in a foreign country and the adopted child was not a citizen of the United States at the time of birth, the department shall prepare a "Certificate of Foreign Birth" as required by [section 14]. If the adopted child was born in Canada, the department shall send a copy

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of the certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption to the appropriate registration authority in Canada.

(7) If the adopted child born in a foreign country was a citizen of the United States at the time of birth, the department may not prepare a "Certificate of Foreign Birth" and shall notify the adoptive parents of the procedures for obtaining a revised certificate of birth for their child through the United States department of state.

(8) A deceased person cannot be adopted.

Section 17. Section 50-15-403, MCA, is amended to read:

"**50-15-403. Preparation and filing of death or fetal death certificate.** (1) A person in charge of disposition of a dead body or fetus *that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death* shall obtain personal data on the deceased or, in the case of a fetal death, on the parents *that is* required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred."

Section 18. Section 50-15-405, MCA, is amended to read:

"**50-15-405. Authorization for removal of body from place of death.** (1) Except as provided in subsection (2), a dead body may be removed from the place of death only upon the written authorization or oral authorization, which must be reduced to writing within 24 hours, of the physician in attendance at death or the physician's designee, the coroner having jurisdiction, or a mortician licensed under 37-19-302.

(2) If the death requires inquiry under 46-4-122, the written authorization may only be granted by the coroner having jurisdiction or the coroner's designee or by the state medical examiner if the coroner fails to act. However, when the only reason for inquiry under 46-4-122 is that the body is to be cremated, the coroner may grant oral authorization for ~~removal~~ *cremation* of the body, which must be reduced to writing as specified under subsection (1) by the coroner.

(3) The written authorization to move a dead body *or, when applicable, to cremate a dead body* must be made in ~~triplicate~~ *quadruplicate* on a form provided by the department. The person in charge of disposition of the dead body, the coroner having jurisdiction, and the local registrar must each be provided with and retain a copy of the authorization. *A fourth copy may accompany the body to final disposition, as necessary.*

(4) A written authorization issued under this section permits removal, transportation, and final disposition of a dead body."

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Section 19. Section 50-16-542, MCA, is amended to read:

"50-16-542. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;

(e) the health care information might ~~disclose birth out of wedlock or provide information from which knowledge of birth out of wedlock might be obtained and which~~ *contain* information is protected from disclosure pursuant to ~~50-15-206~~ *[sections 7 and 8]*;

(f) the health care provider obtained the information from a person other than the patient; or

(g) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian ~~have~~ *has* not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the ~~disclosable~~ information *subject to disclosure*.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), ~~he~~ *the provider* shall permit examination and copying of the record by *the patient's spouse, adult child, or parent or guardian or by* another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection."

Section 20. Repealer. Sections 50-15-110, 50-15-112, 50-15-113, 50-15-201, 50-15-205, and 50-15-206, MCA, are repealed.

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Section 21. Codification instructions. (1) [Sections 7 through 10] are intended to be codified as an integral part of Title 50, chapter 15, part 1, and the provisions of Title 50, chapter 15, part 1, apply to [sections 7 through 10].

(2) [Sections 11, 13, and 14] are intended to be codified as an integral part of Title 50, chapter 15, part 2, and the provisions of Title 50, chapter 15, part 2, apply to [sections 11, 13, and 14].

(3) [Section 16] is intended to be codified as an integral part of Title 50, chapter 15, part 3, and the provisions of Title 50, chapter 15, part 3, apply to [section 16].

Section 22. Coordination instruction. If Senate Bill No. 150 is passed and approved and if it contains a section that amends 40-8-126, then [section 2 of this act] reads as follows:

"40-8-126. **Confidentiality *and disclosure* of record and proceedings — *appointment and duties of confidential intermediary.*** (1) Unless the court *orders* otherwise, all hearings held in proceedings under this part *are* confidential and *must* be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption *must* be kept as a permanent record of the court and withheld from inspection. *A* person *may not* have access to *the* records, except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered;

(b) as provided in subsection (7); or

(c) as provided in *[sections 7 and 8].*

(3) All files and records pertaining to adoption proceedings *retained by* the department or any authorized *agency are* confidential and *must be* withheld from inspection, except *as provided in [sections 7 and 8] and except that the department or authorized agency may disclose:*

(a) nonidentifying information to an adoptee, an adoptive or biological parent, or an extended family member of an adoptee or biological parent; and

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in [sections 7 and 8].

(4) When an adoptee reaches 18 years of age, the adoptee, an adoptive or biological parent, or an extended family member of the adoptee or biological parent may petition the court for disclosure of the identity of the adoptee, biological son, biological daughter, or biological parent. A petition for disclosure must contain the following information:

(a) the name, address, and identification of the petitioner;

(b) the date of the adoptee's birth;

(c) the county and state where the adoption occurred;

(d) the date of the adoption; and

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(e) any information known to the petitioner concerning the biological parents, the adoptive parents, and the adoptee that could assist in locating the person being sought.

(5) After a petition for disclosure has been filed under subsection (4), the court shall appoint a confidential intermediary who shall:

(a) conduct a confidential search for the person sought, as requested in the petition for disclosure;

(b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless ordered to do so by the court; and

(c) make a written report of the results of the search to the court not later than 6 months after appointment.

(6) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

(7) A confidential intermediary may inspect otherwise confidential records of the court, the department, or an authorized agency for use in the search. The confidential intermediary may not disclose the contents of the records or any results of a search unless authorized by the court.

(8) If a confidential intermediary is unable to locate the person being sought within 6 months of appointment, the confidential intermediary shall recommend to the court whether a further search is warranted and state the reasons for the recommendation. If the court finds that a further search is warranted, the court may order that the search be continued for a specified time.

(9) If a confidential intermediary locates the person being sought, a confidential inquiry must be made as to whether the located person consents to having that person's present identity disclosed to the petitioner. The court may request that the confidential intermediary assist in arranging contact between the petitioner and the located person.

(10) If a confidential intermediary locates the person being sought and the located person does not consent to having that person's identity disclosed, identifying information regarding that person may be disclosed only upon order of the court for good cause shown.

(11) If the person being sought is found to be deceased, the court may order disclosure of the identity of the deceased to the petitioner."

Section 23. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 24. Effective date. [This act] is effective January 1, 1996.

Approved April 25, 1995

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CHAPTER NO. 516

[HB 200]

AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; ADDING DEFINITIONS; EXEMPTING CORPORATE OFFICERS AND MANAGERS OF LIMITED LIABILITY COMPANIES FROM COVERAGE UNLESS THE EMPLOYER ELECTS TO COVER THE OFFICER OR MANAGER AND THE INSURER ALLOWS THE ELECTION; CLARIFYING PROHIBITIONS REGARDING MEDICAL PROVIDER SELF-REFERRAL; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR VIDEOCONFERENCE; CLARIFYING THE STATUS OF LIMITED LIABILITY COMPANIES; CLARIFYING THE DEPARTMENT'S RESPONSIBILITY IN APPROVING THE GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INVESTMENT INCOME OF THE UNINSURED EMPLOYERS' FUND TO BE DEPOSITED IN THE FUND; REMOVING THE LIMIT ON AN UNINSURED EMPLOYER'S LIABILITY FOR CLAIMS; INCREASING THE AUTHORITY TO FILE CEASE AND DESIST ORDERS TO INCLUDE PERSONS, BUSINESSES, AND ENTITIES THAT HAVE CONTRACTED WITH UNINSURED EMPLOYERS AND PROVIDING FOR PENALTIES; PROVIDING A DISTRICT COURT WITH THE OPTION TO REQUEST THE WORKERS' COMPENSATION JUDGE TO DETERMINE THE AMOUNT OF RECOVERABLE DAMAGES DUE TO AN INJURED UNINSURED WORKER; REMOVING THE REFERENCES TO WAGE SUPPLEMENT; REQUIRING THE BOARD OF INVESTMENTS TO INVEST CERTAIN MONEY IN THE SUBSEQUENT INJURY FUND AND REQUIRING THE INVESTMENT INCOME TO BE DEPOSITED IN THE FUND; REDUCING THE TIME PERIOD ALLOWED FOR A PARTY TO RESPOND TO A WORKERS' COMPENSATION MEDIATOR'S RECOMMENDATION; REVISING THE MEDICAL PANEL PROCESS; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-315, 39-71-318, 39-71-401, 39-71-432, 39-71-433, 39-71-503, 39-71-504, 39-71-507, 39-71-516, 39-71-710, 39-71-721, 39-71-723, 39-71-737, 39-71-902, 39-71-1108, 39-71-2103, 39-71-2411, 39-71-2905, 39-72-601, 39-72-602, AND 39-72-612, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

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(d) furnishing of services and facilities; and

(e) ~~utilization~~ *use* of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Aid or sustenance" means any public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

~~(2)~~*(3)* "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the ~~Montana~~ department ~~of labor and industry~~. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(3)~~*(4)* "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections ~~(3)(a)~~ *(4)(a)* through ~~(3)(d)~~ *(4)(d)*, does not exist; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections ~~(3)(a)~~ *(4)(a)* through ~~(3)(e)~~ *(4)(e)*, does not exist.

~~(4)~~*(5)* "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

~~(5)~~*(6)* "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(6)~~*(7)* "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(7)~~*(8)* "Days" means calendar days, unless otherwise specified.

~~(8)~~*(9)* "Department" means the department of labor and industry.

~~(9)~~*(10)* "Disability" means a condition in which a worker's ability te engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the

worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition.

~~(10)~~*(11)* "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(12) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

~~(11)~~*(13)* "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

~~(12)~~*(14)* "Invalid" means one who is physically or mentally incapacitated.

(15) "Limited liability company" is as defined in 35-8-102.

~~(13)~~*(16)* "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(14)~~*(17)* "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

~~(15)~~*(18)* "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(13)~~*(19)* "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(17)~~*(20)* "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually he, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(13)~~*(21)* "Permanent partial disability" means a condition, after a worker has reached maximum medical healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(h) is able to return to work in some capacity, but the physical restriction impairs the worker's ability to work.

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~~(19)~~*(22)* "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prespect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(20)~~*(23)* The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

~~(21)~~*(24)* "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(22)~~*(25)* "Public corporation" means the state or any county, municipal corporation, school district, city, city under *a* commission form of government or special charter, town, or village.

~~(22)~~*(26)* "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(24)~~*(27)* "Reasonably safe tools and appliances" are tools and appliances as *that* are adapted to and *that* are reasonably safe for use for the particular purpose for which they are furnished.

~~(25)~~*(28)* "Secondary medical services" means those medical services or appliances *that are* considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(26)~~*(30)* "Temporary partial disability" means a condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(27)~~*(31)* "Temporary service contractor" means ~~any~~ *a* person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(28)~~*(32)* "Temporary total disability" means a condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(29)~~*(33)* "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary hasis to substitute for a permanent employee on leave or te meet an emergency or short-term workload.

~~(30)~~*(34)* "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed hy the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in suhsection ~~(30)(a)~~ *(34)(a)*, in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

~~(31)~~*(35)* "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, *and* irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies ~~therein~~ and ~~every~~ *each* person, ~~every~~ *each* prime contractor, and ~~every~~ *each* firm, voluntary association, *limited liability company,* and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee ~~thereof~~;

(b) any association, corporation, *limited liability company,* or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association, *limited liability company,* or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who ~~utilizes~~ *uses* the services of a worker furnished by another person, association, contractor, firm, *limited liability company,* or corporation, other than a temporary service contractor, is

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presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, *limited liability company,* or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, *limited liability company,* or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract motor carrier doing business in this state who ~~utilizes~~ *uses* drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, *limited liability company,* or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 3. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The ~~terms~~ *term* "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, *except those officers identified in 39-71-401(2),* while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic ~~service~~ *employment* is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third

party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant te 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership, ~~or~~ sole ~~proprietorship~~ *proprietor, or a member-managed limited liability company,* the employer may elect to include as an employee within the provisions of this chapter any member of the partnership, ~~or~~ the owner of the sole proprietorship, *or any member of the limited liability company* devoting full time to the partnership, ~~or~~ proprietorship, *or limited liability company* business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners, ~~or~~ sole proprietor, *or members* to be covered and stating the level of compensation coverage desired by electing the

amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, ~~or~~ sole proprietor, *or member* is not considered an employee within this chapter until notice has heen given.

(c) A change in elected wages must he in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must he hased on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation henefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not less than $200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

~~(5)~~*(6)* The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

~~(6)~~*(7)* An employee or worker in this state whose services are furnished by a person, association, contractor, firm, *limited liability company,* or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

~~(7)~~*(8)* For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed hy an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ *(8)(b)* and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

~~(8)~~*(9)* An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection ~~(7)(b)~~ *(8)(b)* or ~~(7)(d)~~ *(8)(d)* as a condition of approving the election under subsection ~~(7)(d)~~ *(8)(d)*."

Section 4. Section 39-71-315, MCA, is amended to read:

"**39-71-315. Prohibited actions — penalty.** (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 5. Section 39-71-318, MCA, is amended to read:

"**39-71-318. Hearings — rules of evidence — *conduct — exception.*** *(1)* The statutory and ~~common law~~ *common-law* rules of evidence do not apply to a hearing before the department under this chapter.

(2) Except for a hearing before the workers' compensation court, a hearing under this chapter may be conducted by telephone or by videoconference."

Section 6. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, ~~or~~ working members of a partnership, *or working members of a member-managed limited liability company,* except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of ~~any~~ *a* person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with ~~any~~ *a* railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) ~~any~~ *employment of a* person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member ~~who operates~~ *or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted* solely within the exterior boundaries of an Indian reservation;

(n) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

(3) (a) A sole proprietor, ~~or~~ a working member of a partnership, *or a working member of a member-managed limited liability company* who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. *There is no fee for the initial application. Any subsequent application must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.* ~~The department may deny the application only if it determines that the applicant is not an independent contractor.~~

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) ~~When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status as an independent contractor until the independent contractor notifies the department of any change in status and provides a description of present work status.~~ *The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an*

independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

~~(e)~~*(f)* If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision hy an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A ~~private~~ corporation *or a manager-managed limited liability company* shall provide coverage for its ~~officers and other~~ employees under the provisions of compensation plan No. 1, 2, or 3. ~~However, pursuant to rules the department promulgates and subject in all cases to approval by the department, an officer of~~ *A quasi-public corporation,* a private corporation, *or a manager-managed limited liability company* may elect ~~not to be bound as an employee under this chapter~~ *coverage for its corporate officers or managers, who are otherwise exempt under subsection (2),* by giving a written notice~~, on a form provided by the department, served~~ in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the *corporation or to the management organization of the manager-managed limited liability company* ~~employer and to the department~~; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the *corporation or to the management organization of the manager-managed limited liability company* ~~employer, to the department,~~ and to the insurer.

(b) If the employer changes plans or insurers, the ~~officer's~~ *employer's* previous election is not effective and the ~~officer~~ *employer* shall again serve notice ~~as provided~~ *to its insurer and to its board of directors or the management organization of the manager-managed limited liability company* if the ~~officer~~ *employer* elects ~~not~~ to be bound.

~~(c)~~*(5)* The appointment or election of an employee as an officer of a corporation, *a partner in a partnership, or a member in or a manager of a limited liability company* for the purpose of ~~excluding~~ *exempting* the employee from coverage under this chapter does not entitle the officer, *partner, member, or manager* ~~to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202 if the officer falsifies the notice~~ *to exemption from coverage.*

~~(5)~~*(6)* Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 7. Section 39-71-432, MCA, is amended to read:

"**39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, *limited liability company,* joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together with the approval of the department to purchase individual workers' compensation insurance policies covering each business entity that is part of a group."

Section 8. Section 39-71-433, MCA, is amended to read:

"**39-71-433. Group purchase of workers' compensation insurance.** (1) On receiving approval of the department, two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(2) To he eligible to join a *new* group *that is forming*, the department shall determine that a business entity is engaged in a business pursuit that is the same as or similar te tbe business pursuits of the other entities participating in the group.

(3) The department shall establish a certification program for groups organized under this section and shall issue to eligible business entities certificates of approval that authorize formation and maintenance of a group.

(4) The department by rule shall adopt forms, criteria, and procedures for tbe issuance of certificates of approval to groups under this section.

(5) A group certified under this section may add additional members without approval from the department if the additional members meet the specific criteria identified in the original application and any modifications to the criteria, as approved by the department.

~~(5)~~*(6)* A group certified under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this stato, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but cannot refuse coverage to an

individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

~~(6)~~*(7)* A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

~~(7)~~*(8)* A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, *the eligibility requirements to join the group,* and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management. A group shall file a copy of its plan of operation with the department."

Section 9. Section 39-71-503, MCA, is amended to read:

"**39-71-503. Administration of fund — appropriation.** (1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves may not be kept for the fund. The department shall make ~~such~~ payments as *that* it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. ~~No lump-sum~~ *Lump-sum* payments of future projected benefits, including impairment awards, may *not* be made from the fund. The board of investments shall invest the money of the fund, *and the investment income must be deposited in the fund.* The cost of administration of the fund must be paid out of the money in the fund.

(3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 10. Section 39-71-504, MCA, is amended to read:

"**39-71-504. Funding of fund — option for agreement between department and injured employee.** The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. ~~An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.~~

(2) ~~(a)~~ The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. ~~However, the uninsured employer's liability under this subsection (2)(a) may not exceed $50,000.~~

~~(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515.~~

(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) ~~shall~~ *must* be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection ~~(2)(a)~~ *(2)*."

Section 11. Section 39-71-507, MCA, is amended to read:

"**39-71-507. Department to order uninsured employer to cease operations — noncompliance with order a misdemeanor — coordination of remedies.** (1) When the department discovers an uninsured employer, it shall order ~~him~~ *the employer* to cease operations until ~~he~~ *the employer* has elected to be bound by a compensation plan.

(2) When the department discovers a person, business, or other entity functioning as a prime contractor that has subcontracted for the services of an uninsured employer, it may order the person, business, or other entity functioning as a prime contractor to cause all operations performed by the uninsured employer to cease at worksites controlled by the prime contractor until the uninsured employer has elected to be bound by a compensation plan. If after 3 business days following the order by the department the person, business, or other entity functioning as a prime contractor has not complied with the order, the department may order the prime contractor to cease all operations at the affected worksites.

~~(2)~~*(3)* An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) A person, business, or other entity functioning as a prime contractor that does not comply with the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action. In addition, the department may assess a penalty against the person, business, or other entity functioning as a prime contractor of not more than $1,000 per day for each day of violation.

~~(3)~~*(5)* The department may institute and maintain in the name of the state, through the attorney general or the county atterney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

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~~(4)~~*(6)* The remedies provided in 39-71-506 and subsections ~~(2) and (3)~~ *(3) through (5)* of this section are not mutually exclusive and may be pursued concurrently."

Section 12. Section 39-71-516, MCA, is amended to read:

"**39-71-516. District court venue and jurisdiction for independent cause of action.** An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 ~~must~~ *shall* bring ~~such~~ *the* action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant ~~such~~ interim relief ~~as~~ *that* it considers appropriate, including but not limited to injunctive relief, attachment, or receivership. *The court may request the workers' compensation judge to determine the amount of recoverable damages due to the employee.*"

Section 13. Section 39-71-710, MCA, is amended to read:

"**39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of ~~wage supplement,~~ permanent total disability, and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 14. Section 39-71-721, MCA, is amended to read:

"**39-71-721. Compensation for injury causing death — limitation.** (1) (a) If an injured employee dies and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover ~~such~~ *the* payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116~~(3)(a)~~*(4)(a)* through ~~(3)(d)~~ *(4)(d)*, weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of ~~his~~ death.

(3) To beneficiaries as defined in 39-71-116~~(3)(e)~~*(4)(e)* and ~~(3)(f)~~ *(4)(f)*, weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum

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weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary ~~as defined in 39-71-116~~, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of ~~such~~ *the* beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~ *(4)(b)* through ~~(3)(d)~~ *(4)(d)*.

(6) In all cases, benefits must be paid to beneficiaries~~, as defined in 39-71-116~~.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death.~~"

Section 15. Section 39-71-723, MCA, is amended to read:

"**39-71-723. How compensation to be divided among beneficiaries.** Compensation due to beneficiaries ~~shall~~ *must* be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases ~~where~~ *in which* beneficiaries are a surviving spouse and stepchildren of ~~such~~ *the* spouse, the compensation ~~shall~~ *must* be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in 39-71-116~~(3)(c)~~*(4)(e)* and ~~(3)(f)~~ *(4)(f)*, ~~where~~ *when* there is more than one, ~~shall~~ *must* be divided equitably among them, and the question of dependency and amount ~~thereof shall be~~ *is* a question of fact for determination by the department."

Section 16. Section 39-71-737, MCA, is amended to read:

"**39-71-737. Compensation to run consecutively — exceptions.** Compensation ~~shall~~ *must* run consecutively and not concurrently, and payment ~~shall~~ *may* not be made for two classes of disability over the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid concurrently with other classes of benefits~~, and wage supplement and partial rehabilitation benefits may be paid concurrently~~."

Section 17. Section 39-71-902, MCA, is amended to read:

"**39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers.** (1) In ~~every~~ *each* case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the department may assess ~~every~~ *each* insurer an amount

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not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer. *The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.* The cost of administration of the fund must be paid out of money in the fund.

(2) When, in tbe judgment of the department, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities and administrative costs, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by tbe department."

Section 18. Section 39-71-1108, MCA, is amended to read:

"**39-71-1108. Physician self-referral prohibition.** *(1)* Unless authorized by the insurer, a treating physician may not refer a claimant to a health care facility at which the physician does not directly provide care or services when the physician has an investment interest in the facility, unless there is a demonstrated need in the community for the facility and alternative financing is not available. The insurer or the claimant is not liable for charges incurred in violation of this section.

(2) Subsection (1) does not apply to care or services provided directly to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 19. Section 39-71-2103, MCA, is amended to read:

"**39-71-2103. Employer permitted to carry on business and settle directly with employee — individual liability.** (1) If ~~such~~ *the* employer making ~~such~~ *the* election ~~shall be~~ *is* found by the department and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation and benefits in this chapter ~~provided for~~, then the department, with the concurrence of the guaranty fund, shall grant to the employer permission to carry on ~~his~~ business for the ~~fiscal~~ year within which ~~such~~ *the* election is made and ~~such~~ proof filed, or the remaining portion of ~~such~~ *the* ~~fiscal~~ year, and to make ~~such~~ payments directly to ~~his~~ *the* employees as they may become entitled to receive the ~~same~~ *payments*.

(2) Each individual employer in an association, corporation, *limited liability company,* or organization of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, *limited liability company,* or organization under this chapter. An association, corporation, *limited liability company,* or organization of employers given permission to operate as self-insured ~~must~~ *shall* maintain excess liability coverage in amounts and under ~~such~~ conditions as provided by rules of the department."

Section 20. Section 39-71-2411, MCA, is amended to read:

"**39-71-2411. Mediation procedure.** (1) Except as otberwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

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(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and argument to the mediator, ~~he~~ *the mediator* shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within ~~45~~ *25* days of the mailing of ~~his~~ *the mediator's* report whether the party accepts the mediator's recommendation. If either party does not accep*c* the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines tbat either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediater's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute."

Section 21. Section 39-71-2905, MCA, is amended to read:

"**39-71-2905. Petition to workers' compensation judge.** A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a detormination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. *In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee.* The judge, after a hearing, shall make a determination of the dispute in accordance with

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the law as set forth in chapter 71 of this title. If the dispute relates to benefits due *to* a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71."

Section 22. Section 39-72-601, MCA, is amended to read:

"**39-72-601. Medical panel.** (1) The department shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by ~~his~~ *the physician's* specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department shall select a panel physician to examine a claimant, as required. The department shall appoint, as required, ~~one member of the panel to be the chairman~~ *a physician as the presiding officer*."

Section 23. Section 39-72-602, MCA, is amended to read:

"**39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability.** (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The department shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ *the member's* findings to the department.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether ~~he believes~~ the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ *the member's* findings to the department. ~~When a second examination has been requested, the reports of the examinations shall be submitted to three members of the medical panel for review. A~~ *The* medical panel member ~~or the panel~~ may, in order to ~~assist the panel member or the panel in reaching~~ *reach* a conclusion, consult with the claimant's attending physician. *The reports from the two examining physicians must be sent by the department to the presiding officer of the panel.* The ~~three panel members~~ *presiding officer*

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shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) *(i)* If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician.

(ii) If a second examination is requested, the department shall issue its order based on the report of the ~~three members of the medical panel~~ *presiding officer.*

~~(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman.~~ If the panel ~~chairman~~ *presiding officer* has examined the claimant, the ~~panel chairman~~ *department* shall appoint another ~~member of the medical panel to be the third member~~ *presiding officer.*"

Section 24. Section 39-72-612, MCA, is amended to read:

"**39-72-612. Hearing and appeal to workers' compensation judge.** (1) Within 20 days after the department has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation judge, the appealing party shall request a hearing before the department. The department shall grant a hearing, ~~and the~~ *which may be conducted by telephone or by videoconference. The* department's final determination may not be issued until after the hearing.

(2) Appeals from a final determination of the department must be made to the workers' compensation judge within 30 days after the department has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the department only on the basis that the department's determination is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Section 25. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 26. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act]

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is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Seetion 27. Applicability. (1) [Section 9] applies retroactively, within the meaning of 1-2-109, to all occurrences beginning after October 1, 1977.

(2) [Section 17] applies retroactively, within the meaning of 1-2-109, to all occurrences beginning after October 1, 1973.

(3) [Sections 5 and 24] apply to hearings or appeals requested on or after [the effective date of this act].

Section 28. Effective dates. (1) [Sections 5, 12, 21, and 24 through 27 and this section] are effective on passage and approval.

(2) [Sections 1 through 4 and 6] are effective July 1, 1995.

(3) [Sections 7 tbrough 11, 13 through 20, 22, and 23] are effective October 1, 1995.

Approved April 25, 1995

CHAPTER NO. 517

[HB 201]

AN ACT REQUIRING THAT ANNUAL SUSTAINABLE YIELD BE USED AS A FACTOR IN THE MANAGEMENT OF FORESTED STATE TRUST LANDS; DEFINING "ANNUAL SUSTAINABLE YIELD" AND ESTABLISHING ANNUAL SUSTAINABLE YIELD AS THE ANNUAL TIMBER SALE REQUIREMENT; PROVIDING FOR DECENNIAL REVIEW OF ANNUAL SUSTAINABLE YIELD; PROVIDING THAT A PORTION OF INCOME FROM SUSTAINABLE YIELD FROM SCHOOL TRUST LAND BE USED TO FUND SCHOOL TECHNOLOGY; AMENDING SECTION 20-9-343, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition. As used in [sections 1 through 3], "annual sustainable yield" means the quantity of timber that can be harvested from forested state lands each year in accordance with all applicable state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds, and in compliance with water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5, taking into account the ability of stato forests to generate replacement tree growth.

Section 2. Determination of annual sustainable yield. (1) The department, under the direction of the board, shall commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested state lands.

(2) Until the study required by subsection (1) is completed, the annual sustainablo yield is considered to be a range of 45 million board feet to 55 million board feet.

Section 3. Annual sustainable yield as timber sale requirement — review. (1) The annual sustainable yield constitutes the annual timber sale requirement for the state timber sale program administered by the department. This annual requirement may be reduced proportionately by tbe amount of sustained income te the beneficiaries generated by site-specific alternate land uses approved by the board.

(2) After it is determined under [section 2], the annual sustainable yield must be reviewed and redetermined by the department, under the direction of the board at least once every 10 years.

Section 4. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means the account in the state special revenue fund that receives revenue as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the purposes of payment of systems development and otber related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid, state reimbursement for school facilities, and matching funds for the systemic initiative for Montana mathematics and science grant, *and grants for school technology purchases*;

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 per biennium; and

(c) the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend funds appropriated from the state equalization aid account as required for the purposes of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), and the Montana educational telecommunications network, ~~throughout the biennium, and for the biennium beginning July 1, 1993,~~ equipment purchases that qualify as the state match for the systemic initiative for Montana mathematics and science grant, *and school technology purchases*.

(3) The following must be paid into the state equalization aid account for the public scbools of the state:

(a) money allocated to state equalization from the collection of the severance tax on coal;

(b) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(c) *(i) subject to subsection (3)(c)(ii),* interest and income money described in 20-9-341 and 20-9-342;

(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year to be appropriated for purposes of [section 5];

(d) money received from the state equalization aid levy under 20-9-360;

(e) income from the lottery, as provided in 23-7-402;

(f) the surplus revenues collected by the counties for BASE funding program support according to 20-9-331 and 20-9-333; and

(g) investment income earned by investing money in the state equalization aid account in the state special revenue fund.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account at the end of a fiscal year must be transferred to the general fund."

Section 5. Technology acquisition fund — limitations. (1) The trustees of a district may establisb a technology acquisition fund for school district expenditures incurred for:

(a) the purchase, rental, repair, and maintenance of technological equipment, including computers and computer network access; and

(b) associated technical training for school district personnel.

(2) The trustees of a district shall fund the budget for the technology acquisition fund with the state money received under [section 6].

(3) Whenever the trustees of a district establish the technology acquisition fund, the trustees shall:

(a) adopt a resolution stating the reasons and purpose for financing a technology acquisition fund budget;

(b) adopt a budget for the amount required for the technology acquisition fund for the ensuing school fiscal year; and

(c) report the technology acquisition fund budget to the county superintendent on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103.

(4) The trustees of a district may not use revenue in the technology acquisition fund to finance contributions to the teachers' retirement system, the public employees' retirement system, or the federal social security system or for unemployment compensation insurance.

Section 6. School technology purchases. The superintendent of public instruction shall allocate the amount appropriated for grants for school technology purchases to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts

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multiplied by the amount of money provided in 20-9-343(3)(c)(ii) in the current school year.

Section 7. Codification instructions. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 77, chapter 5, part 2, and the provisions of Title 77, chapter 5, part 2, apply to [sections 1 through 3].

(2) [Sections 5 and 6] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 5 and 6].

Section 8. Effective date. [This act] is effective July 1, 1995.

Approved April 25, 1995

CHAPTER NO. 518

[HB 308]

AN ACT REVISING LAWS RELATING TO COUNTY WATER AND SEWER DISTRICTS; PROVIDING FOR RATES BASED UPON THE DIRECT BENEFIT OF FACILITIES; CLARIFYING THAT WATER AND SEWER DISTRICTS ARE SUBJECT TO OPEN MEETING REQUIREMENTS; PROVIDING FOR NOTICE AND FOR PUBLIC HEARINGS; PROVIDING FOR TERMINATION OF SERVICES AND COLLECTION OF DELINQUENT CHARGES AS A TAX LIEN UPON PROPERTY OR BY FILING SUIT IN ANY COURT WITH JURISDICTION; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS; CLARIFYING THE AUTHORITY TO ISSUE REFUNDING BONDS; AMENDING SECTIONS 7-13-2218, 7-13-2274, 7-13-2275, 7-13-2301, 7-13-2321, AND 7-13-2324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2218, MCA, is amended to read:

"7-13-2218. District powers related to water and sewer projects. Any district incorporated as provided in this part may:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain from that water association any type of property referred to in this section;

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(3) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated in the district;

(4) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(5) commence, maintain, and defend actions and proceedings to prevent any interference with the waters or rights referred to in this section as may endanger the inhabitants or lands of the district;

(6) lease from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain them;

(7) sell water or the use of water for household or domestic or other similar purposes or sell sewer service and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the water or sewerworks capacity to municipalities or towns or to consumers located within or outside the boundaries of the district.;

(8) retain the services of architects and engineers for designing, preparing a feasibility study for, and drawing plans and specifications of a water or sewer system for the district, with the cost of these services apportioned and assigned against properties in the district; and

(9) establish, by ordinance or resolution, rules and regulations for the operation, maintenance, use, and availability of any of its systems or improvements, including but not limited to connection procedures, service termination, and payment of rates and charges, including penalties and interest charges for delinquent accounts."

Section 2. Section 7-13-2274, MCA, is amended to read:

"7-13-2274. Conduct of business. (1) All legislative sessions of the board of directors, whether regular or special, ~~shall~~ *must* be open to the public. *Notice of the sessions must be given and the sessions must be held in compliance with the requirements of Title 2, chapter 3, parts 1 and 2.*

(2) A majority of the board ~~shall constitute~~ *constitutes* a quorum for the transaction of business.

(3) The board ~~shall~~ *may* act only by ordinance or resolution."

Section 3. Section 7-13-2275, MCA, is amended to read:

"7-13-2275. Procedure relating to ordinances and resolutions — *rates, fees, and charges established.* (1) The ayes and noes ~~shall~~ *must* be taken upon the passage of all ordinances or resolutions and entered upon the

journal of the proceedings of the board of directors. ~~No~~ *An* ordinance or resolution ~~shall~~ *may not* be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board ~~shall~~ *must* be in these words: "Be it ordained by the board of directors of.... district as follows:"

(3) All resolutions and ordinances ~~shall~~ *must* be signed by the president of the board and attestod by the secretary.

(4) Prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, or increasing rates, fees, or charges for services or facilities, the board shall order a public hearing.

(a) Notice of the public hearing must be published as provided in 7-1-2121. The published notice must contain:

(i) the date, time, and place of the hearing;

(ii) a brief statement of the proposed action; and

(iii) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(b) The notice must also be mailed to all persons who own property in the district and to all customers of the district at least 7 days and not more than 30 days prior to the public hearing. The mailed notice must contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution.

(c) Any interested person, corporation, or company may be present, represented by counsel, and testify at the hearing.

(d) The hearing may be continued by the board as necessary. After the public hearing, the board may, by resolution, impose, establish, change, or increase rates, fees, or eharges."

Section 4. Section 7-13-2301, MCA, is amended to read:

"7-13-2301. Establishment of charges for services — *payment of charges.* (1) The board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users.

(2) The board, in ~~the~~ furnishing of water, sewer service, other services, and facilities, shall *review, at least once every 2 years, and from time to time* fix ~~such~~ *the* rate, fee, toll, rent, or other charge *for the services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received, that* ~~as~~ will ~~pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due~~ *be sufficient in each year to provide income and revenue adequate for:*

(a) the payment of the reasonable expense of operation and maintenance of the facilities;

(b) administration of the district;

(c) the payment of principal and interest on any bonded or other indebtedness of the district; and

(d) the establishment or maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of facilities, as may be determined necessary from time to time by the board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the district.

(3) A person or entity may not use any facility without paying the rate established for the facility. In the event of nonpayment, the board may order the discontinuance of water or sewer service or both to the property and may require that all delinquent charges, interest, penalties, and deposits be paid before restoration of the service.

(4) (a) If the board has ordered discontinuance of service as provided in subsection (3) and the person or entity who received the service has not mads full payment of all delinquent charges, interest, penalties, and deposits, then a district may elect to have its delinquent charges for water or sewer services collected as a tax against the property by following the procedures of this subsection (4). If a charge for services is due and payable in a fiscal year and is not paid by the end of the fiscal year, the general manager shall, by July 15 of the succeeding fiscal year, give notice to the owners of the property to which the service was provided. The notice must be in writing and:

(i) must specify the charges owed, including any interest and penalty;

(ii) must specify that the amount due must be paid by August 15 or it will be levied as a tax against the property;

(iii) must state that the district may institute suit in any court of competent jurisdiction to recover the amount due; and

(iv) may be served on the owner personally or by letter addressed to the post-office address of the owner as recorded in the county assessor's office.

(b) On September 1 of each year, the general manager shall certify and file with the county assessor a list of all property, including legal descriptions, on which arrearages remain unpaid. The list must include the amount of each arrearage, including interest and penalty. The county assessor shall assess the amount owed as a tax against each lot or parcel with an arrearage. If the property on which arrearages remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the amount owed must be assessed as a tax against the property.

(5) In addition to collecting delinquent charges in the same manner as a tax, a district may bring suit in any court of competent jurisdiction to collect amounts due as a debt owed to the district.

~~(3)~~*(6)* Notwithstanding any other section of ~~this part or~~ part 22 *or this part* or *any* limitation imposed ~~therein and~~ *in part 22 or this part,* when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of ~~treatment services and works~~

facilities, the board may adopt a system of charges and rates to require that each recipient of ~~treatment works~~ *facility* services pays its proportionate share of the costs of operation, maintenance, and replacement and ~~to~~ *may* require industrial users of ~~treatment works~~ *facilities* to pay the portion of the cost of construction of the ~~treatment works which~~ *facilities that* is allocable to the treatment of that industrial user's wastes."

Section 5. Section 7-13-2321, MCA, is amended to read:

"**7-13-2321. Procedure to incur bonded indebtedness.** Whenever the board of directors ~~deems~~ *considers* it necessary for the district to incur a bonded indebtedness, *other than for indebtedness to refund bonded indebtedness as provided for in [section 7],* it shall by a resolution ~~so declare and~~ state the purpose for ~~which~~ the proposed debt ~~is to be incurred~~, the land within the district to be benefited ~~thereby~~, the amount of debt to be incurred, the maximum term *for* the *proposed* bonds ~~proposed to be issued shall run~~ before maturity, and the proposition to be submitted to the electors."

Section 6. Section 7-13-2324, MCA, is amended to read:

"**7-13-2324. Notice of election on incurring bonded indebtedness.** (1) The board of directors shall give notice of the holding of the election. The notice ~~shall contain the resolution adopted by the board of directors of the district,~~ *must:*

(a) state the date of the election;

(b) state the hours the polls will be open;

(c) describe the boundaries of voting precincts, which ~~shall include~~ *may include* only the lands to be benefited as stated in the resolution~~, and the location of polling places.~~*;*

(d) describe the purpose of the issue, the amount of bonds proposed to be issued, and the term of years for repayment of the bonds;

(e) reference the resolution authorizing the election and state that it is available for public inspection; and

(f) state any other information that the board considers proper.

(2) The notice ~~shall~~ *must* be published as provided in 13-1-108."

Section 7. Issuance of general obligation bonds. (1) In addition to the powers granted to a district in this part to finance facilities and improvements, a district may issue general obligation bonds for a term of up to 40 years to:

(a) provide funds to pay part or all of the cost of acquisition, construction, or improvement of facilities; or

(b) refund any bonds issued for the acquisition, construction, or improvement of facilities.

(2) General obligation bonds issued pursuant to this section must be authorized, sold, and issued, with provisions for their payment, in the manner and subject to the conditions prescribed for bonds of school districts in Title 20,

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chapter 9, part 4, except te the extent that those conditions conflict with the express provisions of part 22 or this part.

(3) Nothing in this section prohibits a district from imposing rates or other charges for the use of facilities that have been financed in whole or part hy general obligation bonds under this section if the revenue from the rates or charges is used to ahate taxes that have been levied to pay the principal or interest on the general obligation bonds or is used to pay the principal or interest on other bonded indebtedness of the district.

Section 8. Issuance of refunding bonds without election. (1) (a) District refunding bonds, issued to provide money to refund outstanding bonded indebtedness, may be issued without a vote of the electorate. In order to issue refunding bonds, the board of directers shall adopt a resolution setting forth the facte regarding the outstanding bonds that are to be redeemed, the reasons for issuing the refunding honds, and the terms and details of the refunding bond issue.

(b) After adopting a resolution, the board of directors may sell the honds at times and in a manner considered to be in the public interest.

(2) (a) Refunding honds may be issued prior to the maturity or redemption date of the outstanding bonds they are to refund. The proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the refunding bonds or amounts to be used for the cost of issuance or establishing reserves for the refunding bonds, must be deposited with other funds appropriated for payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or in securities for which the principal and interest are guaranteed by the United States. The securities must be payable on the dates required and bear interest at a rate sufficient, with any cash retained in the escrow account, to pay, when due, accrued interest on each refunded bond until its maturity or redemption dato if called for redemption. The securities must also he sufficient to pay the principal of the bond at maturity or upon the redemption date and to pay any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of principal, interest, and redemption premium, if any, of the refunded bonds.

(d) A district may pay for reasonable costs of issuing the refunding bonds and maintaining the escrow account. Alternatively, a district may issue crossover refunding bonds as provided in Title 17, chapter 5, part 21.

Section 9. Codification instruction. [Sections 7 and 8] are intended to be codified as an integral part of Title 7, chapter 13, part 23, and the provisions of Title 7, chapter 13, part 23, apply to [sections 7 and 8].

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 25, 1995

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CHAPTER NO. 519

[HB 395]

AN ACT IMPLEMENTING AN INTEGRATED NOXIOUS WEED CONTROL PROGRAM FOR STATE AGENCIES AND ENTITIES BY CLARIFYING WHAT PROVISIONS REGARDING PLANS OF OPERATIONS AND BUDGETS MUST BE INCLUDED IN COOPERATIVE AGREEMENTS BETWEEN STATE AGENCIES AND ENTITIES AND THE DISTRICT WEED BOARDS; REQUIRING THE COORDINATION OF WEED CONTROL EFFORTS THROUGH THE STATE WEED COORDINATOR; APPROPRIATING MONEY FROM THE RESOURCE DEVELOPMENT ACCOUNT TO THE DEPARTMENT OF STATE LANDS AND FROM THE NOXIOUS WEED MANAGEMENT STATE SPECIAL REVENUE FUND TO THE DEPARTMENT OF AGRICULTURE TO DEVELOP NOXIOUS WEED MANAGEMENT PLANS; AMENDING SECTION 7-22-2151, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2151, MCA, is amended to read:

"**7-22-2151. Cooperative agreements.** (1) Any state agency controlling land within a district, including the department of transportation; the department of state lands; the department of fish, wildlife, and parks; the department of corrections and human services; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for *integrated* noxious weed management on state-owned or state-controlled land within the district. *The agreement must include the following:*

(a) a 6-year integrated noxious weed management plan, which must be updated biennially;

(b) a noxious weed management goals statement;

(c) a specific plan of operations for the biennium, including a budget to implement the plan; and

(d) a provision requiring a biennial performance report by the board to the state weed coordinator in the department of agriculture, on a form to be provided by the state weed coordinator, regarding the success of the plan.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsihility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties.

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(4) Each agency or entity listed in subsection (1) shall submit a statement or summary of all noxious weed actions that are subject to the agreement required under subsection (1) to the state weed coordinator and shall post a copy of the statement or summary on the state bulletin board."

Section 2. Appropriation. (1) There is appropriated $54,046 in fiscal year 1996 to the department of state lands from the resource development account for the development of the plan provided for in [section 1].

(2) There is appropriated $18,865 in fiscal year 1996 from the noxious weed management state special revenue fund to the department of agriculture as a grant to the department of natural resources and conservation for the development of the plan provided for in [section 1]. The money must be granted pursuant to 80-7-814.

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved April 25, 1995

CHAPTER NO. 520

[HB 421]

AN ACT REVISING THE LAWS ON COUNTY HOSPITALS; PROVIDING FOR COUNTY HEALTH CARE FACILITIES; PROVIDING FOR THE PLEDGE OF TAXES TO THE REPAYMENT OF CERTAIN BONDS; AUTHORIZING THE CONSTRUCTION, LEASING, AND FINANCING OF HEALTH CARE FACILITIES; CLARIFYING THAT CERTAIN BONDS MAY BE ISSUED WITHOUT AN ELECTION; AMENDING SECTIONS 7-6-2512, 7-8-2102, 7-8-2103, 7-34-2201, 7-34-2202, 7-34-2203, 7-34-2204, 7-34-2301, 7-34-2303, 7-34-2401, 7-34-2402, 7-34-2411, 7-34-2414, 7-34-2415, 7-34-2416, 7-34-2417, 7-34-2418, 7-34-2501, AND 53-2-802, MCA; REPEALING SECTIONS 7-34-2302 AND 7-34-2412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2512, MCA, is amended to read:

"7-6-2512. County tax levy for ~~nursing homes and hospital~~ *health care* facilities. *(1)* The board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax, not to exceed 10 mills on each dollar of taxable valuation of property, upon all property within the county ~~for the erection, maintenance, and operation of~~ *to erect, furnish, equip, expand, improve, maintain, and operate* county-owned or county-operated ~~hospitals and nursing homes or other hospital~~ *health care* facilities created under 7-8-2102, 7-34-2201, ~~7-34-2301,~~ and 7-34-2502. "~~Hospital~~ *Health care* facilities" as used in this section ~~means a hospital or hospital-related facility, including outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, and infirmaries~~ *has the meaning as defined in 7-34-2201*. The combined total number of mills levied under this section and for the county poor fund under 53-2-322 may not exceed 18 mills. A higher levy may be made upon compliance with 7-6-2531 through 7-6-2537 or 53-2-322. If a hospital district is

created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district.

(2) If a county issues bonds under 7-34-2411 to finance or refinance the costs of a health care facility, the board of county commissioners may covenant to levy the tax authorized by this section during the term of the bonds, to the extent necessary, and to apply the collections of the tax to the costs of erecting, furnishing, equipping, expanding, improving, maintaining, and operating the health care facility or facilities of the county or the payment of principal of or interest on the bonds. The pledge of the taxes to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction. The pledge may be made by the board only upon authorization of a majority of the electors of the county voting on the pledge at a general or special election as provided in 7-34-2414."

Section 2. Section 7-8-2102, MCA, is amended to read:

"7-8-2102. Erection and maintenance of county buildings. The board of county commissioners has jurisdiction and power, under ~~such~~ *the* limitations and restrictions ~~as~~ are prescribed by law, to ~~cause to be erected, furnished, and maintained~~ *erect, furnish, equip, expand, improve, and maintain* a courthouse, jail, ~~hospital~~ *health care facility*, civic center, youth center, park buildings, museums, recreation centers, and any combination ~~thereof~~ *of those buildings* and ~~such~~ *any* other public buildings as may be necessary."

Section 3. Section 7-8-2103, MCA, is amended to read:

"7-8-2103. Authorization to create county building commission. (1) The board of county commissioners ~~shall have the power to~~ *may* create a commission for the management of ~~such~~ *a* civic center, *a* youth center, park buildings, museums, county parks, recreation centers, ~~hospitals~~ *health care facilities*, or any combination of ~~two or more thereof~~ *those buildings*. ~~Such~~ *The* commission ~~shall~~ *must* be composed of the ~~chairman~~ *presiding officer* of the board of county commissioners and five lay members to be appointed by the board. In cases ~~where~~ *in which* a commission has been appointed, the commission, together with the board, ~~shall have~~ *has* the power to employ a manager.

(2) The terms of office for the first lay members of the commission ~~shall be~~ *are*, respectively, one for 1 year, two for 2 years, and two for 3 years. On the expiration of ~~such~~ *the* terms ~~of figures 1, 2, and 3 years, their~~, *the* successors shall hold *office* for 3 years each.

(3) All of the ~~above~~ persons *in subsection (2)* shall serve without compensation."

Section 4. Section 7-34-2201, MCA, is amended to read:

"7-34-2201. Erection and management of county ~~hospital~~ *health care facilities — definition — provision of health care services.* (1) The board of county commissioners has jurisdiction and power, under ~~such~~ *the* limitations and restrictions ~~as~~ are prescribed by law, to ~~cause a hospital to be erected, furnished, and maintained~~ *erect, furnish, equip, expand, improve, and maintain health care facilities and to provide health care services in those facilities as permitted by law.*

(2) The board of county commissioners of ~~any~~ *a* county ~~of this state which now~~ *that* has or may ~~hereafter~~ acquire title to a site and building or buildings suitable for county ~~hospital~~ *health care* purposes ~~shall have~~ *has* jurisdiction and power, under ~~such~~ *the* limitations and restrictions ~~as are~~ prescribed by law, to *erect,* furnish ~~and~~, equip ~~such~~, *expand, improve, maintain, and operate the* building or buildings for ~~hospital~~ *health care* purposes ~~in accordance with and~~ as provided by ~~the provisions of~~ this section.

(3) As used in parts 21, 23, 24, and 25 and this part, unless the context clearly requires otherwise, the term "health care facility" means a hospital, a medical assistance facility, an ambulatory surgical facility, a hospice, a kidney treatment center, an outpatient facility, a public health center, a rehabilitation facility, a long-term care facility, or an adult day-care center, as defined in 50-5-101, or any combination and related medical facilities including offices for physicians or other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."

Section 5. Section 7-34-2202, MCA, is amended to read:

"7-34-2202. **~~Hospital~~ *Health care facilities* commission.** The board of county commissioners ~~shall have the power to~~ *may* create a commission for the management of ~~such hospitals~~ *health care facilities*, as provided in 7-8-2103."

Section 6. Section 7-34-2203, MCA, is amended to read:

"7-34-2203. **Provision of *health* care ~~for indigent and nonindigent sick~~ *services.*** A county ~~hospital so erected and furnished~~ *health care facility* may be used ~~for the hospitalization of the indigent sick of the county~~ *to provide health care services.* ~~Any county hospital which has heretofore been or which may hereafter be erected and furnished under the provisions of 7-34-2201 may also be used for the hospitalization of the nonindigent sick provided said nonindigent sick pay a reasonable fee for such hospitalization and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents.~~"

Section 7. Section 7-34-2204, MCA, is amended to read:

"7-34-2204. **Lease of county property for ~~hospital~~ *health care* purposes.** (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to lease county buildings, equipment, furniture, and fixtures for ~~hospital~~ *health care facility* purposes, with full power of lessor except as ~~hereinafter~~ limited *in this section*, upon the terms and conditions as the board may decide upon. The rentals received under the lease or leases ~~shall~~ *must* be paid inte the general fund of the county, *or if the lease is of a long-term care facility or portion of a long-term care facility, the rentals must be paid into the county poor fund, except as provided in subsection (2)(a).*

(2) (a) ~~No~~ *A* lease may *not* be made for a ~~longer~~ period *longer* than 5 years except in a case ~~of financing~~ *in which* bonds *are to be or have been issued* in accordance with 7-34-2411 ~~through 7-34-2418~~, in whicb case the lease may ~~terminate at~~ *extend until* the maturity date of the bonds sold and in which case bond payments may be made from lease receipts.

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(b) The board may not enter into a ~~contract of~~ lease without ~~and until~~ first having advertised in a newspaper published in the county at least once a week for 5 weeks that the ~~buildings and equipment~~ *health care facility or designated portion of a health care facility, including equipment if applicable,* ~~are~~ *is* for lease for ~~hospital~~ *health care* purposes."

Section 8. Section 7-34-2301, MCA, is amended to read:

"**7-34-2301. Construction and operation of county boarding ~~or~~ nursing ~~home~~ authorized.** The board of county commissioners may erect, *furnish,* equip, *expand, improve,* maintain, and operate a boarding home ~~or nursing home~~ for the aged *that does not constitute a health care facility,* subject to *any applicable* standards established by the department of health and environmental sciences. *A boarding home may be located adjacent to or in a building containing a health care facility and may be operated in conjunction with the health care facility.*"

Section 9. Section 7-34-2303, MCA, is amended to read:

"**7-34-2303. Lease of county property for boarding ~~or nursing~~ home.** (1) The board of county commissioners may lease ~~and demise~~ county buildings, equipment, furniture, and fixtures for the purpose of operation of a boarding home ~~or nursing home~~ for aged persons, with full power of lessor except as limited in this part, upon terms and conditions as the board ~~shall~~ *may* decide upon.

(2) The rentals received under the lease or leases must be paid into the poor fund of the county, *or if bonds have been issued under 7-34-2411 to finance or refinance the costs of a boarding home, the rentals must be applied, as neeessary, to the payment of the principal of or interest on the bonds.*

(3) (a) Except as provided in subsection (3)(b), the lease ~~and demise~~ may not be made for a ~~longer~~ period *longer* than 5 years.

(b) ~~If a lessee of a nursing home is required to undertake capital improvements by state or federal agencies administering health and safety laws and the undertaking requires financing from sources other than county revenues, the term of the lease and demise may correspond to the term of the financing but may not exceed 15 years.~~ *A lease may be made for a period longer than 5 years when bonds are to be or have been issued under 7-34-2411, in which case the lease may extend until the maturity date of the bonds.*

(4) The board may not entor into a ~~contract of~~ lease unless it has advertised in a newspaper published in the county at least once a week for 5 weeks that specified buildings and equipment are for lease for the purpose of a boarding home ~~or nursing home~~ for aged persons."

Section 10. Section 7-34-2401, MCA, is amended to read:

"**7-34-2401. Depletion allowance reserve fund authorized.** The governing body of ~~any~~ *a* county ~~in Montana~~ may establish a depletion allowance reserve fund for the replacement and acquisition of property and equipment for county-operated ~~hospitals and nursing homes~~ *health care facilities* created under 7-8-2102, 7-34-2201, ~~7-34-2301,~~ and 7-34-2502."

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Section 11. Section 7-34-2402, MCA, is amended to read:

"7-34-2402. Sources of money for depletion allowance reserve fund. Money for the depletion allowance reserve fund may be derived from:

(1) public and private grants;

(2) money collected by the ~~hospital or nursing home~~ *health care facility* for which the fund is created, from or for indigent patients *or residents*, that ~~are~~ *is* in excess of the expenses incurred for the care of ~~such~~ *the* patients *or residents*."

Section 12. Section 7-34-2411, MCA, is amended to read:

"7-34-2411. ~~Hospital and nursing home~~ *County health care facility* bonds authorized. (1) Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county ~~constructing~~ *acquiring, erecting, furnishing, equipping, expanding, improving, or maintaining* a ~~hospital or nursing home~~ *health care facility* under 7-8-2102 or 7-34-2201 *or a boarding home under 7-34-2301* may borrow money and issue its bonds ~~therefor~~ *for a health care facility or a boarding home*, including refunding bonds, in ~~such~~ *the* form and upon ~~such~~ *the* terms as it may determine, payable out of any ~~revenues~~ *revenue* of the facility *or boarding home, respectively*, including ~~revenues~~ *revenue* derived from:

(a) fees and payments for ~~hospital or nursing~~ *health care or boarding* home services;

(b) taxes levied under *7-6-2512 or* 7-34-2417 *for a health care facility*;

(c) grants or contributions from the federal government; or

(d) any other sources.

(2) For the security of ~~any such~~ *the* bonds, the county may by resolution make and enter into any covenant, agreement, or indenture and exercise any additional powers authorized to be made, entered into, or exercised by a county, *including those authorized in 7-6-2512 and this part*. The sums required ~~from time to time~~ to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all ~~revenues referred to in 7-34-2411 through 7-34-2418~~ *revenue of the health care facility or boarding home* prior to the payment of current costs of operation and maintenance of the facilities."

Section 13. Section 7-34-2414, MCA, is amended to read:

"7-34-2414. Election required on question of issuance of bonds. (1) ~~No bonds~~ *A county* may ~~be issued by any county~~ *not issue bonds to which all or a portion of the taxes levied under 7-6-2512 are pledged or to which the general tax authorized under 7-34-2418 is pledged* until the question of approval of the issuance of ~~such~~ *the* bonds has been submitted to the registered electors of the county at a general election or a special election called for that purpose by the governing body of the county and the majority of the electors voting on the question have voted in favor ~~thereof~~ *of the bonds*. The notice and conduct of the election ~~shall~~ *must* be governed, to the extent applicable, by the laws governing the election on county general obligation bonds in chapter 7, part 22.

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(2) If *less than* a majority of the electors voting ~~thereon~~ *on the issuance of the bonds* vote ~~against~~ *in favor of* the issuance of the bonds, the county ~~shall have no authority to~~ *may not* issue the bonds under 7-34-2411 ~~through 7-34-2418~~."

Section 14. Section 7-34-2415, MCA, is amended to read:

"**7-34-2415. Details of bonds.** (1) The bonds may be sold at public or private sale and ~~shall~~ bear interest at a rato or rates as provided in 17-5-102. The bonds may be for a 40-year period.

(2) Except as otherwise provided in 7-34-2411 *and 7-34-2413* through 7-34-2418, any bonds issued pursuant to 7-34-2411 *and 7-34-2413* through 7-34-2418 by a county ~~shall~~ *must* be payable as to principal and interest solely from ~~revenues~~ *revenue* of the county and ~~shall~~ *must* state on their face the applicable limitations or restrictions regarding the source or sources from which ~~such~~ *the* principal and interest are payable."

Section 15. Section 7-34-2416, MCA, is amended to read:

"**7-34-2416. Tax-exempt status of bonds.** Bonds issued by a county pursuant to the provisions of 7-34-2411 *and 7-34-2413* through 7-34-2418 are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a)."

Section 16. Section 7-34-2417, MCA, is amended to read:

"**7-34-2417. Special tax levy authorized.** In the event the bonds ~~become delinquent or cannot~~ *are not paid or are not expected to* be paid from ordinary ~~revenues~~ *revenue* of the facility, a county ~~which~~ *that* has issued bonds under 7-34-2411 *for a health care facility* may levy taxes on all taxable property within tbe county in the manner provided for public bospital districts under 7-34-2133, 7-34-2134, 7-34-2135(1), and 7-34-2136, up to a maximum of 3 mills not submitted to a vote of the people and 3 additional mills approved by a vote of the people."

Section 17. Section 7-34-2418, MCA, is amended te read:

"**7-34-2418. General tax to support bonds authorized.** (1) (a) The governing body of ~~any~~ *a* county may, with respect to bonds issued by the county pursuant to 7-34-2411 ~~through 7-34-2418~~ *for a health care facility and if approved by the voters as provided in 7-34-2414*, by resolution covenant that:

(i) in the event that at any time all ~~revenues~~ *revenue*, including taxes, appropriated and ~~theretofore~~ collected for ~~such~~ *the* bonds ~~are~~ *is* insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county for the payment of ~~such~~ *the* deficiency; and

(ii) at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on ~~such~~ *the* bonds, it will levy a general tax upon all the taxable property in the county for the payment of ~~such~~ *the* deficiency.

(b) The resolution ~~shall~~ *must* stato the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(2) ~~Such~~ *The* taxes ~~shall~~ *are* not ~~be~~ subject to any limitation of rate or amount applicable to other county taxes but ~~shall be~~ *are* limited to a rate estimated to be sufficient to produce the amount of the deficiency.

(3) In the event ~~more than one county is included in an authority issuing bonds~~ *that the health care facility for which bonds are issued* pursuant to 7-34-2411 ~~through 7-34-2418~~ *is a joint institution, as provided in part 25, and the deficiency tax levy is authorized under 7-34-2417*, the counties may apportion the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for ~~such~~ *the* bonds in ~~such~~ *the* manner as the counties shall determine."

Section 18. Section 7-34-2501, MCA, is amended to read:

"**7-34-2501. Definitions.** As used in this part, the following definitions ~~shall~~ apply:

(1) "Contract" means the agreement entered into by two or more counties for the purpose of creating a joint institution.

(2) "Joint institution" means a county ~~hospital or nursing~~ *health care facility or boarding* home for the aged constructed, purchased, leased, equipped, and operated by two or more counties pursuant to the terms of the contract creating it."

Section 19. Section 53-2-802, MCA, is amended to read:

"**53-2-802. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "County department" means the county department of public welfare provided for in part 3 of this chapter.

(2) "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.

(3) "Needy person" is one who is eligible for public assistance under the laws of this state.

(4) "Protective services" means services to children and adults to be provided by the department of family services as permitted by Titles 41 and 53.

(5) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county department, regardless of the original source of assistance.

(6) "State assumption" means the transfer to the department of social and rehabilitation services and the department of family services by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through 53-2-306 and for public assistance and protective services, respectively, provided by the county department pursuant te Titles 41 and 53, except as otherwise specifically provided in this part. A county may continue to provide optional indigent assistance as provided in 53-2-804 and ~~nursing home and hospital~~ *health care* services as provided in 7-6-2512."

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Section 20. Repealer. Sections 7-34-2302 and 7-34-2412, MCA, are repealed.

Section 21. Effective date. [This act] is effective on passage and approval.

Approved April 25, 1995

CHAPTER NO. 521

[HB 445]

AN ACT ESTABLISHING A NOXIOUS WEED SEED FREE FORAGE PROGRAM AND ADVISORY COUNCIL; ESTABLISHING THE POWERS, DUTIES, AND RULEMAKING AUTHORITY OF THE DEPARTMENT OF AGRICULTURE IN ADMINISTERING THE PROGRAM; AUTHORIZING APPLICABLE FEES; PROVIDING FOR ENFORCEMENT AUTHORITY AND FOR PENALTIES, ORDERS, INJUNCTIONS, AND EMBARGOES APPLICABLE TO THE PROGRAM; AMENDING SECTION 7-22-2126, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the department of agriculture to develop rules regarding implementation of the noxious weed seed free forage program. It is intended that the department, when adopting rules for the program and certification standards, processes, operations, agreements, and contracts; fees and the collection of fees; and inspections and investigation standards, ensure that the program and rules will be effective in preventing new introductions of noxious weed seed from forage in the state. The department shall base any related fees on the cost of managing and conducting the program. It is further intended that the program be conducted in a cooperative manner with federal, state, and local agencies, the regulated industry, and the public and that the department be allowed te enter into reciprocal agreements with other states or Canadian provinces as necessary for the proper administration of the program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 16] may be cited as the "Noxious Weed Seed Free Forage Act".

Section 2. Findings — purpose. (1) The legislature finds that:

(a) natural resources of tbe state need to be protected from noxious weeds and their seeds;

(b) the movement of agricultural crops or commodities as livestock forage, bedding, mulch, and related materials, including pollets, cubes, and other processed livestock feeds with noxious weed seeds, causes new and expanding noxious weed infestations on private and government-managed lands, which adversely impact agricultural, forest, recreational, and other lands;

(c) it is necessary to develop and implement a state forage and product noxious weed seed free program in cooperation with federal, state, and local government, the university system, and private enterprise;

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(d) an educational program is needed to inform all citizens of the importance of the incentive to market and handle forage that is free of noxious weed seeds;

(e) a cooperative forage and product distribution systom with federal, state, local, and privato land manager participation is needed to prevent increased noxious weed infestations; and

(f) compliance standards involving the import or export of forage, in cooperation with county weed districts and the department, are needed.

(2) The purpose of [sections 1 through 16] is to promote incentives to benefit the people of this stato and other states by producing and making available forage free of noxious weed seeds.

Section 3. Definitions. As used in [sections 1 through 16], the following definitions apply:

(1) "Advisory council" means the Montana noxious weed seed free forage advisory council. Except as provided in [section 4], the council is subject to the provisions of 2-15-122.

(2) "Certification" means the state-approved and documented process of determining within a standard range of variances or tolerances that forage production fields are free of the seeds of noxious weeds, as defined in 7-22-2101(7)(a)(i), which process allows a person to sell the forage as noxious weed seed free and to attach approved certification identification.

(3) "Forage" means any crop, including alfalfa, grass, small grains, straw, and similar crops and commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch or related uses and the byproducts of those crops or commodities that have been processed into pellets, cuhes, or related products.

(4) "Noxious weed seed free" means that forage has an ahsence of noxious weed seeds within a standardized range of variances or tolerances established by department rule.

(5) "Person" means a natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust, sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed te be certified as noxious weed seed free.

(7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale, advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage as noxious weed seed free or certified or approved as noxious weed seed free.

Section 4. Composition of advisory council. (1) Tbe director of the department shall appoint an advisory council to provide advice to the department concerning the administration of [sections 1 through 16].

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(2) The advisory council must be composed of 10 voting members and 2 ex officio, nonvoting members, as follows:

(a) the director of the department or a designee, who shall serve as presiding officer;

(b) four members who are producers of forage under a certified forage noxious weed seed free program and who represent different geographical areas of the state;

(c) one member involved in the processing of forage into pellets, cubes, or related products;

(d) one member representing the livestock or agricultural industry;

(e) two members representing county weed districts involved in a forage certification program, who must be members of the Montana weed control association and who represent different geographical areas of the state;

(f) one member representing an outfitter's or guide's organization;

(g) the director of the Montana state university extonsion service or a designated representative, who is an ex officio, nonvoting member; and

(h) the director of the Montana state university agricultural experiment station or a designated representative, who is an ex officio, nonvoting member.

(3) The members shall serve staggered 3-year terms. A member may not serve for more than two consecutive terms.

Section 5. Powers and duties of department. The department may:

(1) provide for administration and enforcement of [sections 1 through 16];

(2) enter into contracts and agreements;

(3) authorize the purchase of all office equipment or supplies and incur all other reasonable and necessary expenses and obligations that are required for administering the provisions of [sections 1 through 16];

(4) become a member of and purcbase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) plan and conduct publicity and promotional campaigns to increase the incentives to use Montana forage that is free of noxious weed seed and te make publicity and promotional contracts and other agreements as necessary;

(6) establish certification standards and processes for forage and byproducts of forage and detormine if processed forage byproducts are noxious weed seed free, based upon field of origin or verification tbat the production process has destroyed the viability of noxious weed seeds;

(7) establish fee assessments and accept other funds to make the certification program financially self-supporting;

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(8) establish a standard range of variances or tolerances for noxious weed seeds in different forage subject to certification as noxious weed seed free, based upon scientific and operational considerations;

(9) administer rules and orders to be adopted for the exercise of its power and the performance of its duties, in accordance with Title 2, chapter 4;

(10) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States government, and enter into contracts or agreements with organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity, reciprocity, and enforcement of [sections 1 through 16];

(11) hire employees and designate authorized agents to conduct certification inspections, investigations, and sampling and to collect evidence of possible violations of [sections 1 through 16]; and

(12) accept grants, donations, and gifts from any source and expend those funds for any purpose consistent with [sections 1 through 16], which may be specified as a condition of any grant, donation, or gift.

Section 6. Certification. (1) A person shall make an annual application to the department for certifying forage. The person shall comply with all certification standards and processes and pay any required fees prior to receiving certification approval and identification markers for the forage. If a production tonnage fee is established, the department may establish the method and time of payment.

(2) A person who wishes to deliver forage as noxious weed seed free into this state from out of state shall notify the department and pay any application fee or other appropriate fee, including an inspection fee, if required, prior to delivering the forage. The forage must be certified as noxious weed seed free from the state or province of origin if the department approves the certification through a reciprocal agreement or other process approved by the department. The department may waive some certification documentation or fees based upon the provisions in a reciprocal agreement.

Section 7. Fees. (1) The department, with the advice of the advisory council, may establish fees to support the cost of administering the noxious weed seed free forage program. Fees may be established for:

(a) processing applications;

(b) per acre inspection of forage;

(c) inspection of facilities;

(d) minimum administration;

(e) inspection related to processing or manufacturing forage into pellets, cubes, and related products;

(f) certification identification markers;

(g) mileage and per diem; and

(h) import inspection.

(2) Fees, structures, and procedures must he recommended to the department by the advisory council.

Section 8. Deposit and disbursement of funds — records — investment. (1) There is a state noxious weed forage account in the state special revenue account. All funds received by the department from fees or penalties collected or received under [sections 5 through 7, 13, and 14(1)], and all other related funds received must be deposited in the state noxious weed forage account.

(2) The department may by contract allow for the collection of fees authorized under [section 7]. A portion of the fees collected may be retained by tho collector, and the portion of the fees assigned te the department must be submitted to the department. The contract must require:

(a) a record of the name of the person collecting fees;

(b) a record of fees collected;

(c) a record of tbe amounts submitted to the department;

(d) a record of tbe amount retained by tbe collector; and

(e) that all records be kept in accordance with generally accepted accounting principles.

(3) Funds received under [sections 5 tbrough 7, 13, and 14(1)] that are not immediately required for the purposes of [sections 1 through 16] must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. The income from the investments must be deposited in the state special revenue fund and credited to the department.

(4) Funds received pursuant to [sections 1 through 16] are appropriated to the department for the administration of the noxious weed seed free forage program and for the purposes of [sections 1 through 16].

Section 9. Rules. The department may, with the advice of the advisory council appointed under [section 4], adopt rules necessary to carry out its responsibilities under [sections 1 through 16] in accordance with Title 2, chapter 4. The rules may include but are not limited to:

(1) contracts and agreements;

(2) certification standards, processing, and sampling and equipment standards and operation;

(3) inspections and investigation procedures and standards;

(4) operations;

(5) records;

(6) application, inspection, production, import, certification identification, mileage, and per diem fees and their collection;

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(7) reciprocal agreements with other states or Canadian provinces; and

(8) penalties, stop sales, condemnation, and other orders.

Section 10. Investigation and enforcement authority. (1) In enforcing the provisions of [sections 1 through 16], the department or its authorized agents, upon reasonable cause, may enter any private or public premises, property, or vehicle with a warrant or with the consent of the inhabitant or owner to inspect, sample, or investigate at reasonable times forage subject to certification or sale as certified forage or as free of noxious weed seeds.

(2) All enforcement actions and orders must be made under the contested case provisions of Title 2, chapter 4, part 6.

Section 11. Stop sale, use, or removal order. When the department has reasonable cause to believe that a person is selling, distributing, storing, transporting, or using forage in violation of any of the provisions of [sections 1 through 16], a written stop sale, use, or removal order may be issued to that person. If the person is not available for service of the order, the department may attach the order to the forage and notify the person. The forage may not he sold, used, or removed until compliance with the provisions of [sections 1 through 16] is achieved. The department may release the order once compliance is achieved. The department may require that the forage be sold or used only as an uncertified forage or delivered back to the seller, or the department may order condemnation of any forage that does not meet the requirement of [sections 1 through 16] or other alternatives established by rule. The department, upon finding that the person responsihle for the embargoed forage has failed to comply with the order in any respect, may petition the district court of the first judicial district for enforcement of the order.

Section 12. Prohibited acts. (1) It is unlawful for a person to certify or sell as certified or as noxious weed seed free any forage as free of noxious weed seed within this state, unless the forage is identified under a department-approved process as "Montana certified" and the forage meets all the requirements of [sections 1 through 16]. A person may not designato forage as certified or use any other title, designation, words, letters, abbreviations, sign, card, or identifier tending to indicate that the forage is certified unless the forage meets all the requirements of [sections 1 through 16].

(2) Forage certified under a reciprocal agreement between the department and another state or Canadian province and identified according to approved certification standards to be shipped into the stato or shipped to another state or province must meet the requirements of [sections 1 through 16].

(3) All forage products used by public utilities and local, county, state, or federal agencies, including but not limited to mulches, bedding materials, and erosion control barriers, must be certified as noxious weed seed free. All seeds used for reclamation purposes by public utilities and local, county, state, or federal agencies must be free of noxious weed seeds and be certified seed according to Title 80, chapter 5.

Section 13. Penalty for nonpayment of fees. In addition to the penalties set out in [section 14], a person who fails to pay or improperly pays any fee assessment or fee assessed under the provisions of [sections 1 through 16] is

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subject to a penalty of $100 or double the assessment, whichever is greater, including the original fee. The penalty must be paid to the department and deposited as provided in [section 8]. A certification issued to a person who fails to pay or improperly pays any fee assessment or fee assessed under the provisions of [sections 1 through 16] is invalid until the original fee and penalty are paid to the department.

Section 14. Penalties. A person who violates or aids in a violation of any of the provisions of [sections 1 through 16] or any rules or orders of the department adopted under [sections 1 through 16] is subject to the following penalties:

(1) a civil penalty of not more than $1,000 for each offense. Assessment of a civil penalty by the department may be made in conjunction with any other warning, order, or administrative action authorized by [sections 1 through 16] that is issued by the department.

(2) a misdemeanor penalty of not less than $100 or more than $1,500 or up to 6 months' imprisonment, or both, if the person is convicted in district court.

Section 15. Injunction authorized. The department may commence a civil action in the district court of the first judicial district seeking appropriate relief, including a permanent or temporary injunction, for a violation of [sections 1 through 16].

Section 16. Embargo. Upon receiving a report from a district weed board, as provided in 7-22-2126, that forage is subject to embargo and upon verification of a violation of [sections 1 through 16], the department shall enforce the embargo throughout the state and issue appropriate stop sale orders as provided in [section 11].

Section 17. Section 7-22-2126, MCA, is amended to read:

"**7-22-2126. Embargo.** *(1)* The board may establish voluntary embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district.

(2) The board shall establish a special embargo program for the movement of forage, as defined in [section 3], into or out of the county. The board may implement an embargo upon confirmation of a violation, based upon complaint investigations, requests for investigation by the department, or through county investigations, if the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in [section 3].

(3) A person in possession of the forage that is not in compliance with [sections 1 through 16] may not move or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is subject to embargo is found to have met all of the requirements of the state certification program and the department verifies compliance with the program, the board shall release the embargo. The board may also release the forage under the following conditions:

(a) verification of guaranteed delivery back to the original producer, as defined in [section 3];

(b) burning or disposal of the forage in a manner acceptable to the board; or

(c) other alternatives approved by the board.

(4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant to a violation of [sections 1 through 16] to the department within 48 hours.

(5) The person in possession of forage subject to embargo shall comply with the conditions approved by the board within 30 days. If resolution is not accomplished, the board may condemn the forage and implement through its employees any of the conditions set forth in this section. If the board proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented by the board are payable by the producer unless the person in possession of the forage also has an interest in the forage."

Section 18. Codification instruction. [Sections 1 through 16] are intended to be codified as an integral part of Title 80, chapter 7, and the provisions of Title 80, chapter 7, apply to [sections 1 through 16].

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective dates. (1) [Sections 1 through 5, 9, 18, 19, and this section] are effective on passage and approval.

(2) [Sections 6 through 8 and 10 through 17] are effective January 1, 1996.

Approved April 25, 1995

CHAPTER NO. 522

[HB 446]

AN ACT PROHIBITING THE EXCLUSION OF CERTAIN PREEXISTING CONDITIONS FROM HEALTH BENEFIT PLANS; PROVIDING DEFINITION; AMENDING SECTIONS 33-22-110 AND 33-22-1811, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-110, MCA, is amended to read:

"**33-22-110. Preexisting conditions.** (1) A *Except as provided in subsection (2), a* policy or certificate of disability insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. The condition may only be excluded for a maximum of 12 months.

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(2) A health benefit plan may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 3 years preceding the effective date of coverage of an insured person. The condition may be excluded for a maximum of 12 months.

(3) For purposes of subsection (2), a "health benefit plan" means a hospital expense-incurred or medical expense-incurred policy, contract, or certificate provided by a health insurer, health service corporation, or health maintenance organization.

(4) An insurer may use an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, perform underwriting in accordance with the insurer's established underwriting standards.

(5) A policy of disability income insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. An exclusion may not apply to a disability commencing more than 12 months from the effective date of coverage of an insured person."

Section 2. Riders. (1) Except for a policy issued under chapter 22, part 18, a policy of disability insurance may contain a provision that excludes coverage for specific conditions through the use of elimination riders for conditions for which medical advice, diagnosis, care, or treatment was recommended by or received from a provider of health care services within 4 years preceding the effective date of coverage of an insured person. The provisions of 33-22-110 do not apply to elimination riders. An insured person may apply te the insurer for removal or modification of a rider, and the insurer shall respond to the application within 60 days of receipt.

(2) An insurer may not, except upon agreement by the insured, retroactively impose an elimination rider on an existing policy, certificate, or contract.

(3) "Elimination rider" means a provision attached te a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.

Section 3. Section 33-22-1811, MCA, is amended to read:

"33-22-1811. Availability of coverage — required plans. (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier shall offer to small employers at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part.

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(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied te a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) The provisions of this section are effective 180 days after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to 33-22-1812, provided that if the program created pursuant to 33-22-1818 is not yet operative on that date, the provisions of this section are effective on the date that the program begins operation.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not, because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit plan may not define a preexisting condition more restrictively than ~~33-22-110, except that the condition may be excluded for a maximum of 12 months~~ *33-22-110(2)*.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services if the qualifying previous coverage was continuous to a date not less tban 30 days prior to the submission of an application for new coverage. This subsection (3)(b)

does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to a small employer when the small employer is not physically located in the carrier's established geographic service area;

(ii) to an employee when the employee does not work or reside within the carrier's established geographic service area; or

(iii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition."

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

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invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Retroactive applicability. [Section 2] applies retroactively, within the meaning of 1-2-109, to policies, certificates, or contracts of disability insurance issued prior to [the effective date of this act], except for policies, certificates, or contracts issued under Title 33, chapter 22, part 18. An insurer may not, as a result of the application of [this section], seek reimbursement for any claims previously paid.

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply te [section 2].

Approved April 21, 1995

CHAPTER NO. 523

[HB 484]

AN ACT RELATING TO PROVISION OF HEALTH CARE FOR MEDICAID RECIPIENTS; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO CONTRACT FOR A STUDY BY THE LEGISLATIVE AUDITOR CONCERNING THE FEASIBILITY OF CHANGING MEDICAID FROM FEE-FOR-SERVICES COVERAGE TO PRIVATE INSURANCE COVERAGE; SPECIFYING THE CONTENTS OF THE CONTRACT; REQUIRING REPORTS TO THE LEGISLATURE, THE LEGISLATIVE FINANCE COMMITTEE, AND THE OFFICE OF BUDGET AND PROGRAM PLANNING; REQUIRING THE LEGISLATIVE FINANCE COMMITTEE AND THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO APPLY FOR A MEDICAID WAIVER UPON A DETERMINATION BY THE OFFICE OF BUDGET AND PROGRAM PLANNING; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Department to contract for study of converting Montana medicaid program to private insurance — report to legislature and legislative finance committee required. (1) The department of social and rehabilitation services shall, if sufficient funds are available from public and private sources, contract with the legislative auditor for a study of the conversion of the Montana medicaid program provided for in Title 53, chapter 6, to private insurance policies or coverage by health service corporations or health maintenance organizations.

(2) The legislative auditor shall advertise for proposals from private offices, firms, partnerships, corporations, and other private business entities for a study of the conversion of the Montana medicaid program provided for in Title 53, chapter 6, to private insurance policies or coverage by health care service corporations or health maintenance organizations. The legislative auditor shall, if sufficient funds are available from public and private sources, contract with

the private entity submitting the best proposal. The legislative auditor's contract must be made with a contractor familiar with the subjects of the study, as provided in subsection (3).

(3) The study must include the following matters:

(a) the persons for whom insurance would be purchased;

(b) the services, benefits, or coverages that would be provided by the policy;

(c) whether coverage by a health services corporation or health maintenance organization would be offered in addition to private insurance policies;

(d) whether coverage would be provided by group or individual policies;

(e) whether copayments or deductibles would be paid directly by the department;

(f) the feasibility of using medical savings accounts in conjunction with insurance coverage;

(g) the feasibility of employers taking over the policy payments for medicaid recipients hired as employees;

(h) the feasibility of making payments directly to recipients for preventive care measures taken by the recipients;

(i) providing price information to recipients to allow them to choose their insurer and health care providers;

(j) educational requirements to teach recipients how to choose insurance options;

(k) the potential dollar savings available to the state and to other consumers of health care services;

(l) whether waivers would have to be obtained from the United States in order to implement a conversion of medicaid reimbursement to private insurance contracts and, if so, the laws or regulations required to be waived and the view of the United States as to approvability of the waivers; and

(m) other matters determined necessary by the legislative auditor.

(4) The legislative auditor shall provide to the contractor any information or data possessed by the legislative auditor, the department of social and rehabilitation services, and other agencies of state government that will facilitate the work of the contractor and the completion of the report.

(5) The legislative auditor shall report the results of the study to the legislature, the legislative finance committee, and the office of budget and program planning on or before October 1, 1996, in the manner required by law.

Section 2. Medical savings accounts — review of report — department to apply for waiver. (1) Upon completion of the study required by [section 1] and upon a determination of cost-effectiveness pursuant to subsection (2) of this section, the department of social and rehabilitation services

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shall design a medical savings account for the purchase of liability insurance most useful and cost-effective for medicaid recipients.

(2) Upon receipt of the report required under [section 1], the office of budget and program planning, after considering comments from tbe legislative finance committee, shall determine whether the purchase of disability insurance for participants in the Montana medicaid program, combined with the use of medical savings accounts for those recipients, is more cost-effective than the Montana medicaid program in effect on [the effective date of tbis act]. If, after reviewing the committee's comments, the office determines that the purchase of disability insurance and the use of medical savings accounte is more cost-effective, it shall inform the director of the department of social and rehabilitation services of that fact and the reasons for its determination.

(3) Upon receipt of the determination of the office of budget and program planning pursuant to subsection (2) or as soon thereafter as possible, the department of social and rehabilitation services sball apply to the United States health care financing administration for a waiver from the medicaid statutes or regulations, or both, to enable tbe department to implement the purchase of disability insurance for participants in the Montana medicaid program combined with use of a medical savings account for those participants. The department shall use as the basis for its waiver application the medical savings account designed pursuant to subsection (1).

Section 3. Effective date. [This act] is effective July 1, 1995.

Section 4. Termination. [This act] terminates Octeber 1, 1996.

Approved April 25, 1995

CHAPTER NO. 524

[HB 490]

AN ACT EXTENDING THE STATE EMPLOYEE PROTECTION ACT; CLARIFYING THE DEFINITION OF EMPLOYEE; AUTHORIZING ADDITIONAL SERVICE AS AN ALTERNATIVE TO BENEFITS UNDER THE STATE EMPLOYEE PROTECTION ACT FOR A MEMBER WHO IS INVOLUNTARILY TERMINATED FROM MEMBERSHIP BY A REDUCTION IN FORCE, ABOLISHMENT OR MERGER OF AN AGENCY, OR RESTRUCTURING OF STATE AGENCIES BY LEGISLATIVE ACTION; AMENDING SECTIONS 2-18-1202, 2-18-1203, 2-18-1204, AND 2-18-1205, MCA; REPEALING SECTION 11, CHAPTER 477, LAWS OF 1993; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-1202, MCA, is amended to read:

"2-18-1202. ~~(Temporary)~~ Definitions. As used in tbis part, the following definitions apply:

(1) "Agency" has the meaning provided in 2-18-101 but does not include the Montana university system.

(2) "Employee" means a person employed by the state who has achieved permanent status, as defined in 2-18-101, or ~~employed by the senate or house of representatives during the 53rd legislature for a period of at least 8 continuous weeks~~ *officers and employees of the legislative branch and teachers under the authority of the department of corrections and human services or department of family services who have been employed for at least 6 continuous months and who have waived benefits under the provisions of [House Bill No. 106].*

(3) "Privatization" means contracting with the private sector to provide a service normally or traditionally provided directly by an employee of an agency. ~~(Terminates July 1, 1995—sec. 11, Ch. 477, L. 1993.)~~"

Section 2. Section 2-18-1203, MCA, is amended to read:

"**2-18-1203. ~~(Temporary)~~ General protection — job register — seniority preference.** (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, ~~or~~ closure of or a reduction in force at an agency, *or other actions by the legislature* is entitled to:

(a) notice of announcements for jobs for which the employee may qualify that arise within the torminating agency or witbin state government. Notices must be provided by the state for a period of 1 year from tbe date of separation.

(b) access to any job retraining and career development programs provided by the state through the Job Training Partnership Act service delivery areas dislocated worker programs, provided that the employee begins participating in a program within 1 year after the elimination of the employee's position; and

(c) inclusion in a special job register from which all agencies, except an agency attempting to hire for a position exempt under 2-18-103 or 2-18-104, shall attempt to hire employees prior to seeking applications from tbe general public. The employee must be listed in the job register according to the occupational categories in which the employee is qualified for employment.

(2) (a) An agency attempting to bire from the job register shall consider the employee's qualifications and length of stato service. If two or more employees listed in the job register are equally qualified for a vacant position, the agency shall select the employee with the longest continuous state service.

(b) If there is not an employee listed on the job register who meets the job qualifications for the vacant position, the agency may hire a qualified external applicant or establish a training assignment, according to state policy. ~~(Terminates July 1, 1995—sec. 11, Ch. 477, L. 1993.)~~"

Section 3. Section 2-18-1204, MCA, is amended to read:

"**2-18-1204. ~~(Temporary)~~ Salary and benefits protection — employee transfer.** (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, ~~or~~ closure of or a reduction in force at an agency, *or other actions by the legislature* and who is subsequently transferred to a different position in a state agency is entitled to:

(a) the same hourly salary as previously received if the new position is at the same grade level *or higher* as the one previously held;

(b) retain all accrued sick leave credits;

(c) retain, cash out, or use accrued vacation leave credits to extend the employee's effective layoff date; and

(d) relocation expenses as provided in state policy.

(2) Relocation expenses must be paid by the hiring agency, and the funds expended by the hiring agency must be reimbursed from the funds appropriated for this purpose, *including those funds subject to transfer under the provisions of [section 6].* ~~(Terminates July 1, 1995—sec. 11, Ch. 477, L. 1993.)~~"

Section 4. Section 2-18-1205, MCA, is amended to read:

"**2-18-1205. ~~(Temporary)~~ Continuation of health insurance and employer contributions.** (1) During the period of unemployment as a result of privatization, reorganization of an agency, ~~or~~ closure of or a reduction in force at an agency, *or other actions by the legislature*, the employee is entitled to remain covered by the state's group health insurance plan and to the continuation of the employer's contribution to the employee's group health insurance for 6 months from the effective date of layoff or until the employee becomes employed, whichever occurs first. ~~This section does not apply to employees of the senate or house of representatives.~~

(2) For the purposes of this section, the term "agency" includes the Montana university system. ~~(Terminates July 1, 1995—sec. 11, Ch. 477, L. 1993.)~~"

Section 5. Additional service for member involuntarily terminated from membership service. (1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection (2) if:

(a) the employee is a member of the public employees', game wardens', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature on or after January 1, 1995, but before July 1, 1997; (c) the employee is eligible for a normal service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service that the member was qualified to purchase under 19-3-513, [sections 2 and 3 of House Bill No. 324], or 19-7-804. A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member te be unqualified to receive all or part of the additional service provided in this section.

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(3) A retired member who was involuntarily terminated because of a reduction in force on or after January 1, 1995, but before [the effective data of this act] and whose effective date of retirement was before [the effective date of this act] is eligible for the involuntary termination benefits described in this section if a properly completed application for those benefits is received by the division on or before June 1, 1995.

(4) Tbe board may allow an employer to pay the contributions required under subsection (2) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(5) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year forfeits the additional service. The employer's contribution to purchase that member's additional service, minus any retirement benefits already paid, must be refunded to the employer. As used in this subsection, the same jurisdiction means all agencies of the state, including the university system.

Section 6. Authority to transfer funding. When authorized by the approving authority, an agency may transfer appropriations from fiscal year 1995 to fiscal year 1996 and appropriations from fiscal year 1996 to fiscal year 1997 to fund the provisions of [this act].

Section 7. Appropriation. There is appropriated $39,408 from the general fund to tbe department of labor and industry for each of the fiscal years 1996 and 1997 to fund the job registry established in 2-18-1203.

Section 8. Repealer. Section 11, Chapter 477, Laws of 1993, is repealed.

Section 9. Codification instruction. [Section 5] is intonded to be codified as an integral part of Title 19, chaptor 2, part 7, and the provisions of Title 19, cbapter 2, part 7, apply to [section 5].

Section 10. Retroactive applicahility. [Section 5] applies retroactively, within the meaning of 1-2-109, to an employee involuntarily terminated from the stato or university system because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature on or after January 1, 1995.

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Termination. [Section 6] terminates July 1, 1997.

Approved April 21, 1995

CHAPTER NO. 525

[HB 504]

AN ACT REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES GOVERNING THE USE OF A PERSONAL

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ASSISTANT BY A PERSON WITH A DISABILITY; PROVIDING THAT THE ACTIONS OF A PERSONAL ASSISTANT ARE NOT SUBJECT TO REGULATION BY THE BOARD OF NURSING; PROVIDING DEFINITIONS; AND AMENDING SECTION 37-8-103, MCA.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 1] requires the department of social and rehabilitation services and the department of labor to adopt rules governing the use of personal assistants by persons with disabilities.

The legislature intends that the rules adopted by the departments allow a person with a disability or an immediately involved representative, such as a parent or guardian, to arrange for and direct the use of a personal assistant. The rules must allow the person with a disability to act as though the person is the employer, for the purposes of selection, management, and supervision, of the personal assistant in making the decisions of who to employ, terms of employment, length of employment, and other matters, although the personal assistant is the employee of another person or entity. Before a person with a disability would be allowed to act as though that person is the employer, the person must also have a plan of care approved by a physician or health care professional, stating what aspects of the disabled person's care the personal assistant may be assigned.

The contents of a plan of care must be addressed by rule and must include the individual's needs for personal assistance services, a plan for emergency back-up, and tasks assigned to the personal assistant. The plan of care may also address training, recruitment, and replacement of personal assistants and schedules for supervision and annual review of care by the health care professional.

Be it enacted by the Legislature of the State of Montana:

Section 1. Agencies to adopt rules governing personal assistant services. (1) Recognizing the importance of consumer control over personal assistance services in a self-directed service model, the legislature directs the department of social and rehabilitation services and the department of labor and industry to adopt administrative rules authorizing a person with a disability to act as though the person is the employer, for the purposes of selection, management, and supervision, of a personal assistant, although the personal assistant is the employee of another person or entity. The rules must reflect both the rights and protection guaranteed to workers under existing labor law and ensure that consumers of personal assistant services have day-to-day control, supervision, and direction over those services.

(2) As used in this section, the following definitions apply:

(a) "Ancillary services" means services ancillary to basic services provided to an individual in need of bome-based care who needs one or more of the following basic services:

(i) homemaker-type services, including but not limited to shopping, laundry, cleaning, and seasonal chores;

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(ii) companion-type services, including but not limited to transportation, letter writing, reading mail, assisting with alternative communication, and escort; and

(iii) assistance with cognitive tasks, including but not limited to managing finances, planning activities, prompting, and problem solving.

(b) "Basic services" includes assistance:

(i) getting in and out of bed, a wheelchair, or a motor vehicle; and

(ii) with routine bodily functions including:

(A) health maintenance activities;

(B) bathing and personal hygiene;

(C) dressing and grooming;

(D) feeding, including preparation and cleanup; and

(E) setup, use, and maintenance of assistive technologies.

(c) "Personal assistant services" means those basic and ancillary services that enable an individual in need of home-based care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care, and mobility.

(d) "Individual in need of home-based services" means an individual with a physical or mental impairment who requires assistance in completing functions of daily living, self-care, and mobility.

(3) The department of social and rehabilitation services is not required to provide personal care services as part of the medicaid program in a self-directed service model as described in this section unless the personal assistant is an employee of an entity willing to provide the protections guaranteed to workers under existing labor laws, including but not limited to the payment of workers' compensation and unemployment insurance premiums.

(4) This section does not prohibit the department of social and rehabilitation services from determining the amount, scope, and duration of the personal assistance services provided under the medicaid program, nor does this section mandate personal assistance services.

(5) Medical and related liability for personal care services provided pursuant to this section rests with the person directing the services.

Section 2. Section 37-8-103, MCA, is amended to read:

"**37-8-103. Exemptions — limitations on authority conferred.** (1) ~~No provisions of this law~~ *This chapter* may *not* be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one ~~such~~ engagement not to exceed 6 months in length, provided that person does not represent to the public that the person is a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency ~~thereof~~ *of the United States* while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents ~~thereof~~ *of the religion or denomination*;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent ~~such~~ *that the* care may be provided by a parent or guardian;

(i) the execution of a death sentence pursuant to 46-19-103; and

(j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the board.

(2) This chapter may not be construed:

(a) as conferring any authority to practice medicine, surgery, or any combination ~~thereof~~ *of medicine or surgery*;

(b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or

(c) to permit any person to undertake the treatment of disease by any of the methods employed in ~~those~~ *the healing* arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

(3) (a) This chapter may not be construed to apply to a personal assistant performing health maintenance activities and acting at the direction of a person with a disability.

(b) The following definitions apply to this subsection:

(i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician assistant-certified, nurse practitioner, registered nurse, or occupational therapist or a medical social worker working as a member of a case management team for the purposes of the home- and community-based services program of the department of social and rehabilitation services.

(ii) "Health maintenance activities" includes urinary systems management, bowel treatments, administration of medications, and wound care if the activities in the opinion of the physician or other health care professional for the person

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with a disability could be performed by the person if the person were physically capable and if the procedure may be safely performed in the home.

(iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [section 1].

Approved April 21, 1995

CHAPTER NO. 526

[HB 509]

AN ACT AUTHORIZING MERGERS AND CONSOLIDATIONS OF HEALTH CARE FACILITIES; AUTHORIZING IMPLEMENTATION OF COOPERATIVE AGREEMENTS, MERGERS, AND CONSOLIDATIONS OF PHYSICIANS; PROVIDING FOR ENFORCEMENT OF THE TERMS AND CONDITIONS OF CERTIFICATES OF PUBLIC ADVANTAGE AUTHORIZING COOPERATIVE, MERGER, OR CONSOLIDATION AGREEMENTS AMONG HEALTH CARE FACILITIES AND PHYSICIANS; ESTABLISHING FEES FOR APPLICATIONS FOR CERTIFICATES OF PUBLIC ADVANTAGE AND FOR REPORTS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 50-4-601, 50-4-602, 50-4-603, AND 50-4-611, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-4-601, MCA, is amended to read:

"50-4-601. Finding and purpose. The legislature finds that the goals of controlling health care costs and improving the quality of and access to health care will be significantly enhanced in some cases by cooperative agreements *and by mergers and consolidations* among health care facilities *and physicians licensed to practice medicine under Title 37, chapter 3.* The purpose of this part is to provide the state, through the authority, with direct supervision and control over the implementation of cooperative agreements, *mergers, and consolidations* among health care facilities *and physicians licensed to practice medicine under Title 37, chapter 3,* for which certificates of public advantage are granted. It is the intent of the legislature that supervision and control over the implementation of these agreements, *mergers, and consolidations* substitute state regnlation of facilities *and physicians licensed to practicc medicine under Title 37, chapter 3,* for competition between facilities *and physicians licensed to practice medicine under Title 37, chapter 3,* and that this regulation have the effect of granting the parties to the agreements, *mergers, or consolidations* state action immunity for actions that might otherwise be considered to be in violation of state or federal, or both, antitrust laws."

Section 2. Section 50-4-602, MCA, is amended to read:

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"50-4-602. **Cooperative agreements, *mergers, and consolidations* allowed.** *(1)* A health care facility may enter into a cooperative agreement with one or more health care facilities. *A health care facility may also merge or consolidate in whole or in part with one or more other health care facilities.*

(2) A physician licensed to practice medicine under Title 37, chapter 3, may enter into a cooperative agreement with one or more physicians licensed to practice medicine under Title 37, chapter 3."

Section 3. Section 50-4-603, MCA, is amended to read:

"50-4-603. **Certificate of public advantage — standards for certification — time for action by authority.** (1) Parties to a cooperative agreement, *merger, or consolidation* may apply to the authority for a certificate of public advantage. The application for a certificate must include a copy of the proposed or executed *cooperative, merger, or consolidation* agreement, a description of the scope of the cooperation, *merger, or consolidation* contemplated by the agreement, and the amount, nature, source, and recipient of any consideration passing to any person under the terms of the agreement.

(2) The authority shall hold a public hearing on the application for a certificate before acting upon the application. The authority may not issue a certificate unless the authority finds that the agreement is likely to result in lower health care costs or ~~in greater access to or quality of health care than would occur without the agreement~~ *is likely to result in improved access to health care or higher quality health care without any undue increase in health care costs.* If the authority denies an application for a certificate for an executed agreement, the agreement is void upon the decision of the authority not te issue the certificate. Parties to a void agreement may not implement or carry out the agreement. *The parties to a void agreement may submit a new application for a certificate based upon a cooperative agreement, merger, or consolidation different from the original application.*

(3) The authority shall deny the application for a certificate or issue a certificate within 90 days of receipt of a completed application *or within one 90-day extension, which may be granted by the authority upon a showing of good cause by the applicants. If the authority does not issue a certificate within that time, the application is considered to have been denied. A certificate may be issued subject to terms and conditions, as the authority may determine are appropriate, in order to best achieve lower health care costs or greater access to or quality of health care.*

(4) Any amendment to a cooperative, merger, or consolidation agreement and any material change in the operations or conduct of any party to a cooperative, merger, or consolidation agreement is considered to be a new agreement and may not take effect or occur until the authority has issued a new certificate of public advantage approving the amendment or change."

Section 4. Section 50-4-611, MCA, is amended to read:

"50-4-611. **Record of agreements to be kept.** The authority shall keep a copy of ~~cooperative~~ agreements for which a certificate is in effect pursuant to this part. A party to ~~a cooperative~~ *an* agreement who terminates the agreement

shall notify the authority in writing of the termination within 30 days after the termination."

Section 5. Enforcement by attorney general. The attorney general may bring an action in the name of the state against a person or persons to whom a certificate has been issued in order te enforce any terms or conditions imposed by the authority upon the issuance of the certificate, te enjoin the violation of the terms or conditions, or to enjoin any material violation of or deviation from the terms of the cooperative, merger, or consolidation agreement submitted te and approved by the authority. The action may be brought in the district court of any judicial district in which a person or persons to whom a certificate has been issued reside or maintain a principal place of business or, with the consent of the parties, in the district court of the first judicial district, Lewis and Clark County.

Section 6. Reports. If the authority issues a certificate of public advantage, the facilities or physicians to whom the certificate has been issued shall submit a report to the authority evaluating whether the cooperative, merger, or consolidation agreement submitted to and approved by the authority has been complied with during the preceding year and, if applicable, evaluating whether any terms and conditions imposed by the authority when it issued the certificate have been met or otherwise satisfied during the preceding year. The report must be submitted annually or more frequently if required by the authority. The authority shall in turn issue findings as to whether the terms and conditions are being met or otherwise satisfied. The authority shall keep copies of all reports and findings based on the reports.

Section 7. Fees — statutory appropriation. (1) The authority shall establish by rule fees to accompany the filing of an application for a certificate of public advantage and for a report required by [section 6]. The fees must be reasonably related to the costs of the authority in considering applications, evaluating reports, and performing other duties necessary te administer this part. The costs may include the retention of accounting, technical, and legal assistance that the authority considers necessary to process applications and reports. The authority shall maintain records sufficient to support the fees charged under this section.

(2) The fees must be deposited in an account in the special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, te the authority.

Section 8. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; *[section 7];* 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 9. Codification instruction. [Sections 5 through 7] are intended to be codified as an integral part of Title 50, chapter 4, part 6, and the provisions of Title 50, chapter 4, part 6, apply te [Sections 5 through 7].

Section 10. Coordination instruction. If House Bill No. 511 is passed and approved and if it amends 50-4-601, 50-4-603, 50-4-604, 50-4-609, 50-4-610, and 50-4-611 to transfer the responsibility for the certificates of public advantage to the department of justice, then any references to the Montana health care authority in this bill and in any new sections codified into Title 50, chapter 4, part 6, must be changed to a reference to the department of justice.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 25, 1995

CHAPTER NO. 527

[HB 533]

AN ACT RELATING TO HEALTH BENEFIT PLANS; PROVIDING FOR THE PORTABILITY OF HEALTH BENEFIT PLANS BY REQUIRING INSURERS

TO WAIVE CERTAIN TIME PERIODS APPLICABLE TO PREEXISTING CONDITIONS; REQUIRING CERTAIN INCREASES IN PLAN CHARGES TO BE DISTRIBUTED PROPORTIONATELY AMONG ALL PLANS OF AN INSURER; REQUIRING DISCLOSURE OF CERTAIN POLICY FEATURES AT OR BEFORE THE TIME OF APPLICATION; CREATING A LOW-COST UNIFORM HEALTH BENEFIT PLAN; CAPPING PREMIUM RATES ON CERTAIN CONVERSION POLICIES; AMENDING SECTIONS 33-22-101, 33-22-508, AND 33-30-1007, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [section 2], unless the context indicates otherwise, the following definitions apply:

(1) "Block of business" means an individual disability insurance policy certificate or contract filed and approved by the commissioner pursuant to 33-1-501 and written and sold by a health care insurer to a defined set of individuals. All individuals covered by the policy or contract are considered to be within the block of business.

(2) "Health care insurer" means a disability insurer, a health service corporation, a health maintenance organization, or a fraternal benefit society.

(3) (a) "Individual health benefit plan" means any hospital or medical expense policy or certificate, subscriber contract, or contract of insurance provided by a prepaid hospital or medical service plan or health maintenance organization subscriber contract and issued for delivery to an individual.

(b) Individual health benefit plan does not include a self-funded group health plan; a self-funded multiemployer group health plan; a group conversion plan; an insured group health plan; accident only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, medicare supplement, long-term care, or disability income insurance; coverage issued as a supplement to liability insurance; workers' compensation or similar insurance; or automobile medical payment insurance.

(4) "Qualifying previous coverage" means benefits or coverage provided under:

(a) medicare or medicaid;

(b) group health insurance or a health benefit plan that provides benefits similar to or exceeding benefits provided under the plan being applied for; or

(c) an individual health benefit plan, including coverage issued by a health maintenance organization, a prepaid hospital or medical care plan, or a fraternal benefit society, that provides benefits similar to or exceeding the plan being applied for.

Section 2. Waiver of preexisting condition exclusion. A health care insurer shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in an individual health benefit plan for the period of time that an individual was previously covered by qualifying previous coverage that provided benefits with respect to

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those services, if the qualifying previous coverage was continuous to a dato not more than 30 days prior to the date of application for new coverage.

Section 3. Premium increases to be distributed proportionately. (1) A health care insurer may increase the health benefit plan charges for an individual policy, certificate, or contract previously issued by that insurer because of a change in the attained age of the insured. Increases in premium, certificate, or contract charges for individual policies, certificates, or contracte previously issued by that insurer, based on facters other than attained age, must be distributed proportionately across the block of busines as defined in [section 1].

(2) As used in this section, the following definitions apply:

(a) (i) "Health benefit plan" means a hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract.

(ii) Health benefit plan does not include:

(A) accident only, credit, dental, vision, specified disease, medicare supplement, long-term care, or disability income insurance;

(B) coverage issued as a supplement to liability insurance, workers' compensation insurance, or similar insurance; or

(C) automobile medical payment insurance.

(b) "Health care insurer" or "insurer" means a disability insurer, a health service corporation, a health maintenance organization, or a fraternal benefit society.

(3) The provisions of Title 33, chapter 1, parts 3 and 7, apply to this section.

Section 4. Section 33-22-101, MCA, is amended to read:

"**33-22-101. Exceptions to scope.** Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, *[section 3],* 33-22-125, 33-22-130 through 33-22-132, and 33-22-304, do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracta or supplemental contracts that contain only those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

Section 5. Disclosure standards — individual policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, an individual disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time the application is made.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

(b) a general description of the insured's financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

(c) a statement of the maximum lifetime benefit available under the policy;

(d) a statement of the estimated periodic premium to be paid by the insured;

(e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant; and

(f) a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) The outline of coverage may include any other information that the insurer considers relevant to the applicant's selection of an appropriate individual disability policy.

(4) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

Section 6. Disclosure standards — group policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, a group disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time the application is made.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

(b) a general description of the insured's financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

(c) a statement of the maximum lifetime benefit available under the policy;

(d) a statement of the estimated periodic premium to be paid by the insured;

(e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant; and

(f) a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) If applicable, the outline of coverage must disclose that the policy does not contain coverage for mental illness or chemical dependency.

(4) The outline of coverage may include any other information that the insurer considers relevant to the applicant's selection of an appropriate group disability policy.

(5) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

Section 7. Disclosure standards — health maintenance organizations. (1) In order to provide for full and fair disclosure in the sale of disability insurance, an enrollment form or evidence of coverage may not be delivered or issued for delivery in this state by a health maintenance organization unless an outline of coverage is delivered to the applicant at the time the application is made. The outline of coverage must be filed with the commissioner as required by 33-1-501.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

(b) a general description of the insured's financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

(c) a statement of the maximum lifetime benefit available under the policy;

(d) a statement of the estimated periodic premium to be paid by the insured;

(e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant; and

(f) a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) The outline of coverage may include any other information that the insurer considers relevant to the applicant's selection of an appropriate health benefit plan.

(4) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

Section 8. Uniform health benefit plan — individual. (1) Each insurer or health service corporation delivering or issuing for a delivery in this state a health benefit plan, as defined in [section 3], to an individual shall make available a uniform health benefit plan providing the benefits and services required in subsection (2).

(2) The uniform health benefit plan must:

(a) provide coverage for the services and articles required by 33-22-1521(2);

(b) pay 50% of the covered expenses in excess of an annual deductible that may not exceed $1,000 per person or $2,000 per family;

(c) include a limitation of $5,000 per person or $7,500 per family on the total annual out-of-pocket expenses for services covered; and

(d) be subject to a maximum lifetime benefit of $1 million.

Section 9. Uniform health benefit plan — group. (1) Each insurer or health service corporation delivering or issuing for a delivery in this state a health benefit plan, as defined in [section 3], to a group shall make available a uniform health benefit plan providing the benefits and services required in subsection (2).

(2) The uniform health benefit plan must:

(a) provide coverage for the services and articles required by 33-22-1521(2);

(b) pay 50% of the covered expenses in excess of an annual deductible that may not exceed $1,000 per person or $2,000 per family;

(c) include a limitation of $5,000 per person or $7,500 per family on the total annual out-of-pocket expenses for services covered; and

(d) be subject to a maximum lifetime benefit of $1 million.

Section 10. Uniform health benefit plan — health maintenance organization. Each health maintenance organization delivering or issuing for a delivery in this state an enrollment form or evidence of coverage shall make available a uniform health benefit plan [providing benefit equivalency and benefit value, as defined in section 1 of House Bill No. 466] comparable to the uniform health benefit plan required in [section 8(2)].

Section 11. Section 33-22-508, MCA, is amended to read:

"**33-22-508. Conversion on termination of eligibility.** (1) A group disability insurance policy issued or renewed after October 1, 1981, must contain a provision that if the insurance or any portion of it on a person, ~~his~~ *a person's* dependents, or family members covered under the policy ceases because of termination of ~~his~~ *the person's* employment or of ~~his~~ *the person's* membership in the class or classes eligible for coverage under the policy or as a result of ~~his~~ *a*

person's employer discontinuing ~~his~~ *the employer's* business or as a result of ~~his~~ *a person's* employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan and if the person had been insured for a period of 3 months and ~~he~~ *the person* is not insured under another major medical disability insurance policy or plan, ~~he~~ *the person* is entitled to have issued to ~~him~~ *the person* by the insurer, without evidence of insurability, group coverage or an individual policy issued by the insurer or, in the absence of an individual policy issued by the insurer, a group policy issued by the insurer, of hospital or medical service insurance on ~~himself~~ *the person*, ~~his~~ *or the person's* dependents, or family members if application for the individual policy is made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity. *In addition, the insurer shall make available a conversion policy as required by subsection (4).*

(3) The premium on the individual policy or group policy must be at *no more than 200% of* the insurer's then customary rate applicable to the coverage of the individual or group policy. *The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.*

(4) The insurer shall make available an individual conversion policy that provides the level of benefits provided by the insurer's lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under part 18, the insurer shall make available an individual conversion policy that provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan."

Section 12. Section 33-30-1007, MCA, is amended to read:

"**33-30-1007. Conversion on termination of eligibility.** (1) The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his *or a person's* dependents, or family members covered under the policy ceases because of termination of his *the person's* employment or of ~~his~~ *a person's* membership in the class or classes eligible for coverage under the policy, as a result of an employer discontinuing ~~his~~ *the employer's* business, or as a result of an employer discontinuing the policy issued by the health service corporation and not providing for any other group disability insurance or plan, ~~such~~ *a* person shall, provided ~~he~~ *that the person* has been insured for a period of 3 months and that ~~he~~ *the person* is not insured under another major medical disability insurance policy or plan, be entitled to have issued to ~~him~~ *the person* by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on ~~himself~~ *the person*, ~~his~~ *or the person's* dependents, or family members~~, provided application~~. *Application* for the individual policy ~~shall~~ *must* be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy shall, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with

the exception of those whose eligibility is determined by their affiliation other than by employment with a particular entity. *In addition, the health services corporation shall make available a conversion policy as required by subsection (4).*

(3) The premium on the individual policy ~~shall~~ *must* be at *no more than 200% of* the insurer's then customary rate applicable to the coverage of the individual policy ~~but may not be greater than 150% of the insurer's highest group rate for a policy with the same benefits as the conversion policy~~. *The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.*

(4) The health service corporation shall make available an individual conversion policy that provides the level of benefits provided by its lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under chapter 22, part 18, the insurer shall make available an individual conversion policy that provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan."

Section 13. Coordination instruction. If House Bill No. 466 is passed and approved, then the bracketed language in [section 10], referring te benefit equivalency and benefit value, must be codified.

Section 14. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 33, chapter 22, part 2, and the provisions of Title 33, chapter 22, part 2, apply to [section 3].

(3) [Sections 5 and 8] are intended to be codified as an integral part of Title 33, chapter 22, part 2, and the provisions of Title 33, chapter 22, part 2, apply to [sections 5 and 8].

(4) [Sections 6 and 9] are intended to be codified as an integral part of Title 33, chapter 22, part 5, and the provisions of Title 33, chapter 22, part 5, apply to [sections 6 and 9].

(5) [Sections 7 and 10] are intended to be codified as an integral part of Title 33, chapter 31, part 3, and the provisions of Title 33, chapter 31, part 3, apply to [sections 7 and 10].

Section 15. Applicability. [This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after [the effective date of this act].

Section 16. Effective date. [This act] is effective January 1, 1996.

Approved April 25, 1995

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CHAPTER NO. 528

[HB 540]

AN ACT GENERALLY REVISING THE MONTANA YOUTH COURT ACT; AND AMENDING SECTIONS 40-6-233, 41-3-102, 41-5-102, 41-5-304, 41-5-306, 41-5-403, 41-5-514, 41-5-522, 41-5-604, 41-5-802, AND 41-5-811, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-6-233, MCA, is amended to read:

"**40-6-233. Remedy for parental abuse.** The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child or by its relative within the third degree or by the county commissioners of the county where the child resides. When the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced. *A parent or guardian of a child has the right to give the child medicine prescribed for the child, and exercise of the right is not an abuse of parental authority.*"

Section 2. Section 41-3-102, MCA, is amended to read:

"**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; a staff person providing care in a day-care facility; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) ~~Nothing in this~~ *This* chapter may *not* be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in subsection (8); or

(ii) threatened harm to a child's health or welfare, as defined in subsection (15).

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(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self defense, defense of others, or action taken to prevent the child from self harm that does not constitute harm to a child's health or welfare.

(6) "Department" means the department of family services provided for in 2-15-2401.

(7) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has been transferred to a licensed agency.

(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest te the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(9) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

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(10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(14) "Social worker" means an employee of the department whose duties generally involve the provision of either child or adult protective services, or both.

(15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(16) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication), that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication), to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who bas been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply tbat treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section."

Section 3. Section 41-5-102, MCA, is amended to read:

"41-5-102. Declaration of purpose. The Montana Youth Court Act ~~shall~~ *must* be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to ~~remove from youth committing violations of the law the element of retribution and to substitute therefor~~ *prevent and reduce youth delinquency through immediate, consistent, enforceable, and avoidable consequences of youths' actions and to establish* a program of supervision, care, rehabilitation, *detention, competency development, community protection,* and, in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of *subsections* (1) and (2) ~~of this section~~ in a family environment whenever possible, separating the youth from ~~his~~ *the* parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair, *accurate* hearing and recognition and enforcement of their constitutional and statutory rights."

Section 4. Section 41-5-304, MCA, is amended to read:

"41-5-304. Investigation, fingerprints, and photographs. (1) All law enforcement investigations relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged ~~would constitute~~ *is* a felony ~~if the act had been committed by an adult~~.

(3) Fingerprint records and photographs may be used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation."

Section 5. Section 41-5-306, MCA, is amended to read:

"41-5-306. Place of shelter care or detention. (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

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(a) in a licensed youth foster home as defined in 41-3-1102;

(b) in a facility operated hy a licensed child welfaro agency;

(c) in a licensed youth group home as defined in 41-3-1102; or

(d) under home arrest, either in the youth's own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.

(2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in subsection (1) and may not be placed in a jail or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in:

(a) the facilities described in subsection (1);

(b) under home arrest as provided in subsection (1);

(c) a short-term detention center; ~~or~~

(d) a youth detention facility*; or*

(e) a community youth court program."

Section 6. Section 41-5-403, MCA, is amended to read:

"**41-5-403. Disposition permitted under informal adjustment — contributions by parents or guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and as determined by the department;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth as determined by the department;

(d) restitution upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of ~~the parents or legal guardian~~ *the parents, legal guardian, or persons contributing to the youth's delinquency or need for supervision* to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; ~~however~~ *However*, the ability of the victim or ~~his~~ *the victim's* insurer to stand any loss may not be considered in any case.

(3) If the youth violates an aftercare agreement as provided for in 52-5-126, ~~he~~ *the youth* must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under informal adjustment.

(4) If the youth is placed in substitute care requiring payment by the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other bealth care.

(5) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

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(7) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 7. Section 41-5-514, MCA, is amended to read:

"**41-5-514. Admissibility of confession or illegally seized evidence.** In a proceeding alleging a youth to be a delinquent youth:

(1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; ~~and~~

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence; *and*

(4) upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs."

Section 8. Section 41-5-522, MCA, is amended to read:

"**41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, ~~his~~ *the youth's* family, ~~his~~ *the youth's* environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination ~~shall~~ *must* be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of ~~such~~ *the* examination ~~shall~~ *must* be included in the social summary or predisposition report. The youth~~, his~~ *or the youth's* parents, guardian, or counsel ~~shall have~~ *has* the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and ~~shall have~~ *has* the right to cross-examine ~~said~~ *the* parties at the dispositional hearing.

(3) Defense counsel ~~shall~~ *must* be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing ~~shall~~ *must* be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of tho case best serving the interests of the youth and the public. ~~Such~~ *The* evidence ~~shall~~ *must* include but *is* not ~~be~~ limited to the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth~~,~~ ~~his~~ *or the youth's* parents~~,~~ or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any otber evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of ~~the parents or legal guardian~~ *the parents, legal guardian, or those that contributed to the youth's delinquency or need for supervision* to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim~~;~~. ~~however~~ *However*, the ability of the victim or ~~his~~ *the victim's* insurer to stand any loss may not be considered in any case."

Section 9. Section 41-5-604, MCA, is amended to read:

"**41-5-604. Disposition of records.** (1) All youth court records and law enforcement records except fingerprints and photographs pertaining to a youth coming under this chapter ~~shall~~ *must* be physically sealed ~~when the youth reaches the age of 18 years~~ *3 years after supervision for an offense ends. The records may be unsealed if a new offense is committed.*

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the ~~above~~ records and files ~~shall~~ *must* be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records ~~so~~ *that are* sealed shall also seal or destroy ~~such~~ *the* copies of records. Anyone violating the provisions of this subsection ~~shall be~~ *is* subject to contempt of court.

(4) ~~Nothing herein contained shall~~ *This section does not* prohibit the destruction of ~~such~~ records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall~~ *may* not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601."

Section 10. Section 41-5-802, MCA, is amended to read:

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"41-5-802. **Shelter care facilities.** (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility ~~must be physically unrestricting and~~ may be used to provide ~~shelter care~~ *an appropriately physically restricting setting* for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(3) A shelter care facility must be ~~separate and apart~~ *physically separated* from any facility housing adults accused or convicted of criminal offenses.

(4) State appropriations and federal funds may be received by the counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(5) A shelter care facility must be furnished in a comfortable manner ~~and be as nearly as possible like a family home~~.

(6) A shelter care facility may be operated in conjunction with a youth detention facility."

Section 11. Section 41-5-811, MCA, is amended to read:

"41-5-811. **Regional detention facilities.** (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-810 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility ~~must be for a term of not less than 10 years. In addition, the contracts~~ must:

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility;

(d) include the applicable per diem charge for the detention of youths in the facility, as well as the basis for any adjustment in the charge; and

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(e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility."

Approved April 25, 1995

CHAPTER NO. 529

[HB 550]

AN ACT PROVIDING IMPROVED TAXPAYER SERVICE TO BUSINESSES BY STREAMLINING AND SIMPLIFYING WAGE-BASED REPORTING FOR WITHHOLDING TAX, UNEMPLOYMENT INSURANCE TAX, AND OLD FUND LIABILITY TAX; PROVIDING A UNIFORM DEFINITION OF INDEPENDENT CONTRACTOR; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-211, 15-1-701, 15-1-704, 15-1-708, 15-2-201, 15-30-201, 15-30-303, 39-51-1105, 39-51-1303, 39-51-1304, AND 39-71-2503, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY PROVISIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-201, MCA, is amended to read:

"15-30-201. **Definitions.** When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision ~~thereof~~ *of the state* or any agency or instrumentality of the United States, the state of Montana, or a political suhdivision ~~thereof~~ *of them*. The term "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person; ~~except that~~ *However*, if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "employer" means the person having control of the payment of wages.

(4) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

~~(4)~~*(5)* "Wages" means all remuneration, ~~(~~other than fees paid to a public official~~)~~, for services performed by an employee for ~~his~~ *the* employer, including

the cash value of all remuneration paid in any medium other than cash, except that the term does not include remuneration paid:

(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter hy an employee unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection ~~(4)(d)~~ *(5)(d)*, an individual is considered to be regularly employed hy an employer during a calendar quarter only if:

(i) on each of 24 days during a quarter the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, (as determined under subsection ~~(4)(d)(i)~~ *(5)(d)(i)*), by the employer in the performance of service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed hy a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold ~~by him~~ at a fixed price, ~~his~~ *the* compensation being based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged ~~to him~~, whether or not ~~he~~ *the individual* is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when the payments are in the form of lodgings or meals and the services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which henefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

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(j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

(k) as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(l) by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection ~~(4)(k)~~ *(5)(k)* terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 2. Section 15-1-211, MCA, is amended to read:

"15-1-211. Uniform tax review procedure — notice — appeal. (1) The department of revenue shall provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

(a) The tax review procedure described in this section applies to all taxes administered by the department *and to all issues arising from the administration of taxes,* except inheritance taxes, estate taxes, ~~and~~ property taxes, *and the issue of whether an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor.* The procedure applies to any revised assessment of centrally assessed property taxed pursuant to chapter 23.

(b) The term "taxpayers", as used in this section, includes all persons determined by the department to have a potential tax liability.

(2) (a) If the department determines that a request for a refund should be denied in whole or part, it shall notify the taxpayer of the determination. If the department determines that a person has failed to pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the running of any applicable statute of limitations regarding the assessment of the tax.

(b) A notice under this section must clearly state:

(i) the reasons for the department's determination that a refund is not due or that tax plus interest and penalty, if any, is due;

(ii) the taxpayer's right to a review by the department, ~~and his~~ *the taxpayer's* right to appeal after a final department decision, *and the taxpayer's right to a review of determinations by the department of labor and industry and board of labor appeals of whether an employer-employee relationship existed between the taxpayer and certain individuals or whether the employment relationship was that of an independent contractor*;

(iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right to contest the department's determination under this section or to file an appeal with the state tax appeal board;

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(iv) that the taxpayer has 30 days to either notify the department in writing that ~~he~~ *the taxpayer* does not agree with an assessment or pay the amount assessed;

(v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless he *the taxpayer* notifies the department that ~~he~~ *the taxpayer* disagrees with an assessment or pays within 30 days; and

(vi) that the notice stops the running of the statute of limitations regarding the assessment of the tax.

(3) (a) A taxpayer shall notify the department, in writing, that ~~he~~ *the taxpayer* objects to the determination within 30 days from the date the notice is mailed. The notification by the taxpayer is not required to specify the reasons for the disagreement or be in any particular form *unless the taxpayer is objecting to a determination that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2.* If the taxpayer does not notify the department within 30 days:

(i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

(ii) the taxpayer waives any further right to review under this section or to appeal to the state tax appeal board; and

(iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) *(i)* A taxpayer who notifies the department pursuant to subsection (3)(a) that ~~he~~ *the taxpayer* disagrees with a tax assessment shall present ~~his~~ *the* objections, the reasons for ~~his~~ *the* objections, and any other information to the administrator of the division, that administers the tax or to ~~his~~ *the administrator's* designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

(ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer disagrees with the department's determination that an employer-employee relationship existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter 30, part 2, must be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2403 and 39-51-2410.

(c) Within 60 days after the taxpayer has presented his objections, as provided in subsection (3)(b), the administrator or ~~his~~ *a* designee shall issue a written decision addressing the taxpayer's objections and describing the reasons for the determination. The administrator's decision must also clearly set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director of revenue.

(4) (a) A taxpayer shall notify the department in writing that ~~he~~ *the taxpayer* objects to the administrator's decision within 30 days from the date that the decision is mailed, or ~~he~~ *the taxpayer* may appeal to the state tax appeal board

as provided in subsection (6). If an objection is not made within 30 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer waives any further right to review or appeal and a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision pursuant to subsection (4)(a) shall present ~~his~~ *the taxpayer's* objections, ~~his~~ *the* reasons for the objections, and any other information to the director of revenue or ~~his~~ *the director's* designee within 60 days after the notice referred to in subsection (4)(a) is mailed. The director or ~~his~~ *the* designee may consider written information, hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana Administrative Procedure Act.

(c) Within 60 days after the taxpayer has presented ~~his~~ *the* objections, the director or ~~his~~ *the* designee shall issue a written decision addressing the objections and describing the reasons for the decision. The director's decision is the final decision and assessment of the department.

(5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by the board or, if further appeals are filed, by the appropriate court. However, any interest required by law must continue to accrue.

(6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the department.

(b) If the director notifies the board within 30 days after an appeal is filed that ~~he~~ *the director* has not had an opportunity to review the administrator's decision and ~~he~~ *the director* believes *that* a review may be helpful in resolving the controversy, the board shall stay the appeal for a time the board considers reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide ~~his~~ *the taxpayer's* objections and reasons for ~~his~~ *the* objections to the director so that the director or ~~his~~ *the director's* designee may review the controversy and issue a decision within the period of the stay granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal resumed.

(7) The time limits in this section must be applied and interpretod as provided in Rule 6 of the Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by mutual consent of the department and the taxpayer. The department shall consent to all reasonable requests for extension of deadlines.

(8) (a) The director of revenue or ~~his~~ *the director's* designee is authorized to enter into an agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department for any taxable period.

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(b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

Section 3. Section 15-2-201, MCA, is amended to read:

"**15-2-201. Powers and duties.** (1) It ~~shall be~~ *is* the duty of the state tax appeal board to:

(a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it ~~shall be~~ *is* the duty of all invited county tax appeal board members to attend if possible, and the cost of their attendance ~~shall~~ *must* be paid from the appropriation of the state tax appeal board;

(b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(2) to hear an appeal.

(c) hear appeals from decisions of the county tax appeal boards;

(d) hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, *except determinations that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2,* and penalties.

(2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or ~~his~~ *the member's* agent. ~~In case any~~ *If a* witness ~~shall fail to~~ *does not* obey ~~any~~ *a* summons to appear before ~~said~~ *the* board or ~~shall refuse~~ *refuses* to testify or answer any material questions or to produce records, books, papers, or documents when required to do so, ~~such~~ *that* failure or refusal ~~shall~~ *must* be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for ~~such~~ *the* neglect or refusal. ~~Any~~ *A* person who ~~shall testify~~ *testifies* falsely in any material matter under consideration by the board ~~shall be~~ *is* guilty of perjury and punished accordingly. Witnesses attending shall receive ~~like~~ *the same* compensation as witnesses in the district court. ~~Such~~ *The* compensation ~~shall~~ *must* be charged to the proper appropriation for the board.

(3) The state tax appeal board ~~shall~~ also ~~have~~ *has* the duties of an appeal board relating to ~~such~~ other matters as may be provided by law."

Section 4. Determination of employer status. A final determination by either the department of labor and industry or the board of labor appeals that an employer-employee relationship existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter 30, part 2,

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which may be subject to judicial review, as provided in 39-51-2404, at the discretion of the taxpayer, is not subject to any further administrative or judicial challenge in any proceeding before or with the department of revenue concerning a determination of the proper amount of state income tax withholding and old fund liability tax to be paid.

Section 5. Section 15-30-303, MCA, is amended to read:

"**15-30-303. Confidentiality of tax records.** (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent te the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding $1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state,

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the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing *taxpayer return* information *and information* from employers' payroll withholding reports to:

(a) the department of labor and industry to *be used for the purpose of investigation and prevention of noncompliance, tax evasion,* ~~prevent and detect~~ fraud, and abuse under the unemployment ~~compensation program~~ *insurance laws*; or

(b) the state fund to *be used for the purpose of investigation and prevention of noncompliance,* ~~prevent and detect~~ fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish te the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) te the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The

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information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation the ratio of gross farm income to total gross income based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223, provided that notice to the applicant has been given as provided in 15-70-223. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns."

Section 6. Section 39-71-2503, MCA, is amended to read:

"39-71-2503. Workers' compensation old fund liability tax. (1) (a) There is imposed on each employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding week.

(b) There is imposed on each employee, except workers engaged in the rail industry who are under the jurisdiction of the federal railroad administration, United States department of transportation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages in the preceding calendar quarter.

(c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager.

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal,

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premium, and interest that must be paid during that period on the outstanding loans or bonds.

(g) Each employer shall maintain the records the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails te withhold from an employee's wages or fails to remit to the state the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the stete the old fund liability tax required by this section.

(2) All collections of the tax must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter and in addition shall remit withholdings for employees' old fund liability taxes at the same time.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings for employees' old fund liability taxes at the same time.

(c) Tax payments required by subsections (1)(a) and (1)(b) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(d) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department sball first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounta due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating te that amount.

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(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry *for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws* under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall~~, on July 1, 1991, or as soon after that date as possible,~~ give the department a list of all employers having coverage under any plan administered or regulatod by the department of labor and industry and the state fund. ~~After the lists have been given to the department, the~~ *The* department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

Section 7. Section 15-1-701, MCA, is amended to read:

"**15-1-701. Warrant for distraint.** (1) A warrant for distraint is an order, under the official seal of the department of revenue or of the department of transportation, directed to a sheriff of a county of Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal property of the delinquent taxpayer locatod in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, *except that the department may enforce the judgment lien at any time within 10 years of its creation or effective date, whichever is later.*

(3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant."

Section 8. Section 15-1-704, MCA, is amended to read:

"**15-1-704. Filing with district court.** (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

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(3) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the provisions of 25-13-102."

Section 9. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid taxes by civil action. (1) If, after due notice, any employer, *liable corporate officer or employee, or liable member or manager of a limited liability company referred to in 39-51-1105* defaults in any payment of taxes, penalties, or interest ~~thereon~~ *on the taxes and penalties*, the department may at its discretion initiate a civil action in the name of the Montana department of labor and industry to collect the amount due, and the employer adjudged in default shall pay the costs of ~~such~~ *the* action.

(2) An action for the collection of taxes due must be brought within 5 years after the due date of ~~such~~ *the* taxes or it is barred.

(3) The department may pursue its remedy under either this section or 39-51-1304, or both."

Section 10. Section 39-51-1304, MCA, is amended to read:

"39-51-1304. Lien for payment of unpaid taxes — levy and execution. (1) Unpaid taxes, including penalties and interest assessed ~~thereon~~ *on the taxes*, have the effect of a judgment against the employer, *or liable corporate officer or employee or liable member or manager of a limited liability company referred to in 39-51-1105*, arising at the time ~~such~~ *that the* payments are due. The department may issue a certificate setting forth the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment ~~pursuant to Title 25, chapter 13, except that the~~ *through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The* department may enforce the judgment at any time within 10 years of the creation of the lien *or the effective date of the lien, whichever is later.*

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the provisions of 25-13-102.

~~(2)~~*(3)* The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

~~(3)~~*(4)* A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the

provisions of 39-51-3204, the department may proceed against the employer, *liable corporate officer or employee, or liable member or manager of a limited liability company referred to in 39-51-1105* under ~~this section or~~ 39-51-1303 *or this section*, or both, to collect the delinquent taxes, penalties, and interest.

~~(4)~~*(5)* The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

Section 11. Section 15-1-708, MCA, is amended to read:

"15-1-708. Release of lien. (1) Upon payment in full of the unpaid tax plus penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

(3)(a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the taxes and penalties, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the state auditor for collection as provided in 17-4-104.

(b) Subject to approval by the department, reasonable fees or costs of collection incurred by the state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the state auditor. If less than the full amount of the debt is collected, the state auditor shall retain only a proportionate share of the collection fees or costs."

Section 12. Section 39-51-1105, MCA, is amended to read:

"39-51-1105. Liability of corporate officers *or employees* for taxes, penalties, and interest owed by corporation. ~~When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state as required by law the department shall hold the president, vice-president, secretary, and treasurer jointly and severally liable for any taxes, penalties, and interest due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the taxes, penalties, and interest thereafter accruing.~~ *(1) The officer or employee of a corporation whose duty it is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties, and interest due.*

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(2) (a) The department shall consider the officer or employee of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the individual:

(i) possessed the authority, duty, and responsibility to file reports and pay taxes on behalf of the corporation;

(ii) possessed the authority on behalf of the corporation to direct the filing of reports and payment of taxes; or

(iii) possessed the fiscal authority on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the authority that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes, penalties, and interest unpaid by the corporation.

(4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a member-managed limited liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending to each member.

(5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable for any taxes, penalties, and interest owed."

Section 13. Collection of unpaid taxes, penalties, and interest by offset. (1) To collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the debtor from the state, except wages subject to the provisions of 25-13-614 and retirement benefits. The department, through the state auditor's office, shall provide the debtor with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the stato auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the state auditor. If less than the full amount of the debt is collected, the state auditor shall retain only a proportionate share of the collection fees or costs.

(3) The department may file a claim for state funds on behalf of the employer if a claim is required before funds are available for offset.

(4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being transferred for offset.

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Section 14. Appropriation. (1) There is appropriated $68,750 from the unemployment insurance administrative tax funds te the department of revenue for the hiennium ending June 30, 1997, for a cost-henefit analysis to determine the feasibility of integrating employer wage reporting and related functions.

(2) Tbere is appropriated $56,250 from tbe workers' compensation tax account to the department of revenue for the biennium ending June 30, 1997, for a cost-benefit analysis to determine the feasibility of integrating employer wage reporting and related functions.

(3) There is appropriated $125,000 from the unemployment insurance penalty and interest account established by 39-51-1301 to the department of labor and industry for the biennium ending June 30, 1997, for a cost-benefit analysis to determine the feasibility of integrating employer wage reporting and related functions.

Section 15. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply te [section 4].

(2) [Section 13] is intended to be codified as an integral part of Title 39, chapter 51, part 13, and the provisions of Title 39, chapter 51, part 13, apply to [section 13].

Section 16. Coordination. (1) If House Bill No. 100 is passed and approved and if it includes a section that amends 39-51-1105, then the section of House Bill No. 100 that amends 39-51-1105 is void.

(2) If House Bill No. 563 is passed and approved transferring debt collection from the state auditor to tbe department of administration, then the reference to "state auditor" in 15-1-708(3)(a) of [this act] is changed to "department of administration" and any reference to "state auditor" in 17-4-103 is changed to "department".

Section 17. Applicability. (1) [Sections 7 througb 10] apply, respectively, to warrants of distraint filed by the department of revenue and certificates of lien filed by tbe department of labor and industry on or after July 1, 1996.

(2) [Section 12] applies to debts incurred on or after July 1, 1996.

Section 18. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Sections 2 through 4] are effective July 1, 1996.

(3) [Section 14] is effective July 1, 1995.

Approved April 25, 1995

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CHAPTER NO. 530

[HB 574]

AN ACT GENERALLY REVISING LIQUOR LAWS; PROVIDING FOR THE CONVERSION OF EMPLOYEE-OPERATED STATE LIQUOR STORES TO AGENCY LIQUOR STORES; PROVIDING THAT ELIGIBLE STATE LIQUOR STORE EMPLOYEES HAVE A RIGHT OF FIRST REFUSAL IN BECOMING AGENTS FOR THE CONVERTED STORES; PROVIDING FOR THE PURCHASE OF LIQUOR ASSETS IN STORES BY THE AGENTS OPERATING THE STORES OVER AN 18-MONTH PERIOD; PROHIBITING NEW AGENCY LIQUOR STORES FOR 4 YEARS IN CITIES OR TOWNS THAT HAD AN AGENCY LIQUOR STORE IN 1994; PROVIDING FOR A STATE LIEN ON LIQUOR IN AGENCY LIQUOR STORES; PROHIBITING A PERSON FROM HAVING AN OWNERSHIP INTEREST IN MORE THAN ONE AGENCY LIQUOR STORE; PROHIBITING AN OWNERSHIP INTEREST IN AN AGENCY LIQUOR STORE BY A PERSON HAVING ANOTHER TYPE OF LIQUOR LICENSE; PROVIDING FOR A BONUS PAYMENT FOR CERTAIN STATE LIQUOR DIVISION EMPLOYEES WHO REMAIN IN EMPLOYMENT DURING THE CONVERSION PROCESS; AMENDING LAWS RELATING TO TABLE WINE TO CLARIFY THE DISTRIBUTION AND SALE OF TABLE WINE IN RELATION TO AGENCY LIQUOR STORES; PROVIDING FOR THE CONTRACTUAL AND OTHER ADMINISTRATION OF AGENCY LIQUOR STORES; INCREASING THE CASE DISCOUNT ON THE SALE OF LIQUOR TO 8 PERCENT AND LIMITING THE DISCOUNT TO ALCOHOLIC BEVERAGE LICENSEES; PROVIDING THAT AGENCY STORES MAY BE OPEN ON MONDAYS IF A MAJORITY OF THE ALL-BEVERAGES LICENSEES IN THE AGENCY'S MARKET AREA AGREE; AMENDING SECTIONS 2-17-101, 16-1-103, 16-1-105, 16-1-106, 16-1-301, 16-1-302, 16-1-303, 16-1-304, 16-1-402, 16-2-101, 16-2-104, 16-2-105, 16-2-106, 16-2-107, 16-2-108, 16-2-201, 16-2-301, 16-3-103, 16-3-106, 16-3-307, 16-3-401, 16-3-402, 16-3-403, 16-3-411, 16-4-105, 16-4-401, 16-6-107, 16-6-303, 17-8-244, AND 30-9-104, MCA; REPEALING SECTIONS 16-2-302 AND 16-2-303, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Eligible state employee. As used in [sections 1 through 8], "eligible state employee" means a state employee who worked 544 hours either in an employee-operated state liquor stere as a liquor store manager, assistant manager, or clerk or in the central office of the liquor division between July 1, 1994, and January 6, 1995, wbo is in a position subject to termination by [sections 1 through 8]. For purposes of this section, the term "worked" includes all hours reported to the central payroll system, such as but not limited to hours worked, sick leave, annual leave, and leave without pay.

Section 2. Purchase of initial inventory by existing state agent. (1) As of June 30, 1995, the department of revenue shall calculate a closing statement showing the dollar amount of inventery on hand for each agency liquor store in operation on that date. As soon as practical thereafter, the department shall send to each agency liquor store a statement for the total price of the inventery, payable in 16 even monthly payments. The price must be

calculated in the same manner as the price for liquor purchased by an agency liquor store under the provisions of 16-2-101. The first payment is due 60 days from the date on which the department mails the statement, and each subsequent payment is due on the last day of the month for each month thereafter. At any time after payment of the first payment, an agent who is purchasing the initial inventory may pay in full the amount due or may increase the amount of each monthly payment. The payment of increased payments does not waive the making of a monthly payment until the initial purchase price is fully paid.

(2) Any shortages due the state as of June 30, 1995, must be offset from the final commission payment. If the shortage exceeds the calculated commission payment, the agent shall make payment within 30 days of notice of the amount due.

Section 3. Purchase of initial inventory and trade fixtures from former state liquor store. (1) After the selection of an agent pursuant to [section 6] who was an eligible state employee or a business entity consisting of eligible state employees to operate an agency liquor store that is operating as a state liquor store, the person or entity selected as agent and the department of revenue shall agree upon a date of conversion from a state liquor store to an agency liquor store. The date must be between July 1, 1995, and December 1, 1995. As of the day before the conversion date, the department shall calculate a closing statement showing the dollar amount of inventory on hand and the dollar amount of any trade fixtures that the agent chooses to purchase. As soon as practical thereafter, the department shall send to the agency liquor store a statement for the total price of the inventory and trade fixtures, payable in 16 even monthly payments. The price of liquor must be calculated in the same manner as the price for liquor purchased by an agency liquor store under the provisions of 16-2-101. Trade fixtures must be valued by the department as the amount, if any, in excess of the fixtures' depreciated value. The first payment is due 60 days from the date on which the department mails the statement, and each subsequent payment is due on the last day of the month for each month thereafter. At any time after payment of the first payment, an agent may pay in full the amount due or may increase the amount of each monthly payment. The payment of increased payments does not waive the making of a monthly payment until the initial purchase price is fully paid.

(2) Any shortages due the state as of the date of conversion must be paid by the store manager if the store manager becomes the liquor store agent or is a partner or shareholder in a business selected as the liquor store agent. The manager shall make payment within 30 days of notice of the amount due.

Section 4. Sales of returned liquor. Any inventory owned by the state that is located in either an agency liquor store or an employee-operated state liquor store prior to the operation of either [section 2] or [section 3], which in the opinion of the department of revenue is not economically feasible to be sold in agency liquor stores, may be returned to the state liquor warehouse. The department may, between July 1, 1995, and June 30, 1996, dispose of this inventory in any commercially reasonable manner, including but not limited to retail sales from the state liquor warehouse to retail licensees. After the department has exhausted all attempts to commercially dispose of the

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inventory, the department may dispose of it in any manner meeting its sound discretion.

Section 5. Liquor store employees preference rights and bonus payment. (1) Any liquor store employee or liquor division central office employee who meets the requirements of an eligible state employee who is terminated as a result of the operation of [sections 1 through 8] is eligible for a work incentive bonus if the employee continues in employment through December 31, 1995. This bonus is in addition to any reduction in force benefits or other benefits that the employee may be entitled to as a result of termination under the provisions of [sections 1 through 8].

(a) The amount of the bonus must be computed by multiplying the eligible state employee's hourly wago by 26.8%. The resulting product must be multiplied by 2,080 and that resulting product must be multiplied by the quotient of the number of hours worked, not to exceed 1,088 hours, as an eligible state employee between July 1, 1994, and January 6, 1995, divided by 1,088, which result is equal to the employee's bonus.

(b) An employee is entitled to the full amount of the bonus if the employee's employment is terminated by the department of revenue before December 31, 1995, because of the operation of [sections 1 through 8].

(2)(a) Notwithstanding any other provision of law, an employee of a state liquor store who meets the requirements of an eligible state employee must be given the right of first refusal for selection of the agent chosen to operate an agency liquor store.

(b) The department's selection criteria in order of priority for selecting an agent for employee-operated state liquor stores to be converted to agency liquor stores are as follows:

(i) The applicant must be either an eligible stato employee who is an employee of the storo, a partnership with a majority of the partners qualifying as eligible state employees and a majority of the partners working as employees of the state liquor store, or a corporation with at least one shareholder who is an eligible state employee and is an employee of the store.

(ii) If no applicant meets the requirements of subsection (2)(b)(i), the applicant must be either an eligible state employee and an employee of another state liquor store in the same city or town, a partnership with a majority of the partners qualifying as eligible state employees and employees of another state liquor store in the same city or tewn, or a corporation with at least one shareholder who is an eligible state employee and is an employee of another state liquor store in the same city or town.

(iii) If no applicant meets the requirements of subsection (2)(b)(i) or (2)(b)(ii), the state agent must bo selected by the methods required by the department of administration.

(3) All state liquor stere employees and liquor division central office employees whose positions are eliminated as a result of [sections 1 through 8] are entitled to all the benefits accorded by the State Employee Protection Act in Title 2, chapter 18, part 12, as that part reads on tho date on which the employee leaves state employment.

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Section 6. Conversion of existing state-operated liquor stores. (1)(a) Within 45 days of [the effective date of this section], any person or entity, an eligible state employee, or a business entity consisting of eligible state employees, as referred to in [section 5(2)(b)(i)], may file an application or applications to operate as an agency liquor stere the liquor store in which the eligible state employee or the employees of the husiness entity consisting of eligible state employees are employed or to operate as an agency liquor store another liquor store in the same community in which tbe eligible stato employee or employees of the business entity consisting of eligible state employees are employed.

(b) The application must set forth the nature of the entity applying for the agency franchise agreement and the employee's or employees' preference rights, if any, along with any other information that the department of revenue requires.

(2)(a) If the employee or a business entity consisting of eligible state employees is the sole applicant, the department shall enter into an agency franchise agreement with either the employee or the business entity to operate the agency liquor store.

(b) If more than one person or entity or more than one eligible state employee or business entity consisting of eligible state employees applies to be the agent for the liquor store, the department shall use the appropriate competitive bidding procedures to select the agent. However, if eligible stato employees or a business entity consisting of eligible state employees matches the bid of any other person or entity, the franchise must be awarded to the eligible state employees or business entity consisting of eligible state employees.

(3) For purposes of this section, an eligible state employee is considered to be an employee of the state liquor store in which the eligible employee worked a majority of the hours between July 1, 1994, and January 6, 1995.

(4) Until converted to an agency liquor store, a state liquor store shall operate under the laws governing the operation of state liquor stores as those laws read on January 1, 1995.

Section 7. No new agency franchises for four years. Notwithstanding the provisions of [section 9], the department of revenue may not establish any new agency liquor stores until after July 1, 1999, in any community that had at least one agency liquor store on July 1, 1994.

Section 8. Exemption from privatization plan requirements. [Sections 1 through 8] do not constitute privatization by an agency as that term is used in Title 2, chapter 8, part 3, and the administration of [sections 1 through 8] by the department of revenue is not subject to the provisions of Title 2, chapter 8, part 3.

Section 9. Number and iocation of agency liquor stores. (1)(a) In a community with a population of 12,000 or less, there may be one agency liquor store. In communities with populations greater than 12,000, there may be one agency liquor store for the first 12,000 inhabitants and one additional agency liquor store within increments of population of 40,000 inhabitants above 12,000 inhabitants. In determining population, the department shall use the same

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methods used for determining increases in the retail license quota system as provided in 16-4-501.

(b) In communities that are eligible for more than one agency liquor store, an agency liquor store established after [the effective date of this section] may not be located within a 1-mile radius of any other agency liquor store in the community.

(2) An agency liquor store established after [the effective date of this section] may not be located in a community that is closer than 35 miles to another community in which an agency liquor store is presently located, except in the circumstance when the most recent population estimates show a 25% growth in population or a growth of 1,000 inhabitants within a 2-year period, whichever is greater, and when this population increase is reasonably expected to continue for at least 5 years.

Section 10. State lien on liquor in agency liquor stores. The state has a first lien with an absolute first priority to secure any outstanding amounts due the state for liquor purchased on any inventory, including any after-acquired inventory in the possession of an agent or on the premises of an agency liquor store, to secure payment for the existing inventory. The state has the right to physically recover any inventory from an agency liquor store for any failure to timely make payments.

Section 11. Section 2-17-101, MCA, is amended to read:

"**2-17-101. Allocation of space.** (1) The department of administration shall determine the space required by state agencies other than the university system and shall allocate space in buildings owned or leased by the state, based on each agency's need. To efficiently and effectively allocate space, the department periodically shall identify the amount, location, and nature of space used by each agency.

(2) An agency requiring additional space shall notify the department. The department, in consultation with the agency, shall determine the amount and nature of the space needed and locate space within a building owned or leased by the state to meet the agency's requirements. If ~~no~~ space is *not* available in a building owned or leased by the state, the department shall locate space to be leased in an appropriate building or recommend alternatives to leasing, such as remodeling or exchanging space with another agency. A state agency may not lease, rent, or purchase property for quarters without prior approval of the department.

(3) (a) The location of the chambers for the house of representatives must be determined in the sole discretion of the house of representatives. The location of the chambers of the senate must be determined in the sole discretion of the senate.

(b) The department of administration, with the advice of the legislative council, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

(4) For state agencies located in a city other than Helena, the department of administration shall consolidate the offices of these agencies in a single, central location within the city whenever the consolidation would result in a

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cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and buildings in the city to achieve consolidation. ~~State retail liquor stores, liquor retail agencies, and offices~~ *Offices* of the law enforcement services division and motor vehicle division of the department of justice are exempted from consolidation."

Section 12. Section 16-1-103, MCA, is amended to read:

"**16-1-103. Policy as to retail sale of liquor.** It is the policy of the state that it is necessary to further regulate and control the sale and distribution of alcoholic beverages within the state and to ensure *that the department has* ~~the entire~~ *complete regulatory* control of the sale of liquor in ~~the department of revenue~~ *this state*. It is advisable and necessary, in addition to the operation of the ~~state~~ *agency* liquor stores now provided by law, that the department be empowered and authorized to grant licenses to persons qualified under this code to sell liquor purchased by them at ~~state~~ *agency* liquor stores at retail posted price in accordance with this code and under rules promulgated by the department and under its strict supervision and control and to provide severe penalty for the sale of liquor except by and in ~~state~~ *agency* liquor steres and by persons licensed under this code. The restrictions, regulations, and provisions contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the people of the state."

Section 13. Section 16-1-105, MCA, is amended to read:

"**16-1-105. Divisions of code.** Tbis code is divided into six chapters. Chapter 1 relates to the authority of the department of revenue to administer this code and the powers and functions of the department. Chapter 2 relatos to the establishment of ~~state~~ *agency liquor* stores and the keeping and selling of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license administration. Chapter 5, now repealed, related to identification cards. Chapter 6 relates to enforcement."

Section 14. Section 16-1-106, MCA, is amended to read:

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or retail price for off-premises consumption.

~~(2)~~*(3)* "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

~~(3)~~*(4)* "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

~~(4)~~*(5)* "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

~~(5)~~*(6)* "Beer importer" means a person other than a brewer who imports malt beverages.

~~(6)~~*(7)* "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

~~(7)~~*(9)* "Department" means the department of revenue, unless otherwise specified.

~~(8)~~*(10)* "Immediate family" means a spouse, dependent children, or dependent parents.

~~(9)~~*(11)* "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

~~(10)~~*(12)* "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

~~(11)~~*(13)* "Liquor" means an alcoholic beverage except beer and table wine.

~~(12)~~*(14)* "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

~~(13)~~*(15)* "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(14)~~*(16)* "Posted price" means the ~~retail~~ *wholesale* price of liquor ~~and table wine~~ *for sale to persons who hold liquor licenses* as fixed and determined by the department and in addition an excise and license tax as provided in this code.

~~(15)~~*(17)* "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

~~(16)~~*(18)* "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

~~(17)~~*(20)* "Rules" means rules adopted hy the department or the department of justice pursuant to this code.

~~(18)~~*(21)* "State liquor ~~facility~~ *warehouse*" means a ~~facility~~ *building* owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic heverages *to agency liquor stores.*

~~(19) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor and table wine.~~

~~(20)~~*(22)* "Storage depot" means a huilding or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(21)~~*(23)* "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(22)~~*(24)* "Table wine" means wine that contains not more than 16% alcohol by volume.

~~(23)~~*(25)* "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(24)~~*(26)* "Warehouse" means a building or structure located in Montana owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(25)~~*(27)* "Wine" means an alcobolic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 15. Section 16-1-301, MCA, is amended to read:

"16-1-301. Administration of code. The department shall have tbe powers and duties to administer the Montana Alcoholic Beverage Code, including the general control, management, and supervision of all ~~state~~ *agency* liquor stores."

Section 16. Section 16-1-302, MCA, is amended to read:

"16-1-302. Functions, powers, and duties of department. The department bas the following functions, duties, and powers:

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(1) to buy, import, have in its possession for sale, and sell liquors ~~and table wine~~;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities where ~~state~~ *agency* liquor stores are to be established throughout the state and the situation of the stores within these municipalities;

(4) to lease, furnish, and equip any building or land required to administer its duties under this code;

(5) to buy or lease plants and equipment necessary to administer its duties under this code;

(6) to employ ~~store managers and other~~ *the necessary* employees required to administer this code and to dismiss them, assign them their title, and define their respective duties and powers and to contract with the department of justice for investigative services or to contract for the services of experts and persons engaged in the practice of a profession, if appropriate;

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under this code;

(9) to place special restrictions on the use of a particular license, which must be endorsed upon the face of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions are agreed to by the licensee;

(10) without limiting or being limited by the foregoing, to do all things necessary to administer this code or rules."

Section 17. Section 16-1-303, MCA, is amended to read:

"**16-1-303. Department rules.** (1) The department and the department of justice may make rules not inconsistent with this code necessary to efficiently administer this code.

(2) Rules made by the department may include but are not limited to the following:

(a) regnlating the ~~equipment and management~~ *contractual operation* of ~~state~~ *agency liquor* stores and warehouses in which liquor ~~or table wine~~ is kept or sold and prescribing the books and records to be kept;

(b) prescribing the duties of department employees and regulating their conduct while in the discharge of their duties;

(c) governing the purchase of liquor ~~and table wine~~ and the furnishing of liquor ~~and table wine~~ to ~~state~~ *agency liquor* stores;

(d) determining the classes, varieties, and brands of liquor ~~and table wine~~ to be ~~kept~~ *available* for *distribution from the state liquor warehouse* ~~sale at any state store~~;

(e) prescribing the *minimum* hours during which ~~state~~ *agency* liquor stores must be open for the sale of alcoholic beverages;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor ~~and table wine~~ kept for sale;

(g) prescribing forms to be used for the purpose of this code or the rules and the terms and conditions for permits and licenses issued and granted under this code;

(h) prescribing the form of records of purchase of liquor ~~and table wine~~ and the reports to be made to the department and providing for inspection of the records;

(i) prescribing the manner of giving and serving notices required by this code or the rules;

(j) prescribing the fees payable for permits and licenses issued under this code for which ~~no~~ fees are *not* prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules;

(k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of alcoholic beverage licenses and the books and records to be kept and the returns to be made by the licensees;

(l) specifying and describing the place and the manner in which alcoholic beverages may be lawfully kept or stored;

(m) specifying and regulating the time when and the manner by which vendors and brewers may deliver alcoholic beverages under this code and the time when and the manner by which alcoholic beverages, under this code, may be lawfully conveyed or carried;

(n) governing the conduct, management, and equipment of any premises licensed to sell alcoholic beverages under this code;

(o) providing for the imposition and collection of taxes and making rules respecting returns, accounting, and payment of the taxes to the department.

(3) The department of justice may adopt rules to administer and implement its responsibilities under this title, including but not limited to rules providing for the inspection of licensed premises or premises where the sale of liquor has been proposed.

(4) Whenever this code provides that an act may be done if authorized by rules, the department, subject to the restrictions in subsection (1), may make rules respecting the act.

(5) The department shall use the negotiated rulemaking procedures contained in Title 2, chapter 5, for the purpose of adoption of rules related to the operation of agency liquor stores. However, the department may not be required to pay any expenses of the participants or of any persons engaged in the rulemaking process as provided for in 2-5-110."

Section 18. Section 16-1-304, MCA, is amended to read:

"16-1-304. **Prohibited acts.** (1) An employee of the department involved in the operation of the state *liquor* warehouse ~~or state liquor stores~~, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor ~~or table wine~~, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee for the employee's own benefit or in a fiduciary capacity for some other person.

(2) An employee of the state, *a state agent, or any person having any ownership interest in an agency liquor store* may not solicit or receive directly or indirectly any commission, remuneration, ~~or~~ gift, *or other thing tangible or intangible of value* from any person or corporation selling or offering liquor ~~or table wine~~ for sale to the state pursuant to this code.

(3) A person selling or offering for sale to or purchasing liquor ~~or table wine~~ from the state may not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any ~~member or~~ employee of the state, *any state agent, or any person having any ownership interest in an agency liquor store* or to anyone on behalf of ~~the member or~~ *an* employee.

(4) The prohibition contained in subsection (3) does not prohibit the state from receiving samples of liquor ~~or table wine~~ for the purpose of chemical testing, subject to tbe following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to soll any liquor ~~or table wine~~ to the state of Montana shall submit, without cost to the state prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of the merchandise to the state.

(b) When a brand of liquor ~~or table wine~~ has been accepted for testing by the state, the state shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The state shall maintain written records of all samples received. The records must show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the state's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) Liquor~~, wine, or other alcoholic beverage~~ may not be withdrawn from the regular warehouse inventory or from the ~~state~~ *agency* liquor stores for any purpose other than sale *to persons who hold liquor licenses at the posted price and sale to the consumer* at the ~~prevailing state retail prices~~ *retail price established by the agent* or for destroying damaged or defective merchandise. Tho state shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse ~~or state store~~ merchandise.

(6) The state may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor

nationwide in the previous calendar year to maintain minimum amounts of liquor ~~or wine~~ in the state warehouse while the distiller ~~or winery~~ retains ownership of the product.

~~(7) The state may not require a company that bottled and sold less than 100,000 wine gallons of table wine nationwide in the previous calendar year to maintain minimum amounts of table wine in the state warehouse while the company retains ownership of the product.~~"

Section 19. Section 16-1-402, MCA, is amended to read:

"**16-1-402. Payment of excise tax by carriers.** (1) Every airline or railroad operating in the state of Montana and selling liquor purchased outside this state for consumption within this state shall pay to the department the excise taxes and state markup ~~which~~ *that* would be applicable to ~~such~~ *the* liquor if purchased from ~~the~~ *an* ~~state~~ *agency* liquor store.

(2) The amount of ~~such~~ excise taxes and state markup payable ~~shall~~ *must* be determined by multiplying the following factors:

(a) the average liquor used per departure;

(b) the number of departures from Montana on which liquor is served;

(c) the ratio of Montana revenue passenger miles to systom revenue passenger miles; and

(d) the applicable excise tax and state markup rates.

(3) From ~~said~~ *the* product, the carrier shall subtract the amount of excise taxes and state markup on purchases of liquor made within this state."

Section 20. Section 16-2-101, MCA, is amended te read:

"**16-2-101. Establishment and closure of ~~state~~ *agency* liquor stores — agency franchise agreement — kinds and prices of liquor ~~and table wine~~.** (1)~~(a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor and table wine in accordance with the provisions of this code and the rules adopted under this code.~~

~~(b)~~ The department shall enter into ~~an~~ agency franchise ~~agreement~~ *agreements* ~~or employ the necessary help~~ to operate ~~the~~ *agency liquor* stores *as the department finds feasible for the wholesale and retail sale of liquor* ~~and shall designate the duties to be performed by the agent or employees~~.

~~(c) Once established, a store may not be closed, converted to an agency store, or sold by the department unless:~~

~~(i) the store is returning less than a 10% profit to the state; or~~

~~(ii) the closure or sale is approved by the legislature.~~

(2)*(a)* The department may from time to time fix the *posted* prices at which the various classes, varieties, and brands of liquor ~~and table wine~~ may be sold, and *the posted* prices must be the same at all ~~state~~ *agency liquor* stores.

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(b)(i) The department shall supply from the state liquor warehouse to agency liquor stores the various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses and to all other persons at the retail price established by the agent.

(ii)(A) According to the ordering and delivery schedule set by the department, an agency liquor store may place a liquor order with the department at its state liquor warehouse in the manner to be established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency liquor store's commission rate in the state agency franchise agreement and less the agency liquor store's weighed average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. Thereafter, the weighted discount ratio must be computed on the store's first 12 months of operation.

(C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

(c) An agency liquor store may sell table wine at retail for off-premises consumption.

(3) ~~(a) State liquor stores must be considered for closure, conversion, or sale only when a store lease expires. Prior to the expiration of a lease, the department may conduct a financial profitability analysis using the criteria in subsection (1)(c)(i). In computing profit levels of state-operated stores, the costs of the licensing bureau and the legal and enforcement division, other than inspection costs directly attributable to liquor stores, may not be included as expenses. The revenue oversight committee must be informed of all plans for conversion, sale, or closure of state liquor stores.~~

~~(b)~~ Agency *liquor* stores may not be located in or adjacent to grocery stores in communities with populations over 3,000. ~~This provision is applicable only to agency agreements entered into after May 11, 1987.~~

(4) ~~Agency~~ *Agency* stores must receive commissions ~~based on adjusted gross sales~~ *payable* as follows:

(a) a ~~10% commission~~ *10% commission* for agencies in communities with less than 3,000 in population, *unless adjusted pursuant to subsection (6) or (8)*;

(b) a commission established by competitive bidding *unless adjusted pursuant to subsection (6) or (8)* for agencies in communities with 3,000 or more in population.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and may be renewed every 10 years if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the torm of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement.*;*

(c) ~~require the agent to provide performance security in an amount equal to the average monthly value of inventory at cost based on the most recent 12-month period of inventory value at the agency store location or, if a 12-month history is not available, the department's estimate of the average value~~ *provide that upon termination by the department for cause or upon mutual termination, the agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department may immediately repossess all liquor inventory, wherever located*~~; and~~.

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6)*(a)* The commission percentage that the department pays the agent under an agency franchise agreement may be reviewed *on July 1, 1998, and* every ~~5~~ *3* years *thereafter* at tbe request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining torm of the agency franchise agreement *or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement,* to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

~~(a)~~*(i)* the agent's commission percentage is less than the average; and

~~(b)~~*(ii)* all the requirements of the agency franchise agreement have been satisfactorily performed.

(b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the average commission paid agents with similar sales volume:

(i) if the agent demonstrates that:

(A) the agent has experienced cost increases that are beyond the agent's control, including but not limited to increases in the federally established minimum wage or escalation in prevailing rent; and

(B) the average commission percentage is insufficient to yield net income commensurate with net income experienced before the cost increases occurred; and

(ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified in the agent's franchise agreement that will eliminate the impact of cost increases.

(7) The liability insurance ~~and performance security requirements~~ *requirement* may be reviewed every ~~5~~ *3* years *after July 1, 1995,* at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the ~~loss of state assets or from the~~ agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of *liability* insurance coverage may not be less than the minimum requirements of the department of administration.

(8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term and except for a commission percentage that may be negotiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result of a renewal may not he made unless the agent and the department mutually agree.

(b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the department shall notify the agent of that determination.

(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.

(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (8)(c), the department shall enter inte an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.

(e) If the agent exercises the preference right and believes the adjusted commission percentage te be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the adjusted commission percentage is inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate.

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(9)*(a)* The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement ~~or in the following cases~~ *because the agent*:

(i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount provided for in 16-2-201 to persons who hold liquor licenses;

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase special orders;

(iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making purchases of liquor; or

(v) fails to comply with the express terms of the agency franchise agreement.

(b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the termination and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

~~(a)~~ *(c)* ~~Except in~~ *In* the case of *failure to make timely payments to the department for liquor purchased* ~~suspected theft or unauthorized use of state assets, the department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the agency franchise agreement termination and request a hearing within 30 days. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.~~

~~(b) If an agent is suspected of theft or unauthorized use of state assets~~, the department may terminate the agency franchise agreement and ~~retrieve its assets~~ immediately *repossess any liquor purchased and in the possession of the agent*. If an agency franchise agreement is terminated, the agent may contest the ~~agency franchise agreement~~ termination and request a hearing within 30 days of the department's ~~retrieval of assets~~ *repossession of the liquor*. The agency store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(10) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(11) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days

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before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

~~(12) An agency agreement in effect on March 30, 1993, must be converted upon request of the agent and approval of the department to a 10-year agency franchise agreement pursuant to subsections (5) through (11) without competitive bids or proposals.~~

(12) A person or entity may not hold an ownership interest in more than one agency liquor store.

(13) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

Section 21. Section 16-2-104, MCA, is amended to read:

"**16-2-104. Hours.** (1) ~~State~~ *Agency* liquor stores ~~shall be and~~ *may* remain open during ~~such period of the day as the department shall deem advisable~~ *the period between 8 a.m. and 2 a.m.* The stores ~~shall~~ *must* be closed for the transaction of business on legal holidays and between the close of normal business Saturday ~~p.m.~~ *afternoon* up to the opening of normal business Tuesday ~~a.m.~~ *morning* ~~as set by department rule~~.

(2)(a) An agency liquor store may be open on Mondays that are not legal holidays if 51% of the all-beverages licensees within the agency liquor store's immediate market area sign a petition agreeing that agency liquor stores located within the immediate market area may be open on Mondays. The petition must be on a form prescribed by the department. The department shall verify the validity of the signatures on the petition. If the department determines that the petition contains sufficient valid signatures, all agency liquor stores within the designated market area must be allowed to transact business on Mondays that are not legal holidays. To determine the number of signatures needed, the department shall round up to the nearest whole number any fractional number of all-beverages licensees.

(b) For the purposes of subsection (2)(a), immediate market area means:

(i) the city limits for stores located in incorporated cities or towns; and

(ii) the area contained within a 5-mile radius from a store or stores located in unincorporated cities or towns or in a consolidated local government.

~~(2) No sale or delivery of liquor or table wine shall be made on or from the premises of any state liquor store nor shall any store be open for the sale of liquor or table wine:~~

~~(a) on any holiday recognized by state law;~~

~~(b) during such other period and on such other days as the department may direct.~~"

Section 22. Section 16-2-105, MCA, is amended to read:

"**16-2-105. Place and time of selling liquor.** ~~No~~ *A liquor* ~~store manager~~ *agent* and ~~no~~ *a* person acting as ~~the clerk or servant~~ *an employee* of or in any capacity for any ~~manager shall~~ *agent may not* sell liquor in any other place or

at any other time or otherwise than as authorized by this code and the rules *implementing this code.*"

Section 23. Section 16-2-106, MCA, is amended to read:

"**16-2-106. Purchase price in advance.** A *liquor* store ~~manager~~ *agent* may sell to any person ~~such~~ *any* liquor and table wine ~~as~~ that *the* person is entitled to purchase in conformity with the provisions of this code and the rules ~~made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price~~ *implementing this code. An agent may, under the terms and conditions that the agent establishes, deliver liquor and table wine purchased from the agent's agency liquor store.*"

Section 24. Section 16-2-107, MCA, is amended to read:

"**16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of state *agency* store.** ~~No officer, clerk, or agent of the department employed in a state~~ *An agent and the agent's employees in an agency* store shall *may not* allow any alcoholic beverage container to be opened on the premises of ~~a state~~ *an agency liquor* store or allow any alcoholic beverage to be consumed on the premises of ~~a state~~ *an agency liquor* store, nor ~~shall~~ *may* any person open an alcoholic beverage container or consume any alcoholic beverage ~~on such premises~~ *in an agency liquor store.*"

Section 25. Section 16-2-108, MCA, is amended to read:

"**16-2-108. Disposition of money received.** ~~All money received from the sale of liquor and table wine at the state liquor stores must be deposited in the enterprise fund in the state treasury to the credit of the department.~~ The department may purchase liquor ~~and table wine~~ from money deposited to its account in the enterprise fund. The department shall pay from its account in the enterprise fund its administrative expenses, subject to the limits imposed by legislative appropriation. ~~No~~ *An* obligation created or incurred by the department may *not* be a debt or claim against the state of Montana but must be payable by the department solely from funds derived from the operation of state liquor ~~stores~~ *sales*. The department shall pay into the state treasury to the credit of the enterprise fund the receipts from *the sale of liquor and* all taxes and license and permit fees collected by it. Taxes, license and permit fees, and the net proceeds from the operation of state liquor ~~stores~~ *sales* must be transferred to the general fund."

Section 26. Section 16-2-201, MCA, is amended to read:

"**16-2-201. Reduction for quantity sales of liquor.** *(1)* Reduction of ~~5%~~ *8%* of the ~~retail~~ *posted* price of liquor sold at the ~~state~~ *agency* liquor store ~~shall~~ *must* be made by the department for sales of liquor to any ~~person~~ *licensee* purchasing liquor in unbroken case lots. No other reduction ~~shall~~ *may* be made *to any other person* by the department for quantity sales of liquor.

(2) This section does not prevent an agent from providing purchase discounts or selling liquor to any other person at a price less than the agent's established retail price. However, an agent is prohibited from selling liquor to any person at a price less than the department's posted price."

Section 27. Section 16-2-301, MCA, is amended to read:

"16-2-301. Retail selling price on table wine — tax on certain table wine. ~~(1) The retail selling price at which table wine is sold either by the department, through a state employee-operated store, or by a commission agent who was appointed before April 30, 1987, including subsequent renewals of such appointment, and who elects to order table wine from the department is computed by adding to the statewide weighted average cost of table wine the tax and state markup as designated by the department.~~

~~(2)~~*(1)* The retail selling price at which table wine is sold ~~by a commission agent appointed by the department after May 1, 1987,~~ *at an agency liquor store* is as determined by the agent.

~~(3)~~*(2)* In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on table wine sold by a table wine distributor to an agent as described in subsection ~~(2)~~ *(1)*. This additional tax must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is paid. The department shall deposit the tax paid under this section in the general fund."

Section 28. Section 16-3-103, MCA, is amended to read:

"16-3-103. Unlawful sales solicitation or advertising — exceptions. (1) ~~No~~ *A* person within the state ~~shall~~ *may not*:

(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless permitted to do so under rules that ~~shall be~~ *are* promulgated by the department te govern ~~such~~ *the* activities;

(b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the case of beer proposed to be sold to beer licensees duly authorized te sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with ~~such~~ *the* rules.

(2) This section does not apply to:

(a) the department, any act of the department, any ~~state~~ *agency* liquor stere;

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operater or post-office employee in the ordinary course of employment as ~~such~~ *the* agent, operator, or employee; or

(c) the sale and serving of beer in the grandstand and bleacher area of a county fairground or public sports arena under a special permit issued pursuant te 16-4-301 or a catering endorsement issued pursuant to 16-4-111 or 16-4-204."

Section 29. Section 16-3-106, MCA, is amended to read:

"16-3-106. Conveyance of liquors, table wines, and beer — opening alcobolic beverages during transit forbidden. (1) It ~~shall be~~ *is* lawful to

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carry or convey liquor or table wine to any ~~state~~ *agency liquor* store and to and from ~~any~~ *the state liquor* warehouse or *any* depot established by the department for the purposes of this code, and when permitted to do so by this code and the rules ~~made thereunder and in accordance therewith~~ *promulgated under this code*, it ~~shall be~~ *is* lawful for any common carrier or other person to carry or convey liquor or table wine sold by a vendor from ~~a state~~ *an agency liquor* store or *to carry or convey* beer, when lawfully sold by a brewer, from the premises ~~wherein such~~ *where the* beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which the ~~same~~ *liquor, table wine, or beer* may be lawfully delivered under this code and the rules ~~made thereunder~~ *promulgated under this code.*

(2) ~~No~~ *A* common carrier or any other person ~~shall~~ *may not* open, break, or allow to be opened or broken any package or vessel containing an alcoholic beverage or drink or use or allow to be drunk or used any alcoholic beverage ~~therefrom~~ while being carried or conveyed."

Section 30. Section 16-3-307, MCA, is amended to read:

"**16-3-307. Sale of liquor at less than posted price unlawful.** It ~~shall be~~ *is* unlawful for any licensee under the provisions of this code to resell any liquor purchased by ~~such~~ *the* licensee from ~~a state~~ *an agency* liquor store or the state of Montana for a sum less tban the posted price established by the ~~store~~ *department* and paid by the licensee ~~therefor~~."

Section 31. Section 16-3-401, MCA, is amended to read:

"**16-3-401. Short title — public policy — purpose.** (1) This part may be cited as the "Wine Distribution Act".

(2) The public policy of the state of Montana is to maintain a system ~~for the importation and sale of table wine by the state through state liquor facilities and~~ *to* provide for, regulate, and control the acquisition, importation, and distribution of table wine by licensed table wine distributors ~~and the state~~.

(3) This part governs relationships between suppliers and table wine distributors, and because the legislature recognizes the public interest and the interests of suppliers and table wine distributors in the fair, efficient, and competitive distribution of table wine, this part is intonded to:

(a) protect the table wine distributor's independence in managing ~~his own~~ *the distributor's* business, including the establishment of selling prices; and

(b) encourage table wine distributors to devote their best efforts to the sale and distribution of the table wines they sell and distribute."

Section 32. Section 16-3-402, MCA, is amended to read:

"**16-3-402. Importation of wine — records.** (1) ~~With the exception of table wine purchased by the department and shipped to its warehouse, all~~ *All* table wine manufactured outside of Montana and shipped into Montana ~~shall~~ *must* be consigned to and shipped to a licensed table wine distributor~~,~~ and ~~by him~~ *be* unloaded *by the distributor* into ~~his~~ *the distributor's* warehouse in Montana or subwarehouse in Montana. The distributor shall distributo ~~said~~ *the* table wine from ~~such~~ *the* warehouse or subwarehouse.

(2) The distributor shall keep records at ~~his~~ *the distributor's* principal place of business of all table wine, including the name or kind received, on hand, sold, and distributed. The records may at all times be inspected by ~~any member or representative of~~ the department ~~of revenue~~.

(3) ~~Any table~~ *Table* wine ~~which~~ *that* has been shipped into Montana and *that* has not been shipped to and distributed from a warehouse of a licensed table wine distributor ~~or the department shall~~ *must* be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor."

Section 33. Section 16-3-403, MCA, is amended to read:

"16-3-403. To whom table wine distributor may sell. (1) A table wine distributor may sell and deliver table wine purchased or acquired by ~~him~~ *the distributor* to:

(a) another table wine distributor, retailer, or common carrier ~~which~~ *that* holds a license issued by the department of revenue; *and*

(b) ~~the department~~ *an agency liquor store*~~; and~~

~~(c) a commission agent of the department~~.

(2) It ~~shall be~~ *is* unlawful for any table wine distributor to sell, deliver, or give away any table wine to be consumed on ~~such~~ *the* distributor's premises or to give, sell, deliver, or distribute any table wine purchased or acquired by ~~him~~ *the distributor* to the public."

Section 34. Section 16-3-411, MCA, is amended to read:

"16-3-411. Domestic winery. A winery located in Montana and registered pursuant to 16-4-107 may:

(1) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

(2) sell wine it produces at wholesale ~~to the department or~~ to wine distributors;

(3) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

(4) provide, without charge, wine it produces for consumption at the winery;

(5) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces; or

(6) obtain a special event permit under 16-4-301."

Section 35. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any

person, firm, or corporation ~~who~~ *that* is approved hy the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of ~~such~~ *those* cities and towns ~~shall~~ *must* be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitents or less and within a distance of 5 miles from the corporate limits of ~~such~~ *the* towns, not more than one retail beer license, which may not be used in conjunction with a reteil all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of ~~such~~ *the* cities or tewns, one retail beer license for ~~each~~ *every* 500 inhabitants, which may not he used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of ~~such~~ *the* cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction thereof, and one additional retail beer license for ~~each~~ *every* additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in ~~such~~ *incorporated* cities and *incorporated* towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits ~~thereof~~ *of the cities or towns*, ~~shall govern~~ *governs* the number of retail beer licenses that may be issued for use within ~~such~~ *the* cities and tewns and within a distance of 5 miles from the corporate limits ~~thereof~~ *of the cities and towns*. If two or more incorporatod municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of ~~such~~ *the incorporated* municipalities and within a distance of 5 miles from their respective corporate limits ~~shall~~ *must* be determined on the basis of the combined populations of both of ~~such~~ *the* municipalities and may not exceed the ~~foregoing~~ limitations *in this section*. The distance of 5 miles from the corporata limits of any incorporated city or incorporated town ~~shall~~ *must* be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of ~~such~~ *the* city or tewn.

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110~~, which~~ *that* are in excess of the foregoing limitations ~~shall be~~ *are* renewable, but ~~no~~ new licenses may *not* be issued in violation of ~~such~~ *these* limitations;

(d) ~~such~~ *these* limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted ~~men's~~ *persons'*, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if ~~such~~

the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits ~~thereof~~ *of the city or town* or for use at premises situated within any unincorporated ~~town shall~~ *area must* be ~~as~~ determined by the department in ~~the exercise of~~ its ~~sound~~ discretion, except that ~~no~~ *a* retail beer license may *not* be issued for any premises so situated unless the department determines that the issuance of ~~such~~ *the* license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue ~~such~~ *an* amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, ~~shall mean~~ *means* automatic loss of the wine amendment license.

(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation ~~who~~ *that* is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of ~~such~~ licenses that the department may issue is not limited by the provisions of subsection (1) ~~of this section~~ but ~~shall~~ *must* be determined by the department in ~~the exercise of~~ its ~~sound~~ discretion, and the department may in ~~the exercise of~~ its ~~sound~~ discretion grant or deny any application for any ~~such~~ license or suspend or revoke any ~~such~~ license for cause."

Section 36. Section 16-4-401, MCA, is amended to read:

"**16-4-401. License as privilege — criteria for decision on application.** (1) A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection (6), in the case of a license that permits on-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

~~(ii)~~*(iii)* the applicant or any member of ~~his~~ *the applicant's* immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

~~(iii)~~*(iv)* the applicant is a resident of the state and is qualified to vote in a state election;

~~(iv)~~*(v)* the applicant's past record and present status as a purveyor of alcoholic beverages and as a ~~businessman~~ *business person* and citizen demonstrate that ~~he~~ *the applicant* is likely to operate ~~his~~ *the* establishment in compliance with all applicable laws of the state and local governments; and

~~(v)~~*(vi)* the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection ~~(2)(a)(iii)~~ *(2)(a)(iv)*;

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a) ~~of this section~~;

(iii) the corporation is authorized to do business in Montana; and

(iv) in the case of a corporation not listed on a national steck exchange, each owner of stock meets the requirements of subsection (2)(a)(i) *and (2)(a)(ii)*; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

~~(ii)~~*(iii)* the applicant or any ~~member~~ of ~~his~~ *the applicant's* immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

~~(iii)~~*(iv)* the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, ~~his~~ *the applicant's* rights have been restored;

~~(iv)~~*(v)* the applicant's past record and present status as a purveyor of alcoholic beverages and as a ~~businessman~~ *business person* and citizen

demonstrate that ~~he~~ *the applicant* is likely to operate ~~his~~ *the* establishment in compliance with all applicable laws of the stato and local governments; and

~~(v)~~*(vi)* the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection ~~(3)(a)(iii)~~ *(3)(a)(iv)*;

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listod in subsection (3)(a) of this section; and

(iii) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

~~(ii)~~*(iii)* the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, ~~his~~ rights have been restored;

~~(iii)~~*(iv)* the applicant's past record and present status as a purveyor of alcoholic beverages and as a ~~businessman~~ *business person* and citizen demonstrate that ~~he~~ *the applicant* is likely to operate ~~his~~ *the* establishment in compliance with all applicable laws of the state and local governments;

~~(iv)~~*(v)* the applicant is not under the age of 19 years; and

~~(v)~~*(vi)* an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection ~~(4)(a)(ii)~~ *(4)(a)(iii)*;

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a) of this section;

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302."

Section 37. Section 16-6-107, MCA, is amended to read:

"16-6-107. Disposal of forfeited alcoholic beverages — report. (1) If a court or hearing examiner orders the forfeiture of alcoholic beverages under this code or if a claimant to an alcoholic beverage under 16-6-105 or 16-6-106 fails to establish the claimant's right to the alcoholic beverage, the alcoholic beverage in question and the packages in which the alcoholic beverage is kept must be delivered to the department. The department shall determine the market value of each forfeited alcoholic beverage found to be suitable for sale in ~~the state~~ *agency* liquor stores and shall pay the amount determined to the state treasurer after deducting any expenses incurred by the department for transporting the forfeited alcoholic beverage to the state liquor warehouse. The alcoholic beverage suitable for sale in ~~a state~~ *an agency* liquor store must be taken into stock by the department and sold under the provisions of this code. All alcoholic beverages found to be unsuitable for sale in ~~state~~ *agency* liquor stores must be destroyed by the department.

(2) If an alcoholic beverage is seized by a peace officer, the officer shall report to the department in writing the particulars of the seizure."

Section 38. Section 16-6-303, MCA, is amended to read:

"16-6-303. Sale of liquor not purchased from ~~state~~ *agency liquor* store forbidden — penalty. It is unlawful for any licensee to sell or keep for sale or have on ~~his~~ *the licensee's* premises for any purpose whatever any liquor except that purchased from ~~the state~~ *an agency* liquor store, and any licensee found in possession of or selling and keeping for sale any liquor ~~which~~ *that* was not purchased from ~~a state~~ *an agency* liquor store shall, upon conviction, be punished by a fine of not less than $500 or more than $1,500, by imprisonment for not less than 3 months or more than 1 year, or by both ~~such~~ fine and imprisonment. If the department is satisfied that ~~any such~~ *the* liquor was knowingly sold or kept for sale within the licensed premises by the licensee or by ~~his~~ *the licensee's* agents, servants, or employees, the department shall immediately revoke the license."

Section 39. Section 17-8-244, MCA, is amended to read:

"**17-8-244. Exemptions.** *(1)* Section 17-8-242 does not apply to the following:

~~(1)~~*(a)* interagency or intergovernmental transactions;

~~(2)~~*(b)* claims subject to a good faith dispute;

~~(3)~~*(c)* delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

~~(4)~~*(d)* contracts entered into before October 1, 1983;

~~(5)~~*(e)* wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

~~(5)~~*(f)* claims submitted to the state or to its fiscal intermediary by providers of supplies or services under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists.

(2) In the case of liquor withdrawn from bailment in the state liquor warehouse by the department of revenue for the purpose of resale through agency liquor stores, payment is timely if paid within 60 days after the product is withdrawn."

Section 40. Section 30-9-104, MCA, is amended to read:

"**30-9-104. Transactions excluded from chapter.** This chapter does not apply:

(1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that ~~such~~ *the* statute governs the rights of parties to and third parties affected by transactions in particular types of property;

(2) to a landlord's lien;

(3) to a lien given by statute or other rule of law for services or materials except as provided in 30-9-310 on priority of such liens;

(4) to a transfer of a claim for wages, salary, or other compensation of an employee;

(5) to a transfer by a government or governmental subdivision or agency;

(6) to a sale of accounts or chattol paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract, or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness;

(7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

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(8) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral);

(9) to any right of setoff;

(10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents ~~thereunder~~ *under the lease*;

(11) to a transfer in whole or in part of any claim arising out of tort; ~~or~~

(12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312)*; or*

(13) to liquor in an agency liquor store as defined in 16-1-106."

Section 41. Repealer. Sections 16-2-302 and 16-2-303, MCA, are repealed.

Section 42. Codification instruction. [Sections 9 and 10] are intended to be codified as an integral part of Title 16, chapter 2, part 1, and the provisions of Title 16, chapter 2, part 1, apply to [sections 9 and 10].

Section 43. Effective date. (1) Except as provided in (2), [this act] is effective on passage and approval.

(2) [Section 26] is effective July 1, 1995.

Section 44. Termination. [Section 39] terminates June 30, 1997.

Approved April 25, 1995

CHAPTER NO. 531

[HB 584]

AN ACT APPROPRIATING FUNDS FOR THE LAW ENFORCEMENT ACADEMY PROJECT; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. (1) There is appropriated to the department of administration for the law enforcement academy project a total of $1,450,000, of which $950,000 is from the long-range building program account and $500,000 is from Lewis and Clark County.

(2) The law enforcement academy project consists of improvements or the planning, capital construction, renovation, furnishing, or major repair of the Mountain View school in Helena, Montana.

Section 2. Planning and design. The department of administration may proceed with the planning and design of the law enforcement academy project prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred prior to the receipt of other funding sources.

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Section 3. Legislative consent. The appropriation authorized in [section 1] constitutes legislative consent for the capital project contained in [section 1] within the meaning of 18-2-102.

Section 4. Department of justice. The department of justice shall repay the $500,000 provided hy Lewis and Clark County from its operating budget within 10 years, commencing in fiscal year 1998. The terms of the repayment agreement must he finalized hefore the department of administration hegins capital construction and may include utilization of fees charged for law enforcement training.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 25, 1995

CHAPTER NO. 532

[HB 598]

AN ACT PROVIDING THAT WHEN THE GRANTOR IDENTIFIED ON A REALTY TRANSFER CERTIFICATE IS NOT THE PERSON TO WHOM THE PROPERTY IS ASSESSED, THE DEPARTMENT OF REVENUE MAY NOT SUBSTITUTE THE GRANTEE'S NAME FOR THAT OF THE PERSON TO WHOM THE PROPERTY IS ASSESSED BUT SHALL INCLUDE THE GRANTEE'S NAME WITH THAT OF THE PERSON TO WHOM THE PROPERTY IS ASSESSED; PROVIDING THAT ALL TRANSFERS OF REAL PROPERTY MUST BE REPORTED BUT EXEMPTING CERTAIN TRANSFERS FROM THE REQUIREMENT THAT THE SALES PRICE BE REPORTED; AMENDING SECTIONS 15-7-304 AND 15-7-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-304, MCA, is amended to read:

"15-7-304. Report of transfers — change of ownership records. (1) All transfers of real property that are not evidenced by a recorded document, except those transfers otherwise provided for in this part, must be reported to the department on the form prescribed.

(2) The department is not required to change any ownership records used for the assessment or taxation of real property unless tbe department has received a transfer certificate from the clerk and recorder ~~or a~~ *and the* transfer has been reported to the department as provided by rule. *If the grantor on the transfer certificate is not the person to whom the property is assessed on the property tax record, the department may not substitute the grantee's name on the certificate for the name of the current person listed on the property tax record, but the department shall add the grantee's name to the property tax record with the name of the person to whom the property is assessed. The department shall mail notification of the change to the person to whom the property is asscssed and to the grantee. The department shall substitute the grantee's name on the property tax record when reliable evidence demonstrates that the grantee is the owner of the property for tax purposes."*

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Section 2. Section 15-7-307, MCA, is amended to read:

"15-7-307. Certificate — exceptions. The certificate imposed by this part ~~shall not apply~~ *applies to all transfers. However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred*:

(1) an instrument recorded prior to July 1, 1975;

(2) the sale of agricultural land when the land is used for agricultural purposes;

(3) the sale of timberland when the land is used for producing timber;

(4) the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

(5) an instrument which (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;

(6) a transfer pursuant to court decree;

(7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;

(8) a transfer by a subsidiary corporation te its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(9) a transfer of decedents' estates;

(10) a transfer of a gift;

(11) a transfer between busband and wife or parent and child with only nominal actual consideration therefor;

(12) an instrument the effect of which is to transfer tbe property to the same party or parties;

(13) a sale for delinquent taxes or assessments, sheriff sale, bankruptcy action, or mortgage foreclosure;

(14) a transfer made in contemplation of death."

Section 3. Effective date — applicability. [This act] is effective on passage and approval and applies to all transfers after [the effective date of this act].

Approved April 21, 1995

CHAPTER NO. 533

[HB 607]

AN ACT CREATING THE OFFENSE OF CAPITOL DESECRATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Desecration of capitol. (1) In this section, "capitol" means the Montana state capitol building and any permanent monuments on the capitol grounds.

(2) A person commits the offense of desecration of the capitol if the person purposely or knowingly:

(a) defiles or defaces the capitol;

(b) places on or attaches to the capitol any mark, design, or material not properly a part of the capitol; or

(c) injures, damages, or destroys any portion of the capitol.

(3) A person convicted of the offense of desecration of the capitol shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $100,000, or both.

(4) This section does not apply to displays or actions authorized by the department of administration.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 6, part 1, and the provisions of Title 45, chapter 6, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 25, 1995

CHAPTER NO. 534

[SB 113]

AN ACT INCREASING FROM 10 DAYS TO 6 MONTHS THE MAXIMUM JAIL SENTENCE THAT MAY BE IMPOSED UPON THE THIRD OR SUBSEQUENT CONVICTION OF DRIVING WITHOUT LIABILITY INSURANCE; AND AMENDING SECTION 61-6-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. (1) It is unlawful for any person to operate a motor vehicle upon ways of this state open to the public without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless the person has been issued a certificate of self-insurance, pursuant to 61-6-143, or has previously posted an indemnity bond with the department, as provided by 61-6-301, or is operating a vehicle exempt under 61-6-303.

(2) Conviction of a first offense under 61-6-301 through 61-6-304 is punishable by a fine of ~~not less than $250 or more than~~ *not less than $250 or more than* $500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of $350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent

conviction is punishable by a fine of $500 or by imprisonment in the county jail for not more than ~~10 days~~ *6 months*, or both.

(3) Upon a second or subsequent conviction, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall send the receipt and plates, along with a copy of the complaint and dispositional order, to the department, which shall immediately suspend the receipt and plates for a period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction. The receipt and plates may not be reinstated until the expiration of that period, but if the vehicle is transferred te a new owner, the new owner is entitled to register the vehicle.

(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(5) A court may not defer imposition of penalties provided by this section."

Approved April 21, 1995

CHAPTER NO. 535

[SB 127]

AN ACT PROVIDING THAT THE DISTRICT COURT CRIMINAL REIMBURSEMENT PROGRAM PAY FOR CERTAIN EXPENSES INCURRED IN STATE DISTRICT COURT FOR POSTCONVICTION RELIEF HEARINGS AND HABEAS CORPUS PROCEEDINGS AND FOR CERTAIN EXPENSES INCURRED BY THE STATE IN FEDERAL HABEAS CORPUS CASES CHALLENGING THE VALIDITY OF A CONVICTION OR OF A SENTENCE; AMENDING SECTION 3-5-901, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-901, MCA, is amended to read:

"**3-5-901. State assumption of certain district court expenses — *designation as district court criminal reimbursement program.*** (1) ~~The state shall, to~~ *To* the extent that revenue is available under 61-3-509, *the state shall* fund*:*

(a) the following district court expenses in criminal cases only:

~~(a)~~*(i)* salaries of court reporters;

~~(b)~~*(ii) fees for* transcripts of proceedings;

~~(c)~~*(iii)* witness fees and necessary expenses;

~~(d)~~*(iv)* juror fees;

~~(e)~~*(v) expenses for* indigent defense;

~~(f)~~*(vi)* expenses of the appellate defender commission and the office of appellate defender; and

~~(g)~~*(vii) expenses for* psychiatric examinations~~.~~*;*

(b) the district court expenses, as listed in subsection (1)(a), in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings; and

(c) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations.

(2) The revenue received under 61-3-509 is statutorily appropriated, as provided in 17-7-502, to the supreme court for funding the expenses listed in subsection (1) and the costs of administering this section.

(3) If money appropriated for the expenses listed in subsection (1):

(a) exceeds the amount necessary to fully fund those expenses, the excess amount must be used for district court grants as provided in 7-6-2352; or

(b) is insufficient to fully fund those expenses, the *expenses listed in subsection (1)(c), the expenses for the* appellate defender commission, and *the expenses for* the office of appellate defender must be funded first ~~and the~~. *The* county is responsible for payment of the balance.

(4) Money deposited in the state general fund in fiscal year 1992, as provided in 61-3-509, that is in excess of the legislative appropriation is statutorily appropriated, as provided in 17-7-502, to the supreme court for district court and courts of limited jurisdiction automation purposes during the 1995 biennium.

(5) This section may be cited as the district court criminal reimbursement program. (Subsection (4) terminates July 1, 1995—sec. 7, Ch. 330, L. 1993.)"

Section 2. Coordination instruction. If both [this act] and Senate Bill No. 83 are passed and approved and if both include a section that amends 3-5-901, then 3-5-901 must read as follows:

"3-5-901. **State assumption of certain district court expenses — *designation as district court criminal reimbursement program.*** (1) ~~The state shall, to~~ *To* the extent that revenue is available under 61-3-509, *the state shall* fund*:*

(a) the following district court expenses in criminal cases only:

~~(a)~~*(i)* salaries of court reporters;

~~(b)~~*(ii) fees for* transcripts of proceedings;

~~(c)~~*(iii)* witness fees and necessary expenses;

~~(d)~~*(iv)* juror fees;

~~(e)~~*(v) expenses for* indigent defense; *and*

~~(f) expenses of the appellate defender commission and the office of appellate defender; and~~

~~(g)~~*(vi) expenses for* psychiatric examinations~~.~~*;*

(b) the district court expenses, as listed in subsection (1)(a), in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings; and

(c) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations.

(2) ~~The revenue received under 61-3-509 is statutorily appropriated, as provided in 17-7-502, to the supreme court for funding the expenses listed in subsection (1) and the costs of administering this section~~ *If revenue received under 61-3-509 exceeds the amount appropriated by the legislature to fund the expenses of the appellate defender program, the excess amount is statutorily appropriated, as provided in 17-7-502, to the supreme court to fund the expenses described in subsections (1)(a) through (1)(c) and the costs of administering this section.*

(3) If money appropriated for the expenses listed in subsection (1):

(a) exceeds the amount necessary to fully fund those expenses, ~~the excess amount~~ *up to $500,000 of the excess amount must be used for youth court and probation foster care placements if the department of family services certifies to the supreme court that appropriations for youth court and probation foster care placements will be inadequate to fund those costs and remaining excess amounts* must be used for district court grants as provided in 7-6-2352; or

(b) is insufficient to fully fund those expenses, ~~the appellate defender commission and the office of appellate defender must be funded first and~~ the county is responsible for payment of the balance.

(4) Money deposited in the state general fund in fiscal year 1992, as provided in 61-3-509, that is in excess of the legislative appropriation is statutorily appropriated, as provided in 17-7-502, to the supreme court for district court and courts of limited jurisdiction automation purposes during the 1995 biennium. (Subsection (4) terminates July 1, 1995—sec. 7, Ch. 330, L. 1993.)"

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved April 21, 1995

CHAPTER NO. 536

[SB 226]

AN ACT REVISING COUNSELING LAWS; REVISING THE DEFINITION OF PROFESSIONAL COUNSELING; REQUIRING LICENSURE TO ENGAGE IN THE PRACTICE OF PROFESSIONAL COUNSELING OR FOR A PERSON TO REPRESENT THAT THE PERSON IS A PROFESSIONAL COUNSELOR; AUTHORIZING COUNSELING BY CERTAIN INDIVIDUALS ACTING WITHIN THE SCOPE OF THEIR PROFESSIONAL PRACTICE; AMENDING SECTIONS 37-23-102, 37-23-201, AND 37-23-311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-23-102, MCA, is amended to read:

"**37-23-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Licensee" means a person licensed under this chapter.

(3) "Professional counseling" means engaging in methods and techniques that include:

(a) counseling, which means ~~assisting an individual or a group, through the counseling relationship, to develop understanding of intrapersonal and interpersonal problems, to define goals, to make decisions, to plan a course of action reflecting his or their needs, interests, and abilities, and to use informational and community resources~~ *the therapeutic process of:*

(i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives; or

(ii) planning, implementing, and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;

(b) ~~appraisal~~ *assessment*, which means selecting, administering, scoring, and interpreting instruments designed te assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) ~~technical assistance, which means applying scientific principles and procedures in counseling, guidance, and human development to provide assistance in understanding and solving a current or potential problem that an individual may have in relation to another individual, a group or organization, or other third party~~ *counseling treatment intervention, which means those cognitive, affective, behavioral, and systemic counseling strategies, techniques, and methods common to the behavioral sciences that are specifically*

implemented in the context of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development; and

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of ~~such~~ *the* judgment, and communicating as requested or considered appropriate with ~~such~~ *the* referral sources."

Section 2. Section 37-23-201, MCA, is amended to read:

"37-23-201. Representation *or practice* as licensed clinical professional counselor — license required. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor" *or "professional counselor"*.

(2) Except as provided in subsection ~~(2)~~ *(3)*, a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters "LPC" or "LCPC" after the person's name or by any other means, *engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling,* unless licensed under this chapter.

~~(2)~~*(3)* Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

~~(3)~~*(4)* Subsection ~~(1)~~ *(2)* does not prohibit:

(a) a qualified member of another profession, such as a physician, ~~psychologist,~~ lawyer, pastoral counselor, probation officer, court employee, nurse, ~~social worker,~~ school counselor, ~~or~~ educator, *chemical dependency counselor accredited by a federal agency, or chemical dependency counselor certified pursuant to 53-24-215,* from ~~professional counseling consistent with that person's training if the person does not use a title or description incorporating the words "licensed professional counselor", "licensed counselor", "professional counselor", "licensed clinical professional counselor", or "licensed clinical counselor"~~ *performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling*;

(b) an activity or service or use of an official title by a person employed by *or acting as a volunteer for* a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence te perform suеh *the* activity or service. However, suеh *the* person shall report to the department of commerce the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform suеh *the* activity or service in the state of his *the person's* former residence.*;*

(g) an activity or service of a person who is working to satisfactorily complete the 3,000 hours of counseling practice required for licensure by 37-23-202(1)(b) if the person has already completed a planned graduate program as required by 37-23-202(1)(a) or is working to complete the 3,000 hours of social work experience as required by 37-22-301; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics of the person's profession."

Section 3. Section 37-23-311, MCA, is amended to read:

"37-23-311. Misdemeanor violations — penalties. (1) It is a misdemeanor for a person to knowingly:

(a) *engage in the practice of professional counseling, except as provided in 37-23-201(4);*

(b) represent ~~himself as~~ *that the person is* a licensed professional counselor without being licensed under this chapter;

~~(b)~~*(c)* obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

~~(c)~~*(d)* make a false statement on any form used by tbe board to implement this chapter or tbe rules adopted under this chapter.

(2) A person convicted under this section sball be imprisoned in the county jail for a period not exceeding 6 montbs or fined not more than $500, or both. A person convicted of any subsequent offense under this section shall be punished by both ~~suеh~~ fine and imprisonment."

Section 4. Effective date. [Tbis act] is effective January 1, 1996.

Approved April 21, 1995

CHAPTER NO. 537

[SB 229]

AN ACT CREATING THE OFFENSE OF USE OR POSSESSION OF PROPERTY SUBJECT TO CRIMINAL FORFEITURE; PROVIDING FOR CRIMINAL FORFEITURE OF PROPERTY USED IN OR DERIVED FROM DRUG-RELATED CRIMES; SPECIFYING THE TYPES OF PROPERTY THAT ARE SUBJECT TO CRIMINAL FORFEITURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Use or possession of property subject to criminal forfeiture — property subject to criminal forfeiture. (1) A person commits the offense of use or possession of property subject to criminal forfeiture if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years. Upon conviction, the property subject to criminal forfeiture is forfeited to the state and must be disposed of in accordance with the provisions of 44-12-205 and 44-12-206.

(2) The following property is subject to criminal forfeiture under this section:

(a) money, raw materials, products, equipment, and other property of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(b) property used or intended for use as a container for property enumerated in subsection (2)(a);

(c) except as provided in subsection (3), a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(d) books, records, research products and materials, formulas, microfilm, tapes, and data used or intended for use in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(e) (i) everything of value furnished or intended to be furnished in exchange for a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110; and

(ii) all proceeds traceable to such an exchange;

(f) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

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(g) personal property constituting or derived from proceeds obtained directly or indirectly from a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110; and

(h) real property, including any right, title, and interest in a lot or tract of land and any appurtenances or improvements, that is directly used or intended te be used in any manner to facilitate a violation of or that is derived from or maintained by proceeds resulting from a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110. An owner's interest in real property is not subject to criminal forfeiture by reason of an act or omission unless it is proved that the act or omission was the owner's or was with the owner's express consent.

(3) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance to violate or knowingly consented to its use for the purpose of violating 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

(4) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest is subject to that interest if the secured party did not use or consent to the use of the property in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

(5) Property subject to criminal forfeiture under this section may be seized under the following circumstances:

(a) A peace officer who has probable cause to make an arrest for a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110 may seize a conveyance obtained with proceeds of the violation or used to facilitate the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency, to be held as evidence until a criminal forfeiture is declared or release ordered.

(b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.

(c) Seizure without a warrant may be made if:

(i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a criminal forfeiture proceeding based on this section or on Title 44, chapter 12;

(iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

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(iv) a peace officer has probable cause to believe that the property was used or is intended to be used in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy is a violation of 45-9-101, 45-9-103, or 45-9-110.

(6) As used in this section, "dangerous drug" means a substance designated as a dangerous drug under Title 50, chapter 32, parts 1 and 2.

(7) A prosecution under subsection (1) must he commenced within 45 days of the seizure of the property involved.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 21, 1995

CHAPTER NO. 538

[SB 361]

AN ACT TRANSFERRING PART OF THE HIGHWAY TRAFFIC SAFETY PROGRAM FROM THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF TRANSPORTATION; EXPANDING ARREST AUTHORITY FOR CERTAIN TRAFFIC OFFENSES; AMENDING SECTIONS 2-15-2007, 61-2-102, 61-2-103, AND 61-12-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2007, MCA, is amended to read:

"**2-15-2007. Highway traffic safety program.** ~~The~~ *Except as provided in 61-2-103, the* highway traffic safety program provided for in 61-2-102 ~~is attached to~~ *must be administered by* the department of ~~justice for administrative purposes only as prescribed in 2-15-121. However, the program may hire its own personnel, and 2-15-121(2)(d) does not apply~~ *transportation.*"

Section 2. Section 61-2-102, MCA, is amended to read:

"**61-2-102. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of ~~justice provided for in Title 2, chapter 15, part 20~~ *transportation.*

(2) "Highway traffic safety program" means a program designed to reduce traffic accidents, deaths, injuries to persons, and damage to property. The program ~~shall~~ *must* be in accordance with uniform standards established by the secretary of commerce of the United States under Title 23, U.S.C., as amended. Nothing in this part restricts or prohibits the establishment of standards ~~which~~ *that* enlarge or implement the federal standards.

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(3) "Political subdivisions" means ~~every~~ *each* county, incorporated city or town, and school district within the boundaries of the state."

Section 3. Section 61-2-103, MCA, is amended to read:

"**61-2-103. Duties.** (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this stato under the Federal Highway Safety Act of 1966~~,~~ and, in so doing, may cooperate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment and all amendments to it. The governor may appoint an administrator of the highway traffic safety program to carry out the governor's responsibilities under this part. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs, certification of teachers, and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this part interferes with the provisions of *Title 20, chapter 7, part 5, or* 20-9-603 ~~or part 5, chapter 7, of Title 20~~.

(2) The department ~~of justice~~ shall:

(a) advise and assist the governor in all matters of highway safety and establish comprehensive training programs, including establishment and regulation of driver training schools, ~~and~~ certification of the schools and instructors, and establishment of adult training and retraining programs;

(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use; *and*

(c) establish a continuing and adequate research program desigued to determine the causes of accidents and effect a program of prevention~~;~~.

(3) The department of justice shall:

~~(d)~~*(a)* establish a uniform system of driver licensing, including mental and physical standards; and

~~(e)~~*(b)* prescribe and establish safety regulations for motor vehicles and operators."

Section 4. Section 61-12-206, MCA, is amended to read:

"**61-12-206. Offenses for which arrest authorized.** (1) Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions ~~only~~:

(a) chapters 3 and 5, of this title, but only if the vehicle involved is subject to 61-10-141;

~~(a)~~*(b)* ~~part 1,~~ chapter 10, of this title;

~~(b)~~*(c)* part 3, chapter 4, of this title;

~~(c)~~*(d)* ~~sections~~ 15-24-201 through 15-24-205;

~~(d)~~*(e)* Title 15, chapter 70, parts 2 and 3;

~~(e)~~*(f)* ~~sections~~ 15-71-101 through 15-71-105;

~~(f) section 61-3-502(1);~~

~~(g) sections 61-10-201, 61-10-203, 61-10-206, 61-10-209, and 61-10-211 through 61-10-215;~~

~~(h) sections 61-10-222 through 61-10-224;~~

~~(i) sections 61-10-231 through 61-10-233~~.

(2) These employees may not arrest for violations other than specified in this section."

Section 5. Effective date. [This act] is effective July 1, 1995.

Approved April 21, 1995

CHAPTER NO. 539

[SB 346]

AN ACT ALLOWING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO TEMPORARILY MODIFY WATER QUALITY STANDARDS; AMENDING SECTIONS 75-5-301 AND 75-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is provided for this hill because it allows the board of health and environmental sciences to adopt rules establishing temporary water quality standards.

The principle behind establishing temporary water quality standards is that there are Montana surface and ground waters that are of lower quality than the applicable water quality standards. The legislature intends that the temporary water quality standards may not he established for waters that are impaired but still support their beneficial uses. Temporary standards may be established only when substantive information indicates that the water body or water segment does not support a designated use for its classification. The goal of establishing temporary standards is to improve the quality of the water to the point at which it supports the beneficial uses for its classification.

The establishment of temporary standards provides a legal basis that facilitatos improvement of the water quality for those waters and allows, in limited circumstances, discharges to those waters. The rules must reflect the legislature's intent that establishing temporary water quality standards will trigger development and implementation of a plan with the overall goal of continuously improving the quality of the water during the period of the modification to the point that beneficial uses are supportod. At no time during the period of a modification should a discharge be allowed that will cause water

quality to become worse than the quality of the water body or segment prior to the discharge.

The legislature recognizes that persons may desire to commence discharging to the water body or segment for which a standard has been temporarily modified during the period of the modification. Any discharges that are allowed should not in any way slow or impede the improvement of the water body or segment.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 75-5-302 through 75-5-307 and 80-15-201, the board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water ~~purity~~ *quality* and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention. *When rules are adopted regarding temporary standards, they must conform with the requirements of [section 3].*

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water ~~purity~~ *quality* and classification;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; and

(c) establish criteria for determining whether a proposed activity or class of activities will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers hoth the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; and

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 2. Section 75-5-302, MCA, is amended to read:

"75-5-302. Revised classifications not to lower water quality standards — exception. *(1)* ~~In~~ *Except as provided in subsection (2), in* revising classifications or standards or in adopting new classifications or standards, the board may not ~~so~~ formulate standards of water ~~purity~~ *quality* or classify any state water ~~as to lower~~ *in a manner that lowers* any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted ~~except upon a finding~~ *unless the board finds* that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 75-5-307.

(2) Establishment of a temporary water quality standard or classification does not require a finding that the affected state water was classified under a standard or classification that was higher than the actual water quality that existed at the time of the prior classification."

Section 3. Temporary water quality standards. (1) The board may on its own, upon recommendation of the department, or upon a petition for rulemaking by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific water body or segment on a parameter-hy-parameter basis in those instances in which substantive information indicates that the water body or segment is not supporting its designated uses. When the board adopts temporary standards, the goal is to improve water quality to the point at which an additional beneficial use or uses are supported.

(2) As a condition for estahlishing temporary water quality standards for a particular water hody or segment, the department or the petitioner, as applicable, shall prepare a support document and implementation plan for use by the board in determining whether to adopt a proposed temporary water quality standard.

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(3) If a person petitions for rulemaking under this section, the petition must specifically describe the affected state water, the existing ambient water quality for the parameter or parameters at issue, the water quality standard or standards affected, and the temporary modifications sought. Within 180 days after the board grants a petition to initiate rulemaking, the petitioner shall prepare and submit to the board and the department a proposed support document and implementation plan that sets forth:

(a) the water quality limiting facters affecting the water body or segment;

(b) the existing heneficial use or uses and the beneficial use or uses considered attainable in the absence of the water quality limiting factors;

(c) an implementation plan to eliminate the water quality limiting factors to the extent considered achievable; and

(d) a schedule for implementing the plan that ensures that the water quality standards for the parameter or parameters at issue are met as soon as reasonably practicable and in no event later than the time allowed by the board in the temporary standard.

(4) Upon the board's adoption of a temporary water quality standard, the department shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation plan are established in appropriate discharge permits.

(5)(a) A temporary modification of a water quality standard may not result in adverse impacts to existing beneficial uses or be established for a total period longer than 20 years.

(b) During the period of the temporary modification, the hoard may not allow a discharge that will cause overall water quality to become worse than the overall quality of the water body or segment prior to the discharge.

(6) If a state water is designated as having temporary standards, the department shall report to the board at least every 3 years or upon request of the board regarding whether adequate efforts have been made to implement the plans submitted as the basis for the temporary standard.

(7) The board shall review temporary standards at least every 3 years at a public hearing for which notice and an opportunity for comment have been provided. The board may terminate the temporary standard based on information submitted at the time of its review that the applicant is not complying with the approved implementation plan.

(8) The hoard shall terminate a temporary standard for a parameter if:

(a) values for the modified parameter or parameters improve to conditions that support all designated uses for that classification;

(h) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-302; or

(c) the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the board or department.

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(9) The board may modify the plan if the permittee submits convincing evidence to the board that the plan needs modification. The board may not extend the plan beyond a total period of 20 years.

(10) If a temporary standard for a parameter in a particular state water is terminated because the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the board or department, a person may request a new temporary standard by submitting both a petition for rulemaking and a plan that meet the requirements of subsections (2) and (3). However, the board may not adopt another temporary standard for the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for the parameter in the state water.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 3].

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 27, 1995

CHAPTER NO. 540

[SB 352]

AN ACT PROVIDING A LIMITATION ON THE CRIMINAL LIABILITY OF A LANDOWNER OR AGENT WHO TAKES A PUBLICLY OWNED WILD BUFFALO OR BISON, SUSPECTED OF CARRYING DISEASE, THAT IS PRESENT ON THE LANDOWNER'S PRIVATE PROPERTY OR THREATENING THE LANDOWNER'S LIVESTOCK UNDER CERTAIN CONDITIONS; PROHIBITING SUPPLEMENTAL FEEDING OF BIG GAME ANIMALS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF LIVESTOCK TO WORK TO PREVENT CONTACT BETWEEN WILD BUFFALO OR BISON AND LIVESTOCK AND TO REPORT TO THE LEGISLATURE REGARDING THAT WORK; AMENDING SECTIONS 87-1-215 AND 87-3-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-130, MCA, is amended to read:

"**87-3-130. Taking of wildlife to protect persons or livestock — *taking of publicly owned wild buffalo or bison that are present on private property — notice — supplemental feeding — penalty.*** *(1)* ~~Nothing in this~~ *This* chapter may *not* be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this chapter if ~~such~~ *the* wildlife is molesting, assaulting, killing, or threatening to kill any person or

livestock. Any person who so takes any wildlife protected by this chapter shall notify the department within 72 hours.

(2) This chapter may not be construed to impose, by implication or otherwise, criminal liability on a landowner or the agent of a landowner for the taking of a publicly owned wild buffalo or bison that is suspected of carrying disease and that is present on the landowner's private property or otherwise threatening the landowner's livestock if:

(a) the landowner or agent notifies or makes a good faith effort to notify the department in order to allow as much time as practicable for the department to first take or remove the publicly owned wild buffalo or bison that is present on the landowner's property; and

(b) the landowner or agent is not in violation of subsection (3).

(3) A person may not intentionally provide supplemental feed to game animals in a manner that results in an artificial concentration of game animals that may potentially contribute to the transmission of disease. A person who violates this subsection is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1)."

Section 2. Section 87-1-215, MCA, is amended to read:

"87-1-215. Wild buffalo as species in need of management — policy — department duties. (1) The legislature finds that the management through hunting of wild buffalo or bison is not appropriate but that significant potential exists for the spread of contegious disease to persons or livestock in Montana and damage to persons and property by wild buffalo or bison. Therefore, it is the purpose of this section to designate wild huffalo or bison, which have not been reduced to captivity, as a species in need of management and te set out specific departmental duties for management of the species.

(2) The department:

(a) is responsible for and shall develop rules to implement the management of wild buffalo or bison in this state that threaten persons or property other than through the transmission of contagious disease;

(b) shall develop rules to manage and reduce the number of wild buffalo or bison that leave Yellowstone national park.

(3) The department of livestock shall, within its statutory authority, regulate wild buffalo or bison in tbis state that pose a threat to persons or livestock in Montana through the transmission of contagious disease.

(4) *The department shall work cooperatively and aggressively with the department of livestock to prevent any contact between livestock and wild buffalo or bison suspected of carrying disease in this state.*

(5) The department of fish, wildlife, and parks and the department of livestock are strongly urged to enter into an agreement with the national park service for the long-term management of the Yellowstone national park herd. If the national park service does not proceed in good faith in a timely manner to enter a long-term management agreement that in the determination of the department of fish, wildlife, and parks and the department of livestock responds

adequately to the needs of Montana, the departments are strongly urged to take appropriate court action. The department of fish, wildlife, and parks and the department of livestock shall prepare a joint report to the ~~53rd~~ *55th* legislature, *including a report of cooperative work conducted as required under subsection (4),* regarding the present state of bison management in Montana and any progress on an agreement for the long-term management of the Yellowstone national park herd."

Section 3. Coordination instruction — contingent codification. (1) If Senate Bill No. 312 is passed and approved and if it includes a section that repeals 87-1-215, then [section 2 of this act], amending 87-1-215, is void.

(2) If Senate Bill No. 312 is passed and approved and if it transfers to the department of livestock primary management of publicly owned wild buffalo or bison that enter Montana on private or public land, then:

(a) [section 1 of this act] is amended to read:

"87-3-130. **Taking of wildlife to protect persons or livestock.** *(1)* ~~Nothing in this~~ *This* chapter may *not* be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this chapter if ~~such~~ *the* wildlife is molesting, assaulting, killing, or threatening to kill any person or livestock. Any person who so takes any wildlife protected by this chapter shall notify the department within 72 hours.

(2) A person may not intentionally provide supplemental feed to game animals in a manner that results in an artificial concentration of game animals that may potentially contribute to the transmission of disease. A person who violates this subsection is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This subsection does not apply to supplemental feeding activities conducted by the department for disease control purposes."

(b) a new section is enacted to read:

"**Taking of publicly owned wild buffalo or bison that are present on private property — notice — supplemental feeding — penalty.** (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability on a landowner or the agent of a landowner for the taking of a publicly owned wild buffalo or bison that is suspected of carrying disease and that is present on the landowner's private property and is potentially associating with or otherwise threatening the landowner's livestock if:

(a) the landowner or agent notifies or makes a good faith effort to notify the department in order to allow as much time as practicable for the department to first take or remove the publicly owned wild buffalo or bison that is present on the landowner's property;

(b) the landowner or agent makes a good faith effort to notify the department that a taking has occurred and to retain all parts for disposal by the department; and

(c) the landowner or agent is not in violation of subsection (2).

(2) A person may not intentionally provide supplemental feed to game animals in a manner that results in artificial concentration of game animals

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that may potentially contribute to the transmission of disease. A person who violates this subsection is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This subsection does not apply to supplemental feeding activities conducted by the department for disease control purposes."

(3) The code commissioner is instructed to codify the new section in Title 81, chapter 2, part 1, and the provisions of Title 81, chapter 2, part 1, apply to the new section.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 27, 1995

CHAPTER NO. 541

[SB 357]

AN ACT ALLOWING ALL MEMBERS OF THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM TO RECEIVE A REGULAR SERVICE RETIREMENT BENEFIT AFTER 20 YEARS OF SERVICE REGARDLESS OF AGE; INCREASING THE BENEFIT FOR EACH YEAR OF SERVICE AFTER 20 YEARS FOR MEMBERS HIRED BEFORE JULY 1, 1981; ELIMINATING THE MAXIMUM BENEFIT LIMITATION; RAISING CONTRIBUTIONS TO FUND THE BENEFITS; AMENDING SECTIONS 19-13-601, 19-13-604, 19-13-605, 19-13-701, 19-13-704, 19-13-803, 19-13-902, 19-13-1007, AND 19-13-1009, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-13-601, MCA, is amended to read:

"19-13-601. Deduction remitted to firemen's association — member's contribution. (1) Each employer shall retain from the compensation of each active member a sum equal to 1% of the member's compensation for services as a firefighter and shall remit this amount on a monthly basis to the Montana stato firemen's association for the payment of premiums on a group life and accidental death and dismemherment insurance policy for members and to defray expenses incurred by the association when representing members of the retirement system.

(2) The member's contribution to the retirement system is 6% *7.8%* of the member's compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of the member's compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under 19-13-604, 19-13-605, and this section must be based on the total compensation received by the member from the employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicahle on July 1, 1987, shall pick up and

pay the contributions that would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up hy the employer and remit the total of the contributions to the board."

Section 2. Section 19-13-604, MCA, is amended to read:

"**19-13-604. State contribution.** The stato shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-18-512. These payments must be made annually to the pension trust fund after the end of each fiscal year but no later than November 1 from the gross premium taxes after deduction for cancellations and returned premiums. The division shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year. The state's contribution is ~~23.27%~~ *24.21%* of this tetal compensation ~~effective July 1, 1991~~. As soon as practicable after receipt of the stato contribution, the division sball deposit it in the pension trust fund."

Section 3. Section 19-13-605, MCA, is amended to read:

"**19-13-605. Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available te the city for this purpose. The employer's contribution is ~~13.02%~~ *14.36%* of the total compensation paid to members. All contributions are payable monthly to the division, which shall, as soon as practicable after their receipt, deposit them in the pension trust fund."

Section 4. Section 19-13-701, MCA, is amended to read:

"**19-13-701. Eligibility for service retirement — commencement of benefit.** (1) A member who bas ~~reached age 50 and has~~ completed ~~10~~ *20* years or more of membership service is eligible for service retirement commencing on the first day of the month following the member's last day of service.

(2) A vested member who terminates service hefore the minimum retirement date and keeps the member's accumulated contributions on deposit is eligible for service retirement commencing on the memher's minimum retirement date.

(3) A vested inactive member may file a written application with the board requesting that the member's retirement benefit commence on the first day of

the month following receipt of the application. However, the retirement benefit for an inactive vested member must commence no later than the first day of the month following the member's 55th hirthday."

Section 5. Section 19-13-704, MCA, is amended to read:

"**19-13-704. Amount of service retirement benefit.** (1) (a) A memher hired hefore July 1, 1981, who elects to retire after having reached ~~both~~ 20 years of membership service ~~and age 50~~ must receive a service retirement benefit equal to the sum of:

(i) 50% of the memher's last monthly compensation for years of service credit up to and including 20 years; and

(ii) ~~1%~~ *2%* of the member's last monthly compensation for each year of service credit after 20 years.

(h) A member hired before July 1, 1981, who elects to retire after having reached at least 10 years *but less than 20 years* of membership service ~~but prior to reaching age 50~~ as an active memher must receive a service retirement benefit equal to 2% of the member's last monthly compensation for each year of service credit. Upon the retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104.

(2) A member hired on or after July 1, 1981, who retires with at least 10 years of membership service must receive a service retirement benefit equal to 2% of the member's final average compensation for each year of service credit.

~~(3) The maximum monthly benefit payable to any retiree under subsection (1) may not exceed 60% of the member's last monthly compensation. The maximum monthly benefit payable to any retiree under subsection (2) may not exceed 60% of the member's final average compensation.~~"

Section 6. Section 19-13-803, MCA, is amended te read:

"**19-13-803. Amount of disability retirement benefit.** (1) A member hired before July 1, 1981, who becomes disabled:

(a) hefore completing 20 years of membership service must receive a disability retirement benefit equal to one-half tbe member's last monthly compensation;

(b) after completing 20 years or more of memhership service must receive the disability retirement benefit provided in subsection (1)(a) increased at a rate of ~~1%~~ *2%* of the member's last monthly compensation for each year of service credit in excess of 20~~, up to a maximum benefit equal to 60% of the member's last monthly compensation~~.

(2) A memher hired on or after July 1, 1981, who becomes disabled:

(a) before completing 25 years of membership service must receive a disability retirement benefit equal to one-half the member's last monthly compensation;

(b) after completing 25 years or more of membership service must receive the disability retirement benefit provided in subsection (2)(a) increased at a rate of 2% of the member's last monthly compensation for each year of service credit in excess of 25~~, up to a maximum benefit equal to 60% of the member's last monthly compensation~~.

(3) A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's death the member leaves no surviving spouse or upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as they remain dependent children as defined in 19-13-104."

Section 7. Section 19-13-902, MCA, is amended to read:

"**19-13-902. Survivorship benefit.** (1) (a) Upon the death before retirement of an active member hired before July 1, 1981, the member's surviving spouse, if there is one, must receive a survivorship benefit equal to one-half the last monthly compensation received by the member. If the member leaves one or more dependent children, then, upon the member's death if the member leaves no surviving spouse or upon the death of the surviving spouse, the member's dependent children must collectively receive the same benefit that a surviving spouse would have received, as long as the children remain dependent children as defined in 19-13-104.

(b) If the deceased member completed over 20 years of membership service, the survivorship benefit provided in subsection (1)(a) must be increased at a rate of ~~1%~~ 2% of the last monthly compensation for each year in excess of 20~~, up to a maximum of 60% of the last monthly compensation received by the member~~.

(2) Upon the death before retirement of a member hired on or after July 1, 1981, the member's surviving spouse, if there is one, must receive a survivorship benefit equal to one-half of the member's final average compensation. If the member leaves one or more dependent children, then, upon the member's death if the member leaves no surviving spouse or upon the death of the surviving spouse, the member's dependent children must collectively receive the same benefit that a surviving spouse would have received, as long as the children remain dependent children as defined in 19-13-104."

Section 8. Section 19-13-1007, MCA, is amended to read:

"**19-13-1007. Benefit adjustment.** (1) For a member retiring on or after July 1, 1973, who was hired before July 1, 1981, or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704(1)(a), the disability retirement benefit provided in 19-13-803(1), and the survivorship benefit provided in 19-13-902(1) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

(2) For a member hired on or after July 1, 1981, or the member's surviving spouse or dependent children, the disability retirement benefit provided in 19-13-803(2) and the survivorship benefit provided in 19-13-902(2) may not be less than one-half the monthly compensation paid te a newly confirmed, active

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firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

(3) If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsections (1) and (2) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

(4) If the employment of a vested member hired before July 1, 1981, is involuntarily discontinued ~~before the member reaches age 50~~ because of the termination of employment of all full-paid firefighters in the city that employed the member, the member's service retirement benefit provided in 19-13-704(1)(b) and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 10 but less than 20 years of membership service, 2% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service."

Section 9. Section 19-13-1009, MCA, is amended to read:

"**19-13-1009. Supplement to retirement benefits for persons hired on or after July 1, 1981.** (1) The division shall pay a supplemental benefit from the account provided for in 19-13-615 to each member hired on or after July 1, 1981, who has ~~both~~ earned ~~25~~ *20* years of membership service ~~and reached age 50~~ as an active firefighter or to the member's surviving spouse or dependent children. Except as provided in subsection (2), the supplemental benefit, when added to the service retirement benefit, must equal one-half the regular monthly compensation paid to a newly confirmed full-paid active firefighter of the city that last employed the member as a firefighter as provided each year in the budget of that city. If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's supplemental benefit must be calculated on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

(2) If the amount available to the account is insufficient to fully fund the supplemental benefit provided for in subsection (1), the supplemental benefit for each eligible member or survivor must be reduced by an equal percentage so that the amount contained in the account is not exceeded."

Section 10. Effective date. [This act] is effective July 1, 1995.

Approved April 27, 1995

CHAPTER NO. 542

[SB 358]

AN ACT RELATING TO THE INCOME AND CORPORATE TAX CREDIT FOR RECYCLING OF MATERIAL; EXTENDING THE TERMINATION DATE FOR THE CREDIT; PROVIDING THAT CERTAIN DEPRECIABLE PROPERTY USED FOR THE TREATMENT OF HAZARDOUS WASTES IN SOILS QUALIFIES FOR THE CREDIT; AMENDING SECTIONS 15-32-601, 15-32-602, AND 15-32-603, MCA, AND SECTION 9, CHAPTER 712, LAWS OF 1991; AND PROVIDING AN APPLICABILITY DATE AND A TERMINATION DATE.

STATEMENT OF INTENT

This bill extends by 6 years the termination date for the recycling tax credit provided for in 15-32-602 and the recycling tax deduction provided for in 15-32-610. It also expands the application of the credit to include investments in equipment used to treat soils contaminated by hazardous wastos. In order to implement the tax credit for capital investments in property purchased to collect or process reclaimed material, including soil that has been contaminated by hazardous wastes, provided for under 15-32-602, the department of revenue shall make a determination about the equipment and processes that qualify. It is the intent of the legislature that the department of health and environmental sciences, upon request, assist the department of revenue in making that determination.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-601, MCA, is amended to read:

"**15-32-601. (Temporary) Definitions.** For the purposes of this part, unless otherwise required by the context, the following definitions apply:

(1) "Collect" means the collection and delivery of reclaimable materials to a recycling or reclaimable materials processing facility.

(2) "Postconsumer material" means a product or packaging material that has served its final intended use, that has been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use, and that is usually thrown away and hauled to landfills. This term does not include wastes generated during production of an end product.

(3) "Process" includes but is not limited to the treatment of hazardous wastes as defined in 75-10-403.

~~(3)~~*(4) (a)* "Reclaimable material" means*:*

(i) material that has useful physical or chemical properties after serving a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer*; or*

(ii) soil that has been contaminated by hazardous wastes to the extent that treatment of those wastes is required as defined in 75-10-403.

(b) Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material.

~~(4)~~*(5)* "Recycled material" means a substance that is produced from reclaimed material as provided in 15-32-609. ~~(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)~~"

Section 2. Section 15-32-602, MCA, is amended to read:

"**15-32-602. (Temporary) Amount and duration of credit — how claimed.** (1) An individual, corporation, partnership, or small business corporation, as defined in 15-31-201, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material, if the taxpayer qualifies under 15-32-603.

(2) Subject to 15-32-603~~(2)~~*(3) and subsection (4) of this section*, a taxpayer qualifying for a credit under 15-32-603 is entitled to claim a credit ~~in an amount equal to 25% of~~ *, as provided in subsection (3), for* the cost of ~~the~~ *each item of* property purchased to collect or process reclaimable material or to manufacture a product from reclaimed material only in the year in which the property was purchased. If qualifying property was purchased prior to January 1, 1992, but on or after January 1, 1990, a taxpayer is entitled to a credit for tax year 1992.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is determined according to the following schedule:

(a) 25% of the cost of the property on the first $250,000 invested;

(b) 15% of the cost of the property on the next $250,000 invested; and

(c) 5% of the cost of the property on the next $500,000 invested.

(4) A credit may not be claimed for investments in depreciable property in excess of $1 million. ~~(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)~~"

Section 3. Section 15-32-603, MCA, is amended te read:

"**15-32-603. (Temporary) Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material.** (1) The following requirements must be met to be entitled to a tax credit for investment in property to collect or process reclaimable material or to manufacture a product from reclaimed material:

(a) The investment must be for depreciable property used primarily to collect or process reclaimable material or to manufacture a product from reclaimed material.

(b) (i) The taxpayer claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that collecte or processes reclaimable material or that manufactures a product from reclaimed matorial. For the purposes of this section, a business qualifies as a business that collects reclaimable material if it gathers reclaimable material for later sale or

processing for another business that has as its primary business function the collection or processing of reclaimable material or the manufacture of a product from reclaimed material. The collection of reclaimable material may be a minor or nonprofit part of a business otherwise engaged in a retail trade or other business activity.

(ii) The taxpayer may but need not operata or conduct a business that collects or processes reclaimable material or manufactures a product from reclaimed material. If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (1)(b), and must have been collecting or processing reclaimable material or manufacturing a product from reclaimed material during the tax year for which the credit is claimed.

(d) The reclaimed material collected, processed, or used to manufacture a product may not be an industrial waste generated by the person claiming the tax credit unless:

(i) the person generating the waste histerically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) A credit for depreciable property that treats soil contaminated by hazardous wastes applies only to property that treats contaminated soil and not to auxiliary property.

~~(2)~~*(3)* A credit under this section may be claimed by a taxpayer for a business only if the qualifying property ~~was~~ *is* purchased ~~on or after January 1, 1990, but before January 1, 1996~~ *before January 1, 1998.*

~~(2)~~*(4)* The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

~~(4)~~*(5)* A tax credit otherwise allowable under this section that is not used by the taxpayer in the taxable year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year.

~~(5)~~*(6)* Tbe taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

~~(6)~~*(7)* If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary te collect or process reclaimable material or to manufacture a product from reclaimed material. In all other respects, the allowance and effect of the tax credit apply te the corporation as otherwise provided by law. ~~(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)~~"

Section 4. Section 9, Chapter 712, Laws of 1991, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~1995~~ *2001*."

Section 5. Termination — exception. (1) [Sections 1 through 3] terminate December 31, 1997.

(2) Notwithstanding subsection (1), 15-32-603(3), as numbered by [this act], which reads: "A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 1998.", is deleted in its entirety on December 31, 1997.

Section 6. Applicability. [This act] applies to tax years beginning and to depreciable property purchased after December 31, 1995.

Approved April 27, 1995

CHAPTER NO. 543

[SB 377]

AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY REQUIRING COUNTIES TO ESTABLISH CERTAIN ADMINISTRATIVE BOARDS, DISTRICTS, AND COMMISSIONS BY RESOLUTION; ALLOWING COUNTY COMMISSIONERS TO ACT AS CERTAIN ADMINISTRATIVE BOARDS, DISTRICTS, OR COMMISSIONS IF THERE ARE NOT ENOUGH QUALIFIED PERSONS TO SERVE ON THE BOARDS, DISTRICTS, OR COMMISSIONS; REVISING THE METHOD OF ESTABLISHING A MUNICIPAL BOARD OF PARK COMMISSIONERS; REPEALING THE MUNICIPAL WINTER WORK PROGRAM; AMENDING SECTIONS 7-8-2103, 7-13-213, 7-13-215, 7-13-2510, 7-13-2521, 7-16-2105, 7-16-2203, 7-16-2301, 7-16-2327, 7-16-4201, 7-16-4222, 7-21-3401, 7-21-3406, 7-22-2103, 7-22-2109, 7-22-2215, 7-22-2216, 7-22-2411, 7-22-2415, 7-35-2108, AND 7-35-2109, MCA; REPEALING SECTIONS 7-13-214, 7-13-2522, 7-13-2523, 7-13-2524, 7-13-2525, 7-13-2526, 7-16-2204, 7-16-2302, 7-16-2303, 7-16-2305, 7-16-2306, 7-16-2307, 7-16-2308, 7-16-2309, 7-16-2310, 7-16-2311, 7-16-2313, 7-16-2321, 7-16-4202, 7-16-4203, 7-16-4204, 7-16-4205, 7-16-4206, 7-16-4207, 7-16-4208, 7-16-4209, 7-16-4210, 7-16-4211, 7-16-4221, 7-16-4224, 7-16-4301, 7-16-4302, 7-16-4303, 7-16-4304, 7-16-4305, 7-16-4306, 7-16-4307, 7-16-4308, 7-16-4309, 7-21-3403, 7-21-3404, 7-21-3405, 7-22-2105, 7-22-2413, AND 7-22-2414, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Boards. (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to [sections 2 and 3] and this section and listed in [section 2]. The resolution creating an administrative board, district, or commission must specify:

(a) the number of board, district, or commission members;

(b) the terms of the members;

(c) whether members are entitled to mileage, per diem, expenses, and salary; and

(d) any special qualifications for membership in addition to those established by law.

(2)(a) An administrative board, district, or commission may be assigned responsibility for a department or service district.

(b) An administrative board, district, or commission may:

(i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law;

(ii) administer programs, establish policy, and adopt administrative and procedural rules.

(c) The resolution creating an administrative board, district, or commission must grant the board, district, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.

(d) If authorized by resolution, an administrative board, district, or commission may employ personnel to assist in its functions.

(3) Administrative boards, districts, and commissions may be made elective.

(4) Administrative boards, districts, and commissions may not sue or be sued independently of the local government unless authorized by state law.

(5) Members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy.

(6) The county commissioners shall maintain a register of appointments, including:

(a) the name of the board, district, or commission;

(b) the date of appointment and confirmation, if any is required;

(c) the length of term;

(d) the name and term of the presiding officer and other officers of each administrative board, district, or commission; and

(e) the date, time, and place of regularly scheduled meetings.

(7) Terms of all members, except elected members, may not exceed 4 years. Unless otherwise provided by resolution, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.

(8) An administrative board, district, or commission must consist of a minimum of 3 members and must have an odd number of members.

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(9) The resolution creating an administrative board, district, or commission may provide for voting or nonvoting ex officio members.

(10) Two or more local governments may provide for joint boards, districts, or commissions to he established hy interlocal agreements.

(11) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting, unless the resolution creating the board, district, or commission specifies otherwise.

(12) An administrative board, district, or commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.

(13) An administrative board, district, or commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.

(14) Unless otherwise provided by law, a person must be a resident of the county to be eligible for appointment to an administrative board, district, or commission. The county commissioners may prescribe by resolution additional qualifications for membership.

(15) A person may be removed from an administrative board, district, or commission for cause by the county commissioners or as provided by resolution.

(16) A resolution creating an administrative board, district, or commission must contain, if applicable, budgeting and accounting requirements for which the board, district, or commission is accountable to the county commissioners.

Section 2. Transition of existing boards and creation of new boards. (1) Unless otherwise specified by law, the state laws providing for the organization and operation of the following administrative boards, districts, and commissions must be given the status of local ordinances for 1 year following [the effective date of this act], and the following boards, districts, and commissions shall continue to function during this period under the respective laws until the hoards, districts, or commissions are reorganized by the county commissioners pursuant to the provisions of [section 1]:

(a) county building commission;

(b) cemetery districts;

(c) county fair commission;

(d) mosquito control hoard;

(e) museum board;

(f) board of park commissioners;

(g) rodent control board;

(h) solid waste district;

(i) television district;

(j) weed control district.

(2) Subject to [sections 1 and 3], a county may create administrative boards, districts, and commissions, in addition to those listed in subsection (1), that are not otherwise provided for by law.

Section 3. County commissioners to assume duties of administrative boards, districts, and commissions. (1) If the minimum number of qualified persons is not available for membership on an administrative board, district, or commission, the county commissioners may by resolution, at a public meeting, assume the duties of the administrative board, district, or commission and may act as that board, district, or commission with the same powers and duties as that board, district, or commission.

(2) County commissioners, acting in the capacity of an administrative board, district, or commission may not receive any compensation in addition to their compensation as county commissioners.

Section 4. Section 7-8-2103, MCA, is amended to read:

"**7-8-2103. Authorization to create county building commission.** ~~(1)~~ The board of county commissioners ~~shall have the power to~~ *may* create a *building* commission *subject to the provisions of [sections 1 through 3].* ~~for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two or more thereof. Such commission shall be composed of the chairman of the board of county commissioners and five lay members to be appointed by the board. In cases where a commission has been appointed, the commission, together with the board, shall have the power to employ a manager.~~

~~(2) The terms of office for the first lay members of the commission shall be, respectively, one for 1 year, two for 2 years, and two for 3 years. On the expiration of such terms of figures 1, 2, and 3 years, their successors shall hold for 3 years each.~~

~~(3) All of the above persons shall serve without compensation.~~"

Section 5. Section 7-13-213, MCA, is amended to read:

"**7-13-213. District to be administered by appointed board of directors.** Upon creation of any solid waste management district, the commissioners shall appoint a board of directors for the proposed solid waste management district *subject to the provisions of [sections 1 through 3].*"

Section 6. Section 7-13-215, MCA, is amended to read:

"**7-13-215. Powers and duties of board.** Except for powers specifically reserved by the counties in the resolution creating the district, the board has the powers and duties provided in 75-10-112 *as well as any additional powers granted the board in the resolution.*"

Section 7. Section 7-13-2510, MCA, is amended to read:

"**7-13-2510. Powers of district.** A *In addition to any powers granted pursuant to [section 1], a* television district organized under this part, acting through its board of trustees ~~herein provided for~~, may:

(1) perform all the acts and take all the necessary or proper steps to ~~assure~~ *ensure* that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within ~~such~~ *the* service area ~~shall be~~ *are* supplied by means of an appropriate electrical or electronic system for television program distribution;. ~~such~~ *The* authorized system ~~to~~ *must* provide ~~such~~ flexibility as to permit radical improvements in technical quality without rendering ~~inoperative~~ receivers ~~therein~~ *in the area inoperative*, but discontinuance of service by the district for improvements or repairs for a temporary period ~~shall~~ *may* not be construed as rendering *the system* inoperative;

(2) if necessary or proper in the furtherance of the objects of this part, acquire, build, construct, repair, own, maintain, and operate any necessary stations transmitting simultaneous visual and aural signals intended to be received by the general public, relay stations, pickup stations, or any other necessary electrical or electronic system;

(3) make contracts to compensate any owner of land or other property for the use of ~~such~~ *the land or* property for the purposes of this part;

(4) make contracts with the United States, any state or municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) acquire, by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits) and employ engineers, laboratery personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this part;

(7) issue warrants, payable at the time stated ~~therein~~ *in the warrants*, to evidence the obligation to repay money borrowed or any other obligation incurred by the district;. ~~warrants so issued to~~ *Warrants* draw interest at a rate fixed by the board, payable annually or semiannually as the board may prescribe;.

(8) contract indebtedness or borrow money for corporate purposes and issue revenue bonds ~~therefor~~ to be repaid from rates and charges, bearing interest as provided in 17-5-102 payable semiannually;. ~~the~~ *The* bonds *may* not ~~to~~ be sold for less than par and accrued interest;.

(9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this part;

(10) prescribe ~~such~~ installation or ready-to-serve charges to be used for any costs connected with preparation, acquisition, or construction of the system;

(11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law; and

(12) provide FM translator services if authorized as provided in 7-13-2512."

Section 8. Section 7-13-2521, MCA, is amended to read:

"**7-13-2521. Appointment of board of trustees.** The board of county commissioners, upon the creation of ~~said~~ *the* district and as a part of the order creating the district, shall appoint a board of ~~three~~ trustees to administer the affairs of the district *subject to the provisions of [sections 1 through 3].*"

Section 9. Section 7-16-2105, MCA, is amended to read:

"**7-16-2105. Acquisition of land by county for public recreational or cultural purposes.** (1) The ~~several~~ counties of this state are ~~hereby~~ authorized ~~and empowered~~ to acquire, by purchase, grant, deed, gift, devise, condemnation, or otherwise, lands suitable for public camping, ~~and~~ public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination thereof or may lease ~~such~~ *the* land tracts, each of which ~~shall~~ *must* be so situated as to offer ready access to a public highway.

(2) ~~Nothing contained herein shall~~ *This section may not* be construed as amending or repealing 7-16-2201 through ~~7-16-2205~~ *7-16-2204.*"

Section 10. Section 7-16-2203, MCA, is amended to read:

"**7-16-2203. Board of trustees —appointment and term.** ~~(1)~~ The board of county commissioners of each county owning or acquiring a museum, facility for the arts, or collection of exhibits may, at the first regular meeting of the board after acquiring a museum, facility, or collection, appoint a board of trustees, *subject to the provisions of [sections 1 through 3],* for the administration of the county museum fund as provided in this part.

~~(2) The board of county commissioners shall, at a public meeting, pass a resolution establishing the number of members on the board of trustees and the terms of the appointments. The board of trustees must consist of at least three members and no more than nine members, and the members of the board must be residents of the county.~~"

Section 11. Section 7-16-2301, MCA, is amended to read:

"**7-16-2301. Authorization for county board of park commissioners.** ~~(1)~~ There may be created in ~~all counties~~ *each county* a board of park commissioners *subject to the provisions of [sections 1 through 3].*

~~(2) Such board shall constitute a department of the county government with the powers provided in this part.~~"

Section 12. Section 7-16-2327, MCA, is amended to read:

"**7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, ~~has the power and duty to~~ *may* contract an indebtedness in behalf of a county, upon the credit of the county, ~~for the purposes of 7-16-2321(1) and (2)~~ *in order to carry out its powers and duties.*

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus

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the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness.

(b) Money may not he borrowed on bonds issued for the purchase of lands and improving the land for any purpose until tbe proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds."

Section 13. Section 7-16-4201, MCA, is amended to read:

"7-16-4201. Autborization for municipal board of park commissioners. ~~(1)~~ There may be created *by ordinance* in all cities of the first and second class a board of park commissioners, whether ~~such~~ *the* cities ~~be~~ *are* a council form of government or city-manager form. *The ordinance must meet the same requirements as those provided for a county resolution in [section 1].*

~~(2) Such board of park commissioners shall constitute a department of the city government with the powers provided in this part.~~"

Section 14. Section 7-16-4222, MCA, is amended to read:

"7-16-4222. Rules to implement part. (1) ~~The~~ *In addition to the powers and duties established in the ordinance creating the board of park commissioners and the provisions of 7-16-4223 through 7-16-4228, the* board of park commissioners ~~shall have~~ *has* the following powers and ~~be charged with the following~~ duties:

(a) to make all rules necessary or convenient to protect and promote the growtb of trees and plants in parks, streets, avenues, alleys, boulevards, and public places under the care and control of ~~said~~ *the* board and for the protection of all birds inbabiting, frequenting, or nesting in ~~such~~ *the* parks, streets, avenues, boulevards, and public places;

(b) to make all rules for the use of parks by the public; and

(c) to provide penalties for the violation of ~~such~~ *the* rules.

(2) The rules autborized by tbis section shall have tbe force of city ordinances and *may* be enforced ~~in like manner~~ as ordinances of the city are enforced."

Section 15. Section 7-21-3401, MCA, is amended to read:

"7-21-3401. Authorization to create county fair commission — appointment and term. ~~(1)~~ The board of county commissioners may, at any regular meeting, appoint a county fair commission *subject to the provisions of [sections 1 through 3].*

~~(2) The board of county commissioners shall, at a public meeting, pass a resolution establishing the number of members of the fair commission and the terms of the appointments. The fair commission must consist of at least three~~

~~members and no more than nine members, and the members of the board must be residents of the county.~~"

Section 16. Section 7-21-3406, MCA, is amended to read:

"**7-21-3406. Powers of county fair commission.** ~~By~~ *In addition to the powers and duties established in the* resolution of the board of county commissioners *creating the county fair commission and by the provisions of 7-21-3407 through 7-21-3414*, the county fair commissioners ~~shall~~ have control and operation of the fair and the supervision and management of the fairgrounds and also the leasing of buildings and fairgrounds on a continuous basis throughout the fiscal year and shall return to the fair fund of the county all revenue obtained from the leasing or renting of the ~~same~~ *the buildings and fairgrounds*."

Section 17. Section 7-22-2103, MCA, is amended to read:

"**7-22-2103. District weed board ~~—appointment and term.~~** (1) The commissioners sball appoint a district weed board *subject to the provisions of [sections 1 through 3].*

~~(2) The commissioners shall, at a public meeting, pass a resolution establishing the number of members of the district weed board and the terms of the appointments. The board must consist of at least three members and no more than nine members, and the members of the board must be residents of the district. A majority of the board members must be rural agricultural land owners.~~

~~(3) The county extension agent in each county and other interested individuals may be appointed to serve as nonvoting members of that district's weed board.~~

~~(4) The board members are public officers.~~

~~(5)~~*(2)* The board may call upon the county attorney for legal advice and services as it may require."

Section 18. Section 7-22-2109, MCA, is amended to read:

"**7-22-2109. Powers and duties of board.** (1) ~~The~~ *In addition to any powers or duties established in the resolution creating a district weed board, the* board may:

(a) employ a supervisor and other employees as necessary and provide for their compensation;

(b) purchase ~~such~~ chemicals, matorials, and equipment and pay other operational costs as it determines necessary for implementing an effective weed management program. ~~Such~~ *The* costs must be paid from the noxious weed fund.

(c) determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for ~~such~~ *the* chemicals, materials, or equipment must be paid by ~~such~~ *the* person and collected as provided in this part.

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(d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state which may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if ~~such~~ *the* plant species spreads or threatens to spread into the state; and

(e) perform other activities relating to weed management.

(2) The board shall:

(a) administer the district's noxious weed program;

(b) establish management criteria for noxious weeds on all land within the district;

(c) make all reasonable efforts to develop and implement a noxious weed program covering all land within the district owned or administered by a federal agency."

Section 19. Section 7-22-2215, MCA, is amended to read:

"**7-22-2215. Rodent control board.** ~~(1)~~ A governing body creating a rodent control district shall appoint a rodent control board *subject to the provisions of [sections 1 through 3].* ~~The county extension agent is an ex officio member of the board. Each member of the board must be an elector and reside within the district.~~

~~(2) The governing body shall, at a public meeting, pass a resolution establishing the number of members on the board and the terms of the appointments. The board must consist of at least three members and no more than nine members, and the members of the board must be residents of the district.~~

~~(3) Each member of the board is entitled to:~~

~~(a) a mileage allowance as provided in 2-18-503 for the distance actually and necessarily traveled to perform official duties; and~~

~~(b) per diem expenses established by the governing body.~~

~~(4) The district weed board appointed under 7-22-2103 may be appointed by the governing body to also serve as the rodent control board, in which case the qualifications, terms, compensation, mileage, and expenses of the rodent control board are the same as those of the district weed board and subsections (1) through (3) do not apply.~~"

Section 20. Section 7-22-2216, MCA, is amended to read:

"**7-22-2216. Board powers.** (1) ~~The~~ *In addition to the powers and duties established in the resolution creating a rodent control board, the* board may:

(a) develop and administer a program for the abatement and alleviation of rodent pest conditions within the district;

(b) employ ~~such~~ assistants and employees as are necessary;

(c) purchase or lease ~~such~~ equipment, material, or services as are considered necessary for an effective control program;

(d) sell or lease ~~such~~ equipment, material, or services to district landowners or residents as are considered necessary to implement the rodent abatement program;

(e) cooperate with any corporation, association, group, individual, or state or federal agency in rodent abatement programs;

(f) receive gifts or grants for the implementation of a rodent abatement program; and

(g) enter district lands in order to survey and study conditions and to implement a rodent abatement program.

(2) The board shall cooperate with the department in the management and suppression of rodent pests and may enter into written agreements with the department."

Section 21. Section 7-22-2411, MCA, is amended to read:

"**7-22-2411. District to be governed by appointed mosquito control board ~~—appointment and term.~~** ~~(1)~~ Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board *subject to the provisions of [sections 1 through 3].*

~~(2) Each member of the mosquito control board shall be an elector within the boundaries of the district.~~

~~(3) The commissioners shall, at a public meeting, pass a resolution establishing the number of members of the board and the terms of the appointments. The board must consist of at least three members and no more than nine members, and the members of the board must be residents of the district.~~

~~(4) The board is a body corporate and shall act as such, and the members are public officers.~~

~~(5) The health officer having jurisdiction in the proposed district, the sanitarian or a member of his staff, and the county extension agent, if the county has any or all such officers, are ex officio members of the board without vote.~~"

Section 22. Section 7-22-2415, MCA, is amended to read:

"**7-22-2415. Powers of mosquito control board.** ~~The~~ *In addition to the powers and duties established in the resolution creating a* mosquito control board, ~~shall have power to~~ *may*:

(1) develop and administer a program for the abatement and alleviation of mosquito pest conditions within the district;

(2) employ ~~such~~ suitable and competent assistants and employees as may be necessary and provide for their compensation;

(3) purchase, rent, or execute leasing agreements for ~~such~~ equipment and material as ~~they~~ *the board* may determine te be necessary for carrying on an effective control program;

(4) cooperate with any corporation, association, individual, or group of individuals, including any agency of the federal or state governments, in a mosquito abatement program;

(5) receive gifts, grants, or donations for the purpose of advancing its program;

(6) take ~~such~~ action as may be necessary or advisable to survey, control, modify, or abate any condition which may or does contribute to the existence of the mosquito pest and for this purpose enter upon any premises located within the ~~said~~ district, through its members, employees, or agents."

Section 23. Section 7-35-2108, MCA, is amended to read:

"**7-35-2108. Government of district by trustees.** ~~(1)~~ The cemetery district ~~shall~~ *must* be governed and managed by ~~three~~ trustees appointed by the board of county commissioners *pursuant to the provisions of [sections 1 through 3].* ~~The trustees at their first meeting shall adopt bylaws for the government and management of the district.~~

~~(2) The trustees may be appointed from the residents of the district for terms of 1, 2, and 3 years, respectively, and until their successors are appointed and qualified. Annually thereafter the board of county commissioners shall appoint one trustee for a term of 3 years or until his successor is appointed and qualified.~~

~~(3) Per diem and mileage of the cemetery trustees may be set by resolution of the board of county commissioners.~~"

Section 24. Section 7-35-2109, MCA, is amended to read:

"**7-35-2109. Powers of district.** ~~Said~~ *In addition to the powers and duties established in the resolution creating a cemetery district, the* district may:

(1) maintain a cemetery or cemeteries within ~~said~~ *the* district;

(2) hold title te property by grant, gift, devise, lease, or any other method; and

(3) perform all acts necessary or proper for the carrying out of the purposes of 7-35-2101 through 7-35-2125, including the selling or leasing of burial lots."

Section 25. Repealer. Sections 7-13-214, 7-13-2522, 7-13-2523, 7-13-2524, 7-13-2525, 7-13-2526, 7-16-2204, 7-16-2302, 7-16-2303, 7-16-2305, 7-16-2306, 7-16-2307, 7-16-2308, 7-16-2309, 7-16-2310, 7-16-2311, 7-16-2313, 7-16-2321, 7-16-4202, 7-16-4203, 7-16-4204, 7-16-4205, 7-16-4206, 7-16-4207, 7-16-4208, 7-16-4209, 7-16-4210, 7-16-4211, 7-16-4221, 7-16-4224, 7-16-4301, 7-16-4302, 7-16-4303, 7-16-4304, 7-16-4305, 7-16-4306, 7-16-4307, 7-16-4308, 7-16-4309, 7-21-3403, 7-21-3404, 7-21-3405, 7-22-2105, 7-22-2413, and 7-22-2414, MCA, are repealed.

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Section 26. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 7, chapter 1, and the provisions of Title 7, chapter 1, apply to [sections 1 through 3].

Section 27. Effective date. [Section 25] is effective October 1, 1996.

Approved April 27, 1995

CHAPTER NO. 544

[SB 385]

AN ACT RELATING TO MEDICAL SERVICES FOR CHILDREN OF POOR FAMILIES; PROVIDING FOR THE EXPANSION OF MEDICAID SERVICES TO CERTAIN CHILDREN; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ADOPT RULES PROVIDING FOR MONTHLY FEES TO BE PAID BY CERTAIN MEDICAID RECIPIENTS; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO COOPERATE WITH AND MAKE GRANTS TO A NONPROFIT CORPORATION TO PROVIDE MEDICAL SERVICES FOR CHILDREN INELIGIBLE FOR THE MONTANA MEDICAID PROGRAM; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because 53-6-131 requires the department of social and rehabilitation services to adopt rules providing for monthly fees to be assessed medicaid recipients for services received from a medicaid health care provider. The rules adopted by the department must provide for a sliding scale of payments by each new recipient, as described in [this act] or as permitted by federal waiver, based upon the number of medicaid recipients per family and the family's income.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-131, MCA, is amended to read:

"**53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act, (42 U.S.C. 1381, et seq.), or aid to families with dependent children under Title IV of the federal Social Security Act, (42 U.S.C. 601, et seq.).

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

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(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act, (42 U.S.C.

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1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(6) *(a)* Notwithstanding any other provision of this chapter, medical assistance must be provided to:

(i) infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program; *and*

(ii) subject to funding, all children under 19 years of age whose family income does not exceed up to 133% of the federal poverty threshold and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(b) The department shall establish by rule a range of monthly fees to be paid for medicaid benefits by medicaid recipients for the expansions described in subsection (6)(a), if allowed by waiver. The department shall work with local health departments to control costs.

(7) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

~~(7)~~*(8)* A person described in subsection (6) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7)."

Section 2. Coordination. The amendments to 53-6-131(6)(a)(ii) and (6)(b) contained in [this act] are void if specific funding for the expansion is not contained in House Bill No. 2.

Section 3. Effective date. [This act] is effective July 1, 1995.

Approved April 27, 1995

CHAPTER NO. 545

[SB 398]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE LEGISLATIVE BRANCH; ELIMINATING AND REVISING CERTAIN COMMITTEES AND DUTIES; AMENDING SECTIONS 1-11-201, 1-11-303, 2-4-401, 2-15-401, 2-15-1514, 2-15-1523, 2-18-103, 2-18-201, 5-1-106, 5-2-301, 5-5-215, 5-11-101, 5-11-102, 5-11-103, 5-11-105, 5-11-106, 5-11-107, 5-11-111, 5-11-112, 5-11-201, 5-11-202, 5-11-203, 5-11-205, 5-11-206, 5-11-207, 5-11-208, 5-11-209, 5-11-301, 5-11-402, 5-11-404, 5-11-405, 5-12-204, 5-12-205, 5-12-301, 5-12-302, 5-12-303, 5-12-304, 5-13-202, 5-13-301, 5-13-302, 5-13-304, 5-13-305, 5-14-103, 5-15-104, 5-16-101, 5-16-104, 5-19-104, 5-19-107, 13-27-201,

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13-27-202, 13-27-504, 17-5-1650, 17-7-122, 17-7-402, 17-7-404, 18-1-118, 22-1-218, 39-30-103, 41-3-1002, 44-12-206, 44-13-103, 60-11-111, 75-1-201, 75-1-323, 75-1-324, 85-1-203, 85-1-621, 85-2-105, 85-2-436, 90-4-302, 90-4-305, 90-4-307, 90-4-308, 90-4-310, AND 90-4-313, MCA; REPEALING SECTIONS 1-13-101, 1-13-102, 1-13-103, 1-13-105, 1-13-111, 5-12-402, 17-7-114, 23-7-203, 75-1-321, 75-1-322, AND 90-4-303, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Declaration of policy and purpose. It is the public policy of this state and the purpose of [sections 1 through 4]:

(1) to create a structure of the legislative branch of state government that is efficient and responsive to the needs of the people of this state and is sufficiently flexible to meet changing conditions;

(2) to strengthen the legislative branch capacity to administer its affairs effectively and efficiently on behalf of the people of the state;

(3) to provide means for coordination of branch activities; and

(4) to eliminate unnecessary overlapping and duplication of effort within the legislative branch of state government.

Section 2. Structure of legislative branch. The legislature established in Article V, section 1, of the Montana constitution and the committees established by law constitute the legislative branch. The functional organization of the legislative branch is governed by the joint rules of the legislature and the laws governing the several components of the branch. The administrative organization of the legislative branch is consolidated as provided in [sections 1 through 4].

Section 3. Consolidation of legislative branch entities for specified purposes. (1) An entity of the legislative branch that is consolidated with the legislative council as provided in [section 4] shall:

(a) exercise its substantive functions independently as provided by law;

(b) adhere to administrative policies, including personnel policies, adopted by the legislative council;

(c) submit its budget proposals through the legislative council; and

(d) submit reports required of it as provided in 5-11-210.

(2) The legislative council shall:

(a) coordinate budgeting, recordkeeping, reporting, and related administrative and clerical functions as a consolidated entity, including acknowledgment of actions by the approving authority of the consolidated entity;

(b) include within the legislative council budget the budget proposals for the legislature and the consolidated entities, separately identified;

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(c) provide separate identification for appropriations and expenditures for the legislature and for each of the consolidated entities;

(d) establish procedures for approval of expenditures by the legislature and by each of the consolidated entities; and

(e) provide personnel administration for the legislative branch. The senate and the house of representatives or a consolidated entity with statutory hiring authority may hire its own personnel, subject to administrative procedures established by the legislature and legislative council.

(3) The legislative council shall allocate office space occupied by the legislative branch for the use of a consolidated entity as necessary. Space occupied by the senate or the house of representatives may not be reallocated except upon approval of the respective house as provided in the rules of that house. The location of the chambers of the house of representatives and the senate must be determined as provided by 2-17-101.

Section 4. Legislative branch consolidated. The following legislative branch entities are consolidated with the legislative council, as provided in [section 3] and this section:

(1) the senate and the house of representatives provided for in Article V, section 1, of the Montana constitution;

(2) the legislative council established by 5-11-101;

(3) the legislative services division established by 5-11-111;

(4) the legislative finance committee established by 5-12-201;

(5) the legislative fiscal division established by 5-12-301;

(6) the legislative audit committee established by 5-13-201;

(7) the legislative audit division established by 5-13-301;

(8) the administrative code committee established by Title 5, chapter 14, part 1;

(9) the environmental quality council established by 5-16-101;

(10) the revenue oversight committee established by 5-18-102; and

(11) the committee on Indian affairs established by 5-19-102.

Section 5. Section 1-11-201, MCA, is amended to read:

"**1-11-201. ~~Office of code~~ *Code* commissioner ~~created~~.** There is ~~created~~ within the legislative ~~council~~ *services division* ~~the office of a~~ code commissioner."

Section 6. Section 1-11-303, MCA, is amended to read:

"**1-11-303. Authority to issue ancillary publications.** The ~~legislative council~~ *code commissioner* may issue supplementary and ancillary publications as ~~it considers~~ necessary or desirable in aid of the general use and purposes of the Montana Code Annotated and the supplements or replacements to the

Montana Code Annotated. The ~~legislative council~~ *code commissioner* shall publish a legislative review containing a summary of enactments of each session of the legislature. The ~~legislative council~~ *code commissioner* shall publish a history and final status of all bills and resolutions of each session of the legislature that contains corrected voting records for bills and resolutions."

Section 7. Section 2-4-401, MCA, is amended to read:

"**2-4-401. Administrative code committee — staff, meetings, and compensation.** (1) The legislative ~~council~~ *services division* shall provide staff assistance to the administrative code committee. The committee may ~~retain whatever employees, consultants, or counsel as are necessary to carry out the provisions of this chapter and to~~ advise the publisher in relation to the text and legal authority of the material published in the register or ARM, within the limitations of legislative appropriations.

(2) The committee shall meet as often as may be necessary during and between legislative sessions.

(3) Committee members are entitled to receive compensation and expenses as provided in 5-2-302."

Section 8. Section 2-15-401, MCA, is amended to read:

"**2-15-401. Duties of secretary of state.** In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon ~~him~~ *the secretary of state* by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor, including all appointments made by him *the governor*, with date of commission and names of appointees and predecessors;

(3) affix the great seal, with ~~his~~ *the secretary of state's* attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(4) record in proper books all articles of incorporation filed in ~~his~~ *the secretary of state's* office;

(5) take and file ~~in his office~~ receipts for all books distributed by ~~him~~ *the secretary of state* and direct the county clerk of each county to do the same;

(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(7) furnish, on demand, to any person paying the fees ~~therefor~~, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in ~~his~~ *the secretary of state's* office;

(8) keep a fee book in which must be entered all fees, commissions, and compensation ~~of whatever nature or kind by him~~ earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in

each case, which ~~book~~ must be verified annually by ~~his~~ *the secretary of state's* affidavit entered ~~therein~~ *in the fee book*;

(9) file in ~~his~~ *the secretary of state's* office descriptions of seals in use by the different state officers;

(10) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of ~~him~~ by law;

(11) register marks as provided in Title 30, chapter 13, part 3;

(12) report annually to the legislative ~~council~~ *services division* all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(13) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application."

Section 9. Section 2-15-1514, MCA, is amended to read:

"2-15-1514. State library commission — natural resource data system advisory committee. (1)(a) There is a state library commission which is created in Title 22, chapter 1.

(b) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members remain as prescribed by law.

(2) (a) There is a natural resource data system advisory committee consisting of an employee of the ~~environmental quality council~~ *legislative services division*, of the state library, and of each principal data source agency, appointed by the head of the respective state agency, and by the board of regents of higher education for the Montana university system.

(b) The state library shall provide staff support to the committee, within the limits of the library's available resources."

Section 10. Section 2-15-1523, MCA, is amended to read:

"2-15-1523. Ground water assessment steering committee. (1) There is a ground water assessment steering committee consisting of an employee of each of the following state agencies having responsibility for ground water protection, management, or information who must be appointed by the head of the respective state agency:

(a) the department of natural resources and conservation;

(b) the department of health and environmental sciences;

(c) the department of agriculture;

(d) the department of state lands; and

(e) the Montana state library, natural resource information system.

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(2) The ground water assessment steering committee may include representatives of the following agencies and units of government with expertise or management responsibility related to ground water and representatives of the organizations and groups specified in subsection (2)(h), who shall serve as ex officio members:

(a) the ~~environmental quality council~~ *legislative services division*;

(b) the board of oil and gas conservation;

(c) the Montana bureau of mines and geology;

(d) a representative from a unit of the university system, other than the Montana bureau of mines and geology, appointed by the board of regents of higher education for the Montana university system;

(e) a county government, appointed by an organization of Montana counties;

(f) a city, town, or city-county government, appointed by an organization of Montana cities and towns;

(g) each principal federal agency having responsibility for ground water protection, management, or research, appointed by the Montana head of the respective federal agency; and

(h) one representative of each of the following, appointed by the governor:

(i) agricultural water users;

(ii) industrial water users; and

(iii) a conservation or ecological protection organization.

(3) The ground water assessment steering committee shall elect a ~~chairman~~ *presiding officer* from its voting members.

(4) The Montana bureau of mines and geology shall provide staff support to the committee."

Section 11. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** *(1)* Parts 1 and 2 do not apply to the following positions in state government:

~~(1)~~*(a)* elected officials;

~~(2)~~*(b)* county assessors and their chief deputy;

~~(3) officers and employees of the legislative branch;~~

(c) employees of the office of consumer counsel;

~~(4)~~*(d)* judges and employees of the judicial branch;

~~(5)~~*(e)* members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

~~(6)~~*(f)* officers or members of the militia;

~~(7)~~*(g)* agency heads appointed by the governor;

~~(8)~~*(h)* academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

~~(9)~~*(i)* academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

~~(10)~~*(j)* teachers under the authority of the department of corrections and human services or family services;

~~(11)~~*(k)* investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

~~(12)~~*(l)* four professional staff positions under the board of oil and gas conservation;

~~(13)~~*(m)* assistant director for security of the Montana state lottery;

~~(14)~~*(n)* executive director and senior investment officer of the Montana board of science and technology development;

~~(15)~~*(o)* executive director and employees of the state compensation insurance fund;

~~(16)~~*(p)* state racing stewards employed by the executive secretary of the Montana board of horseracing;

~~(17)~~*(q)* executive director of the Montana wheat and barley committee; and

~~(18)~~*(r)* commissioner of banking and financial institutions.

(2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative branch, other than the office of consumer counsel:

(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;

(b) as used in 2-18-102, the term "governor" applies to the legislature; and

(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102."

Section 12. Section 2-18-201, MCA, is amended to read:

"2-18-201. Development of personnel classification plan. The department shall develop a personnel classification plan for all state positions and classes of positions in state service following hearings involving affected employees and employee organizations, except those exempt in 2-18-103 and 2-18-104. *The legislative council shall in a like manner develop a classification plan for employees of the legislative branch, other than those of the office of consumer counsel."*

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Section 13. Section 5-1-106, MCA, is amended to read:

"5-1-106. Legislative ~~council~~ *serviees division* to provide technical and clerical services. The executive director of the legislative ~~council~~ *services division*, under the direction of the commission, shall provide the technical staff and clerical services ~~which~~ *that* the commission needs to prepare its districting and apportionment plans."

Section 14. Section 5-2-301, MCA, is amended to read:

"5-2-301. Compensation and expenses for members while in session. (1) Except as provided in subsection (7), legislators are entitled to a salary commensurate to that of the daily rate of an entry grade 8 classified state employee in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Legislators are entitled to $50 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments ~~shall~~ *must* stop when the legislature recesses for more than 3 days and ~~shall~~ resume when the legislature reconvenes.

(4) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(5) In addition to the mileage allowance provided for in subsection (4), legislators, upon submittal of an appropriate claim for ~~such~~ mileage reimbursement to the *legislative services division* ~~office of the legislative council~~, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) ~~such~~ additional round trips as are authorized by the legislature during special session.

(6) Legislators are not entitled to any additional mileage allowance under subsection (4) for a special session if it is convened within 7 days of a regular session.

(7) In lieu of the salary provided for in subsection (1) and the expense allowance provided for in subsection (3), a legislator may receive remuneration for services performed during a legislative session. A legislator choosing to receive remuneration for services performed shall file a request to receive payment under this subsection with the ~~accounting~~ *legislative services division* ~~office of the legislative council~~. A legislator exercising the option te receive remuneration for services performed may not receive more remuneration than legislators paid pursuant to subsections (1) and (3). Remuneration for services performed must be reduced $50 a day when the legislature recesses for more than 3 days."

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Section 15. Section 5-5-215, MCA, is amended to read:

"5-5-215. Duties of subcommittees. (1) Each subcommittee shall accumulate, compile, analyze, and furnish ~~such~~ information *bearing upon its assignment and* relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to *the adequate completion of its work.* ~~important issues of policy and questions of statewide importance, including but not limited to:~~

~~(a) the possibilities of consolidations of departments, commissions, boards, and institutions in state government for:~~

~~(i) the elimination of unnecessary activities and duplications in office personnel and equipment;~~

~~(ii) the coordination of activities;~~

~~(iii) the purpose of increasing efficiency of service or effecting economies; and~~

~~(iv) the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of taxes; and~~

~~(b) all other matters pertaining to the function of the departments and branches of state government.~~

(2) Each subcommittee shall prepare ~~such~~ bills and resolutions ~~as~~ *that*, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) ~~Each subcommittee~~ *The legislative services division* shall keep accurate records of ~~its~~ *the* activities and proceedings *of each subcommittee.*"

Section 16. Section 5-11-101, MCA, is amended to read:

"5-11-101. Appointment and composition of council. *(1)* There is a legislative council ~~which~~ *that* consists of:

~~(1)~~*(a)* ~~four members of the house of representatives appointed by~~ the speaker of the house, ~~with the advice of the majority and~~ *the* minority ~~leaders~~ *leader* of the house, ~~no more than two of whom may be of the same political party~~ *and four members chosen by the speaker of the house, no more than two of whom may be of the same political party*; and

~~(2)~~*(b)* ~~four members of the senate appointed by the committee on committees~~ *the president* of the senate, ~~no more than two of whom may be of the same political party~~ *the minority leader of the senate, and four members chosen by the committee on committees, no more than two of whom may be of the same political party.*

(2) No more than three members of each house may be of the same political party."

Section 17. Section 5-11-102, MCA, is amended to read:

"**5-11-102. Term.** Membership on the council is for 2 years *while the member remains qualified and until a successor is appointed and qualified* ~~and terminates with the appointment of a new council or on the 50th legislative day of the next regular session following the one in which the appointment was made, whichever event occurs first. A new council~~ *Members required to be appointed by leadership under 5-11-101* ~~shall~~ *must* be appointed ~~no later than the 50th day of each regular session~~ *immediately following organization of the senate and the house of representatives as provided in 5-2-212 and 5-2-213.*"

Section 18. Section 5-11-103, MCA, is amended to read:

"**5-11-103. Vacancies.** A vacancy on the legislative council ~~occurring when the legislature is not in session shall~~ *must* be filled by the selection of another member by the same method as the original appointment."

Section 19. Section 5-11-105, MCA, is amended to read:

"**5-11-105. Powers and duties of council.** (1) *The legislative council shall:*

(a) employ and, in accordance with the rules for classification and pay established as provided in this section, set the salary of an executive director of the legislative services division, who serves at the pleasure of and is responsible to the legislative council;

(b) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules for classification and pay of legislative branch employees, other than those of the office of consumer counsel;

(c) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules governing personnel management of branch employees, other than those of the office of consumer counsel;

(d) adopt procedures to administer legislator claims for reimbursements authorized by law for interim activity; and

(e) perform other duties assigned by law.

(2) If a question of statewide importance arises when the legislature is not in session and a ~~subcommittee has not~~ *legislative committee has not* been ~~appointed~~ *assigned* to consider the question, the legislative council shall assign the question to an appropriate subcommittee as provided in Title 5, chapter 5, part 2, or to the appropriate statutorily created committee.

~~(2) The legislative council shall supervise the activities of the council staff.~~

~~(3) The legislative council shall assist in the preparation and submission of all standing and select committee and subcommittee reports and recommendations to the legislature.~~

~~(4) This section shall not be construed to permit the council to approve or disapprove of any substantive portions or recommendations of a standing or select committee or subcommittee report.~~"

Section 20. Section 5-11-106, MCA, is amended to read:

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"**5-11-106. Authority to investigate and examine.** The legislative ~~council~~ *services division*, on behalf of standing and select committees and subcommittees, ~~shall have authority to~~ *may* investigate and examine ~~the costs of~~ state governmental activities and may examine and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana."

Section 21. Section 5-11-107, MCA, is amended to read:

"**5-11-107. Powers relating to hearings.** (1) In the discharge of its duties *or* on behalf of ~~standing~~ *statutory* committees ~~and~~ *or* subcommittees, the legislative council may hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in district court.

(2) If a person disobeys a subpoena issued by the council ~~on behalf of a standing committee or subcommittee~~ or if a witness refuses to testify on any matters regarding which ~~he~~ *the witness* may be lawfully interrogated, the district court of any county ~~or a judge thereof~~ shall, on application of the legislative council, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from ~~such~~ *a district* court or a refusal to testify ~~therein~~ *in the district court*."

Section 22. Section 5-11-111, MCA, is amended to read:

"**5-11-111. ~~Executive director, personnel, and consultants~~ *Legislative services division.*** ~~The legislative council may employ an~~ *There is a legislative services division under the direction of an* executive director *employed by the legislative council under 5-11-105* ~~and such other personnel, not members of the council, as it considers necessary to assist in the preparation of proposed legislative acts and standing and select committee and subcommittee reports and recommendations and to carry out other council activities~~. *The executive director may engage personnel and consultants to fulfill the duties of the legislative services division within the limits of appropriations to the legislative services division.* The ~~council~~ *executive director* shall fix the compensation of ~~such~~ *the* employees *of the legislative services division in accordance with the rules for classification and pay adopted by the legislative council.* ~~It may also employ the services of any research agency which it considers necessary in the discharge of its duties.~~"

Section 23. Section 5-11-112, MCA, is amended to read:

"**5-11-112. Functional ~~divisions~~ *organization and responsibilities.*** *(1)* The legislative council may establish *a* functional ~~divisions~~ *organization* within the ~~council staff~~ *legislative services division* in order to *effectively and efficiently* carry out all of the responsibilities delegated to the ~~council~~ *division* by law or legislative rule. The ~~divisions shall~~ *responsibilities of the legislative services division* include the following:

~~(1)~~*(a)* ~~legislative~~ *document* services ~~division~~:

(i) bill drafting and preparation for introduction;

~~(a)~~*(ii)* engrossing and enrolling;

~~(b)~~*(iii)* ~~mailroom~~ *distribution of legislative bills and information*;

~~(c)~~*(iv) coordination of legislative* printing; *and*

(v) publication of legislative records;

~~(d) data processing;~~

~~(2)~~*(b)* research and reference services ~~division~~:

~~(a)~~*(i)* general and specialized legislative research; *and*

~~(b)~~*(ii)* legislative reference and information;

~~(c) committee staffing, including staffing for interim committees organized under Title 5, chapter 5, part 2;~~

~~(3)~~*(c)* legal services ~~division~~:

~~(a)~~*(i)* ~~bill drafting~~ *legal review of draft bills*;

~~(b)~~*(ii)* legal counseling *on legislative matters*;

~~(c)~~*(iii)* ~~committee staffing~~ *legal support for consolidated entities; and*

(iv) support for the functions of the code commissioner provided in 1-11-201;

(d) committee services:

(i) research, legal, and administrative staff support for consolidated committees as assigned, including support for interim committees organized under Title 5, chapter 5, part 2; and

(ii) research and legal support for legislative standing and select committees;

~~(4)~~*(e)* management and business services ~~division, which shall~~:

~~(a)~~*(i)* ~~maintain bookkeeping~~ *financial* records;

~~(b)~~*(ii)* ~~sign~~ claims and payrolls;

~~(c)~~*(iii)* ~~order all~~ *coordination of procurement of* printing, supplies, and equipment; and

~~(d)~~*(iv)* ~~serve the house and senate during the session~~ *maintenance of property inventories;*

(f) personnel and administrative services:

(i) rules for classification and pay; and

(ii) personnel and administrative policies; and

(g) information technology services:

(i) legislative branch network support services;

(ii) application support and development;

(iii) communications support and coordination; and

(iv) information technology planning.

(2) The responsibilities of the legislative services division must be fulfilled collaboratively with consolidated entities whenever the efficient operation of the legislative branch is served."

Section 24. Section 5-11-201, MCA, is amended to read:

"5-11-201. Journals — how authenticated — filing. The journal of the senate must be authenticated by the signature of the president and the journal of the house of representatives by the signature of the speaker. Each authenticated journal must be filed with the secretary of state. A copy of each authenticated journal must be filed with the legislative ~~council~~ *services division*."

Section 25. Section 5-11-202, MCA, is amended to read:

"5-11-202. Printing of session laws. The legislative ~~council~~ *services division* shall deliver to the appropriate printer, at the earliest practicable day after the final adjournment of each session of the legislature, copies of all laws and resolutions passed or adopted during the session. The session laws must be delivered to the appropriate printer in the form provided for in 5-11-205 and 5-11-206."

Section 26. Section 5-11-203, MCA, is amended to read:

"5-11-203. Distribution of session laws — inspection of journals. (1) Immediately after the session laws are published, the legislative ~~council~~ *services division* shall distribute them.

(2) The ~~council~~ *legislative services division* shall make the house and senate journals available for inspection or copying by the public as provided in Title 2, chapter 6, part 1. The ~~council~~ *legislative services division* may publish the journals in an electronic format.

(3) The following entities may receive the number of copies of session laws listed at no cost:

(a) to the library of congress, eight copies;

(b) to the state library, two copies;

(c) to the state historical library, two copies;

(d) to the state law librarian, four copies for the use of the library and additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;

(e) to the library of each custodial institution, one copy;

(f) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102(8), one copy;

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(g) to any agency, board, commission, or office of the state, other than a state officer, and to any other subdivision of the state upon request and approval by the legislative council, one copy;

(h) to each member of the legislature, the secretary of the senato, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;

(i) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;

(j) to each county clerk, one copy for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy."

Section 27. Section 5-11-205, MCA, is amended to read:

"5-11-205. Publication of laws — format. (1) The legislative ~~council~~ *services division* shall publish all laws and resolutions passed or adopted by each session of the legislature in a publication to be known as the Laws of Montana.

(2) Laws of each session must be printed in the Laws of Montana in the order that they have been filed in the office of the secretary of state with the chapter number assigned by the secretary of state as the heading. The chapter number must also appear as part of each page heading. In all laws containing amendments to an existing law, the new parts designated in the act by underlining must be printed in italics in the Laws of Montana and deleted provisions must be shown as stricken. The senate or house bill number may be omitted from each act.

(3) Reference to the laws of a legislative session may be made as follows: "Chapter.... (giving number), Laws of.... (giving the year enacted)".

(4) Resolutions adopted by each session of the legislature must be printed in a separato section of the Laws of Montana with the type of resolution and its number as a heading.

(5) The legislative ~~council~~ *services division* shall also publish in the Laws of Montana the indexes required by 5-11-206."

Section 28. Section 5-11-206, MCA, is amended to read:

"5-11-206. Index — list. (1) The legislative ~~council~~ *services division* shall prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislature. The index ~~shall~~ *must* be a thorough index of the laws and resolutions and of each subject contained in or covered by the laws and resolutions, together with a cross-index to assist in readily finding any subject contained in each volume. A separate index must be prepared for appropriation bills passed by each session of the legislature.

(2) For the purpose of uniformity in indexes, the index of each succeeding publication of the session laws ~~shall~~ *must* conform as nearly as practicable with those of the volumes preceding it.

(3) There ~~shall~~ *must* also be prepared for each publication of the session laws a "code sections affected list" showing what sections of the Montana Code

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Annotated have been amended or repealed by any laws enacted hy that session of the legislature."

Section 29. Section 5-11-207, MCA, is amended to read:

"5-11-207. Description of county boundaries included in session laws. The legislative ~~council~~ *services division* shall include in the published session laws a description of the county boundaries of any new counties of the state created by petition and election, commencing with counties created after January 1, 1921, by inserting in each set of session laws new counties that have been created since the publication of the laws of the previous session."

Section 30. Section 5-11-208, MCA, is amended to read:

"5-11-208. Expenses. The expenses incurred by the legislative ~~council~~ *services division* in carrying into effect 5-11-202, 5-11-203, and 5-11-205 through 5-11-207~~, as amended,~~ must be paid out of money ~~specifically~~ appropriated for that purpose."

Section 31. Section 5-11-209, MCA, is amended to read:

"5-11-209. Codes — availability to legislators — reserved for use by legislative committees. (1) Immediately after the Montana Code Annotated statute text and histories are bound following each legislative session, the legislative ~~council~~ *services division* shall make available one set of these volumes to each member of the legislature at a charge of $10.

(2) The legislative ~~council~~ *services division* shall reserve 50 sets of the Montana Code Annotated statute text and histories for the use of the standing and select committees of the legislature.

(3) Costs associated with providing code sets as required by this section ~~shall~~ *must* be paid out of the state special revenue fund account established under 1-11-301."

Section 32. Section 5-11-301, MCA, is amended to read:

"5-11-301. Functions of legislative council — interstate *and international* cooperation. It ~~shall be~~ *is* a function of the legislative council, *within the limits of appropriations,* to:

(1) carry forward the participation of the state of Montana as a member of the council of state governments *and the national conference of state legislatures,* and the legislative council is ~~hereby~~ designated as the Montana commission on interstate *and international* cooperation;

(2) encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise with the other states, with the federal government, and with local units of government, *as well as tribal governments, bordering Canadian provinces, and regions designated as sister states by the legislature*;

(3) establish ~~such~~ delegations and committees as may be ~~deemed~~ *considered* advisable to confer with similar delegations and committees from other states, *provinces, and countries* concerning problems of mutual interest. The membership of ~~such~~ *the* delegations and committees may consist of legislators

and employees of the state other than members of the legislative council. ~~Members~~ *Legislative members* of ~~such~~ *the* delegations and committees ~~shall~~ *must* be reimbursed and compensated as provided in 5-2-302.

(4) endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process;

(5) make appointments to any policy committee established by the Pacific Northwest economic region as provided in 5-11-703(2)."

Section 33. Section 5-11-402, MCA, is amended to read:

"**5-11-402. Legislative branch computer system planning council.** There is a legislative branch computer system planning council composed of:

(1) the secretary of the senate or another representative of the senate designated by the president;

(2) the chief clerk of the house of representatives or another representative of the house designated by the speaker;

(3) the sergeants-at-arms in the two houses or another representative of each house designated by the ~~chairman~~ *presiding officer* of the legislative administration committee of that house;

(4) the executive director of the legislative ~~council~~ *services division*, who shall chair the planning council;

(5) the legislative auditor;

(6) the legislative fiscal analyst;

~~(7) the executive director of the environmental quality council;~~

~~(8)~~*(7)* the consumer counsel; and

~~(8)~~*(8)* a person designated by the director of the department of administration to represent the data processing policy and planning functions of the department, who shall serve as a nonvoting member of the planning council."

Section 34. Section 5-11-404, MCA, is amended to read:

"**5-11-404. Technical support.** *(1)* The executive director of the legislative ~~council~~ *services division* shall provide technical staff support to the legislative branch computer system planning council. In performing this duty, the legislative ~~council staff~~ *services division* shall assist the planning council by:

(a) developing or having developed analyses of existing and alternate systems;

(b) providing technical solutions and advice related to the standards set by the planning council;

(c) assisting in assessing benefits and costs of optional solutions;

(d) apprising the planning council of developments and directions in the industry;

(e) maintaining a liaison with and informing the planning council of plans and directions within the executive branch; assisting in the selection and purchasing of supplies and equipment; and

(f) providing other assistance as may be requested.

(2) The executive director shall encourage participation of appropriate personnel of the senate, the house of representetives, and other legislative agencies *entities* in the provision of technical support."

Section 35. Section 5-11-405, MCA, is amended to read:

"**5-11-405. Legislative branch computer system plan — adoption.** The legislative branch computer system plan must be approved and adopted ~~jointly~~ by the legislative ~~administration committees of the senate and the house of representatives~~ *council*."

Section 36. Section 5-12-204, MCA, is amended to read:

"**5-12-204. Vacancies.** If a vacancy occurs on the committee when the legislature is not in session, the remaining members shall select a member of the appropriate political party and appropriate committee, as provided in 5-12-202, to complete the unexpired term. *If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-12-202.*"

Section 37. Section 5-12-205, MCA, is amended to read:

"**5-12-205. Powers and duties of committee.** The committee may:

(1) organize, adopt rules to govern its proceedings, and meet as often as necessary, upon the call of the ~~chairman~~ *presiding officer*, to advise and consult with the legislative fiscal analyst;

(2) employ and, *in accordance with the rules for classification and pay adopted by the legislative council,* set the salary of the legislative fiscal analyst~~,~~ ~~who~~. *The legislative fiscal analyst* shall serve at the pleasure of and be responsible ~~to~~ *for providing services to* the committee~~; and~~.

(3) exercise the investigatory powers of a standing committee under chapter 5, part 1, of this title."

Section 38. Section 5-12-301, MCA, is amended to read:

"**5-12-301. ~~Office of legislative~~ *Legislative* fiscal ~~analyst~~ *division.*** There is ~~an office of~~ *a* legislative fiscal *division* ~~analyst~~. The legislative fiscal

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analyst shall *manage the legislative fiscal division to support the legislative finance committee and* carry out the provisions of this chapter."

Section 39. Section 5-12-302, MCA, is amended to read:

"5-12-302. Fiscal analyst's duties. The legislative fiscal analyst shall:

(1) provide for fiscal analysis of state government and accumulato, compile, analyze, and furnish ~~such~~ information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) estimate revenue from existing and proposed taxes;

(3) analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

(4) for the legislative session convening in January 1997, following receipt of the information required in 17-7-122 from the governor and in 17-7-123 from the budget director in a mutually prescribed format, publish the governor's budget and incorporate the information required by 17-7-123 in a combined governor's budget and legislative fiscal analyst's budget analysis presentation. The combined budget and budget analysis presentation must be made available to the legislature prior to the convening date set for a regular session of the legislature. The cost of printing the combined budget and budget analysis presentation must be shared proportionally by the office of budget and program planning and the office of the legislative fiscal analyst. This section does not prohibit the legislative fiscal analyst from including any analysis and comments on any portion of the executive budget in the combined budget and budget analysis presentation.

~~(4)~~*(5)* make the reports and recommendations ~~he deems~~ *that the legislative fiscal analyst considers* desirable te the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature;

~~(5)~~*(6)* assist committees of tbe legislature and individual legislaters in compiling and analyzing financial information~~; and~~

~~(6) assist the revenue oversight committee in performing its revenue estimating duties under 5-18-107(5).~~*; and*

(7) assist the revenue oversight committee in performing its revenue estimating duties under 5-18-107(5)."

Section 40. Section 5-12-303, MCA, is amended to read:

"5-12-303. Fiscal analysis information from state agencies. (1) The legislative fiscal analyst may investigate and examine the costs and revenues of state government activities and may examine and obtsin copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same

penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.

(4) The budget director shall furnish the legislative fiscal analyst with copies of all budget requests, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, at the time of submission to the budget director as provided by law and, if requested, all underlying and supporting documentation. In preparing the executive budget for the next biennium for submission to the legislature, the budget director shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(5) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst, ~~on a confidential basis and~~ in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst:

(a) by October 10, a preliminary budget reflecting the base budget and, by November 1, a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium;

(b) by November 15, a preliminary budget that must meet the statutory requirements for submission of the budget to the legislature *and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature*;

(c) by November 12, a paper copy and an electronic copy of the documents that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity; and

(d) by December 15, all amendments to the preliminary budget.

(6) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(7) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure."

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Section 41. Section 5-12-304, MCA, is amended to read:

"5-12-304. Employees and consultants. The legislative fiscal analyst may ~~employ,~~ *engage personnel and consultants to fulfill the duties of the division within the limits of appropriations for the division. The legislative fiscal analyst may define the duties of personnel engaged and shall* fix the salaries *of employees in accordance with the rules for classification and pay adopted by the legislative council,* ~~and define the duties of such staff and consultants as may be necessary, within the limits of his appropriation.~~"

Section 42. Section 5-13-202, MCA, is amended to read:

"5-13-202. Appointment and term of members — officers — vacancies. (1) The legislative audit committee consists of ~~four~~ *six* members of the senate and ~~four~~ *six* members of the house of representatives appointed before the ~~60th legislative day~~ *end* of each regular session in the same manner as standing committees of the respective houses are appointed. No more than ~~two~~ *three* of the appointees of each house may be members of the same political party.

(2) A member of the committee shall serve until ~~his~~ *the member's* term of office as a legislator ends or until ~~his~~ *a* successor is appointed, whichever occurs first.

(3) The committee shall elect one of its members as ~~chairman~~ *presiding officer* and ~~such~~ other officers as it considers necessary.

(4) A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee. *If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under subsection (1).*"

Section 43. Section 5-13-301, MCA, is amended to read:

"5-13-301. ~~Office of legislative auditor~~ *Legislative audit division.* There is ~~an office of the~~ *a* legislative *audit division* ~~auditor~~. The legislative auditor is responsible ~~for performing~~ *to manage the division in order to perform* the duties imposed by this chapter."

Section 44. Section 5-13-302, MCA, is amended to read:

"5-13-302. Appointment and qualifications. (1) The committee shall appoint the legislative auditor and set ~~his~~ *the legislative auditor's* salary *in accordance with the rules for classification and pay adopted by the legislative council.*

(2) The legislative auditor shall hold a degree from an accredited college or university with a major in accounting or an allied field and shall have at least 2 years' experience in the field of governmental accounting and auditing."

Section 45. Section 5-13-304, MCA, is amended to read:

"5-13-304. Powers and duties. The legislative auditor shall:

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(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct a special audit whenever the legislative auditor determines it necessary and shall so advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency ~~which~~ *that* was audited, each member of the committee, and the legislative ~~council~~ *services division*.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(7) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under ita control to others, the agency shall obtain the written consent of the grantee to the audit provided for in this subsection."

Section 46. Section 5-13-305, MCA, is amended to read:

"5-13-305. Employees, consultants, and legal counsel — *cure for impairment.* *(1)* The legislative auditor may appoint *and define the duties of* ~~whatever~~ employees and consultants *who* are necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations. *The legislative auditor shall set the pay for employees in accordance with the rules for classification and pay adopted by the legislative council.* The legislative auditor may employ legal counsel to conduct proceedings under this chapter.

(2) The legislative auditor shall inform the legislative council and the legislative audit committee in writing of an administrative policy or rule adopted under 5-11-105 that may impair the independence of the division, along with a statement of the reasons for the opinion and suggested changes to cure the impairment. The legislative council shall review the rule in question and adopt a revision that is generally applicable to the legislative branch and that is designed to cure the impairment. While the impairment exists, the legislative audit committee may adopt a specific exemption to the questioned rule that states the alternative rule to be employed under the exemption."

Section 47. Section 5-14-103, MCA, is amended to read:

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"5-14-103. Vacancies. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee. *If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-14-101.*"

Section 48. Section 5-15-104, MCA, is amended to read:

"5-15-104. Vacancies. A vacancy on tbe committee occurring when the legislature is not in session shall be filled by the selection of a legislator by the remaining members of the committee. *If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-15-101.*"

Section 49. Section 5-16-101, MCA, is amended to read:

"5-16-101. Appointment and composition. The environmental quality council ~~shall consist~~ *consists* of ~~13~~ *17* members ~~to be~~ as follows:

(1) the governor or ~~his~~ *the governor's* designated representative ~~shall be~~ *is* an ex officio member of the council and shall participato in council meetings as a nonvoting member;

(2) ~~four~~ *six* members of the senate and ~~four~~ *six* members of the house of representatives appointed before the 50th legislative day in the same manner as standing committees of the respective houses are appointed. No more than ~~two~~ *three* of the appointees of each bouse ~~shall~~ *may* be members of the same political party.

(3) four members of the general public. Two public members ~~shall~~ *must* be appointed by the speaker of tbe house with the consent of the house minority leader, and two ~~shall~~ *must* be appointed by the president of the senate with the consent of the senato minority leader."

Section 50. Section 5-16-104, MCA, is amended to read:

"5-16-104. Vacancies. (1) A vacancy on the council of a member appointod under 5-16-101(2) occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the same method as the original appointment. *If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-16-101.*

(2) (a) When a vacancy on the council of a member appointed under 5-16-101(3) has occurred or is expected to occur, the appointing authority shall have posted in a conspicuous place in the state capitol a notice announcing the actual or anticipated vacancy and describing the procedure for applying for appointment.

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(b) A copy of the notice required under subsection (2)(a) must be sent to the lieutenant governor, who may publish the notice in an appropriate publication."

Section 51. Section 5-19-104, MCA, is amended to read:

"**5-19-104. Vacancies.** (1) A vacancy occurring during a legislative session must be filled in the same manner as the original appointment. *If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment no later than the 10th legislative day.*

(2) A vacancy occurring when the legislature is not in session must be filled by the selection of a member from the appropriate house and political party by the remaining members of the committee.

(3) An appointment to the committee under this section is for the unexpired term of the original member."

Section 52. Section 5-19-107, MCA, is amended to read:

"**5-19-107. Staff assistance.** The legislative ~~council~~ *services division* shall provide staff assistance to the committee. The legislative ~~council~~ *services division* has the same authority of investigation and examination *as it has for other committees under 5-11-106,* and the *legislative council has the* same authority to hold hearings on behalf of the committee as it has for other committees under ~~5-11-106 and~~ 5-11-107."

Section 53. Section 13-27-201, MCA, is amended to read:

"**13-27-201. Form of petition generally.** (1) A petition for the initiative, the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 1/2 x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the measure to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the measure proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the measure must be in the bill form provided in the most recent issue of the bill drafting manual furnished by the legislative ~~council~~ *services division.* If sheets are circulated in sections, the complete text of the measure must be attached to each section."

Section 54. Section 13-27-202, MCA, is amended to read:

"**13-27-202. Recommendations — approval of form required.** (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must be submitted to the legislative ~~council~~ *services division* for review.

(b) Tbe ~~council~~ *legislative services division* staff shall review the text for clarity, consistency, and any other factors the council staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the ~~council~~ *legislative services division* staff shall make te the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider ~~any such~~ *the* recommendations and respond in writing to the ~~council~~ *legislative services division*, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative ~~council~~ *services division* shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy ~~thereof~~ *of the correspondence* available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the secretary of state. The secretary of state shall refer a copy of the petition sheet to the attorney general for ~~his~~ approval. The secretary of state and attorney general ~~must~~ *shall* each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any. The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative ~~council~~ *services division* unless the material not submitted to the legislative ~~council~~ *services division* is a substantive change not suggested by the legislative ~~council~~ *services division*.

(4) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the form of the petition. The secretary of state shall send written notice to the person who submitted the petition sheet of the approval or rejection within 28 days after submission of the petition sheet. If the petition is rejected, the notice must include reasons for rejection.

(5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures.

(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated in the form of the sample prepared by the secretary of state."

Section 55. Section 13-27-504, MCA, is amended to read:

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"**13-27-504. Copy of approved issues to be sent to legislative ~~council~~ *services division*.** The secretary of state shall send a certified copy of all ballot issues ~~which~~ *that* have been approved by a majority of those voting on the issue and a copy of the statement of the canvass to the ~~executive director of the legislative council~~ *legislative services division* at the same time ~~he transmits~~ *that* a certified copy of the statement of the canvass *is transmitted* to the governor."

Section 56. Section 17-5-1650, MCA, is amended to read:

"**17-5-1650. Annual report.** By December 31 of each year, the board shall publish a financial report for distribution to the governor, the legislature, and the public. Distribution to the legislature is accomplished by providing two copies to the ~~office of the legislative fiscal analyst, two copies to the~~ legislative ~~council~~ *services division*, and a copy to a legislator on request. The report must include a statement of the board's current financial position with respect to its activities under this part, a summary of its activities pursuant to this part during the previous year (including a listing of the local governmental securities purchased by the board, a listing of the bonds and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under this part), an estimate of the levels of activities for the next year, and a comparison of the activities during the previous year with the estimates of those activities that were made in the previous annual report."

Section 57. Section 17-7-122, MCA, is amended to read:

"**17-7-122. Submission *Preparation* of budget ~~to legislature~~.** (1) The governor shall, following the receipt of the preliminary budget from the budget director, have prepared a budget for the ensuing biennium and shall submit the budget to ~~each member of the legislature at the time of the convening of the legislature~~ *the legislative fiscal analyst in accordance with 5-12-303 for inclusion in the combined governor's budget and budget analysis report.*

(2) Legislative branch ~~requests~~ *budget proposals* must be included in the budget submitted by the governor without changes.

(3) Judicial branch ~~requests~~ *budget proposals* must be included in the budget submitted by the governor, but expenditures above the current base budget need not be part of the balanced financial plan pursuant to 17-7-123."

Section 58. Section 17-7-402, MCA, is amended to read:

"**17-7-402. Budget amendment requirements.** (1) Except as provided in subsection (6), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue;;

(ii) additional tuition collected by the Montana university system;;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;;

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(iv) Montana historical society enterprise revenue resulting from sales to the public~~;~~; *or*

(v) additional revenue deposited in funds, other than the general fund, from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91~~, or a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter~~;

(b) by the approving authority, ~~which~~ *if the budget amendment* contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority, for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure;

(d) by the approving authority, unless it will provide additional services;

(e) by the approving authority, for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented te an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open te that matter; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) All budget amendments must itemize planned expenditures by fiscal year.

(3) Each budget amendment must be submitted by the approving authority to the budget director and the ~~office of the~~ legislative fiscal analyst.

(4) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, ~~is subject to the review process provided in 17-7-114 and~~ is exempt from the requirements of this part.

(5) An appropriation that would usually be the subject of a budget amendment that is submitted to the legislature for approval during a legislative session may not include authority to spend money beyond the first fiscal year of the next biennium.

(6) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

Section 59. Section 17-7-404, MCA, is amended te read:

"**17-7-404. Budget amendment procedures.** (1) Upon receiving a proposed budget amendment, the approving authority shall immediately forward a copy of the entire budget amendment tc the legislative fiscal analyst.

(2) If the approving authority denies the request for a budget amendment, he *the approving authority* shall immediately forward a notice of denial to the legislative fiscal analyst.

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(3) If the approving authority intends to make certification of the budget amendment, immediately upon ~~his~~ completion of the certification ~~he~~ *the approving authority* shall forward the certification and all supporting documentation to the legislative fiscal analyst. ~~The approving authority may not approve the budget amendment until he receives the legislative finance committee's written report for that budget amendment unless:~~

~~(a) the report is not received within 90 calendar days from the date the certification and supporting documentation were forwarded to the finance committee, in which case the approving authority may approve the budget amendment; or~~

~~(b) there has been a waiver of review and report as provided in subsection (6).~~

~~(4) The legislative fiscal analyst shall review each proposed budget amendment that has been certified by the approving authority for compliance with statutory budget amendment requirements and standards and shall present a written report of this review to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the budget amendment, the legislative fiscal analyst shall submit the committee's report to the approving authority.~~

~~(5) Upon receipt of the legislative finance committee's written report, the approving authority may approve or deny the budget amendment or may return the budget amendment to the requesting agency for further information.~~ If the approving authority has returned the budget amendment to the requesting agency and the requesting agency resubmits the budget amendment to the approving authority, all procedures set out in this section apply to the resubmitted budget amendment.

~~(6) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive his written review and the legislative finance committee's written report required by this section. Upon receipt of such waiver, the approving authority may approve the budget amendment on completion of his certification. Such a waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the budget amendment, and all other budget amendment requirements and standards remain in effect. After such a waiver, the legislative fiscal analyst may complete the written review.~~

~~(7)~~*(4)* ~~Nothing in this~~ *This* part ~~confers~~ *does not confer* any authority on the legislative finance committee to approve or deny budget amendments."

Section 60. Section 18-1-118, MCA, is amended to read:

"18-1-118. Access to records of contracting entities. Money may not be spent by a state agency under a contract with a nonstate entity unless the contract contains a provision that allows the legislative auditor ~~and the legislative fiscal analyst~~ sufficient access to the records of the nonstate entity to determine whether the parties have complied with the terms of the contract. The access to records is necessary to carry out the functions provided for in Title 5, ~~chapters 12 and~~ *chapter* 13. A state agency may terminate a contract, without

incurring liability, for the refusal of a nonstato entity to allow access to records as required by this section."

Section 61. Section 22-1-218, MCA, is amended to read:

"**22-1-218. Exemptions.** This part does not apply to officers of or affect the duties concerning publications distributed by:

(1) the state law library;

(2) the code commissioner in connection with ~~his~~ duties under Title 1, chapter 11, as amended; and

(3) the legislative ~~council~~ *services division* in connection with its duties under 5-11-203, as amended."

Section 62. Section 39-30-103, MCA, is amended to read:

"**39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a handicapped person determined by the department of social and rebabilitation services to bave a 100% disability who is unable to use ~~his~~ *an* employment preference because of ~~his~~ *the* disability.

(2) "Handicapped person" means an individual certified by the department of social and rebabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of tbe current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency~~, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst,~~ for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), current employees in a reduction-in-force pool who bave been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), or current participants in a federally authorized employment program is not an initial hiring.

(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has suhstantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a puhlic employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable

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determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Section 63. Section 41-3-1002, MCA, is amended to read:

"**41-3-1002. ~~Establishment of pilot program~~ *Interest in local review board.*** ~~(1)~~ The office of the supreme court administrator shall solicit written indication of interest from each youth court judge interested in having a local citizen review board established pursuant to this part within the jurisdiction of the youth court.

~~(2) (a) There is a local citizen review board screening committee. The committee is composed of the following members:~~

~~(i) a member of the house of representatives, designated by the speaker of the house;~~

~~(ii) a member of the senate, designated by the president of the senate;~~

~~(iii) a representative of the Montana judges' association, designated by the association; and~~

~~(iv) a representative of the office of the supreme court administrator, designated by the chief justice of the supreme court.~~

~~(b) The members designated pursuant to subsections (2)(a)(i) and (2)(a)(ii) must be from different political parties.~~

~~(3) The committee shall meet at a time agreeable to its members, and the members shall serve without additional compensation.~~

~~(4) The committee shall review the responses of youth court judges received pursuant to subsection (1) and shall designate judicial districts to operate a local citizen review board pilot program from among those courts expressing an interest in the program.~~"

Section 64. Section 44-12-206, MCA, is amended to read:

"**44-12-206. Disposition of proceeds of sale ~~—report~~.** (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(c) through (1)(e);

(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(d) and (1)(e);

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(d) if the property was seized by an employee of the state, the remainder, if any, to the account established in subsection (3), except as provided in subsection (1)(e); and

(e) if the property was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation, as determined by the attorney general.

(2) All proceeds from any source that are deposited into a county, city, or town drug forfeiture account must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug laws enforcement and education concerning drugs.

(3) Net proceeds received by the state under subsections (1)(d) and (1)(e) must be deposited in an account in the state special revenuo fund to the credit of the department of justice. The department may expend the money in the account only for purposes of enforcement of drug laws. An amount up to $125,000 each year is statutorily appropriated, as provided in 17-7-502, to the attorney general for enforcement of drug laws. Any expenditure in excess of $125,000 each fiscal year requires approval through budget amendment, as provided in Title 17, chapter 7, part 4.

~~(4) The attorney general shall provide the legislative finance committee and the legislative auditor with a detailed, written report of the amounts and property credited to the account no later than 4 months after the end of each fiscal year. The attorney general may not disclose any information that would compromise any investigation or prosecution.~~"

Section 65. Section 44-13-103, MCA, is amended to read:

"**44-13-103. Limitations on use of special law enforcement assistance account ~~—report~~.** (1) After property is credited to the account, the attorney general may:

(a) transfer the property to any local or state law enforcement agency to be used for criminal investigation purposes;

(b) sell the property by public sale;

(c) destroy any illegal or controlled substances and sell or destroy raw materials, products, and equipment used or intended for use in manufacturing, compounding, or processing a controlled substance;

(d) compromise and pay claims against the property; and

(e) make any other disposition of the property authorized by law.

(2) Money and proceeds from property credited to the account may be used by the attorney general for:

(a) the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell seized, detained, or forfeited property, including but not limited to payment for contract services and reimbursement to a federal, state, or local agency for its expenses;

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(b) the payment of awards for information or assistance leading to a criminal proceeding or a civil forfeiture proceeding;

(c) the compromise and payment of claims against property;

(d) the payment of sums for criminal investigation purposes, including but not limited to:

(i) payment of informants;

(ii) use by undercover agents to purchase unlawful substances, including, without limitation, counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;

(iii) use by undercover agents as gambling front money; and

(iv) payment of overtime to state or local law enforcement officers when engaged in special criminal investigations;

(e) the payment of funds into the account created by 53-9-109; and

(f) matching federal grants for criminal investigation purposes.

~~(3) The attorney general shall submit to the legislative finance committee and the legislative auditor a detailed written report of the amounts and property credited to the account and of the disposition of money and property credited to the account, but may not make any disclosure that would compromise any investigation or prosecution.~~"

Section 66. Section 60-11-111, MCA, is amended to read:

"**60-11-111. Identification and acquisition of railroad rights-of-way — identification of railroad lines for rehabilitation.** (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements ~~therein~~ *in the lines.*

(2) Identification of those railroad branch lines in the state that may have potential for local rail freight transportation service is necessary to determine the feasibility of providing loans or grants to the owner or operator of the railroad line as provided in 60-11-120.

(3) The department of transportation:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may he abandoned;

(b) shall identify, under the state rail planning program, railroad branch lines that should be preserved for continued operation;

~~(c) shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to subsections (3)(a) and (3)(b);~~

~~(d)~~*(c)* may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection (3)(a) and:

(i) hold all acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to the local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection ~~(3)(d)~~ *(3)(c)*;

~~(e)~~*(d)* shall cooperate with and assist persons representing recreational, transportation, and utility interests and other interested persons, including adjacent landowners, in acquiring ownership or easement of abandoned railbeds; and

~~(f)~~*(e)* shall establish procedures, including the use of federal funds received for rail freight assistance programs under 49 U.S.C. 1654, for providing loans and grants under 60-11-120.

(4) Abandoned rights-of-way acquired and held in trust pursuant to subsection ~~(3)(d)(i)~~ *(3)(c)(i)* must be administered by the department of state lands, as prescribed in Title 77, until the land is needed for transportation purposes."

Section 67. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state ~~shall~~ *must* be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) ~~utilize~~ *use* a systematic, interdisciplinary approach ~~which~~ *that* will ~~insure~~ *ensure* the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking ~~which~~ *that* may have an impact on ~~man's~~ *the human* environment;

(ii) identify and develop methods and procedures ~~which~~ *that* will ~~insure~~ *ensure* that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects ~~which~~ *that* cannot be avoided ~~should~~ *if* the proposal ~~be~~ *is* implemented;

(C) alternatives to the proposed action;

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(D) the relationship between local short-term uses of ~~man's~~ *the human* environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources ~~which~~ *that* would be involved in the proposed action ~~should~~ *if* it ~~be~~ *is* implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal ~~which~~ *that* involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of ~~mankind's~~ *the* world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and ~~utilize~~ *use* ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency ~~which~~ *that* has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of ~~such~~ *the* statement and the comments and views of the appropriate stato, federal, and local agencies ~~which~~ *that* are authorized to develop and enforce environmental standards ~~shall~~ *must* be made available to the governor, the environmental quality council, and the public and ~~shall~~ *must* accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regnlatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).~~

~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31, 1989, that must include but not be limited to:~~

~~(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;~~

~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions~~

~~similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;~~

~~(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;~~

~~(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;~~

~~(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and~~

~~(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.~~

~~(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council.~~"

Section 68. Section ~~75-1-323~~, MCA, is amended to read:

"**~~75-1-323. Appointment of employees~~** ***Staff for environmental quality council.*** The ~~executive director, subject to the approval of the council, may appoint whatever~~ *legislative services division shall provide sufficient and appropriate* ~~employees are necessary~~ *support to the environmental quality council in order that it may* to carry out ~~the provisions of parts 1 through 3,~~ *its statutory duties,* within the limitations of legislative appropriations. *The environmental quality council staff is a principal subdivision within the legislative services division. There is within the legislative services division a legislative environmental analyst. The legislative environmental analyst is the primary staff person for the environmental quality council and shall supervise staff assigned to the environmental quality council. The environmental quality council shall select the legislative environmental analyst with the concurrence of the legislative council.*"

Section 69. Section 75-1-324, MCA, is amended to read:

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"75-1-324. Duties of ~~executive director and staff~~ *environmental quality council.* ~~It shall be the duty and function of the executive director and the staff to~~ *The environmental quality council shall*:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret ~~such~~ *the* information for the purpose of determining whether ~~such~~ *the* conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to ~~such~~ *the* conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which ~~such~~ *the* programs and activities are contributing to the achievement of ~~such~~ *the* policy and make recommendations to the governor and the legislature with respect ~~thereto~~ *to the policy*;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish ~~such~~ studies, reports ~~thereon~~ *on studies*, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan; and

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among ~~such~~ *the* activities and with a general ecologic perspective, and suggest legislation to remedy ~~such~~ *the* situations."

Section 70. Section 85-1-203, MCA, is amended to read:

"85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may conduct

studies; adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies; perform research or employ other competent agencies to perform research on a contract basis; and hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and, with the approval of the board, adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, and utilization of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(3) The department shall submit to the ~~water policy committee~~ *environmental quality council* established in ~~85-2-105~~ *5-16-101* and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(4) The legislature, by joint resolution, may revise the state water plan.

(5) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(6) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(7) In developing and revising the state water plan as provided in this section, the department shall consult with the ~~water policy committee~~ *environmental quality council* established in ~~85-2-105~~ *5-16-101* and solicit the advice of the committee in carrying out its duties under this section."

Section 71. Section 85-1-621, MCA, is amended to read:

"**85-1-621. Report.** The department shall prepare a biennial report describing the status of the renewable resource grant and loan program. The report must describe ongoing projects and projects that have been completed during the biennium. The report must identify and rank in order of priority the projects for which the department has received applications. The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report must be

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submitted to the ~~water policy committee~~ *environmental quality council* established in ~~85-2-105~~ *5-16-101*."

Section 72. Section 85-2-105, MCA, is amended to read:

"**85-2-105. ~~Water policy committee~~ *Environmental quality council — water policy duties.*** (1) ~~There is a permanent water policy committee of the legislature. The committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The committee shall elect its chairman and vice chairman.~~ The *environmental quality council* ~~committee~~ shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the ~~committee~~ *environmental quality council* shall:

(a) advise the legislature on the adequacy of the state's water policy and of important state, regional, national, and international developments ~~which~~ *that* affect Montana's water resources;

(b) oversee the policies and activities of the department of natural resources and conservation, other state executive agencies, and other state institutions, as they affect the water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the ~~committee~~ *environmental quality council* shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature as provided in 5-11-210.

(4) The ~~environmental quality council~~ *legislative services division* shall provide staff assistance to the ~~committee~~ *environmental quality council to carry out its water policy duties.* ~~The committee may contract with experts and consultants, in addition to receiving assistance from the environmental quality council, in carrying out its duties under this section.~~"

Section 73. Section 85-2-436, MCA, is amended to read:

"**85-2-436. (Temporary) Water leasing study.** (1) The department of fish, wildlife, and parks and the department, in consultation with the ~~water policy~~

~~committee~~ *environmental quality council*, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the board pursuant to 85-2-437.

(b) Upon receipt of a correct and complete application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically

consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or sterage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify otber appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other tban an appropriator described in subsection (2)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right tbat is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under tbis section.

(3)(a) The department of fish, wildlife, and parks shall complete and submit te the board, commission, and ~~water policy committee~~ *environmental quality council* an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the board and commission and submitted to the ~~water policy committee~~ *environmental quality council*, which shall complete the final report by December 1, 1998.

(4) This section does not create the rigbt for a person to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 1999—sec. 4, Cb. 740, L. 1991.)"

Section 74. Section 90-4-302, MCA, is amended to read:

"90-4-302. **Definitions.** As used in this part, the following definitions apply:

(1) "Bulk pipeline terminal" means a facility that is primarily used for sterage for marketing of petroleum products and that has total bulk sterage capacity of 50,000 gallons or more.

~~(2) "Committee" means the energy policy committee established in 90-4-303.~~

~~(3)~~*(2)* "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency or cooperative ~~which~~ *that* engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

~~(4)~~*(3)* "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

~~(5)~~*(4)* "Energy emergency" means an existing or imminent domestic, regional, or national shortage of energy ~~which~~ *that* will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users.

~~(6)~~*(5)* "Energy facility" means a facility ~~which~~ *that* produces, extracts, converts, transports, or stores energy.

~~(7)~~*(6)* "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis ~~which~~ *that* foreseeably will affect significantly the availability of essential energy supplies within the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and political subdivisions.

~~(8)~~*(7)* "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

~~(3)~~*(8)* "Petroleum pipeline company" means a person who owns or operates in Montana any pipeline used for the transportation of petroleum products or their derivatives. This definition does not include pipelines used to transport crude petroleum from producing wells to refineries.

~~(10)~~*(9)* "Petroleum products" means propane, hutane, propane/butane mix, motor gasoline, kerosene and other middle distillates, aviation gasoline, jet fuel, number 4 fuel oil, residual fuel oil, and alcohol fuels, whether in natural or synthetic form.

~~(11)~~*(10)* "Prime petroleum supplier" means the person who makes the first sale of a petroleum product into the state distribution system. Any person who is considered to be a Montana prime supplier by the U.S. department of energy is included in this definition.

~~(12)~~*(11)* "Refiner" means a person that owns, operates, or controls the operations of one or more refineries located in Montana.

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~~(13)~~*(12)* "Refinery" means an industrial plant, regardless of capacity, that processes fossil or renewable feedstock or manufactures refined petroleum products, except when the plant exclusively produces petrochemicals."

Section 75. Section 90-4-305, MCA, is amended to read:

"**90-4-305. Information obtainable by governor.** (1) The governor may obtain information on a regular basis from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state *that is* necessary for ~~him~~ *the governor*~~, with advice of the committee,~~ to determine the need for energy supply alert and emergency declarations. ~~Such~~ *The* information may include but is not limited to:

(a) sales volumes by customer classifications other than for petroleum products;

(b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and

(c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In order to help anticipate and mitigate the effects of shortages of petroleum products, tbe governor may monitor the supply of and demand for these products by obtaining the following monthly reports submitted no later than 20 days after the last day of the month, on forms prescribed by tlie governor, from the following persons:

(a) Each refiner shall submit Montana refinery processing data by fuel type in custody including:

(i) inventory stocks at the beginning and end of the month;

(ii) receipts during tbe month;

(iii) inputs during the month;

(iv) production during the month;

(v) shipments, losses, and refinery fuel use during the month.

(b) Each prime petroleum supplier shall submit:

(i) 3-month projections of his Montana supply and stock of petroleum products that he *the supplier* anticipates supplying to Montana customers; and

(ii) the actual volume of petroleum products delivered in the stato the previous month.

(c) Each petroleum pipeline company shall submit reports by fuel type of Montana pipeline terminal delivery, throughput, and export.

(d) Each bulk pipeline terminal operator shall submit end-of-month reports of inventory stock levels of finished petroleum products in custody in Montana by type of product and storage location.

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(e) Each prime petroleum supplier shall submit quarterly reports of ~~his~~ monthly marketing sales in Montana by standard point locater index, or other method prescribed by the governor, and fuel type of petroleum products designated by the governor.

(3) In obtaining information under subsections (1) and (2) ~~of this section~~ during a state of energy emergency, the governor may subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda; administer oaths; and causo the depositions of persons residing within or without Montana to be taken in the manner prescribed for depositions in civil actions in district courts, to obtain information relevant te energy resources that are the subject of the proclaimed emergency or associated disaster.

(4) In obtaining information under this section, the governor shall:

(a) avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for ~~his~~ *the governor's* study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(5) Except as provided in subsection (2), ~~nothing in~~ this part ~~requires~~ *does not require* the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(6) (a) The information required under subsection (2) ~~of this section~~ is subject to the following restrictions:

(i) Except in accordance with a proper judicial order, ~~no~~ *a* public officer or employee charged by the governor with the custody of this information may *not* divulge or make known in any manner any information that is specific to a particular distributer.

(ii) The public officers and employees charged by the governor with the custody of the information provided for in subsection (2) may not be required to produce any of it or evidence of anything contained in it on behalf of any party to any action or proceeding under this part, except when the information concerned is directly involved in the action or proceeding, in which case only that information directly pertinent to the action or proceeding may be admitted.

(b) ~~Nothing in this~~ *This* section ~~shall~~ *does not* preclude access to ~~such~~ *the* information by the legislative auditor in carrying out ~~his~~ *the* functions under Title 5, chapter 13.

~~(7) The governor shall forward to the committee such information collected under this section as the committee may request and shall advise the committee of the progress of the information gathering process.~~"

Section 76. Section 90-4-307, MCA, is amended to read:

"**90-4-307. Submission and approval of curtailment plans.** (1) The governor may at any time require a distributor of an energy resource to prepare for ~~his~~ *the governor's* approval a plan for the curtailment of the distribution of that resource in the event of a state of energy emergency. Plans ~~shall~~ *must* be submitted in ~~such~~ *the* form and within ~~such~~ limits ~~as~~ *that* the governor shall

specify and ~~shall~~ *must* recognize the obligations and duties ~~which~~ *that* may be placed upon distributors subject to this part by other jurisdictions, both state and federal.

(2) Approval of plans for curtailment ~~shall~~ *must* be based on the following factors:

(a) the consistency of the plan with the public health, safety, and welfare;

(b) the technical feasibility of implementation of the plan;

(c) the effectiveness with which the plan minimizes the impact of any curtailment;

(d) the needs of commercial, agricultural, retail, professional, and service establishments whose normal function is to supply goods or services, or both, of an essential nature, including but not limited to food, lodging, fuel, and medical care facilities; *and*

(e) the regional agreements or contracts of the distributors~~; and~~

~~(f) the advice of the committee~~."

Section 77. Section 90-4-308, MCA, is amended to read:

"90-4-308. **Governor's considerations.** In determining whether to declare an energy supply alert or energy emergency, the governor shall consider:

(1) availability of regional and national energy resources;

(2) local, state, regional, and national energy needs and shortages;

(3) availability of short-term alternative supplies on a local, state, regional, and national basis;

(4) the economic effect of ~~such~~ *the* declaration and the implementation of any curtailment or conservation plans;

~~(5) the advice of the committee;~~ and

~~(6)~~*(5)* any other relevant factors."

Section 78. Section 90-4-310, MCA, is amended to read:

"90-4-310. **Energy emergency powers of governor.** In addition to ~~his~~ existing powers and duties, the governor ~~shall have~~ *has* the following duties and special energy emergency powers, subject to the definitions and limitations in this part:

(1) The governor ~~with the advice of the committee~~ may, upon finding that a situation exists ~~which~~ *that* threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition or state of energy emergency, at which time all of the general and specific emergency powers ~~further~~ enumerated in this section ~~shall~~ become effective.

(2) The condition of energy emergency terminates after 45 consecutive days unless extended by a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a duration to be established by the legislature.

(3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that effect by either of the following:

(a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may~~, with the advice of the committee~~:

(a) implement such programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy~~:~~. ~~provided that~~ *However,* in so doing, the governor shall impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency~~;~~.

(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) ~~Nothing in this~~ *This* part ~~means~~ *does not mean* that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by this part has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of this part, all actions authorized or required ~~hereunder~~ *under this part* or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act ~~of 1971~~, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, ~~nothing in~~ this part ~~exempts~~ *does not exempt* a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor, or unless impossibility of compliance is a direct result of an order of the governor."

Section 79. Section 90-4-313, MCA, is amended to read:

"**90-4-313. Compliance.** Notwithstanding any provision of law or contract to the contrary, all persons who are specifically ordered by the governor ~~with the advice of committee~~ to comply with an order issued or action taken pursuant to this part shall comply."

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Section 80. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 5, chapter 2, and the provisions of Title 5 apply to [sections 1 through 4].

Section 81. Transition. (1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticato documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995.

Section 82. Repealer. Sections 1-13-101, 1-13-102, 1-13-103, 1-13-105, 1-13-111, 5-12-402, 17-7-114, 23-7-203, 75-1-321, 75-1-322, and 90-4-303, MCA, are repealed.

Section 83. Effective dates. (1) [Sections 16, 42, 49, and 81 and this section] are effective on passage and approval.

(2) Except as provided in subsection (1), [this act] is effective July 1, 1995.

Approved April 27, 1995

CHAPTER NO. 546

[SB 345]

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY CREATING A NEW DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; TRANSFERRING ALL PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE NEW DEPARTMENT; TRANSFERRING ALL PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF FAMILY SERVICES TO THE NEW DEPARTMENT, WITH THE EXCEPTION OF JUVENILE CORRECTIONS PROGRAMS;

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TRANSFERRING JUVENILE CORRECTIONS PROGRAMS TO THE DEPARTMENT OF CORRECTIONS; TRANSFERRING THE MENTAL HEALTH PROGRAMS, SUBSTANCE ABUSE PROGRAMS, AND DEVELOPMENTAL DISABILITIES PROGRAMS AND ASSOCIATED PROGRAMS AND SUPPORT STAFF CURRENTLY ADMINISTERED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO THE NEW DEPARTMENT; TRANSFERRING ALL HEALTH SERVICES PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE NEW DEPARTMENT, EXCEPT FOR LABORATORY SERVICES; ABOLISHING THE EXISTING DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE EXISTING DEPARTMENT OF FAMILY SERVICES; CONTINGENTLY ABOLISHING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AND TRANSFERRING ITS DUTIES TO THE NEW DEPARTMENT; CHANGING THE NAME OF THE BOARD OF SOCIAL AND REHABILITATION APPEALS TO THE BOARD OF PUBLIC ASSISTANCE; CHANGING THE NAME OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO THE DEPARTMENT OF CORRECTIONS; CHANGING THE NAME OF THE BOARD OF PARDONS TO THE BOARD OF PARDONS AND PAROLE; CHANGING THE NAME OF THE WOMEN'S CORRECTIONAL CENTER TO THE WOMEN'S CORRECTIONAL SYSTEM; AMENDING SECTIONS 2-4-102, 2-15-104, 2-15-211, 2-15-225, 2-15-231, 2-15-232, 2-15-1845, 2-15-1875, 2-15-2109, 2-15-2201, 2-15-2203, 2-15-2204, 2-15-2205, 2-15-2210, 2-15-2212, 2-15-2301, 2-15-2302, 2-15-2402, 2-18-103, 2-18-303, 3-10-601, 7-4-2913, 7-6-2427, 7-13-4502, 7-22-2151, 7-32-2222, 7-32-2242, 7-33-2402, 7-34-2301, 7-34-2412, 10-2-401, 10-2-402, 10-2-403, 10-2-404, 10-2-416, 10-2-417, 13-2-402, 15-6-201, 15-6-209, 15-25-121, 15-25-122, 15-30-128, 15-30-303, 15-60-101, 15-60-201, 16-1-404, 16-1-408, 16-1-411, 16-11-119, 17-3-1001, 17-3-1002, 17-4-105, 17-5-430, 17-5-432, 17-8-303, 18-2-301, 18-4-133, 18-4-313, 18-5-402, 20-5-321, 20-5-402, 20-6-621, 20-6-624, 20-7-404, 20-7-436, 20-8-116, 20-25-421, 20-25-604, 20-26-1407, 23-1-302, 23-1-303, 23-1-312, 23-5-112, 27-1-718, 27-6-206, 27-32-302, 31-3-141, 33-22-702, 33-22-705, 33-22-1202, 37-2-104, 37-2-301, 37-7-103, 37-9-101, 37-14-322, 37-21-101, 37-27-320, 37-27-321, 37-30-307, 37-30-412, 37-30-422, 37-31-204, 37-31-308, 37-31-331, 37-41-104, 39-30-103, 39-30-106, 39-30-107, 39-71-743, 39-71-744, 39-71-1003, 39-71-1004, 39-71-1011, 39-71-1014, 39-71-1031, 39-71-2001, 40-1-107, 40-1-203, 40-1-204, 40-1-206, 40-1-208, 40-1-209, 40-4-204, 40-4-205, 40-4-208, 40-4-209, 40-4-215, 40-4-218, 40-5-103, 40-5-143, 40-5-158, 40-5-161, 40-5-162, 40-5-164, 40-5-165, 40-5-173, 40-5-185, 40-5-196, 40-5-201, 40-5-202, 40-5-235, 40-5-303, 40-5-315, 40-5-402, 40-5-403, 40-5-701, 40-5-704, 40-6-105, 40-6-106, 40-6-107, 40-6-110, 40-6-116, 40-6-123, 40-6-126, 40-6-128, 40-6-135, 40-8-103, 40-8-110, 40-8-111, 40-8-121, 40-8-124, 40-8-126, 40-9-102, 41-3-102, 41-3-107, 41-3-108, 41-3-201, 41-3-202, 41-3-205, 41-3-208, 41-3-301, 41-3-302, 41-3-401, 41-3-402, 41-3-406, 41-3-702, 41-3-704, 41-3-1003, 41-3-1004, 41-3-1006, 41-3-1008, 41-3-1010, 41-3-1011, 41-3-1012, 41-3-1013, 41-3-1014, 41-3-1101, 41-3-1102, 41-3-1103, 41-3-1104, 41-3-1114, 41-3-1122, 41-3-1132, 41-4-103, 41-4-104, 41-5-103, 41-5-206, 41-5-301, 41-5-403, 41-5-523, 41-5-530, 44-5-202, 44-5-213, 45-5-621, 45-5-625, 45-8-109, 45-9-202, 46-1-202, 46-14-221, 46-14-222, 46-14-301, 46-14-302, 46-14-303, 46-14-304, 46-14-312, 46-18-101, 46-18-105, 46-18-111, 46-18-201, 46-18-225, 46-18-235, 46-18-254, 46-18-1001, 46-18-1004, 46-19-202, 46-19-303, 46-19-305, 46-19-402, 46-23-103, 46-23-104, 46-23-106, 46-23-201,

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Be it enacted by the Legislature of the State of Montana:

Section 1. Department of social and rehabilitation services abolished — functions transferred to department of public health and human services. (1) The department of social and rehabilitation services is

abolished, and its functions are transferred to the department of public health and human services, as established in 2-15-2201.

(2) Unless inconsistent with [sections 1 through 568], any reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of social and rehabilitation services" or "department" (of social and rehabilitation services) or "director of social and rehabilitation services" or "director" (of social and rehabilitation services) or "board of social and rehabilitation appeals" or "board" (of social and rehabilitation appeals) is changed to the "department of public health and human services", "department" (of public health and human services), "director of public health and human services", "director" (of public health and human services), "board of public assistance", or "board" (of public assistance), as appropriate. The code commissioner shall conform internal references and grammar to these changes.

Section 2. Department of family services abolished — functions transferred. (1) The department of family services is abolished, and its functions are transferred to the department of public health and human services, as established in 2-15-2201, except juvenile corrections division programs, which are transferred to the department of corrections.

(2) Unless inconsistent with [sections 1 through 568], any reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of family services" or "department" (of family services) or "director of family services" or "director" (of family services) is changed to:

(a) the "department of public health and human services", "department" (of public health and human services), "director of public health and human services", or "director" (of public health and human services), as appropriate; or

(b) the "department of corrections", "department" (of corrections), "director of corrections", or "director" (of corrections), as appropriate. The code commissioner shall conform internal references and grammar to these changes.

Section 3. Certain functions of director and department of health and environmental sciences transferred to director or department of public health and human services — board of health and environmental sciences abolished. (1) The public health functions of the director and department of health and environmental sciences are transferred to the director or department of public health and human services, established in 2-15-2201, as appropriate, relating to and including but not limited to the following:

(a) preventive health services, including the chronic disease prevention and health promotion program, surveillance and control of communicable diseases, immunizations, epidemiology services, and support for rape crisis programs;

(b) family and maternal and child health programs, including the women, infants, and children program, the child nutrition and child food care program, family planning services, perinatal services, and children's special health services;

(c) health services, including planning and implementation of a statewide emergency medical system and development of a state health plan;

(d) food and consumer safety programs, including:

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(i) administration of food programs and nutrition services under Title 50, chapter 49;

(ii) regulation of food establishments under Title 50, chapter 50;

(iii) regulation of botels, motels, and roominghouses under Title 50, chapter 51;

(iv) regulation of tourist campgrounds and trailer courts under Title 50, chapter 52; and

(v) regulation of public swimming pools and swimming areas under Title 50, chapter 53;

(e) records and statistics services;

(f) administration of tbe certificate of need program; and

(g) health facility regulation, including licensing, medicaid certification, approval of health facility renovation, and new construction.

(2) Unless inconsistent with [sections 1 through 568] and with respect to public health functions, any reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of health and environmental sciences" or "department" (of health and environmental sciences) or "director of health and environmental sciences" or "director" (of health and environmental sciences) is changed te the "department of public health and human services", "department" (of public health and human services), "director of public health and human services", or "director" (of public health and human services), as appropriate. The code commissioner shall conform internal references and grammar to these changes.

(3) The board of health and environmental sciences is abolished.

Section 4. Certain functions of director and department of corrections and human services transferred to director or department of public health and human services. (1) The human services functions of the director and department of corrections and human services are transferred to the director or department of public health and human services, established in 2-15-2201, as appropriate, relating to and including but not limited to the following:

(a) developmental disabilities services, including institutional and residential care, pursuant to Title 53, chapter 20, provided at the Montana developmental center and Eastmont human services center;

(b) mental health services, including the care and treatment of the mentally ill, pursuant to Title 53, chapter 21, provided at the Montana state hospital and the Montana center for the aged and through community-based services at private, nonprofit regional mental health centers;

(c) chemical dependency services pursuant to Title 53, chapter 24; and

(d) veterans' long-term care services, including those provided at the Montana veterans' home and eastern Montana vetorans' home at Glendive.

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(2) Unless inconsistent with [sections 1 through 568] and with respect to human services functions, any reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of corrections and human services" or "department" (of corrections and human services) or "director of corrections and human services" or "director" (of corrections and human services) is changed to the "department of public health and human services", "department" (of public health and human services), "director of public health and human services", or "director" (of public health and human services), as appropriate. The code commissioner shall conform internal references and grammar to these changes.

Section 5. Department and director of corrections and human services — names changed. Except as provided in [section 4] and with respect to functions that are not related to human services, the names of the department and the director of corrections and human services are changed to the department and director of corrections, respectively. Unless inconsistent with [sections 1 through 568], any reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of corrections and human services" or "department" (of corrections and human services) or "director of corrections and human services" or "director" (of corrections and human services) is changed to the "department of corrections", "department" (of corrections), "director of corrections", or "director" (of corrections), as appropriate. The code commissioner shall conform internal references and grammar to these changes.

Section 6. Section 2-4-102, MCA, is amended to read:

"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons *and parole*, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of Montana and the Montana Administrative Register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

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(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificato, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing ~~herein~~ *in this chapter* may be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana Administrative Register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant te 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated te the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 7. Section 2-15-104, MCA, is amended to read:

"**2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;

(b) department of military affairs;

(c) department of revenue;

(d) state board of education;

(e) department of labor and industry;

(f) department of commerce;

(g) department of justice;

(h) department of ~~health and~~ environmental sciences;

(i) department of ~~social and rehabilitation~~ *public health and human* services;

(j) department of corrections ~~and human services~~;

(k) department of transportation;

(l) department of public service regulation;

(m) department of agriculture;

(n) department of livestock;

(o) department of state lands;

(p) department of natural resources and conservation;

(q) department of fish, wildlife, and parks;

~~(r) department of family services~~.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division is headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.

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(c) The principal unit of a hureau is a section. Each section is headed by a supervisor."

Section 8. Section 2-15-211, MCA, is amended to read:

"**2-15-211. Mental disabilities board of visitors — composition — allocation.** (1) The governor shall appoint a mental disahilities hoard of visitors.

(2) The board shall consist of five persons representing hut not limitod to consumers, doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons and at least one of whom ~~shall~~ *must* be a representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled. No one may he a member of the board who is a full-time agent or employee of the department of ~~corrections~~ *public health* and human services or a mental health facility affected by Title 53, chapter 20, part 1, and chapter 21, part 1, except this prohibition does not affect any employee of a stato college or university.

(3) The mental disabilities board of visitors ~~shall be~~ *is* attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and chapter 21, part 1."

Section 9. Section 2-15-225, MCA, is amended to read:

"**2-15-225. Interagency coordinating council for state prevention programs.** (1) There is an interagency coordinating council for state prevention programs consisting of the following ~~10~~ *seven* members:

~~(a) the director of the department of family services provided for in 2-15-2401;~~

~~(b) the director of the department of health and environmental sciences provided for in 2-15-2101;~~

~~(c) the director of the department of corrections and human services provided for in 2-15-2301;~~

~~(d)~~*(a)* the attorney general provided for in 2-15-501;

~~(e)~~*(b)* the director of the department of ~~social and rehabilitation~~ *public health and human* services provided for in 2-15-2201;

~~(f)~~*(c)* the superintendent of public instruction provided for in 2-15-701;

~~(g)~~*(d)* the presiding officer of the Montana children's trust fund hoard;

~~(h)~~*(e)* two persons appointed by the governor who have experiences relatod to the private or nonprofit provision of prevention programs and services; and

~~(i)~~*(f)* the administrator of the hoard of crime control provided for in 2-15-2006.

(2) The coordinating council shall perform the following duties:

(a) develop through interagency planning efforts a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;

(b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner te meet the needs of those children and families;

(c) study various financing options for prevention programs and services;

(d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs; and

(e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist in providing staff and budgetary, administrative, and clerical services to the council as the council or its presiding officer requests.

(6) Staffing and other resources may be provided te the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Section 10. Section 2-15-231, MCA, is amended to read:

"**2-15-231. Office of aging.** (1) There is an office of aging, headed by a coordinator of aging. The office is in the department of ~~family~~ *public health and human* services.

(2) The governor shall appoint an advisory council on aging. The council is composed of 11 members, a majority of whom must be 60 years of age or older. Members shall serve staggered 3-year terms and until their successors are appointed. Vacancies must be filled by appointment for the unexpired term. The council is allocated to the department of ~~family~~ *public health and human* services for administrative purposes only."

Section 11. Section 2-15-232, MCA, is amended to read:

"**2-15-232. Duties and assistance.** (1) The coordinator of aging shall, with the advice of the advisory council on aging, assist the governor and the department of ~~family~~ *public health and human* services in planning, coordination, and operation of programs within state government that affect senior citizens of the state.

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(2) The coordinator shall meet with senior citizens and the general public to gather information on the needs of senior citizens and the effectiveness of state programs in meeting those needs.

(3) The coordinator shall advise the governor and the director of the department of ~~family~~ *public health and human* services as to ways to improve the effectiveness of programs that affect senior citizens."

Section 12. Section 2-15-1845, MCA, is amended to read:

"**2-15-1845. Board of nursing home administrators.** (1) There is a board of nursing home administrators.

(2) The board consists of five voting members appointed by the governor with the consent of the senate. No more than two members ~~shall~~ *may* be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members ~~shall~~ *must* be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The ~~director of the department of health and environmental sciences or his designee and the~~ director of the department of ~~social and rehabilitation~~ *public health and human* services or his *the director's* designee ~~are~~ *is an* ex officio, nonvoting ~~members~~ *member* of the board.

(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member ~~shall~~ *must* be filled by the governor for the unexpired term.

(5) Appointive members may be removed by the governor only for cause.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 13. Section 2-15-1875, MCA, is amended to read:

"**2-15-1875. Board of plumbers.** (1) There is a board of plumbers.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) two master plumbers and two journeyman plumbers who are at least 18 years old, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment;

(b) one registered professional engineer qualified in mechanical engineering;

(c) three representatives of the public who are not engaged in the business of installing or selling plumbing equipment;

(d) one appointed representative of the department of *public* health and ~~environmental sciences~~ *human services*, who ~~shall~~ *must* be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for ~~a term~~ *terms* of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 14. Section 2-15-2109, MCA, is amended to read:

"**2-15-2109. MIAMI project advisory council.** (1) There is a Montana initiative for the abatement of mortality in infants (MIAMI) project advisory council.

(2) The council is composed of eight members appointed by the governor as follows:

(a) one person from the department who is involved in providing preventative health services for women and children;

(b) one person from the department of ~~social and rehabilitation~~ *public health and human* services who administers or supervises services under the Montana medicaid program;

(c) one person from a local health department;

(d) one person from among local service providers;

(e) one person representing a nonprofit child health organization;

(f) one private physician who specializes in obstetric or pediatric care;

(g) one person involved in children's issues or programs who is a representative of a parents' organization; and

(h) one person who is an enrolled member of a recognized Indian tribe and who is knowledgeable and involved in health services to Indians as a consumer, provider, or advocate.

(3) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members."

Section 15. Section 2-15-2201, MCA, is amended to read:

"**2-15-2201. Department of ~~social and rehabilitation~~ *public health and human* services — head.** There is a department of ~~social and rehabilitation~~ *public health and human* services. The department head is a director of ~~social and rehabilitation~~ *public health and human* services appointed by the governor in accordance with 2-15-111."

Section 16. Section 2-15-2203, MCA, is amended to read:

"**2-15-2203. Board of ~~social and rehabilitation appeals~~ *public assistance* — allocation — quasi-judicial.** (1) There is a board of ~~social and rehabilitation appeals~~ *public assistance*.

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(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board consists of three members appointed by the governor as prescribed in 2-15-124, except that ~~no~~ *an* employee of the department of ~~social and rehabilitation~~ *public health and human* services may *not* be appointed to the board.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124. For purposes of that section, a majority ~~shall be~~ *is* considered as one."

Section 17. Section 2-15-2204, MCA, is amended to read:

"**2-15-2204. Developmental disabilities planning and advisory council.** (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of at least ~~24~~ *23* but no more than ~~26~~ *25* members and consists of the following:

(a) ~~the directors of the departments of social and rehabilitation services, health and environmental sciences, corrections and human services, and family services or their designees~~ *a representative of the program of services provided under the authority of the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq.*;

(b) a representative of the program of services provided under the authority of the Older Americans Act of 1965, 42 U.S.C. 3001, et seq.;

(c) a representative of the program of services for persons with developmental disabilities provided under the authority of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;

~~(b)~~*(d)* ~~the superintendent of public instruction or a designee~~ *a representative of the program of services provided under the authority of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.*;

~~(c)~~*(e)* two recognized professionals, one each in the disciplines of medicine and law;

~~(d)~~*(f)* one member of the state senate;

~~(e)~~*(g)* one member of the state house of representatives;

~~(f)~~*(h)* seven persons, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;

~~(g)~~*(i)* one member of each of the five regional councils provided for in 53-20-207, who has a developmental disability or is an immediate family member or guardian of a person with a developmental disability;

~~(h)~~*(j)* the director of the university-affiliated or satellite program on developmental disabilities, created pursuant to 42 U.S.C. 6031, or a designee of the director;

~~(i)~~*(k)* the director of the state protection and advocacy system, created pursuant to 42 U.S.C. 6012, or a designee of the directer; and

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~~(j)~~*(l)* a representative of a statewide developmental disabilities service provider organization whose member agencies provide direct services to persons with developmental disabilities.

(3) (a) Each member ~~or his designee~~ who serves on the council pursuant te subsection (2)(a), (2)(b), ~~(2)(h), or (2)(i)~~ *(2)(c), or (2)(d)* shall serve for a term concurrent with ~~his~~ *the* respective term ~~as a~~ *of the* directer ~~or the superintendent of public instruction, as the case may be~~ *of the agency that administers the program that the member represents.* Upon ~~his~~ *the* removal *of an agency director* from office, ~~his or his designee's~~ *the representative's* term as a member of the council is automatically terminated ~~and his successor in office or his successor's designee is automatically a member of the council.~~

(b) Each member who serves on the council pursuant to subsection ~~(2)(d)~~*(2)(f)* or ~~(2)(e)~~*(2)(g)* ~~shall~~ *must* be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsection ~~(2)(e)~~*(2)(e)*, ~~(2)(f)~~*(2)(h)*, ~~(2)(g)~~*(2)(i)*, ~~(2)(j)~~*(2)(l)*, or (3)(d) ~~shall~~ *must* be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members serving on the council pursuant to subsection ~~(2)(e)~~*(2)(e)*, ~~(2)(f)~~*(2)(h)*, ~~(2)(g)~~*(2)(i)*, ~~(2)(j)~~*(2)(l)*, or (3)(d) ~~shall~~ *must* be appointed by the governor to serve for terms ending on January 1 of tbe third year of the succeeding gubernatorial term and until their successors are appointed.

(d) Representatives named to tbe council pursuant to this section, in addition to fulfilling the requirements listed in subsections (2)(a) through ~~(2)(j)~~*(2)(l)*, may also be selected to represent tbe following areas: psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities. A minimum of one member of the council ~~shall~~ *must* represent each of these areas. In tbe event that the persons listed in subsections (2)(a) througb ~~(2)(j)~~*(2)(l)* do not represent all of the areas of psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities, up to two representatives may be added to the membership of tbe council to represent not more than two of these groups.

(4) The council is allocated to the department for administrative purposes only and, unless inconsistent with the provisions of ~~this section and~~ 53-20-206 *and this section*, the provisions of 2-15-121 apply."

Section 18. Section 2-15-2205, MCA, is amended to read:

"**2-15-2205. Division of visual services.** There is a division of visual services witbin the department of ~~social and rehabilitation~~ *public health and human* services. The division head is an administrator appointed by the director of the department of ~~social and rehabilitation~~ *public health and human* services in accordance with classification requirements. The division is responsible for administration of rehabilitative and other services for blind and visually handicapped persons."

Section 19. Section 2-15-2210, MCA, is amended to read:

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"**2-15-2210. State advisory council on food and nutrition.** (1) There is a state advisory council on food and nutrition.

(2) The council is composed of 11 members appointed by the governor as follows:

(a) one person from the department of ~~social and rehabilitation~~ *public health and human* services who supervises or administers services under the food stamp program;

(b) one person from the department of ~~health and environmental sciences~~ *public health and human services* who supervises or administers supplemental food programs for women, infants, and children;

(c) one person from the office of public instruction who is responsible for administration of school food programs under the National School Lunch Act;

(d) one person from a statewide organization active in food, nutrition, and hunger issues;

(e) one person representing local food bank programs;

(f) one person from among local, private operators of food and nutrition programs for the elderly;

(g) one person representing the general public who is knowledgeable and active in food, nutrition, and hunger issues;

(h) one person who is an agent in the Montana cooperative extension service;

(i) one Native American; and

(j) one member of the house of representatives and one member of the senate, who must be paid their compensation and expenses as provided in 5-2-302 while engaged in advisory council business.

(3) The council is allocated to the department of ~~health and environmental sciences~~ *public health and human services* for administrative purposes only as provided in 2-15-121.

(4) The provisions of 2-15-122(5) tbrough (8) apply to the council and its members."

Section 20. Section 2-15-2212, MCA, is amended to read:

"**2-15-2212. Committee on telecommunications services for the handicapped — composition — allocation.** (1) There is a committee on telecommunications services for the handicapped.

(2) The committee consists of 11 members appointed by the governor as follows:

(a) four members who are handicapped, two of whom must be deaf or hard-of-hearing;

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(b) two members who are not handicapped, one of whom must be engaged in a business other than a business in the telecommunications industry and one of whom must be a senior citizen;

(c) one member from the department of ~~social and rehabilitation~~ *public health and human* services;

(d) one member from the largest local exchange company in Montana;

(e) one member from an independent local exchange company;

(f) one member from an interLATA interexchange carrier; and

(g) one member from the public service commission.

(3) The committee is allocated to the department of ~~social and rehabilitation~~ *public health and human* services for administrative purposes only as provided in 2-15-121."

Section 21. Section 2-15-2301, MCA, is amended to read:

"**2-15-2301. Department of corrections ~~and human services~~ — head.** There is a department of corrections ~~and human services~~. The department head is a director of corrections ~~and human services~~ appointed by the governor in accordance with 2-15-111."

Section 22. Section 2-15-2302, MCA, is amended to read:

"**2-15-2302. Board of pardons *and parole* — composition — allocation — quasi-judicial.** (1) There is a board of pardons *and parole*.

(2) The board consists of three members and an auxiliary member, at least one of whom shall have particular knowledge of Indian culture and problems. Members of the board, including the auxiliary member, shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) The auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time the auxiliary member has all the rights and responsibilities of a regular board member.

(4) One member and the auxiliary member shall serve terms concurrent with the governor. The remaining members shall serve staggered 4-year terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(6) The board, including the auxiliary member, is designated as a quasi-judicial board for purposes of 2-15-124, except board members ~~shall~~ *must* be compensated as provided by legislative appropriation and the terms of board members ~~shall~~ *must* be staggered as provided in subsection (4)."

Section 23. Section 2-15-2402, MCA, is amended to read:

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"2-15-2402. **Montana children's trust fund board.** (1) There is a Montana children's trust fund board, consisting of seven members appointed hy the governor and serving 3-year terms. Two board members must be chosen from state government agencies involved in education and social work relating te children. The governor shall ensure geographic distribution of appointees.

(2) The board is allocated to the department of ~~family~~ *public health and human* services for administrative purposes only, as provided in 2-15-121. The board may employ staff to carry out its duties as described in Title 41, chapter 3, part 7."

Section 24. Section 2-18-103, MCA, is amended to read:

"2-18-103. **Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of corrections ~~and human services~~ or ~~family~~ *the department of public health and human* services;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation;

(13) assistant director for security of the Montana state lottery;

(14) executive director and senior investment officer of the Montana board of science and technology development;

(15) executive director and employees of the state compensation insurance fund;

(16) state racing stewards employed by the executive secretary of the Montana board of horseracing;

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(17) executive director of the Montana wheat and barley committee; and

(18) commissioner of banking and financial institutions."

Section 25. Section 2-18-303, MCA, is amended to read:

"**2-18-303. Procedures for utilizing pay schedules.** (1) The pay schedules provided in 2-18-312 must be implemented as follows:

(a) The pay schedules provided in 2-18-312 indicate the entry salary and market salary ~~for the fiscal years ending June 30, 1994, and June 30, 1995,~~ for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (6) and (7).

(c) ~~Except as provided in subsection (1)(e), on the first day of the first complete pay period in fiscal year 1994, each employee hired before July 1, 1993, is entitled to the amount of the employee's base salary as it was on June 30, 1993.~~

~~(d) Except as provided in subsection (1)(e), on the first day of the first complete pay period in January 1995, each employee hired before January 1, 1995, is entitled to the amount of the employee's base salary as it was on December 31, 1994, plus 1.5%.~~

~~(e)~~ An employee's base salary may be no less than the entry salary for the employee's assigned grade.

~~(f)~~*(d)* An employee's base salary may not exceed the maximum salary for the employee's grade. The salary of an employee may not be reduced because of this provision.

~~(g)~~*(e)* The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

(2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) do not apply to those teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313 through 2-18-315.

(3) The pay schedules provided in 2-18-313 through 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed under the authority of the department of corrections ~~and human services~~ or the department of family *public health and human* services ~~for fiscal years 1994 and 1995~~.

(ii) ~~The compensation of each teacher on the first day of the first pay period in July 1993 is determined by the teacher's level of academic achievement and years of experience.~~

~~(iii)~~ On the first day of the first complete pay period of each fiscal year, each teacher shall advance one step on the appropriate pay schedule adopted in 2-18-313.

~~(iv)~~*(iii)* On the first day of the first complete pay period of each fiscal year, each teacher employed by the Montana school for the deaf and blind shall advance one step on the teacher pay matrix used by the school.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation ~~for fiscal years ending June 30, 1994, and June 30, 1995,~~ for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee ~~on the first day of the first pay period in fiscal year 1994 or 1995~~ is that amount corresponding te the grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation ~~for fiscal years ending June 30, 1994, and June 30, 1995,~~ for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period ~~in fiscal year 1994 or 1995~~ is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) The current wage or salary of an employee may not be reduced hy the implementation of the pay schedules provided for in 2-18-312 through 2-18-315.

(5) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-312 are not sufficient to attract and retein fully licensed and qualified physicians at the state institutions.

(6) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(7) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention hecause of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. Insofar as these adjustments may apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

Section 26. Section 3-10-601, MCA, is amended to read:

"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees. (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in

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which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer; and

(b) 50% to the county general fund.

(4) The state treasurer shall distribute money received under subsection (3) as follows:

(a) 44.81% to the state general fund;

(b) 9.09% to the fish and game account in the state special revenue fund;

(c) 11.76% to the state highway account in the state special revenue fund;

(d) 16.93% to the traffic education account in the state special revenue fund;

(e) 0.57% to the department of livestock account in the state special revenue fund;

(f) 15.9% to the crime victims compensation account in the state special revenue fund; and

(g) 0.94% to the department of ~~family~~ *public health and human* services special revenue account for the battered spouses and domestic violence grant program."

Section 27. Section 7-4-2913, MCA, is amended to read:

"**7-4-2913. Payment of costs of inquest.** Whenever an inquest is held because of the death of an individual confined in the state prison, the county clerk of the county where the inquest is held shall make out a statement of all the costs incurred by the county in the inquest, properly certified by the coroner of the county. This statement ~~shall~~ *must* be sent to the department of corrections ~~and human services~~ for approval, and after approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the inquest was held."

Section 28. Section 7-6-2427, MCA, is amended to read:

"**7-6-2427. (Temporary) Special provisions for certain charges related to criminal prosecutions.** (1) Notwithstanding 7-6-2426, all costs of a criminal prosecution, including attorney fees, of an offense committed in the state prison are not charges against the county in which the state prison is located. The costs must be paid by the department of corrections ~~and human services~~.

(2) If a criminal action is removed before trial, the costs accruing upon removal and trial must be a charge against the county in which the indictment was found or information filed, subject to reimbursement as provided in 3-5-901. (Terminates June 30, 1995—sec. 1, Ch. 217, L. 1993.)

7-6-2427. (Effective July 1, 1995) Speeial provisions for certain eharges related to criminal prosecutions. (1) Notwithstanding 7-6-2426, all costs of a criminal prosecution, including attorneys' fees, of an offense committed in the state prison are not charges against the county in which the state prison is locatod. ~~Such~~ *The* costs ~~shall~~ *must* be paid by the department of corrections ~~and human services~~.

(2) If a criminal action is removed before trial, the costs accruing upon ~~such~~ removal and trial must be a charge against the county in which the indictment was found or information filed, subject to partial or total reimbursement as provided in 3-5-901."

Section 29. Section 7-13-4502, MCA, is amended to read:

"7-13-4502. Definitions. As used in tbis part, unless tbe context indicates otherwise, the following definitions apply:

(1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of directors provided for in 7-13-4527.

~~(2) "Board of health and environmental sciences" as used in this part means the board of health and environmental sciences as provided in 2-15-2104.~~

~~(3)~~*(2)* "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

~~(4)~~*(3)* "Family residential unit" means a single-family dwelling.

~~(5)~~*(4)* "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by tbe county, and mobile homes as defined in 15-24-201.

~~(6)~~*(5)* "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by tbis part."

Section 30. Section 7-22-2151, MCA, is amended to read:

"7-22-2151. Cooperative agreements. (1) Any state agency controlling land within a district, including the department of transportation; the department of state lands; the department of fish, wildlife, and parks; the department of corrections ~~and human services~~; the department of natural resources and conservation; and tbe university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for noxious weed management on state-owned or state-controlled land within the district.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the

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municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with stata and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties."

Section 31. Section 7-32-2222, MCA, is amended to read:

"**7-32-2222. Health and safety of prisoners.** (1) Each detention center must comply with state and local fire codes for correctional occupancy and with sanitation, safety, and health codes.

(2) Designated exits must permit prompt evacuation of inmatos and detention center staff in an emergency.

(3) When there is good reason to helieve that the inmates may be injured or endangered, the detention center administrator must remove them to a safe and convenient place and confine them there as long as necessary to avoid the danger.

(4) (a) If in the opinion of the detention center administrator an inmate under ~~his~~ *the administrator's* jurisdiction requires medication, medical services, or hospitalization, the expense must be borne by the arresting agency when the arresting agency is not the county in which the inmate is confined, except as provided in subsection (4)(b).

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the expense must be paid by the county. If the department of corrections ~~and human services~~ is the arresting agency and the inmate is a probation violator, the expense must be paid by the county in which the district court that retains jurisdiction over the inmate is located.

(c) Tbe county attorney sball initiate proceedings to collect from the inmate any charges arising from the medical services or hospitalization for the inmate involved if he *the county attorney* determines the inmate is financially able to pay."

Section 32. Section 7-32-2242, MCA, is amended to read:

"**7-32-2242. Use of detention center — payment of costs.** (1) Local government, state, and federal law enforcement and correctional agencies may use any detention center for the confinement of arrested persons and the punishment of offenders, under conditions imposed by law and with tbe consent of the governing body responsible for the detention centor.

(2) (a) If a person is confined in a detention center by an arresting agency not responsible for the operation of the detention center, the costs of holding the person in confinement must be paid by the arresting agency at a rate that is agreed upon by the arresting agency and the detention center and that covers

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the reasonable costs of confinement, excluding capital construction costs, except as provided in subsection (2)(b).

(b) If a city or town commits a person to the detontion center of the county in which the city or tewn is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the costs must be paid by the county. If the department of corrections ~~and human services~~ is the arresting agency and the inmate is a probation violator, the costs must be paid by the county in which the district court that retains jurisdiction over the inmate is located.

(c) Payments must be made to the government unit responsible for the detention center or to the administrater operating a private detention center under an agreement provided for in 7-32-2201, upon presentation of a claim to the arresting agency.

(3) If a person is a fugitive from justice from an out-of-state jurisdiction, the costs, including medical expenses, of holding the person in a detention center pending extradition must be paid by the out-of-state jurisdiction."

Section 33. Section 7-33-2402, MCA, is amended to read:

"**7-33-2402. Area services.** A fire service area created pursuant to 7-33-2401 may provide residents of the area with adequate and standard:

(1) (a) fire and emergency response equipment, personnel, facilities, and maintenance, for a fire service agency providing service to the area; or

(b) fire protection by contracting for the services of a fire service agency; and

(2) emergency medical services and equipment, licensed by the department of *public* health and ~~environmental sciences~~ *human services*, and related personnel, facilities, and maintenance."

Section 34. Section 7-34-2301, MCA, is amended to read:

"**7-34-2301. Construction and operation of county boarding or nursing bome autborized.** The board of county commissioners may erect, equip, maintain, and operate a boarding home or nursing home for the aged, subject to standards established by the department of *public* health and ~~environmental sciences~~ *human services*."

Section 35. Section 7-34-2412, MCA, is amended to read:

"**7-34-2412. Applicability.** The authority granted under 7-34-2411 through 7-34-2418 is available only to counties in which no hospital exists or in which the only existing hospital has been ordered closed or cannot be reasonably hrought into compliance with the standards established by the department of *public* health and ~~environmental sciences~~ *human services* under Title 50, chapter 5, parts 1, 2, and 3."

Section 36. Section 10-2-401, MCA, is amended to read:

"**10-2-401. Location and function of homes — persons admitted.** The institutions at Columbia Falls and in eastern Montana are the Montana veterans' homes, and their primary function is to provide a home and

subsistence for veterans. The department of ~~corrections~~ *public health* and human services may also admit spouses or surviving spouses of veterans to the homes if space allows."

Section 37. Section 10-2-402, MCA, is amended to read:

"10-2-402. **Superintendent to be given veterans' preference.** In the selection of the superintendent of each of the Montana vetorans' homes, the department of ~~corrections~~ *public health* and human services shall apply the preference granted to veterans and disabled veterans under 39-29-102, but not tbe preference granted to other persons under 39-29-102 or Title 39, chapter 30."

Section 38. Section 10-2-403, MCA, is amended to read:

"10-2-403. **Eligibility for residence in home.** To be eligible for residence in a Montana veterans' home under rules prescribed by the department of ~~corrections~~ *public health* and human services, a person must be a veteran or the spouse or surviving spouse of a veteran. Consideration must also be given to:

(1) the person's age;

(2) the person's physical and mental status;

(3) the person's ability or inability to locate suitable alternative accommodations;

(4) the person's torm of residence in Montana;

(5) the person's gender as it relates to availability of appropriate living space;

(6) the ability of the Montana veterans' home to meet the person's needs; and

(7) other admission requirements established by the department."

Section 39. Section 10-2-404, MCA, is amended to read:

"10-2-404. **Acceptance and deposit of federal money.** The department of ~~corrections~~ *public health* and human services may accept money from the federal government that becomes available to tbe state as a result of operating the Montana veterans' homes and sball deposit ~~such~~ *the* money in the state treasury for the benefit of the homes. If a resident of a home is transferred to another institution, ~~as defined in 53-1-101,~~ the department of ~~corrections~~ *public health* and human services shall continue to draw from the federal government any money available for the maintenance of the former resident."

Section 40. Section 10-2-416, MCA, is amended to read:

"10-2-416. **Pledge to continue operation and maintenance.** Pursuant to 38 U.S.C. 641 and 5035(a)(6), the state shall appropriate funds either from the general fund or from funds generated under 16-11-111 to the department of ~~corrections~~ *public health* and human services financial support necessary to provide for continued operation and maintenance of the state home for veterans in eastern Montana. The department of ~~corrections~~ *public health* and human

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services may contract with a private vendor to provide for the operation of the eastern Montana veterans' home and may charge the contract vendor a rental fee for the maintenance and upkeep of the facility."

Section 41. Section 10-2-417, MCA, is amended to read:

"**10-2-417. Use of funds generated by taxation on cigarettes.** (1) Revenue generated by 16-11-119 and allocated to the department of ~~corrections~~ *public health* and human services must be used to support the operation and maintenance of the Montana veterans' homes programs.

(2) The legislature shall appropriate from the account established in 16-11-119 the funds required for the operation and maintenance of the Montana veterans' homes."

Section 42. Section 13-2-402, MCA, is amended to read:

"**13-2-402. Other reasons for cancellation.** The election administrator shall cancel the registration of any elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of any elector is filed or if an elector is reported as deceased by the department of *public* health and ~~environmental sciences~~ *human services* in the department's reports submitted to the county under 72-16-217;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of an elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if an elector is successfully challenged and not allowed to vote at an election upon determination of an election judge; or

(7) if a notice is received from another county or state that the elector has registered in that county or state."

Section 43. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of *public* health and ~~environmental sciences~~ *human services* and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of *public* health and ~~environmental sciences~~ *human services* and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

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(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmontally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) ~~beginning January 1, 1994,~~ timber as defined in 15-44-102; and

(v) all trailers and semitrailers with a licensed gross weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

(2) (a) The term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; ~~however~~ *However*, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 44. Section 15-6-209, MCA, is amended to read:

"**15-6-209. Community services buildings exempt.** (1) The building and appurtenant land, not exceeding 1 acre, owned by a nonprofit community service organization is exempt from property taxation, except as provided in subsections (3) and (4), if ~~such~~ *the* organization:

(a) is a lodge of a nationally recognized fraternal organization and does not sell food or beverages under license from the state of Montana;

(b) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities and does not furnish living accommodations to ~~such~~ *senior* citizens or sell food or beverages under license from the state of Montana; services qualifying under this provision must be recognized in the state plan on aging adopted by the department of ~~family~~ *public health and human* services; or

(c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for public meetings and entertainments.

(2) An applicant for exemption under this section shall demonstrate that it has been an active community service organization continuously from January 1, 1981.

(3) A building and lot exempted under this section ~~shall~~ *must* be appraised, assessed, and subject to levies for any special improvement district if the special improvement directly benefits the building or lot.

(4) The exemption provided under this section may not be extended to any property owned by a community service organization described ~~herein~~ *in this section* which is leased in whole or in part to any person for business or profitmaking purposes."

Section 45. Section 15-25-121, MCA, is amended to read:

"**15-25-121. Accounts.** (1) There is an evaluation special revenue account within the state treasury, for use by the department of ~~family~~ *public health and human* services. One-third of the taxes collected under 15-25-122 ~~shall~~ *must* be deposited in the account.

(2) There is a chemical abuse assessment special revenue account within the state treasury, for use by the department of justice. One-third of the taxes collected under 15-25-122 ~~shall~~ *must* be deposited in the account."

Section 46. Section 15-25-122, MCA, is amended to read:

"**15-25-122. Disposition of proceeds.** The department shall, in accordance with the provisions of 15-1-501(6), transfer all taxes collected pursuant to this chapter, less the administrative fee authorized in 15-25-111(1), as follows:

(1) one-third of the tax to the credit of the department of ~~family~~ *public health and human* services to be used for the youth evaluation program and chemical abuse aftercare programs; and

(2) the remaining two-thirds of the tax proceeds as follows:

(a) one-half to the department of justice to be used:

(i) for grants to youth courts to fund chemical abuse assessments; and

(ii) for grants to counties to fund services for the detention of juvenile offenders in facilities separate from adult jails, as authorized in 41-5-1002; and

(b) one-half to the account created by 44-12-206(3) if a state government law enforcement agency seized the drugs. If a local government law enforcement agency seized the drugs, then that amount must be credited to the treasurer or finance officer of the local government, be deposited in its general fund, and be used to enforce drug laws."

Section 47. Section 15-30-128, MCA, is amended to read:

"**15-30-128. Credit for expense of caring for certain elderly family members.** (1) There is a credit against the tax imposed by this chapter for

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qualified elderly care expenses paid by an individual for the care of a qualifying family member during the taxable year.

(2) A qualifying family member is an individual who:

(a) is related to the taxpayer by blood or marriage;

(b) (i) is at least 65 years of age; or

(ii) has been determined to be disabled by the social security administration; and

(c) bas a family income of $15,000 or less for an unmarried individual and $30,000 or less for a married individual for the taxable year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the gross income, including all nontaxable income, of the individual or, in the case of a married individual, the gross income, including all nontaxable income, of the individual and the individual's spouse.

(4) Qualified elderly care expenses include:

(a) payments by the taxpayer for home health agency services, personal care attendant services and care in a long-term ~~health~~ care facility, as defined in 50-5-101, that is licensed by the department of *public* health and ~~environmental sciences~~ *human services*, homemaker services, adult day care, respite care, or health care equipment and supplies:

(i) provided to the qualifying family member;

(ii) provided by an organization or individual not related to the taxpayer or the qualifying family member; and

(iii) not compensated for by insurance or otherwise;

(b) premiums paid for long-term care insurance coverage for a qualifying family member.

(5) The percentage amount of credit allowable under this section is:

(a) for a taxpayer whose adjusted gross income does not exceed $25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose adjusted gross income exceeds $25,000, the greater of:

(i) 20% of qualified elderly care expenses; or

(ii) 30% of qualified elderly care expenses, less 1% for each $2,000 or fraction ~~thereof~~ *of $2,000* by which the adjusted gross income of the taxpayer for the taxable year exceeds $25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by $1 for each dollar of the adjusted gross income over $50,000 for a taxpayer whose adjusted gross income exceeds $50,000;

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(b) limited to $5,000 per qualifying family member in a taxable year and to $10,000 total for two or more family members in a taxable year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified elderly care expenses paid by those taxpayers for that qualified family member.

(7) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

(8) In the case of a married individual filing a separate return, the percentage amount of credit under subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated in those subsections."

Section 48. Section 15-30-303, MCA, is amended to read:

"15-30-303. **Confidentiality of tax records.** (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery te a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

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(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding $1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing information from employers' payroll withholding reports to:

(a) the department of labor and industry to prevent and detect fraud and abuse under the unemployment compensation program; or

(b) the state fund to prevent and detect fraud and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant suhstantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enahling the department of justice to administer the provisions of 61-5-105;

(b) to the department of ~~social and rehabilitation~~ *public health and human* services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

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(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation the ratio of gross farm income to total gross income based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223, provided that notice to the applicant has been given as provided in 15-70-223. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns."

Section 49. Section 15-60-101, MCA, is amended to read:

"**15-60-101. Definitions.** For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Bed day" means each whole 24-hour period that a resident of a nursing facility is present in the facility and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while the resident is on temporary leave from the facility.

(b) The term includes all periods of 24 hours described in subsection (1)(a) regardless of the source of payment. The term also includes the day of a resident's admission to a nursing facility and the day of the resident's death, even though the resident is present less than a whole 24-hour period on these days.

(2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(3) "Department" means the department of revenue.

(4) "Nursing facility" or "facility" means a health care facility licensed by the department of *public* health and ~~environmental sciences~~ *human services* as a nursing facility to provide skilled nursing care or intermediate nursing care. The term includes nursing facilities, whether they are:

(a) operated as nonprofit or for-profit facilities;

(b) freestanding or part of another health care facility; or

(c) publicly or privately operated.

(5) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are defined in 50-5-101.

(6) "Report" means the report of bed days required in 15-60-201.

(7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as provided in 15-60-102."

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Section 50. Section 15-60-201, MCA, is amended to read:

"15-60-201. Reporting and collection of fee. (1) A nursing facility shall report to the department of revenue, following the end of each calendar quarter, the number of hed days in the facility during the quarter. The report must be in the form prescribed by the department and is due on or before the last day of the month following the close of each calendar quarter. The report must be accompanied by a payment in an amount equal to the fee required to be paid under 15-60-102.

(2) The department of *public* health and ~~environmental sciences~~ *human services* shall provide the department at the end of each calendar quarter with a list of facilities as defined in 15-60-101(4)."

Section 51. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. Thirty percent of these revenues are statutorily appropriated, as provided in 17-7-502, to the department and must, in accordance with the provisions of 15-1-501(6), be allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (3). Four and one-half percent of these revenues are statutorily appropriated, as provided in 17-7-502, and must, in accordance with the provisions of 15-1-501(6), be allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes. The remaining revenues must, in accordance with the provisions of 15-1-501(6), be deposited in the state special revenue fund to the credit of the department of ~~corrections~~ *public health* and human services for the treatment, rehabilitation, and prevention of alcoholism. In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405. That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to the department, which shall pay

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quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501(6), to be allocated to the incorporated cities and towns of the county.

(3) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(4) The license tax proceeds that are allocated to the department of ~~corrections~~ *public health* and human services for the treatment, rehabilitation, and prevention of alcoholism must be credited quarterly to the department of ~~corrections~~ *public health* and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder must be distributed as provided in 53-24-206."

Section 52. Section 16-1-408, MCA, is amended to read:

"**16-1-408. Additional tax.** An additional tax of $1.30 per barrel is levied and imposed as provided by 16-1-406. One dollar of the additional tax must, in accordance with the provisions of 15-1-501(6), be deposited, notwithstanding 16-1-306 and 16-1-410 or any other provision, with the state treasurer to the credit of the department of ~~corrections~~ *public health* and human services each quarter for the treatment, rehabilitation, and prevention of alcoholism as approved by the state, and 30 cents of the additional tax must be deposited in the general fund."

Section 53. Section 16-1-411, MCA, is amended to read:

"**16-1-411. Tax on wine.** (1) A tax of 27 cents per liter is imposed on table wine imported by a table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor must be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department must be collected at the time of sale.

(3) The tax paid by a table wine distributer in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) must, in accordance with the provisions of 15-1-501(6), be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of ~~corrections~~ *public health* and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section "based on population" means:

(a) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-410(2); and

(b) for cities, the distribution described in 16-1-410."

Section 54. Section 16-11-119, MCA, is amended to read:

"**16-11-119. Disposition of taxes — retirement of bonds.** The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of ~~corrections~~ *public health* and human services for the operation and maintenance of state veterans' nursing homes. All remaining revenue collected under the provisions of 16-11-111, less the expense of collecting the taxes, must, in accordance with the provisions of 15-1-501(6), be deposited as follows: ~~79.25%~~ *79.75%* in the long-range building program fund in the debt service fund type and 20.25% in the long-range building program fund in the capital projects fund type."

Section 55. Section 17-3-1001, MCA, is amended to read:

"**17-3-1001. State institutions which may take by gift, bequest, or grant.** (1) The state of Montana, units of the Montana university system, the Montana school for the deaf and blind, all institutions in the department of corrections *and the department of public health* and human services, and any institutions now created or established or which may ~~hereafter~~ be created or established and supported in whole or in part by the state for any purpose may accept gifts, donations, grants, devises, or bequests of real or personal property from any source. Gifts, donations, grants, bequests, or devises may be made directly to the state, in the name of any of the institutions, to any officer or board of the institutions, or to any person in trust for the institutions.

(2) In the event it is made directly to any institution or to any officer or board of any institution, the gift, donation, grant, devise, or bequest is a gift, donation, grant, devise, or bequest to the state and ~~shall~~ *must* be administered and used by the state for the particular purpose for which it was given, donated, granted, bequeathed, or devised. In the event *that* ~~no~~ *a* particular purpose is *not* mentioned in the gift, grant, devise, or bequest, then it ~~shall~~ *must* be used for the general support, maintenance, or improvement of ~~such~~ *the* institution by the state."

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Section 56. Section 17-3-1002, MCA, is amended to read:

"17-3-1002. Persons who may make gifts to state institutions. (1) A donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of 18 years and of sound mind to the state, a unit of the Montana university system, the state school for deaf and blind, an institution in the department of corrections *or the department of public health* and human services, and any and all institutions now created or established or ~~which~~ *that* may ~~hereafter~~ be created or established and supported, in whole or in part, by the state for any purpose. Any person, corporation, or association of persons may make any gift, donation, or grant of property, real or personal, to the state, or to any of the institutions ~~above-named or~~ referred to *in this section*.

(2) In the event *that* any gift, donation, grant, devise, or bequest ~~shall be~~ *is* made to any ~~such~~ institution or to any officer or board of any ~~such~~ institution, the same ~~shall~~ *must* be construed as a gift, donation, grant, devise, or bequest to the state and ~~shall~~ *must* be administered and used for the state for the particular purpose for which the same was given, donated, granted, bequeathed, or devised. In the event *that* ~~no~~ *a* particular purpose is *not* mentioned in ~~such~~ *the* gift, grant, devise, or bequest, then the same ~~shall~~ *must* be used for the general support, maintenance, or improvement of ~~such~~ *the* institution by the state."

Section 57. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt — offsets. (1) Once a debt of a state agency has been transferred to the state auditor, the state auditor has the authority to collect it. The state auditor may contract with commercial collection agencies for recovery of debts owed the state.

(2) The state auditor shall offset any amount due a state agency from a person or entity against any amount, including refunds or taxes, owing the person or entity by any state agency, provided the state auditor may not exercise this right of offset until the debtor has first been notified by the state auditor and been given an opportunity for a hearing. An offset may not be made against any amount paid out as child support collected by the department of ~~social and rehabilitation~~ *public health and human* services. The state auditor shall deduct from the claim and draw warrants for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner as the state auditor, in the state auditor's discretion, determines.

(3) (a) The department retains the power to offset tax refunds due individuals against taxes owed the state, provided the department may not exercise this right of offset until the taxpayer has been notified by the department and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

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(c) Appeal from the decision of the department after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and any decision made as a result of that proceeding has become final.

(4) (a) A debt owed to the department of ~~social and rehabilitation~~ *public health and human* services or being collected by the department of ~~social and rehabilitation~~ *public health and human* services on behalf of any person or agency may be offset by the state auditor if the debt is being enforced or collected by the department of ~~social and rehabilitation~~ *public health and human* services under Title IV-D of the Social Security Act.

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the state auditor for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and any decision made as a result of that proceeding has become final. The hearing must be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of ~~social and rehabilitation~~ *public health and human* services shall adopt rules necessary to determine the hearing procedures.

(5) If, in the discretion of the state auditor, the person or entity refuses or neglects to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity~~:~~. ~~if~~ *If* approved by the department of administration, ~~it shall have~~ *the claim has* the same force and effect as though filed by the person or entity. The amount due any person or entity from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset as provided in this section."

Section 58. Section 17-5-430, MCA, is amended to read:

"**17-5-430. Authorization of bonds.** The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $6,460,000 for the projects described in section 9, Chapter 624, Laws of 1993, over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1993, to be used in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds. The board may fund the ~~department of corrections and human services~~ projects authorized in section 9, Chapter 624, Laws of 1993, through the use of loans or bonds."

Section 59. Section 17-5-432, MCA, is amended to read:

"17-5-432. **Agreement with department of ~~social and rehabilitation~~ *public health and human* services.** For the proceeds of bonds and notes authorized and appropriated by Chapter 624, Laws of 1993, for the construction of a commodities warehouse, the board of examiners and the department of ~~social and rehabilitation~~ *public health and human* services may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds and notes from which the appropriation was made and to accommodate and maintain reserves required under the bonds. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the reserves not required for construction costs may be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payment by the department must be made from *available* funds ~~available therefor~~."

Section 60. Section 17-8-303, MCA, is amended to read:

"17-8-303. **Warrants — presentation and cancellation.** (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state auditor on the state treasury ~~shall~~ *must* be presented for payment within 6 months after the date of the issue thereof.

(b) Warrants issued for the department of ~~social and rehabilitation~~ *public health and human* services that are funded to any extent with federal money ~~shall~~ *must* be presented for payment within 180 days after the date of issue.

(2) Should the payee or legal holder of any warrant fail to present it for payment within the time specified in subsection (1), the state auditor shall enter the same as canceled on the books of ~~his~~ *the state auditor's* office and the amount ~~shall~~ *must* be credited to a separate agency fund account administered by the state auditor. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment within 4 years from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant ~~in lieu thereof~~.

(3) Three years and 6 months after cancellation, the warrant ~~shall~~ *must* be classed as unclaimed property subject to the provisions of Title 70, chapter 9, parts 1 through 3. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment, ~~such~~ *the* presentation ~~shall~~ *must* be to the department of revenue as provided in 70-9-310."

Section 61. Section 18-2-301, MCA, is amended to read:

"18-2-301. **Bids required — advertising.** (1) It is unlawful for any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is $25,000 or more without first advertising in at least one issue each

week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed hids to perform the work and stating the time and place bids will be considered.

(2) All work may he done, caused to be done, or contracted for only after competitive bidding.

(3) If responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.

(4) This section does not apply to work done by inmates at an institution in the department of corrections ~~and human services~~."

Section 62. Section 18-4-133, MCA, is amended to read:

"**18-4-133. Purchases exempt from general requirements.** (1) Fresh fruits and vegetables, ~~(~~other than potatoes~~)~~, ~~shall~~ *may* not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account ~~shall~~ *must* be kept of these purchases, and the account ~~shall~~ *must* he furnished to the department.

(2) ~~Likewise, when~~ *When* immediate delivery of articles or performance of service is required by the public exigencies, the articles or service ~~so~~ required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(3) The department of administration may exempt the department of corrections *and the department of public health* and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections *and the department of public health* and human services for residents of its institutions and community-based programs.

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community."

Section 63. Section 18-4-313, MCA, is amended to read:

"**18-4-313. Contracts — terms, extensions, and time limits.** (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a longer period than 3 years~~;~~. ~~however~~ *However*, the department may contract for the lease or purchase of telecommunications equipment and systems, data processing equipment, the department of revenue liquor agencies, and the department of ~~social and rehabilitation~~ *public health and human* services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

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(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 64. Section 18-5-402, MCA, is amended to read:

"**18-5-402. Definitions.** As used in this part, the following definitions apply:

(1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) "Blind vendor" means a person certified as a blind person for the purpose of this part and who is operating a vending facility administered by the department.

(3) "Certified blind person" means a blind person whom the department has determined to be a blind person as defined in this part who is in need of vocational opportunities, and who is qualified to operate a vending facility.

(4) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services.

(5) "Federal property" means buildings or portions of buildings or other real property owned or leased by the federal government excluding military reservations upon which the department may administor vending facilities hy an agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

(6) "Other property" means all real property other than state or federal property as defined in this part.

(7) "State property" means those buildings or portions of buildings or other real property owned or leased under a lease-purchase agreement, or in the case of a building, leased in its entirety by the state or agencies of the state that are utilized in the conduct of state matters and occupied principally by state employees. State property for the purpose of this part does not include vocational institutions or institutions of higher education.

(8) "Vending facility" means an area and equipment inclusive of vending machines on state property which is or may be utilized in providing a food, beverage, or other service to employees and other persons present on the property.

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(9) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include postage stamp machines or coin-operated telephones.

(10) "Vocational rehabilitation programs" means those programs provided for under the federal Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3."

Section 65. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval — tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and:

(i) the resident district does not provide transportation; or

(ii) the district of residence provides transportation and is not within the same county as the child's school district of choice;

(b) the child resides in a location where, due to road or geographic conditions, it is impractical to attend the school nearest the child's residence;

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school;

(d) the child has been adjudicated by a court of competent jurisdiction to he an abused, neglected, or dependent child, as defined in 41-3-102, or a youth in need of supervision or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the department of ~~family~~ *public health and human* services and, as a result of the placement, is required to attend school outside of the child's district of residence; or

(e) the child is required to attend school outside of the district of residence as the result of a placement by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction.

(2) (a) Whenever a parent or guardian of a child, an agency of the stata, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

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(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

(4) Unless the child is a child with disabilities who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 66. Section 20-5-402, MCA, is amended to read:

"**20-5-402. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Department" means the dopartment of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school, preschool, or postsecondary school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health department" means a city, city-county, county, or district health department.

(5) "Local health officer" means a city, city-county, county, or district health officer.

(6) "Postsecondary school" means a vocational-technical center, a community college, a unit of the Montana university system, or a private university or college.

(7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

(a) serves no child under 5 years of age for more than 3 hours a day; and

(b) serves no child 5 years of age for more than 6 hours a day.

(8) "School" means a place or institution for the teaching of individuals, the curriculum of which is comprised of the work of:

(a) any combination of kindergarten through grade 12;

(b) a postsecondary school; or

(c) a preschool."

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Section 67. Section 20-6-621, MCA, is amended to read:

"20-6-621. Selection of school sites, approval election, and lease of state lands. (1) The trustees of any district ~~shall have the authority to~~ *may* select the sites for school buildings or for other school purposes, but ~~such~~ *the* selection ~~shall~~ *must* first be approved by the qualified electors of the district before any contract for the purchase of ~~such~~ *a* site is entered into by the trustees, except the trustees ~~shall have the authority to~~ *may* purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. ~~Furthermore, the~~ *The* trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site ~~shall~~ *must* be called under the provisions of 20-20-201 and ~~shall~~ *must* be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election ~~shall~~ *must* be qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees shall ~~have the authority to~~ *may* purchase ~~such sites~~ *the site*. A site approval election ~~shall~~ *is* not ~~be~~ required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of ~~such~~ *the* site.

(3) Any site for a school building or other building of the district that is selected or purchased by tbe trustees ~~shall~~ *must*:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of *public* health and ~~environmental sciences~~ *human services* of the state of Montana; and

(c) comply with the statewide building regulations, if any, promulgated by the department of commerce.

(4) The board of land commissioners ~~shall have the authority to~~ *may* sell, at the appraised value, or ~~to~~ lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than 10 acres to be used as a school site in ~~such~~ *the* district."

Section 68. Section 20-6-624, MCA, is amended to read:

"20-6-624. School huilding plans and specifications approval hefore payment. (1) The trustees of a district ~~shall~~ *may* not make any payment under any contract for the construction of school facilities until the plans and specifications for ~~such~~ *the* construction have been approved under tbe provisions of 20-6-622.

(2) Any contractor, architect, trustee, or any other person, firm, or corporation who ~~shall violate~~ *violates* the provisions of 20-6-622, this section, or any regulation promulgated by the ~~state board of health and environmental sciences~~ *department of public health and human services* or the department of justice ~~shall be deemed~~ *is* guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 or more than $500."

Section 69. Section 20-7-404, MCA, is amended to read:

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"20-7-404. Cooperation of state agencies. The ~~state~~ department of *public* health *and human services*~~, the department of family services,~~ and the stata school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. ~~Nothing herein shall~~ *This section may not* be construed to interfere witb the purpose and function of these state agencies."

Section 70. Section 20-7-436, MCA, is amended to read:

"20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psycbiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children wbose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth that have the treatment of cbemical dependency as the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally disturbed as defined in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

(iii) is licensed by tbe department of *public* health and ~~environmental sciences~~ *human services*; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of *public* health and ~~environmental sciences~~ *human services* pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth who have the treatment of chemical dependency as a primary reason for treatment."

Section 71. Section 20-8-116, MCA, is amended to read:

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"20-8-116. **Employment placement — continuing education.** (1) The superintendent shall gather and record data and statistics to help ~~him~~ locate suitable employment for blind, deaf, and hard-of-hearing persons not in attendance at ~~said~~ *the* school or for those who have been trained by the department of ~~social and rehabilitation~~ *public health and human* services when ~~it so~~ *the department* requests ~~such~~ assistance. ~~He~~ *The superintendent* shall consult with various county, state, and federal agencies and with the department of ~~social and rehabilitation~~ *public health and human* services to secure employment for self-sustaining persons. ~~He~~ *The superintendent* shall coordinate ~~his~~ work with ~~such~~ federal agencies, *such* as social security and reemployment for those out of work, as required by this part.

(2) The superintendent may, within funding limitations, develop and offer continuing education programs of a vocational nature for the visually impaired and hearing impaired that use the campus and facilities of the school during the summer months and other times when the school's facilities are not being used by its students."

Section 72. Section 20-25-421, MCA, is amended to read:

"20-25-421. **Charges for tuition — waivers.** The regents may:

(1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction;

(2) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the reciprocal state;

(3) waive resident tuition for students at least 62 years of age;

(4) waive tuition and fees for:

(a) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(b) persons designated by the department of ~~family services~~ *corrections* pursuant to 52-5-112;

(c) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(d) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States; or

(e) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action;

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(5) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of ~~his~~ *the person's* choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(a) a paid or volunteer member of a municipal or rural fire department;

(b) a law enforcement officer as defined in 7-32-201; or

(c) a full-time highway patrol officer."

Section 73. Section 20-25-604, MCA, is amended to read:

"**20-25-604. Department in advisory capacity.** The department of *public* health and ~~environmental sciences~~ *human services* shall act in an advisory capacity in establishing all courses required under this part, and ~~said~~ *the* courses ~~shall~~ *may* be established only after consultation with and advice by the department."

Section 74. Section 20-26-1407, MCA, is amended to read:

"**20-26-1407. Montana student volunteer program committee — terms of office.** (1) There is a Montana student volunteer program committee.

(2) The committee consists of seven members, appointed as follows:

(a) a representative of the office of community service, appointed by the governor;

(b) a representative of the department of ~~family~~ *public health and human* services, appointed by the director;

(c) a member of the board of regents, appointed by majority vote of the board;

(d) a representative from either a participating or an eligible worksite, appointed by the governor;

(e) a full-time student enrolled in any unit of the Montana university system, appointed by the university system student body governments; and

(f) two representatives of the private sector, appointed by the governor.

(3) At least one member of the committee must be a Native American.

(4) A vacancy on the committee is for the unexpired term and must be filled in the same manner as the original appointment.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet at least twice yearly, once in July and once in January, beginning in July 1993. Additional meetings may be called by the presiding officer or the vice presiding officer.

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(7) Members of the board serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503."

Section 75. Section 23-1-302, MCA, is amended to read:

"**23-1-302. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Corps" means the Montana conservation corps.

(2) "Corps coordinator" means the person who acts as the corps administrative officer and employs the staff necessary to implement the provisions of this chapter.

(3) "Corpsmember" means a participant in the corps.

(4) "Crewleader" means a participant in the corps who supervises corpsmembers.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Division" means the parks division of the department of fish, wildlife, and parks.

(7) "State agencies" means the departments of fish, wildlife, and parks; ~~social and rehabilitation~~ *public health and human* services; labor and industry; state lands; ~~family services;~~ and natural resources and conservation."

Section 76. Section 23-1-303, MCA, is amended to read:

"**23-1-303. Powers and duties of the division.** The division, in cooperation with the department, may:

(1) hire a corps coordinator;

(2) coordinate with state agencies to place eligible participants in work experience projects, including those state general assistance (GA) and federal aid to families with dependent children (AFDC) recipients utilizing grant diversion funding and youth under state supervision utilizing payments from the department of ~~family~~ *public health and human* services;

(3) develop and approve work experience projects that meet the requirements of this part;

(4) ensure that work experience projects involve labor-intensive improvements to public lands or facilities that will result in a public value and have a potential to yield revenue;

(5) execute contracts or cooperative agreements containing the terms and conditions necessary and desirable for the employment of crewleaders and corpsmembers in approved work experience projects with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations;

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(6) execute contracts or cooperative agreements with federal, state, or local agencies, persons, partnerships, associations, or corporations for the purpose of administering the requirements of this part;

(7) develop procedures for awarding incentive vouchers;

(8) authorize use of the corps for emergency projects, including but not limited to natural disasters, fire prevention and suppression, and rescue of lost or injured persons, and provide adequate training to corpsmembers prior to participation in an emergency project;

(9) apply for and accept grants or contributions of services, funds, or lands from any public or private donors, including the acceptance of federal funds appropriated by the legislature;

(10) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary to complete work experience projects; and

(11) adopt rules and guidelines necessary to implement the provisions of this part and to effectively administer the program."

Section 77. Section 23-1-312, MCA, is amended to read:

"**23-1-312. Eligibility for employment in program — referrals.** (1) To be eligible to participate in the Montana conservation corps program, a person must:

(a) be a citizen of the state as defined in 1-1-402;

(b) be 18 years of age or older to qualify for the adult corps and at least 16 years of age and under 22 years of age to qualify for the summer youth corps;

(c) be capable of performing labor-intensive work; and

(d) meet the requirement of the job service and the human resource development council, as defined in 53-10-501, for participation in job training programs, be assigned by the department of ~~family~~ *public health and human* services as a youth under state supervision, be unemployed, or be accepted as an unpaid volunteer.

(2) Eligibility for corpsmembers must be determined by local job service offices and summer youth program operators. If the number of corps positions is insufficient to place all eligible individuals who apply for participation in the program, the job service may, upon approval by the applicant, provide the name of an eligible individual to private sector employers or to job training programs requesting referrals."

Section 78. Section 23-5-112, MCA, is amended to read:

"**23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

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(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributer" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operater equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

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(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services. The term does not mean:

(a) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(b) a promotional game of chance; or

(c) an amusement game regulated under chaptor 6 of this title.

(15) "Gross proceeds" means gross revenue received less prizes paid out.

(16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under chapter 7 or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160; and

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter 4 of this title and parts 2, 5, and 8 of this chapter.

(18) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

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(19) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(20) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab card manufacturer, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(21) "Licensee" means a person who has received a license from the department.

(22) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(23) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. The term does not mean lotteries authorized under chapter 7 of this title.

(24) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind te be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator.

(25) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(26) "Operater" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(27) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(28) "Person" or "persons" means hoth natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(29) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(30) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who havo not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the

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department that was manufactured or intended for use for purposes other than gambling.

(31) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(32) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(33) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(34) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of ~~family~~ *public health and human* services.

(35) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(36) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 79. Section 27-1-718, MCA, is amended to read:

"27-1-718. Civil penalty for shoplifting. (1) An adult or emancipated minor, as defined in 20-25-501, who takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile

establishment without the consent of the owner or seller and with the intention of converting the goods to ~~his~~ *the taker's* own use without having paid the purchase price ~~thereof~~ *of the goods* is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, in the amount of the greater of $100 or the retail value of the goods, not to exceed $500. This amount is in addition to actual damages.

(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to ~~his~~ *the minor's* own use without having paid the purchase price ~~thereof~~ *of the goods*, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of $100 or the retail value of the goods, not to exceed $500. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agency that has been assigned responsibility for the minor child pursuant to court order or action of ~~the department of family~~ *the department of corrections or the department of public health and human* services.

(3) Judgments, but not claims, arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section."

Section 80. Section 27-6-206, MCA, is amended to read:

"**27-6-206. Funding.** (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it ~~shall~~ *must* be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but ~~shall~~ *must* be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge ~~shall~~ *must* be levied on all health care providers. The amount of the assessment must be annually set by the director and must be apportioned among physicians, dentists, hospitals, and other health care providers by group. As to the group of all physicians, the group of all dentists, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment, as to all claims closed since April 19, 1977. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of *public* health and ~~environmental sciences~~ *human services*. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all dentists must be equally assessed against all dentists. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities.

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Surplus funds, if any, over and above the amount required for the annual administration of the chapter ~~shall~~ *must* be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge ~~shall~~ *must* be paid on or before the date physicians' and dentists' annual registration or renewal fees are due under 37-3-313 and 37-4-307. All unpaid assessments bear a late charge fee equal to the judgment rato of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians' and dentists' annual registration or renewal fees."

Section 81. Section 27-32-302, MCA, is amended to read:

"**27-32-302. Clerk to certify and file judgment.** The clerk of the court shall certify to two copies of ~~such~~ *a* judgment and file one with the department of *public* health and ~~environmental sciences~~ *human services*, Helena, and the other with the county clerk and recorder of the county in which the judgment was obtained."

Section 82. Section 31-3-141, MCA, is amended to read:

"**31-3-141. Actions available to consumer.** (1) A consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this part.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because ~~he~~ *the person* judges the dispute to be frivolous or irrelevant is liable to suit.

(3) A person, other than the department of ~~social and rehabilitation~~ *public health and human* services under 40-5-261, who furnishes information to a consumer reporting agency that is false or a person who furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

(4) A consumer who disputes the result of a reinvestigation conducted under 31-3-124 of the accuracy of information provided by the department of ~~social and rehabilitation~~ *public health and human* services may petition for an administrative hearing pursuant to 40-5-261."

Section 83. Section 33-22-702, MCA, is amended to read:

"**33-22-702. Definitions.** For purposes of this part, the following definitions apply:

(1) "Chemical dependency treatment center" means a treatment facility which:

(a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state; and

(b) is licensed or approved as a treatment center by the department of ~~corrections~~ *public health* and human services under 53-24-208.

(2) "Inpatient benefits" are as set forth in 33-22-705.

(3) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and which facility is also:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(4) "Mental illness" means neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder.

(5) "Outpatient benefits" are as set forth in 33-22-705."

Section 84. Section 33-22-705, MCA, is amended to read:

"33-22-705. Inpatient and outpatient benefits. (1) "Inpatient benefits" are benefits payable for charges made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and treatment of alcoholism or drug addiction in a freestanding inpatient facility must he in a chemical dependency treatment center that is approved by the department of ~~corrections~~ *public health* and human services under 53-24-208.

(2) "Outpatient benefits" are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed hy a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or chemical dependency treatment center for the necessary care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center must be approved by the department of ~~corrections~~ *public health* and human services under 53-24-208.

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or chemical

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dependency counselor certified by the department of ~~corrections~~ *public health* and human services under 53-24-204."

Section 85. Section 33-22-1202, MCA, is amended to read:

"33-22-1202. Limited benefit disability insurance policies authorized. (1) Insurers and health service corporations may issue limited benefit disability insurance policies that do not provide mandated health care coverage as required in 33-22-111, 33-22-114, 33-22-131, 33-22-229, 33-22-301, 33-22-302, 33-22-304, 33-22-504, 33-22-506, 33-22-509, 33-22-703, 33-22-1002, 33-30-1001, 33-30-1003, 33-30-1004, 33-30-1008, 33-30-1011, 33-30-1013, or any other provision enacted after January 1, 1991, unless the provision specifically mandates coverage for policies issued under this part.

(2) Limited benefit disability insurance policies may be issued only to the following persons:

(a) employers who:

(i) employ 20 or fewer employees working at least 20 hours per week; and

(ii) have been in business in the state for at least 12 months and have not contributed, within the preceding 12 months, to payment of any premiums for disability insurance on behalf of an employee;

(b) disabled or injured workers and their families;

(c) unemployed individuals and their families;

(d) self-employed individuals and their families; and

(e) a parent, or the department of ~~social and rehabilitation~~ *public health and human* services on behalf of the parent, who is ordered by a court or administrative authority of this or another state or who is required under 40-5-208(1)(b) to provide health insurance coverage for a child if health insurance coverage is not available through employment or a union. This subsection (e) applies only to orders or modifications of orders issued after July 1, 1991, by a court or administrative authority.

(3) The insurer or health service corporation may establish terms and conditions for copayments and deductibles.

(4) The insurer or health service corporation issuing a limited benefit disability insurance policy shall provide the insured individual with a written disclosure statement, separate from the insurance policy, certificate, or evidence of coverage, stating in clear and understandable language and format which mandatory coverages and providers are not covered by the policy and what coverage is provided by the policy.

(5) Limited benefit disability insurance policies must provide coverage in accordance with the minimum requirements set forth in 33-22-1203."

Section 86. Section 37-2-104, MCA, is amended to read:

"37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for

a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) ~~Nothing in this~~ *This* section ~~prohibits~~ *does not prohibit*:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family planning clinic under contract with the department of *public* health and ~~environmental sciences~~ *human services* if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353b."

Section 87. Section 37-2-301, MCA, is amended to read:

"**37-2-301. Duty to report cases of communicable disease.** (1) If a physician or other practitioner of the healing arts examines or treats a person ~~whom he~~ *who the physician or other practitioner* believes has a communicable disease or a disease declared reportable hy the department of *public* health and ~~environmental sciences~~ *human services*, ~~he~~ *the physician or other practitioner* shall immediately report the case to the local health officer. The report ~~shall~~ *must* be in the form and contain information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, ~~he~~ *the person* shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or botb. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, ~~shall~~ *must* be paid to the county treasurer of the county in which the violation occurs."

Section 88. Section 37-7-103, MCA, is amended to read:

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"**37-7-103. Exemptions.** Subject only to 37-7-401 and 37-7-402, *this chapter does not*:

(1) ~~nothi~~ ~~in this chapter subjects~~ *subject* a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board ~~or prevents~~, *prevent* ~~such~~ *the* person from compounding or using drugs, medicines, chemicals, or poisons in his *the person's* practice, or ~~prevents~~ *prevent* one duly licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons as ~~he~~ *the person* considers proper in the treatment of the patient;

(2) ~~nothing in this chapter prevents~~ *prevent* the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) ~~nothing in this chapter prevents~~ *prevent* the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and ~~nothing in this chapter prevents~~ *does not prevent* the sale of common household preparations and other drugs~~, provided~~ *if the* stores selling them are licensed under the terms of this chapter;

(4) ~~nothing in this chapter applies~~ *apply* to or ~~may~~ interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) ~~nothing in this chapter prevents~~ *prevent* a registered nurse employed by a family planning clinic under contract with the department of *public* health and ~~environmental sciences~~ *human services* from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs."

Section 89. Section 37-9-101, MCA, is amended to read:

"**37-9-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Inactive nursing bome administrator" means an individual who has heen licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

(4) "Long-term care facility" means any skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of *public* health and ~~environmental sciences~~ *human services*, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

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(5) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether ~~his~~ *the individual's* functions and duties are shared with one or more individuals."

Section 90. Section 37-14-322, MCA, is amended to read:

"**37-14-322. Inspections.** Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of commerce;

(3) the department of *public* health and ~~environmental sciences~~ *human services.*"

Section 91. Section 37-21-101, MCA, is amended to read:

"**37-21-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Authorized agency" means a private agency or institution authorized by the department to establish academic, experience, and training qualifications for dietitians.

(2) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* as provided in ~~2-15-2101~~ *2-15-2201.*"

Section 92. Section 37-27-320, MCA, is amended to read:

"**37-27-320. Reports — failure to report.** (1) A licensed direct-entry midwife shall submit semiannually to the board, on forms supplied by the board, a summary report on each patient given care. The report must include vital statistics on each patient and information on the procedures and scope of care administered, including any transport of the patient to a hospital and physician referrals, but may not include information disclosing the identity of the patient.

(2) A licensed direct-entry midwife shall report within 72 hours to the board and to the department of *public* health and ~~environmental sciences~~ *human services* any maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been given.

(3) Failure of a direct-entry midwife to submit required reports constitutes grounds to deny renewal of a license."

Section 93. Section 37-27-321, MCA, is amended to read:

"**37-27-321. Filing of birth certificate.** (1) When a birth occurs with a licensed direct-entry midwife in attendance, ~~the~~ direct-entry midwife shall prepare and file a birth certificate, as required by 50-15-201, with the department of *public* health and ~~environmental sciences~~ *human services* within 30 days of the birth of the newborn.

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(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under this chapter."

Section 94. Section 37-30-307, MCA, is amended to read:

"**37-30-307. Fees — handicapped persons exempted — other fees prohibited.** (1) The fee to be paid by an applicant for an examination to determine ~~his~~ *the applicant's* fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate ~~shall~~ *must* be prescribed by the board.

(2) A person registered as a barber shall, before the expiration date established by rule of the department, annually pay a license fee, set by the board based on clerical and administrative costs, for the renewal of ~~his~~ *the person's* certificate of registration. If a barber fails to have the certificate renewed before the expiration date, the barber shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

(3) However, physically handicapped persons trained for the barber profession by the department of ~~social and rehabilitation~~ *public health and human* services and certified by that department as having graduated from a barber college licensed by the board are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(4) ~~No other~~ *Another* or *an* additional license or fee may *not* be imposed on barbers by a municipality or other subdivision of this state."

Section 95. Section 37-30-412, MCA, is amended to read:

"**37-30-412. Barbershop owner's duty to monitor employees.** An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of *public* health and ~~environmental sciences~~ *human services* and the department of commerce and *shall* report to the department of commerce the name of a person practicing barbering ~~therein~~ *in the barbershop* who has a communicable disease."

Section 96. Section 37-30-422, MCA, is amended to read:

"**37-30-422. Maintenance of sanitary conditions.** Barbershops, barber schools, and barber colleges ~~shall~~ *must* be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers in consultation with the department of *public* ~~health~~ and ~~environmental sciences~~ *human services* may adopt rules to preserve the public health and prevent the spread of disease."

Section 97. Section 37-31-204, MCA, is amended to read:

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"37-31-204. **Sanitary rules.** The board, subject to the approval of the department of *public* health and ~~environmental sciences~~ *human services*, shall prescribe sanitary rules it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases."

Section 98. Section 37-31-308, MCA, is amended to read:

"37-31-308. **Examination — reexamination — exemption for handicapped persons.** (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology must be held at places and times specified by the board. The examinations must be supervised by the board. The examinations may not be confined to a specific method or system. The examinations must be conducted by persons who hold current licenses to practice in the profession for which the applicant is being examined.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until the applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring shall meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology or manicuring by the department of ~~social and rehabilitation~~ *public health and human* services are, for a period of 1 year immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of ~~social and rehabilitation~~ *public health and human* services that a department of ~~social and rehabilitation~~ *public health and human* services beneficiary has successfully completed the required training in a cosmetology school or manicuring school, the department shall issue the person the necessary certificate or license to practice the profession in this state."

Section 99. Section 37-31-331, MCA, is amended to read:

"37-31-331. **Refusal, revocation, or suspension of licenses — grounds — notice and hearing.** (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetology salon, manicuring salon, school of cosmetology, or school of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of *public* health and ~~environmental sciences~~

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human services for the regulation of cosmetology salons, manicuring salons, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) However, the board may not refuse to authorize the department to issue or renew a license or revoke or suspend a license already issued until after notice and opportunity for a hearing."

Section 100. Section 37-41-104, MCA, is amended to read:

"37-41-104. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)~~*(1)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(2)~~*(2)* "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

~~(4)~~*(3)* "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

~~(5)~~*(4)* "Septage" means waste material from cesspools, septic tanks, or privies."

Section 101. Section 39-30-103, MCA, is amended to read:

"39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a handicapped person determined by the department of ~~social and rehabilitation~~ *public health and human* services to have a 100% disability who is unable to use ~~his~~ *an* employment preference because of ~~his~~ *the* disability.

(2) "Handicapped person" means an individual certified by the department of ~~social and rehabilitation~~ *public health and human* services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), or current participants in a federally authorized employment program is not an initial hiring.

(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

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(e) appointment by an elected official to a public office if the appointment is provided for hy law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Section 102. Section 39-30-106, MCA, is amended to read:

"**39-30-106. Adoption of rules.** The department of administration shall adopt rules implementing this chapter and shall consult with the department of ~~social and rehabilitation~~ *public health and human* services in adopting rules governing certification of handicapped persons for purposes of this chapter. The department of administration's rules apply to all public employers, local as well as state."

Section 103. Section 39-30-107, MCA, is amended to read:

"**39-30-107. Certification of handicapped persons.** The department of ~~social and rehabilitation~~ *public health and human* services shall certify persons as handicapped for the purpose of employment preference as provided in this chapter."

Section 104. Section 39-71-743, MCA, is amended to read:

"**39-71-743. Assignment or attachment of payments.** (1) ~~No payments~~ *Payments* under this chapter ~~shall~~ *may not* be assignahle, subject to attachment or garnishment, or be held liable in any way for debts, except:

(a) as provided in 71-3-1118; or

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court

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of competent jurisdiction or by order rendered in an administrative process authorized by state law.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of ~~social and rehabilitation~~ *public health and human* services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 105. Section 39-71-744, MCA, is amended to read:

"**39-71-744. Benefits not due while claimant is incarcerated — exceptions.** (1) Except as provided in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana women's correctional ~~center~~ *system*, as the result of conviction of a felony. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease centar. This subsection does not prohibit the reinstatoment of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)."

Section 106. Section 39-71-1003, MCA, is amended to read:

"**39-71-1003. Eligibility for vocational rehabilitation expenses.** (1) Upon certification by the department of ~~social and rehabilitation~~ *public health and human* services, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

(2) The appeal process provided for in 53-7-106 is the exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of ~~social and rehabilitation~~ *public health and human* services."

Section 107. Section 39-71-1004, MCA, is amended to read:

"**39-71-1004. Industrial accident rehabilitation account.** (1) The payments provided in 39-71-1003 ~~shall~~ *must* be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account ~~shall~~ *must* be made on or before July 1 of each year as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year;

(c) by the department, an amount to be determined by the department, not exceeding 1% of the compensation paid to injured employees in Montana from the industrial insurance expendable trust fund and the occupational disease expendable trust fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the state special revenue fund ~~shall~~ *must* be kept for each of the plans. If in any fiscal year the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under ~~such~~ *the* plan, the assessment against the employers under ~~such~~ *the* plan for the following year ~~shall~~ *must* be reduced.

(3) The payments ~~herein~~ provided for ~~shall~~ *in this section must* be made to the department, which shall credit the sums paid to the industrial accident rehabilitation account ~~which shall be~~ in the custody of the state treasurer. Disbursements from the account ~~shall~~ *must* be made after approval by the department of ~~social and rehabilitation~~ *public health and human* services and upon audit and approval by the department of administration.

(4) ~~No part of the~~ *The* funds allocated or contributed as ~~herein~~ provided *in this section* ~~and contemplated shall~~ *may not* be used ~~in~~ *for* payment of administrative expenses of the department or department of ~~social and rehabilitation~~ *public health and human* services."

Section 108. Section 39-71-1011, MCA, is amended to read:

"**39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

(3) "Rehabilitation benefits" means benefits provided in 39-71-1003, 39-71-1025, and 39-71-2001.

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(4) "Rehabilitation plan" means an individualized plan to assist a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification.

(5) "Rehabilitation provider" means a rehabilitation counselor certified by tbe board for rehabilitation certification and designated by the insurer to the department or a department of ~~social and rehabilitation~~ *public health and human* services counselor when a worker has been certified by the department of ~~social and rehabilitation~~ *public health and human* services under 39-71-1003.

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to assist a disabled worker to return to work."

Section 109. Section 39-71-1014, MCA, is amended to read:

"**39-71-1014. Rehabilitation services — required and provided hy insurers and the department of ~~social and rehabilitation~~ *public health and human* services.** (1) Rehabilitation services are required for disabled workers and may be initiated by:

(a) an insurer by designating a rehabilitation provider and notifying tbe department;

(b) the department by requiring tbe insurer to designate a rehabilitation provider; or

(c) a disabled worker through a request to the department. The department shall tben require the insurer to designate a rehabilitation provider.

(2) Rehabilitation services provided under this part must be delivered:

(a) through a rehabilitation counselor certified by the board of rehabilitation certification;

(b) by a vocational rehabilitation counselor employed by the department of ~~social and rehabilitation~~ *public health and human* services; or

(c) by both.

(3) A disabled worker served by the department of ~~social and rehabilitation~~ *public health and human* services may receive only those vocational rehabilitation services as provided in Title 53, chapter 7, parts 1 and 2."

Section 110. Section 39-71-1031, MCA, is amended to read:

"**39-71-1031. Exchange of information.** The department of ~~social and rehabilitation~~ *public health and human* services, the insurer's designated rehabilitation provider, and the department shall provide to one another case information as necessary to carry out the purposes of this part."

Section 111. Section 39-71-2001, MCA, is amended to read:

"**39-71-2001. Rehabilitation benefits.** (1) An injured worker is eligible for rehabilitation benefits if:

(a) the injury results in permanent partial disability or permanent total disability as defined in 39-71-116;

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(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;

(c) a rehabilitation plan completod by a rehabilitation provider and designated by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and wage potontial with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests.

(d) a rehabilitation plan between the injured worker and the insurer is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of ~~social and rehabilitation~~ *public health and human* services to use the funds.

(2) After filing the rehabilitation plan with the department, the injured worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon rehabilitation plan. Rehabilitation benefits must be paid while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be creditod against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and detormine whether the worker can return to the job held at the time of injury. If it is determined that the worker cannot return to the job held at the time of injury, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).

(5) A worker may not receive temporary total or biweekly permanent partial disability benefits and rehabilitation benefits during the same period of time.

(6) The rehabilitation provider, as authorized by the insurer, shall continue to work with and assist the injured worker until the rehabilitation plan is completed.

(7) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecutod under 45-6-301."

Section 112. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of *public* health and ~~environmental~~

~~sciences~~ *human services* shall prescribe the form for an application for a marriage license, which ~~shall~~ *must* include the following information:

(a) name, sex, address, date and place of birth of each party te the proposed marriage;

(b) if either party was previously married, ~~his~~ *the party's* name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether tbe parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of *public* health and ~~environmental sciences~~ *human services* shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage."

Section 113. Section 40-1-203, MCA, is amended to read:

"**40-1-203. Proof of age and medical certificate required.** (1) Before a person authorized by law te issue marriage licenses may issue a marriage license, each applicant ~~therefor~~ shall exhibit ~~to him~~ a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of *public* health and ~~environmental sciences~~ *human services*, shall file with the license issuer a medical certificate from a physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by rule of the department to make a medical certificate. The certificate ~~shall~~ *must* state that the applicant has been given a standard serological test and tbat the report of the results of the serological test has been exhibited to the applicant tested and that the other party to the proposed marriage contract has examined the report of the serological test.

(2) A person who by law is able te obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital test."

Section 114. Section 40-1-204, MCA, is amended to read:

"**40-1-204. Contents and form of medical certificate.** (1) Tlie medical certificate ~~shall~~ *must* contain a statement from a physician or other person authorized by rule of the department of *public* health and ~~environmental sciences~~ *human services* to make ~~such~~ *the* reports, setting forth:

(a) the name of the test;

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(b) the name and address of the physician or other person authorized hy rule of the department to sign the certificate;

(c) the name and address of the laboratory performing the test; and

(d) the name of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, ~~such~~ *the* results ~~will~~ *must* he expunged from the records of the department of *public* health and ~~environmental sciences~~ *human services*.

(3) (a) The certificate and statement ~~shall~~ *must* be on a form to be provided and distributed, upon request, by the department of *public* health and ~~environmental sciences~~ *human services*.

(b) This form is hereinafter referred to in 40-1-205 through 40-1-209 as the "certificato form"."

Section 115. Section 40-1-206, MCA, is amended to read:

"**40-1-206. Premarital test — approved laboratories — rules.** (1) For the purpose of 40-1-203 through 40-1-209, a standard serological test ~~shall be~~ *is* a test for rubella immunity ~~which~~ *that* is approved by the department of *public* health and ~~environmental sciences~~ *human services*.

(2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is performed by one of the following:

(a) the laboratory of the department *of environmental sciences*;

(b) a laboratory approved by the department *of public health and human services*;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or the United States armed forces.

(3) The stsndard serological test may be made on request at the laboratory of the department of health and environmental sciences.

(4) The department of *public* health and ~~environmental sciences~~ *human services* shall adopt reasonable rules for:

(a) reports to be submitted by any laboratery making tests and the manner of furnishing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital serological test."

Section 116. Section 40-1-208, MCA, is amended to read:

"**40-1-208. Penalties.** (1) An applicant for a marriage license, a physician or other person authorized by rule of the department of *public* health and ~~environmental sciences~~ *human services* to make a medical certificato, or any person in charge of or authorized te make reports or statements for a laboratery who misrepresents his *the applicant's* identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, any licensing

officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges ~~such~~ *the* information or opens to inspection ~~such~~ *the* certificates, statements, reports, or applications, without authority, to any person not by law entitled to the same is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100."

Section 117. Section 40-1-209, MCA, is amended to read:

"40-1-209. **Expenses.** The department of *public* health and ~~environmental sciences~~ *human services* shall provide the necessary printing and pay the necessary expenses relative to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for ~~such~~ *the* expenses ~~shall~~ *must* be submitted for approval and audit to the department of *public* health and ~~environmental sciences~~ *human services* and ~~shall~~ *must* be paid in accordance with law."

Section 118. Section 40-4-204, MCA, is amended to read:

"40-4-204. **Child support — orders to address health insurance — withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

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(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of ~~social and rehabilitation~~ *public health and human* services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails te provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed te be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

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(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) ~~After October 1, 1993, if~~ *If* a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(6) For the purposes of income withholding under subsection (5), every district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of ~~social and rehabilitation~~ *public health and human* services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) If the department of ~~social and rehabilitation~~ *public health and human* services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(8) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of ~~social and rehabilitation~~ *public health and*

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human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(9) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

(b) A judgment, decree, or order that omits the provision required by subsection (9)(a) is subject to the requirements of subsection (9)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."

Section 119. Section 40-4-205, MCA, is amended to read:

"**40-4-205. Representation of child.** The court may appoint an attorney to represent the interests of a minor dependent child with respect to the child's support, custody, and visitation. The county attorney, a deputy county attorney, if any, or the department of ~~family~~ *public health and human* services or any of its staff may not be appointed for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order must be made against either or both parents, except that if the responsible party is indigent, the costs must be waived."

Section 120. Section 40-4-208, MCA, is amended to read:

"**40-4-208. Modification and termination of provisions for maintenance, support, and property disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; or

(iii) upon application by the department of ~~social and rehabilitation~~ *public health and human* services, whenever the department of ~~social and rehabilitation~~ *public health and human* services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(3) The provisions as to property disposition may not be revoked or modified hy a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the ohligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Provisions for the support of a child are terminated by emancipation of the child or the child's graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later than the child's 19th birthday, unless the termination date is extended or knowingly waived hy written agreement or by an express provision of the decree. Provisions for the support of a child do not terminate upon the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may he modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

Section 121. Section 40-4-209, MCA, is amended to read:

"40-4-209. Security or guaranty to secure support. (1) Upon *a* verified application *that is made* by a person authorized to enforce or collect a child support ohligation ~~the department of family services~~ or *by* the department of ~~social and rehabilitation~~ *public health and human* services ~~showing~~ *and that shows* that a person obligated to pay child support or maintenance pursuant to court or administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may direct the obligated person to appear and show cause why an order should not be entered ordering that ~~he~~ *the obligated person* post bond, give a mortgage, or provide other security or guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court may enter an order requiring him *the obligated person* to post bond, give a mortgage, or provide security or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must be approved by the court. The bond must include the name and address of the issuer. Any person issuing a bond under

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this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or maintenance fails to make payments as required by the court or administrative order, the person or public agency entitled to receive payment may recover on the bond or other security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support arrearages.

(5) The department of ~~social and rehabilitation~~ *public health and human* services shall adopt guidelines ~~which~~ *that* take into account the payment record of the obligated person, the availability of other remedies, and other considerations which it determines relevant for determining whether the procedure provided in this section would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department of ~~social and rehabilitation~~ *public health and human* services determines an application for an order requiring security is not appropriate, it may not request the order."

Section 122. Section 40-4-215, MCA, is amended to read:

"**40-4-215. Investigations and reports.** (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian requests, the court may order an investigation and report concerning custodial arrangements for the child. The department of ~~family~~ *public health and human* services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children~~,~~ *or* food stamps~~, [or general relief benefits]~~ and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order.

(2) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian~~; but the~~ *The* child's consent must be obtained if the child has reached the age of 16 unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing."

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Section 123. Section 40-4-218, MCA, is amended to read:

"40-4-218. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including ~~his~~ *the child's* education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or ~~his~~ *the child's* emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or ~~his~~ *the child's* emotional development significantly impaired, the court may order the department of ~~family~~ *public health and human* services to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out."

Section 124. Section 40-5-103, MCA, is amended to read:

"40-5-103. Definitions. (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support":

(a) means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse; and

(b) includes an unsatisfied obligation to provide support.

(4) "Governor" includes an individual performing the functions of governor or the executive authority of any state covered by this part.

(5) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or person acting as parent. A period of temporary absence of a parent or person acting as parent is counted as part of the 6-month or other period.

(6) "Income" includes:

(a) earnings or other periodic entitlements to money from any source; and

(b) any other property subject to withholding for support under the law of this state.

(7) "Income-withholding order" means an order or other legal process directed to an obligor's employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold support from the income of the obligor.

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(8) "Initiating state" means a state in which a proceeding pursuant te this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a proceeding initiated by the department of ~~social and rehabilitation~~ *public health and human* services under 40-5-263 is filed for forwarding to a responding state.

(9) "Initiating tribunal" means the authorized tribunal in an initiating state.

(10) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(12) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(13) "Obligee" means:

(a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) a state or political subdivision to which the rights under a duty of support or a support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee; or

(c) an individual seeking a judgment determining parentage of that individual's child.

(14) "Obligor" means an individual or the estate of a decedent:

(a) who owes or is alleged to owe a duty of support;

(b) who is alleged but has not been adjudicated to be a parent of a child; or

(c) who is liable under a support order.

(15) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(16) "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.

(17) "Registering tribunal" means a tribunal in which a support order is registered.

(18) "Responding state" means a state to which a proceeding is forwarded under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a proceeding initiated by the department of ~~social and rehabilitation~~ *public health and human* services under 40-5-263.

(19) "Responding tribunal" means the authorized tribunal in a responding state.

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(20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(21) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this part.

(22) (a) "Support enforcement agency" means a public official or agency authorized to seek:

(i) enforcement of support orders or laws relating to the duty of support;

(ii) establishment or modification of child support;

(iii) a determination of parentage; or

(iv) to locate obligors or their assets.

(b) Support enforcement agency includes:

(i) in cases brought under title IV-D of the Social Security Act, the department of ~~social and rehabilitation~~ *public health and human* services; and

(ii) in all other cases, the prosecuting attorney.

(23) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, that:

(a) is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision;

(b) ~~that~~ provides for monetary support, health care, arrearages, or reimbursement; and ~~that~~

(c) may include related costs and fees, interest, income withholding, attorney fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage."

Section 125. Section 40-5-143, MCA, is amended to read:

"**40-5-143. Tribunals of this state.** The district courts and the department of ~~social and rehabilitation~~ *public health and human* services are the tribunals of this state."

Section 126. Section 40-5-158, MCA, is amended to read:

"**40-5-158. Proceedings under this part.** (1) Except as otherwise provided in this part, 40-5-158 through 40-5-166, 40-5-170 through 40-5-178, 40-5-180, and 40-5-183 apply to all proceedings under this part.

(2) This part provides for the following proceedings:

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(a) establishment of an order for spousal support or child support pursuant to 40-5-179;

(b) enforcement of a support order and income-withholding order of another state without registration;

(c) registration of an order for spousal support or child support of another state for enforcement pursuant to 40-5-184 through 40-5-195;

(d) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to 40-5-147 through 40-5-150;

(e) registration of an order for child support of another state for modification pursuant to 40-5-184 through 40-5-195;

(f) determination of parentage pursuant to 40-5-196; and

(g) assertion of jurisdiction over nonresidents pursuant to 40-5-145 and 40-5-146.

(3) If the tribunal is the department of ~~social and rehabilitation~~ *public health and human* services, this part includes the administrative remedies under this chapter.

(4) An individual or a support enforcement agency may commence a proceeding authorized under this part by filing a petition in an appropriate initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent."

Section 127. Section 40-5-161, MCA, is amended to read:

"**40-5-161. Duties of initiating tribunal.** (1) Upon the filing of a petition authorized by this part, an initiating tribunal shall forward three copies of the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) The department of ~~social and rehabilitation~~ *public health and human* services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 5. In all other cases, the district court is the initiating tribunal."

Section 128. Section 40-5-162, MCA, is amended to read:

"**40-5-162. Duties and powers of responding tribunal.** (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158(4), it shall cause the petition or pleading to be filed and notify the petitioner by first-class mail where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by use of civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obligor to seek appropriate employment by specified methods;

(k) award reasonable attorney fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this part or in the documents accompanying the order the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this part upon a party's compliance with visitation provisions.

(5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any.

(6) The department of ~~social and rehabilitation~~ *public health and human* services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal."

Section 129. Section 40-5-164, MCA, is amended te read:

"**40-5-164. Duties of support enforcement agency.** (1) A support enforcement agency of this state, upon application, shall provide services te a petitioner in a proceeding under this part.

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(2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

(a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to inceme and property of the parties;

(d) after receipt of a written notice from an initiating, responding, or registoring tribunal, promptly send a copy of the notice by first-class mail to the petitioner;

(e) after receipt of a written communication from the respondent or the respondent's attorney, promptly send a copy of the communication by first-class mail to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(4) For purposes of this part, the department of ~~social and rehabilitation~~ *public health and human* services is the support enforcement agency for this stato as provided in Title 40, chapter 5, parts 2, 4, and 5. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

Section 130. Section 40-5-165, MCA, is amended to read:

"**40-5-165. Dutics of state information agency.** (1) The department of ~~social and rehabilitation~~ *public health and human* services is designated as the state information agency under this part.

(2) The department shall:

(a) compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this part and of any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) maintain a register of tribunals and support enforcement agencies of other statos;

(c) forward to the appropriato tribunal in the place in this state in which the individual obligee or the obligor resides or in which the obligor's property is believed to be located all documents concerning a proceeding under this part received from an initiating tribunal or the state information agency of the initiating state; and

(d) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating te real property, vital statistics, law enforcement, taxation, moter vehicles, driver's licenses, and social security."

Section 131. Section 40-5-173, MCA, is amended te read:

"**40-5-173. Costs and fees.** (1) The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part.

(2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of current support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under 40-5-184 through 40-5-195 or 40-5-271, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

(4) The standardized schedule of fees established by the department of ~~social and rehabilitation~~ *public health and human* services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."

Section 132. Section 40-5-185, MCA, is amended to read:

"**40-5-185. Procedure to register order for enforcement.** (1) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the department of ~~social and rehabilitation~~ *public health and human* services pursuant to 40-5-263 or to the district court:

(a) a letter of transmittal to the tribunal to request registration and enforcement;

(b) two copies, including one certified copy, of all orders to be registered, including any modification of an order;

(c) a sworn statement by the party seeking registration or a certified statement by the custodian of the records, showing the amount of any arrearages;

(d) the name of the obligor and, if known:

(i) the obligor's address and social security number;

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(ii) the name and address of the obligor's employer and any other source of income of the obligor; and

(iii) a description and the location of property of the obligor in this state that is not exempt from execution; and

(e) the name and address of the obligee and, if applicable, the agency or person te whom support payments are to be remitted.

(2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed, together with one copy of the documents and information, regardless of their form.

(3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this stete may be filed either at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought."

Section 133. Section 40-5-196, MCA, is amended te read:

"**40-5-196. Proceeding to determine parentage.** (1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of that child.

(2) In a proceeding to determino parentage, a responding tribunal of this state shall apply the rules of this state on choice of law.

(3) A proceeding te determine parentage directed to:

(a) the department of ~~social and rehabilitation~~ *public health and human* services from an initiating state pursuant to 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and

(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1."

Section 134. Section 40-5-201, MCA, is amended to read:

"**40-5-201. Definitions.** As used in this part, the following definitions apply:

(1) "Alleged father" means a ~~man~~ *person* who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a ~~man~~ *person* who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of tbe armed forces of the United States, any person under 19 years of age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for wbom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) Child may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services.

(4) "Director" means the director of the department of ~~social and rehabilitation~~ *public health and human* services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant te 40-5-209.

(6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a puhlic agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity hlood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include hut are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Puhlic assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has heen furnished with respect te the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created hy:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintonance is the custodial parent.

(14) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated ~~thereunder~~ *under the act.*"

Section 135. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of ~~social and rehabilitation~~ *public health and human* services — powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

(a) receives a referral ~~from the department of social and rehabilitation services or the department of family services~~ on behalf of the child *from an agency providing services to the child under the provisions of Title 41, Title 52, or Title 53*;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of another state.

(2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. The department may initiate, participate in, or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.

(3) The department has the power of attorney to act in the name of any obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(4) The department is a party to and must be afforded notice and an opportunity to participate in any proceeding relating to paternity or to the establishment, enforcement, or modification of a support obligation, whether initiated by the obligee, the obligor, or the child. A recipient of services may not act to prejudice the rights of the department while the services are being provided.

(5) If child support enforcement services are being or have been provided under this part, an agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may not act to reduce or terminate any rights of the department to recover from the obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(7) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

(8) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

(11) ~~When~~ *In addition to any other requirements for service under the Montana Rules of Civil Procedure, when* a person is required to give notice to, serve, or provide a written response to the department ~~in a proceeding concerning the establishment or enforcement of child support~~ *under this chapter*, the notice, service, or response must be made to the department's child support enforcement division."

Section 136. Section 40-5-235, MCA, is amended to read:

"40-5-235. Effect of order establishing paternity — birth records — relief from order. (1) An administrative order of the department declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal

existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of the child, the department shall ~~file a copy of its order with the department of health and environmental sciences, which shall~~ prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject te the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the time frames provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7."

Section 137. Section 40-5-303, MCA, is amended to read:

"**40-5-303. Petition for income deduction — who may initiate.** A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) the department of ~~family services or the department of social and rehabilitation~~ *public health and human* services ~~of the state of Montana~~."

Section 138. Section 40-5-315, MCA, is amended to read:

"**40-5-315. Immediate income deductions.** (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the salaries and wages of a person obligated to pay child support by an order of a district court issued after October 1, 1991, are subject to an immediate deduction order under 40-5-308 on the effective date of the order, regardless of whether there is a delinquency.

(2) An obligor's salaries and wages are not subject te deduction under this section in any case in which the district court finds:

(a) that there is good cause not to require immediate deduction; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate deduction must, at a minimum, be based on:

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(i) a written determination and explanation by the district court as to why implementation of immediate deductions is not in the best interests of the child; and

(ii) in cases involving the modification of support orders, proof of timely payment of previously ordered support.

(b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of ~~social and rehabilitation~~ *public health and human* services, and that has been approved and entered into the record by the district court that issued or modified the support order.

(4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any further action by the district court, shall issue the order for income deductions provided for by 40-5-308 for service upon the obligor's employer. The deduction order must direct the employer to promptly deliver the amount deducted to the clerk of court for distribution to the obligee.

(5) Wage deductions under this section may be terminated only when:

(a) the obligation to pay support has terminated and all arrearages are paid in full;

(b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or

(c) the department has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.

(7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or other law, the support order is subject to immediate orders to deduct income under this section.

(b) Withholding income under this section must be imposed when an obligor has wages or salaries derived from within this state and the support order was issued in another state.

(8) This section applies only to support orders that are not being enforced by the department under Title IV-D of the Social Security Act. The withholding of income for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those procedures, if applicable, supersede the provisions of this section."

Section 139. Section 40-5-402, MCA, is amended to read:

"40-5-402. **Purpose — applicability.** (1) The purpose of this part is to provide a more effective and efficient way to guarantee the support of dependent children by the person or persons primarily responsible for such support by ensuring that the support of children is the highest priority in the allocation of a responsible parent's income.

(2) This part applies to all support obligations being enforced or collected by the department of ~~social and rehabilitation~~ *public health and human* services pursuant to Title IV-D of the Social Security Act.

(3) When the requirements of this part are met, an employer or other payor of income to a person having a support obligation under a court or administrative order must be directed to withhold from the person's income in an amount sufficient to meet the support obligation and to defray any arrearages that are due or may become due.

(4) Unless an exception under 40-5-411(4) is contained in a support order, withholding of income is required under this part without need for any amendment to the support order involved or any action by the court or entity that issued the support order even though the support order did not address withholding or the support order provided for other payment arrangements.

(5) Withholding, once commenced, applies to all current and subsequent payors of income to a person obligated to pay support until the withholding is terminated as provided by this part.

(6) The provisions for income withholding under this part take precedence over any other law or court order."

Section 140. Section 40-5-403, MCA, is amended to read:

"40-5-403. **Definitions.** As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and signed by the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services provided for in 2-15-2201.

(3) "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(4) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

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(5) "Obligor" means a person who owes a duty to make payments under a support order.

(6) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this stato under Rule 4B of the Montana Rules of Civil Procedure.

(7) "Support order" means an order of the district court of the stato of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and

(c) an order requiring payment of interest due on unpaid judgments for child support."

Section 141. Section 40-5-701, MCA, is amended to read:

"**40-5-701. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

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(h) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services.

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other privilege that is subject to suspension, revocation, forfeiture, or termination hy the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(11) "Support debt" or "support obligation" means the amount created by:

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(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child for whom the person awarded maintenance is the custodial parent.

(12) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(13) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department."

Section 142. Section 40-5-704, MCA, is amended to read:

"**40-5-704. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of an order suspending a license, a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the obligor whose name appears on the order;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; and

(d) if required by law, demanding surrender of the suspended license.

(2) An order issued by a support enforcement entity under 40-5-703 suspending a license must be processed by the licensing authority without an additional review or hearing involving the licensing authority concerning suspension of the license.

(3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by a support enforcement entity suspending a license must be implemented by the licensing authority and continues until the support enforcement entity advises the licensing authority that the suspension has been stayed or terminated.

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(4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

(5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the business, occupation, profession, or other licensed activity while the license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with this part.

(7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

(8) To the extent that inconsistencies exist between this part and the procedural requirements for suspension of a license issued by the department ~~of health and environmental sciences~~, this part supersedes those requirements."

Section 143. Section 40-6-105, MCA, is amended to read:

"**40-6-105. Presumption of paternity.** (1) A ~~man~~ *person* is presumed to be the natural father of a child if:

(a) ~~he~~ *the presumed father* and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, ~~he~~ *the presumed father* and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, ~~he~~ *the presumed father* and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) ~~he~~ *the presumed father* has acknowledged his paternity of the child in writing filed with the department of *public* health and ~~environmental sciences~~

human services or with tho district court for the county where ~~he~~ *the presumed father* resides; or

(ii) with ~~his~~ consent, ~~he~~ *the presumed father* is named as the child's father on the child's birth certificate; or

(iii) ~~he~~ *the presumed father* is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he *the presumed father* receives the child into ~~his~~ *the* home and openly holds out the child as ~~his~~ *the presumed father's* natural child; or

(e) ~~he~~ *the presumed father* acknowledges ~~his~~ paternity of the child in a writing filed with the department of *public* health and ~~environmental sciences~~ *human services* or with the district court of the county where ~~he~~ *the presumed father* resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and ~~she~~ *the mother* does not dispute the acknowledgment within a reasonable time after being informed ~~thereof~~, in a writing filed with the department of *public* health and ~~environmental sciences~~ *human services* or with the district court of the county where the acknowledgment was filed. If another ~~man~~ *person* is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has heen rebutted.

(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence."

Section 144. Section 40-6-106, MCA, is amended to read:

"**40-6-106. Artificial insemination.** (1) If, under the supervision of a licensed physician and with the consent of ~~her~~ *the woman's* husband, a wife is inseminated artificially with semen donated by a ~~man~~ *person* not her husband, the husband is treated in law as if ~~he~~ *the husband* were the natural father of a child ~~thereby~~ conceived *by the insemination*. The husband's consent must be in writing and signed by ~~him~~ *the husband* and ~~his~~ *the* wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the department of *public* health and ~~environmental sciences~~ *human services*, where it ~~shall~~ *must* be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he *the donor* were not the natural father of a child ~~thereby~~ conceived *by artificial insemination*."

Section 145. Section 40-6-107, MCA, is amended to read:

"**40-6-107. Determination of father and child relationship — who may hring action.** (1) Any interested party may bring an action for the purpose

of determining the existence or nonexistence of the father and child relationship presumed pursuant to 40-6-105.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under 40-6-105 may be breught by the child, the mother or personal representative of the child, ~~the department of social and rehabilitation services or its appropriate local affiliate,~~ the department of ~~family~~ *public health and human* services or its appropriato local affiliate, the personal representative or a parent of the mother if the mother has died, a ~~man~~ *person* alleged or alleging ~~himself~~ to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings ~~shall~~ *must* be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony."

Section 146. Section 40-6-110, MCA, is amended to read:

"**40-6-110. Parties.** The child must be made a party to the action. A minor must be represented by the minor's general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may not appoint the department of ~~family~~ *public health and human* services or any of its staff as guardian ad litem for the child. The natural mother, each ~~man~~ *person* presumed to be the father under 40-6-105, and each ~~man~~ *person* alleged to he the natural father must be made parties or, if not subject to the jurisdiction of the court, must be given notice of the action in a manner prescribed by the court and must be given an opportunity te be heard. The court may align the parties."

Section 147. Section 40-6-116, MCA, is amended to read:

"**40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificato be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of hond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

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(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of ~~social and rehabilitation~~ *public health and human* services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate

in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) ~~After October 1, 1993, if~~ *If* a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of ~~social and rehabilitation~~ *public health and human* services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

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(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(10) If the department of ~~social and rehabilitation~~ *public health and human* services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(11) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of ~~social and rehabilitation~~ *public health and human* services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order."

Section 148. Section 40-6-123, MCA, is amended te read:

"**40-6-123. Birth records.** (1) Upon order of a court of this state or upon request of a court of another state, the department of *public* health and ~~environmental sciences~~ *human services* shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth ~~shall~~ *may* not be ascertainable from the new certificate but the actual place and date of birth ~~shall~~ *must* be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate ~~shall~~ *must* be kept in a sealed and confidential file and ~~shall be~~ *is* subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown."

Section 149. Section 40-6-126, MCA, is amended to read:

"**40-6-126. Notice of intent to claim paternity.** (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this stato. The form of the notice ~~shall~~ *must* be prescribed by the director of the department of *public* health and ~~environmental sciences~~ *human services* and supplied to the clerks of the district courts. The notice ~~shall~~ *must* include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of *public* health and ~~environmental sciences~~ *human services*. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

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(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 ~~shall be~~ *is* presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. ~~Such~~ *The* notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. ~~Such~~ *The* notice creates a rebuttable presumption as to patornity of the child for purposes of a dependency or neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate ~~his~~ paternal rights to the child."

Section 150. Section 40-6-128, MCA, is amended to read:

"**40-6-128. Proceeding to determine father's identity and terminate rights.** (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating ~~her~~ rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminato the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release ~~shall~~ *must* be filed with the court, if ~~such~~ *the* notice was given to the putative father. The court shall request the records and statistics bureau of the department of *public* health and ~~environmental sciences~~ *human services* to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to he made of the mother in an effort to identify the natural father. The inquiry shall include the following:

(a) whether the mother was married at the time of conception of the child or at any time ~~thereafter~~ *after conception*;

(b) whetber the mother was cohabiting with a ~~man~~ *person of the opposite sex* at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support payments with respect to the child or in connection with ~~her~~ *the* pregnancy; or

(d) whether any ~~man~~ *person* has formally or informally acknowledged or declared ~~his~~ possible patornity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of ~~her~~ *the mother's* right to privacy, ~~no~~ *a* mother of a child who is

the subject of proceedings under this part may *not* be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing ~~shall~~ *must* be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedure or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other ~~male~~ *person* who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing ~~shall~~ *must* inform the putative father that his failure to appear at the hearing constitutes a denial of ~~his~~ *the putative father's* interest in custody of the child, which denial will result in the court's termination of ~~his~~ *the putative father's* rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) ~~shall~~ *must* be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing need not he required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If ~~no~~ *a* person bas *not* been identified as the natural fatber or possible father, the court, on the basis of all information available, shall determine wbether publication or public posting of notice of the proceeding is likely to lead te identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural motber may be included in ~~such~~ *the* publication only with ~~her~~ *the mother's* written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring tbat the identity of the father cannot be determined.

(9) If the court finds tbat the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived ~~his~~ *the* right te notice of hearing and is not present at the bearing, the court shall adjourn further proceedings until that person is served with a notice of hearing."

Section 151. Section 40-6-135, MCA, is amended to read:

"40-6-135. Relinquishment of parental rights — form, execution, and revocation. (1) A parent or guardian who proposes to relinquish custody of a cbild for purposes of placing the child for adoption may do so by executing a relinquishment by which all parental rights to the child are voluntarily relinquisbed to the department of ~~family~~ *public health and human* services, a licensed adoption agency, or the prospective adoptive parents. A parent may not

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execute a relinquishment to the department or a licensed adoption agency unless the department or the agency has agreed to accept custody of the child until the child is adopted.

(2) A relinquishment may be executed at any time, except that a birth mother may not execute a relinquishment before the child is 72 hours old.

(3) Except as otherwise provided in this section, a relinquishment must be by a separate instrument executed before a notary public.

(4) If the person from whom a relinquishment is required is a member of any of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

(5) If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country and may not proceed unless it finds that the relinquishment was so executed.

(6) Upon the filing of a properly and voluntarily executed relinquishment of a child by a parent or guardian, the court shall immediately issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated and if the department of ~~family~~ *public health and human* services or a licensed adoption agency has agreed to accept custody of the child until the child is adopted, the court shall issue an order committing the child to the department or to the licensed adoption agency to which the relinquishment was given.

(7) Entry of an order terminating the rights of both parents pursuant to subsection (6) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(8) Upon petition of a person who executed a relinquishment and of the department of ~~family~~ *public health and human* services or the licensed adoption agency to which the child was relinquished, the court with which the relinquishment was filed may grant a hearing to consider whether the relinquishment should be revoked. A relinquishment may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to the petition must be made."

Section 152. Section 40-8-103, MCA, is amended to read:

"**40-8-103. Definitions.** As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered te place children as a preliminary to a possible adoption.

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(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(7) "Department" means the department of ~~family~~ *public health and human* services, ~~as established and~~ provided for in ~~2-15-2401~~ *2-15-2201*.

(8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, or brother or sister.

(9) "Home study" means the process of assisting the prospective adoptive parent or family to assess its own readiness to adopt and a determination by the department or a licensed child-placing agency of the compliance of the parent or family and its residence with applicable standards.

(10) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(11) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

(12) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual pursuant to 40-6-135, 40-8-109, or 40-8-117, whichever is applicable."

Section 153. Section 40-8-110, MCA, is amended to read:

"**40-8-110. Adoption services account.** There is an adoption services account in the special revenue fund. The fees collected by the department of ~~family~~ *public health and human* services under 40-8-109 must be deposited into this account and may be used by the department for adoption service."

Section 154. Section 40-8-111, MCA, is amended to read:

"**40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of tbe custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(8)(d);

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(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of ~~family~~ *public health and human* services of the state of Montana for a period of 1 year without contributing te the support of the child during ~~said~~ *that* period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and ~~such~~ *the* guardian has authority by order of the court appointing ~~him~~ *the guardian* to consent te the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to ~~such~~ *the* agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in ~~such~~ *the* agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in ~~such~~ *that* case the court having jurisdiction of the custody of the child ~~must~~ *shall* consent to adoption and a certified copy of its order ~~shall~~ *must* be attached to the petition.

(2) The consents required hy subsections (1)(a) and (1)(b) ~~shall~~ *must* be acknowledged hefore an officer authorized to take acknowledgments or witnessed by a representative of the department of ~~family~~ *public health and human* services or of an agency or witnessed hy a representative of the court."

Section 155. Section 40-8-121, MCA, is amended to read:

"**40-8-121. Petition for adoption.** (1) A petition for adoption ~~shall~~ *must* be filed in duplicate, verified by the petitioners, and ~~shall~~ *must* specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(h) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be estahlished between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption.

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(2) One copy of the petition ~~shall~~ *must* be retained by the court. The other ~~shall~~ *must* be sent to the department of ~~family~~ *public health and human* services or to the child-placing agency participating in the adoption proceeding.

(3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court."

Section 156. Section 40-8-124, MCA, is amended to read:

"**40-8-124. Interlocutory and final decree.** (1) Upon examination of the report described in 40-8-122, if ~~such~~ *a* report has been considered necessary by the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court ~~must~~ *shall* cause service of process to be made on the parent or parents of the child, except in those cases ~~hereinafter~~ provided *in this section*, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court directing ~~such~~ *the* parent or parents to appear in court at a time to be fixed by the court and show cause why the petition should not be granted.

(b) ~~Such~~ *The* citation, together with a copy of the petition for adoption, ~~shall~~ *must* be personally served upon ~~such~~ *the* parent or parents. If, however, ~~any such~~ *a* parent or parents cannot be found within this state, service may be ~~had~~ *made* by publication of a copy of the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of ~~such~~ service, any parent ~~so~~ served does not appear, the court may act upon the petition and the order of the court ~~thereon shall be~~ *is* binding upon all persons ~~so~~ served~~;~~. ~~provided that any such~~ *However, a* person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at the hearing, unless the presence of the child is waived by the court.

(5) Service of process~~, as aforesaid,~~ need not be made on a parent who has consented in writing to an adoption or on any parent whose consent to adoption is not required under the provisions of 40-8-111, and service of process ~~shall~~ *may* not be made on any parent who has relinquished ~~his~~ *the* child to the department of ~~family~~ *public health and human* services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court or after the date of placement for adoption, the investigator, if any, shall observe the child in ~~his~~ *the child's* adoptive home and report in writing to the court within 6 months on any circumstances or conditions ~~which~~ *that* may have a bearing on the adoption. After 6 months from the date of the interlocutory decree or the date of placement for adoption, the petitioners may apply to the court for a final decree of adoption. The court ~~shall thereupon~~ *must* set a time and place for final hearing. Notice of the time and date of the hearing ~~shall~~ *must* be served on the department of ~~family~~ *public health and human* services or the licensed

child-placing agency or any other person named by the court. The investigator, if any, shall file with the court a written report of ~~his~~ *the investigator's* findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree or the date of placement for adoption. After hearing on ~~said~~ *the* application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best intereste of the child. If the adoption is denied, an appropriate order ~~shall~~ *must* he made as to the future custody of the child."

Section 157. Section 40-8-126, MCA, is amended to read:

"**40-8-126. Confidentiality of record and proceedings.** (1) Unless the court shall otherwise order, all hearings held in proceedings under this part ~~shall be~~ *are* confidential and shall *must* be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption ~~shall~~ *must* be kept as a permanent record of the court and withheld from inspection. ~~No~~ *A* person ~~shall~~ *may not* have access to ~~such~~ *the* records except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; or

(b) as provided in 50-15-206.

(3) All files and records pertaining to ~~said~~ *the* adoption proceedings in the county departments of public welfare, the department of ~~social and rehabilitation services, the department of family~~ *public health and human* services, or any authorized agencies ~~shall be~~ *are* confidential and *must be* withheld from inspection except upon order of court for good cause shown or as provided in 50-15-206."

Section 158. Section 40-9-102, MCA, is amended to read:

"**40-9-102. Grandparent visitation rights.** (1) Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable visitation rights, including but not limited to visitation rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of ~~family~~ *public health and human* services must be given notice of a petition for grandparent visitation regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) ~~No~~ *A* person may *not* petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of:

(a) the child;

(b) the child's parent, guardian, or custedian; or

(c) the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to visitation when ~~such~~ *the* interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child hy a person other than a stopparent or a grandparent."

Section 159. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent;

(b) a staff person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered cbild abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicatod psychological care permitted or authorized under stato law.

(b) ~~Nothing in this~~ *This* cbapter may *not* be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, ~~nothing in~~ this chapter may *not* be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in subsection (8); or

(ii) threatened harm to a child's health or welfare, as defined in subsection (15).

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

(6) "Department" means the department of ~~family~~ *public health and human* services provided for in ~~2-15-2401~~ *2-15-2201*.

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(7) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the puhlic for support; or

(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has been transferred to a licensed agency.

(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(9) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(12) "Sexual abuse" means the commission of sexual assault, sexual intorcourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

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(13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(14) "Social worker" means an employee of the department whose duties generally involve the provision of either child or adult protective services, or both.

(15) "Threatoned harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(16) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (,including appropriate nutrition, hydration, and medication), that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions. ~~However, the~~ *The* term does not include the failure to provide treatment (,other than appropriate nutrition, hydration, or medication), to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was horn extremely prematurely, or who has a long-term disabiiity. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section."

Section 160. Section 41-3-107, MCA, is amended to read:

"**41-3-107. Interagency cooperation.** (1) To effectuate the purposes of this chapter, the department of ~~family~~ *public health and human* services shall cooperate with and shali seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. ~~Such~~ *The* cooperation and involvement may not include joint case management but may include joint

policy planning, public education, information services, staff development, and other training.

(2) The department shall enter into a cooperative agreement with other state agencies, as provided in 52-2-203, for the purpose of implementing this section."

Section 161. Section 41-3-108, MCA, is amended te read:

"**41-3-108. Child protective teams.** The county attorney or the department of ~~family~~ *public health and human* services may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitering a treatment plan for, and coordinating services to the child and ~~his~~ *the child's* family. The supervisor of child protective services in a local service area or ~~his~~ *the supervisor's* designee shall serve as the team's coordinater. Members sball include:

(1) a social worker;

(2) a member of a local law enforcement agency;

(3) a representative of the medical profession;

(4) a county attorney; and

(5) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters."

Section 162. Section 41-3-201, MCA, is amended to read:

"**41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of ~~family~~ *public health and human* services or its local affiliate, which then sball notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optemetrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker;

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(g) a peace officer or other law enforcement official; or

(h) clergy.

(3) Any person may make a report under this section if he *the person* knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A clergyperson or priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the clergyperson or priest in ~~his~~ *that person's* capacity as a clergyperson or priest;

(ii) the statement was intended to be a part of a confidential communication between the clergyperson or priest and a member of ~~his~~ *the clergyperson's or priest's* church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the clergyperson or priest.

(c) A clergyperson or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section ~~shall~~ *must* contain:

(a) the names and addresses of the child and ~~his or her~~ *the child's* parents or other persons responsible for ~~his or her~~ *the child's* care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible ~~therefor~~ *for the injury or neglect*; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 163. Section 41-3-202, MCA, is amended to read:

"**41-3-202. Action on reporting.** (1) Upon receipt of a report as required by 41-3-201 that a child is or has been abused or neglected, a social worker, ~~or~~ the county attorney, or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care except as necessary

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to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department ~~will~~ *shall* advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

(5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private residential institution, home, facility, or agency ~~shall be~~ *is* responsible for ensuring that the report is made to the department of ~~family~~ *public health and human* services, its local affiliate, and the county attorney of the county in which the facility is located."

Section 164. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department of ~~social and rehabilitation services, the department of family~~ *public health and human* services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

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(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs desigued to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(k) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect;

(l) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(m) a scbool employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(n) a member of a county intordisciplinary child information team formed under 52-2-211 who is not listed in subsection (3); or

(o) members of a local interagency staffing group provided for in 52-2-203.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) ~~Nothing in this~~ *This* section is *not* intonded to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 165. Section 41-3-208, MCA, is amended to read:

"**41-3-208. Rulemaking authority.** (1) The department of ~~family~~ *public health and human* services shall adopt rules to govern the procedures used by

department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect."

Section 166. Section 41-3-301, MCA, is amended to read:

"**41-3-301. Emergency protective service.** (1) Any child protective social worker of the department of ~~family~~ *public health and human* services, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place ~~him~~ *the youth* in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon ~~thereafter~~ *after placement* as possible.

(2) ~~No~~ *A* child who has been removed from ~~his~~ *the child's* home or any other place for his *the child's* protection or care may *not* be placed in a jail.

(3) A petition ~~shall~~ *must* be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of ~~family~~ *public health and human* services shall make ~~such~~ *the* necessary arrangements for the youth's well-being as are required prior to the court hearing."

Section 167. Section 41-3-302, MCA, is amended to read:

"**41-3-302. Responsibility of providing protective services.** (1) The department of ~~family~~ *public health and human* services ~~shall have~~ *has* the primary responsibility to provide the protective services authorized by this chapter and ~~shall have~~ *has* the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week."

Section 168. Section 41-3-401, MCA, is amended to read:

"**41-3-401. Abuse, neglect, and dependency petitions.** (1) The county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct ~~such~~ *the* investigations and furnish ~~such~~ *the* reports as may be necessary.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. ~~Such~~ *The* petitions ~~shall~~ *must* be given preference by the court in setting hearing dates.

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(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The ~~rules of civil procedure shall~~ *Montana Rules of Civil Procedure* apply except as ~~herein~~ modified *in this section*. Proceedings under a petition are not a bar te criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the stato, ~~shall~~ *must* be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If ~~such~~ *the* person or agency cannot be served personally, the person or agency may be served hy publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) In the event personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice ~~shall~~ *must* be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except ~~where~~ *when* the proceeding is instituted or commenced at the request of the department of ~~family~~ *public health and human* services, a citation ~~shall~~ *must* be issued and served upon a representative of the department prior to the court hearing.

(9) The petition ~~shall~~ *must*:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of ~~his~~ *the youth's* parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption;

(d) any combination of the ~~above~~ *relief provided for in subsections (10)(a) through (10)(c)* or ~~such~~ other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

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(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 169. Section 41-3-402, MCA, is amended to read:

"**41-3-402. Petition for temporary investigative authority and protective services.** (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services ~~shall~~ *must* stato the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services ~~shall~~ *must* be supported by an affidavit signed by the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services or a department of ~~family~~ *public health and human* services report stating in detail the facts upon which the request is based."

Section 170. Section 41-3-406, MCA, is amended to read:

"**41-3-406. Dispositional hearing — contributions by parents or guardians for youth's care.** (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parents or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(c) transfer legal custody to any of the following:

(i) the department;

(ii) a child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(d) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

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(e) order further care and treatment as the court considers in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(2) If the youth is transferred to the custody of the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of ~~social and rehabilitation~~ *public health and human* services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

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(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of ~~social and rehabilitation~~ *public health and human* services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of ~~social and rehabilitation~~ *public health and human* services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 171. Section 41-3-702, MCA, is amended to read:

"**41-3-702. Children's trust fund account — nonsupplantation of funds.** (1) There is a children's trust fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the Montana children's trust fund board, provided for in 2-15-2402, for funding services and activities under and payment of administrative costs of the child abuse and neglect prevention program provided for in 41-3-701.

(2) Funds deposited in the children's trust fund account may be used only for the program authorized in 41-3-701 and may not be used to pay the expenses of any other program or service administered in whole or in part by the department of ~~family~~ *public health and human* services."

Section 172. Section 41-3-704, MCA, is amended to read:

"**41-3-704. Program costs.** The costs incurred by the Montana children's trust fund board in administering the child abuse and neglect prevention program must be paid for with money from the children's trust fund account established by 41-3-702. The board shall keep costs to a minimum and use existing office space, personnel, equipment, and supplies of the department of ~~family~~ *public health and human* services to the extent possible."

Section 173. Section 41-3-1003, MCA, is amended to read:

"**41-3-1003. Establishment of local citizen review board — membership.** (1) Subject to the availability of funds, the youth court judge of a district designated pursuant to 41-3-1002 to operate a pilot program shall establish a local citizen review board in the judicial district to review the case of each child assigned to foster care by the youth court of the judicial district, as provided in Title 41, chapter 5.

(2) A local citizen review board is composed of at least three and not more than five members appointed by the youth court judge of a judicial district designated pursuant to 41-3-1002. Each member appointed must be sworn in by a judge of the judicial district to which the member is appointed to serve.

(3) The youth court judge of a judicial district designated pursuant to 41-3-1002 shall appoint the local citizen review board according to the following guidelines:

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(a) Members of a local citizen review board must be recruited from groups with special knowledge of or interest in foster care and child welfare, which may include but is not limited to adoptive parents and members of the professions of law, medicine, psychology, social work, and education.

(b) As far as practicable, members of a local citizen review board shall represent the various socioeconomic and ethnic groups of the area served.

(c) A person employed by the department of ~~family~~ *public health and human* services, by a private agency regulated, certified, directed, or licensed by or contracting with the department of ~~family~~ *public health and human* services, or by a youth court may not serve on a local citizen review board.

(d) A member of a local citizen review board must be a resident of one of the counties of the judicial district that the member is appointed to serve.

(4) The members of a local citizen review board must be willing to serve without compensation."

Section 174. Section 41-3-1004, MCA, is amended to read:

"41-3-1004. Administration — training — oversight — procedures. (1) Subject to the availability of funds, the youth court of a judicial district designated pursuant to 41-3-1002 shall:

(a) establish and approve policies and procedures that have the force of law for the operation of the local citizen review board;

(b) approve and provide training programs for local citizen review board members;

(c) provide consultation services on request to the local citizen review board; and

(d) employ staff and provide for support services for the local citizen review board.

(2) The office of the supreme court administrator shall, in accordance with the direction of the supreme court, oversee the program established in this part and, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department of ~~family~~ *public health and human* services and other agencies; and

(b) the effectiveness of the local citizen review board in bringing about permanence and appropriate care for children in the custody of the department of ~~family~~ *public health and human* services and other agencies.

(3) The youth court of a judicial district designated pursuant to 41-3-1002 shall adopt procedures that have the force of law for the administration of the local citizen review board pilot program regarding:

(a) the removal of members of the local citizen review board;

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(b) the time, content, and manner in which case plans for and case progress reports on a child assigned to foster care must be provided to the local citizen review board by the department of ~~family~~ *public health and human* services, other agencies, or individuals directly responsible for the care of the child;

(c) the provision of written notice of the review to the department of ~~family~~ *public health and human* services, any other agency directly responsible for the care or placement of a child, the parents or their attorneys, foster parents, surrogate parents, mature children or their attorneys, a court-appointed attorney or special advocato of any child, any county attorney or attorney general actively involved in the case, and other interested persons. The notice must include a statement that persons receiving a notice may participato in the hearing and be accompanied by a representative.

(d) securing or excusing the presence at the review of caseworkers and other employees of the department of ~~family~~ *public health and human* services or other agencies directly responsible for the care of the child; and

(e) the manner in which the local citizen review board may remove cases from review when review is not required under federal law."

Section 175. Section 41-3-1006, MCA, is amended to read:

"**41-3-1006. Terms — officers — meetings.** (1) A local citizen review board member shall serve at the pleasure of the appointing authority. However, if not otherwise released from service on a local citizen review board, the following provisions apply:

(a) A member shall serve a term of 2 years, except that if a vacancy occurs, a successor must be appointed to serve the unexpired term.

(b) A member may be reappointed and continue to serve until a successor is appointed.

(2) A local citizen review board shall:

(a) elect annually from its membership a presiding officer and vice presiding officer to serve in the absence of the presiding officer; and

(b) meet at the nearest department of ~~family~~ *public health and human* services office or another place mutually agreed to by a majority of the local citizen review board as often as it considers necessary to carry out the duties of the board."

Section 176. Section 41-3-1008, MCA, is amended to read:

"**41-3-1008. Access to records.** (1) Notwithstanding the provisions of 41-3-205, a local citizen review board has access to:

(a) any records of the youth court that are pertinent to the case; and

(b) any records of the department of ~~family~~ *public health and human* services or other agencies that would be admissible in a dispositional review hearing conducted pursuant to 41-3-406, including school records and reports of private service providers contained in the records of the department of ~~family~~ *public health and human* services or other agencies.

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(2) All requested records not already before the local citizen review board must be submitted by the department of ~~family~~ *public health and human* services within 5 working days after receipt of a request. A local citizen review board and any staff provided for the board shall return all records and copies received from the department of ~~family~~ *public health and human* services to the department within 7 working days after completion of the review.

(3) A local citizen review board may retain a reference copy of case material used by the board te make its recommendation if:

(a) the material is necessary for the ongoing work of the local citizen review board with regard te the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department of ~~family~~ *public health and human* services. Material retained by the local citizen review boards is not subject to disclosure under the public records law.

(4) If a local citizen review board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section."

Section 177. Section 41-3-1010, MCA, is amended to read:

"41-3-1010. Review — scope — procedures — immunity. (1) Except for cases removed from review under procedures established under 41-3-1004, the local citizen review board shall review the case of each child in foster care that is assigned by the youth court.

(2) The review must take place at times set by the local citizen review board. The first review may not be more than 6 months after the child is placed in foster care. Subsequent reviews must take place at least once every 6 months until the child is no longer within the jurisdiction of the youth court or no longer in foster care.

(3) The youth court, by rule of the court or on an individual case basis, may relieve the local citizen review board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) The local citizen review board shall review any case in which a petition te terminate parental rights has been denied as soon as practical but no later than 45 days after the denial.

(5) After reviewing each case, the local citizen review board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for and appropriateness of the placement;

(c) compliance with the case plan;

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(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or placed for adoption;

(f) other problems, solutions, or alternatives tbat the local citizen review board determines should be explored; and

(g) whether the youth court should appoint an attorney or other person as special advocato to represent or appear on behalf of the child pursuant to 41-3-303.

(6) Whenever a member of a local citizen review board has a potential conflict of interest in a case being reviewed, the member shall declare to the hoard the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the local citizen review board.

(b) If, in the judgment of the majority of the local citizen review board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the memher from participation in the review.

(7) The local citizen review board shall keep accurate records and retain the records on file. The local citizen review board shall send copies of its written findings and recommendations to the youth court, the department of ~~family~~ *public health and human* services, and other participants in the review.

(8) The local citizen review board may hold joint or separate reviews for groups of siblings.

(9) The local citizen review board may disclose to parents and their attorneys, foster parents, mature children and their atterneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a local citizen review board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law."

Section 178. Section 41-3-1011, MCA, is amended to read:

"**41-3-1011. Recommendations by board.** In addition to reviewing individual cases of cbildren in foster care, a local citizen review board may make recommendations to the youth court and to the department of ~~family~~ *public health and human* services concerning foster care services, policies, procedures, and laws."

Section 179. Section 41-3-1012, MCA, is amended to read:

"**41-3-1012. Presence of certain employecs at meetings of board.** (1) Unless excused from doing so hy the local citizen review board, the department of ~~family~~ *public health and human* services and any other agency directly

responsible for the care and placement of the child shall require the presence of any employees having knowledge of the case at board meetings.

(2) The local citizen review board may require the presence of specific employees of the department of ~~family~~ *public health and human* services or any other agency or other persons at board meetings. If an employee fails to be present at the meeting, the local citizen review board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the local citizen review board.

(3) As used in this section, "presence" includes telephone participation, except that the caseworker on the case at the time of the meeting must be physically present if required."

Section 180. Section 41-3-1013, MCA, is amended to read:

"**41-3-1013. Court review of findings and recommendations of board.** (1) Upon receipt of findings and recommendations from the local citizen review board, the youth court shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. If the youth court finds it appropriate, the youth court may on its own motion schedule a review hearing.

(b) cause the findings and recommendations of the local citizen review board to become part of the youth court file; and

(c) give the local citizen review board written notice if the youth court modifies, alters, or takes action on a case as a result of the board's recommendations or refuses to take action on the board's recommendations in any case.

(2) Upon receipt of findings and recommendations from the local citizen review board, the department of ~~family~~ *public health and human* services shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. The recommendations must be implemented and the case plan modified as the department of ~~family~~ *public health and human* services considers appropriate and as resources permit.

(b) give the local citizen review board written notice as soon as practicable, but in no case later than 7 days after the review is completed, if the department of ~~family~~ *public health and human* services does not intend to implement the recommendations; and

(c) include the findings and recommendations of the local citizen review board as part of the case file of the department of ~~family~~ *public health and human* services.

(3) Upon its own motion or upon the request of the department of ~~family~~ *public health and human* services, the local citizen review board, or any interested party, the youth court may appoint an attorney or other person as special advocate to represent or appear on behalf of the child. Subject to the direction of the youth court, the court-appointed special advocate shall:

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(a) investigate all relevant information about the case;

(b) advocate for the child, ensuring that all relevant facts are brought before the court;

(c) facilitate and negotiate te ensure that the youth court, the department of ~~family~~ *public health and human* services, and the child's attorney fulfill their obligations to the child in a timely fashion; and

(d) moniter all youth court orders to ensure compliance and te bring to the youth court's attention any change in circumstance that may require modification of the youth court's order."

Section 181. Section 41-3-1014, MCA, is amended to read:

"**41-3-1014. Dispositional review hearing by youth court.** (1) The youth court shall conduct a dispositional review hearing witbin 18 months after the original placement and conduct a review hearing periodically during the continuation of foster care. Unless good cause otherwise is shown, the youth court shall conduct a dispositional review hearing at any time upon the request of the department of ~~family~~ *public health and human* services, an agency directly responsible for care or placement of the child, a parent whose parental rights have not been terminated, an attorney for tbe child, a court-appointed special advocate, or a local citizen review board. The youth court shall schedule the hearing as soon as possible after receiving a request.

(2) The court may order that the child or any other person be present during the hearing.

(3) The court shall notify the parties listed in subsection (1) and any other interested parties of the hearing. Tbe notice must state the time and place of the hearing. Upon request of the youth court, the department of ~~family~~ *public health and human* services or other legal custodian of the child shall provide the youth court with information concerning the whereabouts and identity of the parties.

(4) The youth court shall enter an order within 20 days after the review hearing. If the child is in foster care, the order must include a determination of:

(a) whether the child should be returned te the parent;

(b) whether the child should be placed for adoption;

(c) whether the child should continue in foster care for a specified period; or

(d) whether, because of special needs or circumstances, the child should be placed in the permanent custody or guardianship of a responsible relative or other individual or should continue in fostor care on a permanent or long-term basis.

(5) If the court determines that the child must be placed or must continue in foster care or must be placed in the custody or guardianship of a responsible relative or other individual, the youth court shall enter written findings specifying why placement with parents or adoption is not appropriate. If the current placement is not expected to be permanent, the youth court shall specify a projected timetable for return of tbe child to the child's home or for permanent

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placement. If the timetable set forth by the youth court is not met, the department of ~~family~~ *public health and human* services shall promptly notify the youth court and the parties.

(6) In the course of the dispositional review hearing, the youth court may determine the adequacy of and compliance with the case plan and case progress report. In addition te other orders, the youth court may:

(a) order the department of ~~family~~ *public health and human* services to develop or to expand a case plan or case progress report that must be submitted within 10 days after the hearing;

(b) set a court hearing at a specific later time;

(c) direct the local citizen review board to review the status of the child prior te its next review, as provided in 41-3-1010;

(d) order the department of ~~family~~ *public health and human* services or other agency directly responsible for the child to modify the care, placement, or supervision of the child; and

(e) determine whether the department of ~~family~~ *public health and human* services or other agency directly responsible for the child has made reasonable efforts to reunify the family.

(7) The dispositional review hearing must be conducted in the manner provided in 41-3-406.

(8) Any decision of tbe youth court made pursuant to the dispositional review hearing is a final order for the purposes of 41-3-406."

Section 182. Section 41-3-1101, MCA, is amended to read:

"**41-3-1101. Estahlishment of suhstltute care for youth.** The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youtb, and youth in need of supervision of tbis state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by tbis part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide ~~such~~ *those* facilities and services through local nonprofit corporations, counties, and the department of ~~family~~ *public health and human* services."

Section 183. Section 41-3-1102, MCA, is amended to read:

"**41-3-1102. Definitions.** For tbe purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substituta care is provided te 13 or more children or youth.

(2) "Department" means the department of ~~family~~ *public health and human* services provided for in ~~2-15-2401~~ *2-15-2201*.

(3) "Foster child" means a person under 18 years of age wbo bas been placed by the department in a licensed youth foster home.

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(4) "Operator of a youth care facility" means ~~any~~ *a* person owning or operating a youth care facility into which he *the operator* takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance ~~he~~ *the operator* receives money or other consideration of value~~,~~ and which child is neither ~~his~~ *the operator's* son, daughter, nor ward, except that this part ~~shall~~ *does* not apply when any person accepts ~~such~~ *the* care and custody of ~~such~~ *a* child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of ~~such~~ *the* child.

(5) "Person" means any individual, partnership, voluntary association, or corporation.

(6) "Respito care" means the provision of temporary, short-torm supervision or care of a foster child, in an emergency or on an intermittent basis, te provide fostor parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respito care includes but is not limited to homemaker services, child care, and emergency care either in the bome or out of the home.

(7) "Respite care provider" means a person wbo meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

(8) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(9) "Youth care facility" means a facility licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth fostor homes, youth group homes, and child-care agencies.

(10) "Youth fostor home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

(11) "Youth group home" means a youth care facility in which substitute care is provided te 7 to 12 children or youth."

Section 184. Section 41-3-1103, MCA, is amended to read:

"**41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, ~~youth in need of supervision, and delinquent youth,~~ as defined in 41-5-103;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care~~,~~ ~~youth in need of supervision, and delinquent youth~~;

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(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequato data on placements it funds in order to keep the legislature properly informed of the following:

(i) the ~~breakdown~~ *number* of youth in need of care~~, youth in need of supervision, and delinquent youth by category~~ in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care~~, youth in need of supervision, and delinquent youth~~ in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a hasic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection."

Section 185. Section 41-3-1104, MCA, is amended to read:

"**41-3-1104. Aftercare facilities.** The department of ~~family services~~ *corrections* may establish, maintain, and administer youth correctional facilities, evaluation facilities, mental health facilities and services, aftercare programs, and aftercare facilities for the care, custody, and treatment of youth who have been committed to the department *of corrections*."

Section 186. Section 41-3-1114, MCA, is amended to read:

"**41-3-1114. Continuing jurisdiction of youth court.** The youth court committing a delinquent youth or a youth in need of supervision to the department of ~~family services~~ *corrections* retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by the department after notice to the youth court of original jurisdiction."

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Section 187. Section 41-3-1122, MCA, is amended to read:

"41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county. (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the department of ~~family~~ *public health and human* services *or the department of corrections* in a youth care facility, the department *making the placement* shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department *of public health and human services* for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month, the department *of public health and human services or the department of corrections* shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments so made during the month. The county ~~must~~ *shall* make reimbursement to the department within 20 days after the claim is presented.

(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.

(4) If a county's level of expenditure for foster care in fiscal year 1987 is $10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.

(5) A county that was state-assumed prior to 1987, but at a later date reassumes responsibility pursuant to 53-2-811, is responsible for reimbursement of foster care expenditures up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

(6) The department shall conduct or arrange for the review required under 41-3-1115, or when applicable, 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department."

Section 188. Section 41-3-1132, MCA, is amended to read:

"41-3-1132. Governmental contracts with nonprofit organizations. (1) The department *of public health and human services and the department of corrections* may contract with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth in youth care facilities and is *are* authorized to expend ~~such~~ money ~~as~~ *that* is appropriated or available ~~therefor~~ *for those purposes*. ~~Such~~ *The* contracts ~~shall~~ *must* be based on the following considerations:

(a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;

(b) reasonable costs of service;

(c) appropriation level; and

(d) availability of funds.

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(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized, at their own expense, to provide funds, materials, facilities, and services for community-based services."

Section 189. Section 41-4-103, MCA, is amended to read:

"**41-4-103. Appropriate public authorities defined.** The "appropriate public authorities" as used in Article III of tbe Interstate Compact on the Placement of Children ~~shall~~, with reference to this state, ~~mean~~ *means* the department of ~~family~~ *public health and human* services, and ~~said~~ *the* department shall receive and act with reference to notices required by ~~said~~ Article III."

Section 190. Section 41-4-104, MCA, is amended to read:

"**41-4-104. Appropriate authority in the receiving state.** As used in Article V(1) of tbe Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state", with reference to this state, ~~shall mean~~ *means* the department of ~~family~~ *public health and human* services."

Section 191. Section 41-5-103, MCA, is amended to read:

"**41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for tbe care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(5) "Court", when used without further qualification, means the youth court of the district court.

(6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has heen given but does not include a person who has only physical custody.

(7) "Delinquent youtb" means a youth:

(a) who has committed an offense that, if committed by an adult, would constituto a criminal offense; or

(b) who, having been placed on probation as a delinquent youtb or a youth in need of supervision, violates any condition of ~~his~~ probation.

(8) "Department" means the department of ~~family services~~ *corrections* provided for in ~~2-15-2401~~ *2-15-2301*.

(9) "Detention" means the holding or tomporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home

for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of ~~his~~ *the youth's* case.

(10) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-torm detention center, and regional detention facility.

(11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.

(12) "Foster home" means a privato residence licensed by the department for placement of a youth.

(13) "Guardianship" means tbe status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(14) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(16) "Judge", when used without further qualification, means the judge of the youth court.

(17) (a) "Legal custedy" means the legal status created by order of a court of competont jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise ~~his~~ *the individual's* rights and duties as guardian unless otherwise authorized by the court entering the order.

(18) "Necessary parties" includes the youth, ~~his~~ *the youth's* parents, guardian, custedian, or spouse.

(19) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless ~~his~~ *the putative father's* paternity is established by an adjudication or by other clear and convincing proof.

(20) "Probable cause hearing" means the hearing provided for in 41-5-303.

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(21) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-811.

(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

(23) "Secure detention facility" means any public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(24) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(25) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(26) "Shelter care facility" means a facility used for the shelter care of youth. The torm is limited to the facilities enumerated in 41-5-306(1).

(27) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

(28) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school in Helena.

(29) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardian.

(30) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(31) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

(32) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of yeuth that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

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(33) "Youth in need of care" has the meaning provided for in 41-3-102.

(34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) continues to exhibit behavior beyond the control of ~~his~~ *the youth's* parents, foster parents, physical custodian, or guardian despito the attempt of ~~his~~ *the youth's* parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediato, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision."

Section 192. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(I);

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(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing ~~will~~ *must* be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, ~~his~~ *the youth's* counsel, and ~~his~~ *the youth's* parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committod the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts ~~will~~ *is* not of itself ~~be~~ grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constituto deliberate homicide as defined in 45-5-102, mitigated deliherate homicide as defined in 45-5-103, or the attompt, as defined in 45-4-103, of either deliberate or mitigated deliberato homicide if the act had been committod by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has heen transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

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(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentonced to the stato prison, the commitment must be to the department of corrections ~~and human services~~. The department shall confine the youth in whatever institution *that* it considers proper, including a state youth correctional facility under the procedures of 52-5-111; however, ~~no~~ *a* youth under 16 years of age may *not* be confined in the state prison.

(9) A youth whose case is transferred te district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of ~~his~~ *the youth's* case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

Section 193. Section 41-5-301, MCA, is amended to read:

"**41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms ~~thereof~~ *of an order*, a probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge te accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter ~~shall~~ *must* be immediately referred to the department *of public health and human services.*

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether ~~sueh~~ detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; and

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and ~~his~~ *the youth's* parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403~~, provided such~~ *if the* treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, ~~and provided further that said~~ *if the* matter is referred immediately to the county attorney for review, and ~~that~~ *if* the probation officer ~~proceed~~ *proceeds* no further unless authorized by the county attorney; or

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by ~~such~~ evidence ~~as~~ *that* the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(7) A petition charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or the petition ~~shall~~ *must* be dismissed and the youth released unless good cause is shown to further detain ~~such~~ *the* youth.

(8) If ~~no~~ *a* petition is *not* filed under this section, the complainant and victim, if any, ~~shall~~ *must* be informed by the probation officer of the action and the reasons ~~therefor~~ *for not filing* and ~~shall~~ *must* be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition ~~shall be~~ *is* filed."

Section 194. Section 41-5-403, MCA, is amended to read:

"41-5-403. Disposition permitted under informal adjustment — contributions by parents or guardians for youth's care. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and as determined by the department;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth as determined by the department;

(d) restitution upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; ~~however~~ *However*, the ability of the victim or ~~his~~ *the victim's* insurer to stand any loss may not be considered in any case.

(3) If the youth violates an aftercare agreement as provided for in 52-5-126, ~~he~~ *the youth* must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under informal adjustment.

(4) If the youth is placed in substitute care requiring payment by the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(5) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of ~~social and rehabilitation~~ *public health and human* services pursuant to 40-5-209.

(6) (a) Except as provided in subsection (6)(h), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must he in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

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(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(7) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of ~~social and rehabilitation~~ *public health and human* services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of ~~social and rehabilitation~~ *public health and human* services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 195. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition — commitment to department — placement and evaluation of youth — restrictions. (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home, provided that:

(i) the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(c) order restitution by the youth or the youth's parents;

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(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. ~~Nothing in this~~ *This* section ~~limits~~ *does not limit* the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a state youth correctional facility or other facility or program operated by the department or who signs an

aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

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(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of ~~social and rehabilitation~~ *public health and human* services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and *must* be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of ~~social and rehabilitation~~ *public health and human* services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of ~~social and rehabilitation~~ *public health and human* services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

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Section 196. Section 41-5-530, MCA, is amended to read:

"41-5-530. Parental contributions account — allocation of proceeds. (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by tho parents and guardians of youth under 41-3-406, 41-5-403, 41-5-523, or 41-5-524 must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department *of public health and human services* to carry out its duties under 52-1-103."

Section 197. Section 44-5-202, MCA, is amended to read:

"44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of corrections ~~and human services~~; and

(c) the department of justice.

(2) The department of corrections ~~and human services~~ may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photegraph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, ~~he~~ *the person* shall ~~submit himself to~~ *appear before* the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of ~~his~~ initial appearance in court to answer the information or indictment against ~~him~~ *the person*.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if ~~he~~ *the accused* has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless ~~he~~ *the individual* is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) Tbe stato repository shall compare the fingerprints received with those already on file in the stato repository. If it is determined that the individual is

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wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken ~~shall~~ *must* be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken, in the following circumstances:

(a) upon order of the court that had jurisdiction; or

(b) upon the request of the individual when ~~he~~ *the individual* was released without the filing of charges or when the charges did not result in a conviction."

Section 198. Section 44-5-213, MCA, is amended to read:

"**44-5-213. Procedures to ensure accuracy of criminal history records.** In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under 44-5-202 shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under 44-5-202;

(4) the department of corrections ~~and human services~~ shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under 44-5-202;

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries ~~shall~~ *must* be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry ~~shall~~ *must* still be made and the response ~~shall~~ *must* be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of the judicial branch of government to implement

this section. The department of justice may adopt rules for the same purpose for the judicial hranch of government if the supreme court consents to the rules."

Section 199. Section 45-5-621, MCA, is amended to read:

"45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if the person fails to provide support that the person can provide and that the person knows the person is legally obliged to provide to a spouse, child, or other dependent.

(2) (a) A person commits the offense of aggravated nonsupport if:

(i) the offender has left the state without making reasonahle provisions for the support of a spouse, child, or other dependent; or

(ii) the offender has been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person's inability must he the result of circumstances over which the person had no control. In determining ahility to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support.

(5) Payment records maintained hy the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or hoth.

(b) A person convictod of nonsupport who has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed $5,000 or he imprisoned in the state prison for a term not to exceed 2 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed $50,000 or he imprisoned in the state prison for a term not to exceed 10 years, or hoth.

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(8) Before trial with the consent of the defendant, on entry of a plea of guilty, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of 2 years or, in the case of aggravated nonsupport, for a period of 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under 40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) must be forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the defendant to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

(11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support. A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the defendant.

(12) When any payment of public assistance money has been made for the benefit of a child by the department of ~~social and rehabilitation~~ *public health and human* services under the provisions of Title 53, a representative of the department may sign a criminal complaint against the person obligated by law to support the child who received the public assistance.

(13) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court."

Section 200. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

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(b) photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulatod;

(c) persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulatod, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) possesses matorial referred to in subsection (1)(d); or

(f) finances any of the activities described in subsections (1)(a) through (1)(d), knowing that the activity is of the nature described in those subsections.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), a person convictod of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 50 years, or both.

(c) A person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(f) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if ~~such an~~ *the* activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections ~~and human services~~."

Section 201. Section 45-8-109, MCA, is amended to read:

"**45-8-109. Prohibited activities — penalties — exceptions.** (1) A person is guilty of a crime if, with one or more other persons, ~~he~~ *the person* purposely or knowingly assembles for the purpose of training in, instructing in the use of, or practicing with any technique or means capable of causing property damage, bodily injury, or death, with the purpose of employing the training, instruction, or practice in a civil disorder.

(2) A person convicted of violating the provisions of subsection (1) is guilty of a felony and shall be imprisoned in the state prison for a period not to exceed 10 years or be fined not to exceed $50,000, or both.

(3) Subsection (1) does not prohibit:

(a) an act protected pursuant to Article II of the Montana constitution;

(b) an act of a governmental military force;

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(c) an act of a peace officer performed in the lawful performance of the officer's duties;

(d) an authorized activity of the department of fish, wildlife, and parks; the department of corrections ~~and human services~~; a law enforcement agency; or the law enforcement academy;

(e) training in nonviolent civil disobedience techniques;

(f) lawful self-defense or defense of others or an activity intended to teach or practice self-defense or self-defense techniques; or

(g) a facility, program, or lawful activity related to firearms instruction or training intended to teach the safe handling and use of firearms or activities or sports related to recreational use or possession of firearms.

(4) Sections 45-8-107 through 45-8-109 do not apply to an employer or employees involved in a labor dispute."

Section 202. Section 45-9-202, MCA, is amended to read:

"**45-9-202. Alternative sentencing authority.** (1) A person convicted of a dangerous drug felony offense under this chapter may, in lieu of imprisonment, be sentenced according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of the record or from a presentence investigation and report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify a fine as part of the penalty or $1,000 for those offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility and not more than 1 year;

(c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug education program with compliance to be monitored by the probation and parole bureau of the department of corrections ~~and human services~~ based upon information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau, placement in a program of intensive probation that requires, at a minimum, that the defendant comply with all of the following conditions:

(i) maintain employment or full-time student status at an approved school, making progress satisfactory to the probation officer, or be involved in supervised job searches and community service work designated by the probation officer;

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(ii) pay probation supervision fees through the clerk of the district court of not less than $50 per month to be deposited in an account in the state special revenue fund to the credit of the department of corrections ~~and human services~~;

(iii) find a place to reside approved by the probation officer that may not be changed without the officer's approval;

(iv) remain at the residence at all times except to go to work, to attend school, or to perform community service or as otherwise specifically allowed by the probation officer;

(v) remain drug free and submit to drug and alcohol tests administered randomly not less than once each month by or under supervision of the probation officer;

(vi) perform not less than 10 hours of community service each month as approved by the probation officer, except that full-time students may be exempted or required to perform fewer hours of community service;

(vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program; and

(viii) comply with any other conditions imposed by the court to meet the needs of the community and the defendant;

(e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject to the following terms and conditions:

(i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for 6 months;

(ii) upon the second conviction, the driver's license must be revoked for 1 year;

(iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years."

Section 203. Section 46-1-202, MCA, is amended to read:

"**46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(2) "Arrest" means taking a person into custody in the manner authorized by law.

(3) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(4) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

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(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(6) "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(7) "Court" means a place where justice is judicially administered and includes the judge of the court.

(8) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(9) "Judge" means a person who is vested by law with the power to perform judicial functions.

(10) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(11) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the matorials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(12) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(13) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(14) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(15) "Parole" means the release to the community of a prisoner by a decision of the board of pardons *and parole* prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons *and parole* and the supervision of the department of corrections and ~~human services~~.

(16) "Peace officer" means any person who hy virtue of the person's office or public employment is vested hy law with a duty to maintain puhlic order and make arrests for offenses while acting within the scope of the person's authority.

(17) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have heen previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

(18) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

(19) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(20) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections ~~and human services~~ upon direction of the court.

(21) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(22) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(23) "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

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(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(24) "Sentence" means the judicial disposition of a criminal proceeding upon a plea, verdict, or finding of guilty.

(25) "Statement" means:

(a) a writing sigued or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

(26) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place te answer a charge for the offense set forth in the order.

(27) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(28) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stepped.

(29) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(30) "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators."

Section 204. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the court, the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor counsel for the defendant contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in

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subsection (4), and the court shall commit the defendant to the custody of the director of the department of ~~corrections~~ *public health* and human services to he placed in an appropriate institution of the department of ~~corrections~~ *public health* and human services for so long as the unfitness endures. The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4), and the prosecutor shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court detormines that the defendant lacks fitness to proceed because the defendant is developmentally disabled as provided in 53-20-102(4), the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and without the personal participation of tlie defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of ~~corrections~~ *public health* and human services to be placed in an appropriate institution of the department of ~~corrections~~ *public health* and human services, of keeping the defendant there, and of bringing the defendant back are chargeable to the state and payable according to procedures established under 3-5-902(1)."

Section 205. Section 46-14-222, MCA, is amended to read:

"**46-14-222. Proceedings if fitness regained.** When the court, on its own motion or upon tho application of the director of the department of ~~corrections~~ *public health* and human services, tbe prosecution, or tbe defendant or the defendant's legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate institution of the department of ~~corrections~~ *public health* and human services."

Section 206. Section 46-14-301, MCA, is amended to read:

"**46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge.** (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not bave a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate

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disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to the custody of the director of the department of ~~corrections~~ *public health* and human services to be placed in an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) A person committed to the custody of the director of the department of ~~corrections~~ *public health* and human services must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disease or defect that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(a) serious bodily injury or death to the person or others;

(b) an imminent threat of physical injury to the person or others; or

(c) substantial property damage.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the director of the department of ~~corrections~~ *public health* and human services to be placed in an appropriate mental health facility for custody, care, and treatment.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of ~~corrections~~ *public health* and human services or the person or the representative of the

person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3)."

Section 207. Section 46-14-302, MCA, is amended to read:

"**46-14-302. Discharge or release upon motion of director.** (1) If the director of the department of ~~corrections~~ *public health* and human services believes that a person committed to the director's custody under 46-14-301 may be discharged or released on condition without danger to the person or others because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial property damage, the director shall make application for the discharge or release of the person in a report to the district court by which the person was committed unless that court transfers jurisdiction to the court in the district in which the person has been placed and shall send a copy of the application and report to the prosecutor of the county from which the person was committed.

(2) Either the director of the department of ~~corrections~~ *public health* and human services or the person may also make application to the court for discharge or release as part of the person's annual treatment review.

(3) The court shall then appoint at least one person who is either a qualified psychiatrist or licensed clinical psychologist to examine the person and to report as to the person's mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the court may have the person confined in any mental health facility located near the place where the court sits that may be designated by the director of the department of ~~corrections~~ *public health* and human services as suitable for the temporary detention of persons suffering from mental disease or defect.

(4) The committed person or the person's attorney may secure a professional person of the committed person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons, the court shall appoint an additional professional person to perform the examination. Whenever possible, the court shall allow the committed person or the person's attorney a reasonable choice of an available professional person qualified to perform the requested examination. The professional person must be compensated by the department of ~~corrections~~ *public health* and human services.

(5) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting psychiatrist or licensed clinical psychologist that the committed person may be discharged or released on condition because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial property damage, the court shall order the person's discharge.

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(6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released on the grounds that the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(b) A hearing is considered a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely discharged or released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(c) According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody of the director of the department of ~~corrections~~ *public health* and human services, subject to discharge or release only in accordance with the procedures provided in this section and 46-14-303."

Section 208. Section 46-14-303, MCA, is amended to read:

"46-14-303. Application for discharge or release by committed person. A committed person may make application for discharge or release to the district court by which the person was committed unless that court transfers jurisdiction to the court in the district in which the person has been placed, and the procedure to be followed upon the application is the same as that prescribed in 46-14-302 in the case of an application by the director of the department of ~~corrections~~ *public health* and human services. However, an application by a committed person need not be considered until the person has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person may not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for the person's release or discharge."

Section 209. Section 46-14-304, MCA, is amended to read:

"46-14-304. Revocation of conditional release. (1) The court may order revocation of a person's conditional release if the court determines after hearing evidence that:

(a) the conditions of release have not been fulfilled; and

(b) based on the violations of the conditions and the person's past mental health history, there is a substantial likelihood that the person continues to

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suffer from a mental disease or defect that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.

(3) If the court finds that the conditional release should he revoked, the court shall immediately order the person to he recommitted to the custody of the director of the department of ~~corrections~~ *public health* and human services, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-14-303."

Section 210. Section 46-14-312, MCA, is amended to read:

"**46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of ~~corrections~~ *public health* and human services to he placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under suhsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has heen imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders the defendant unahle to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;

(c) the defendant suffers from a mental disease or defect but is not a danger to the defendant or others; or

(d) the defendant suffers from a mental disease or defect that makes the defendant a danger te the defendant or others, hut:

(i) there is no treatment availahle for the mental disease or defect;

(ii) the defendant refuses to cooperate with treatment; or

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(iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Section 211. Section 46-18-101, MCA, is amended to read:

"**46-18-101. Correctional policy.** (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for the individual's actions. Corrections laws and programs must be implemented to impress upon each individual the responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the stato's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of the offender;

(iii) the circumstances under which the crime was committed;

(iv) the criminal histery of the offender; and

(v) consideration of alternatives to imprisonment of the offender in the state prison or the women's correctional ~~center~~ *system*.

(b) Dangerous offenders who habitually violate the law and victimize the public must be removed from society and correctively treated in custody for long terms, as needed. Other offenders must be dealt with by probation, suspended sentence, community corrections, community service, or fine whenever ~~such~~ *the* disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders must include restitution te the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

(4) It is also the policy of the state that altornatives to imprisonment, such as community corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate in other activities that will reduce recidivism and enable offenders to become productive members of society."

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Section 212. Section 46-18-105, MCA, is amended to read:

"46-18-105. Community corrections facilities or programs. The department of corrections ~~and human services~~ may provide community corrections facilities or programs for the rehabilitation of nonviolent felony offenders, as authorized under Title 53, chapter 30, part 3."

Section 213. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation — when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, or 45-5-625 involving a victim who was less than 16 years of age when the offense was committed, the investigation must include an evaluation of the defendant and a recommendation as to treatment of the offender in the least restrictive environment, considering community safety and offender needs. The evaluation must be completed by a person who is determined to be qualified under guidelines established by the department of corrections ~~and human services~~. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation officer is presented to and considered by the district court. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor."

Section 214. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

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(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of ~~the above~~ *subsections (1)(a)(i) through (1)(a)(xii).*

(b) suspend execution of sentence for a period up to tho maximum sentence allowed or for a period of 6 months, wbicbever is greater, for each particular offense. The sentencing judgo may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or stato prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections ~~and human services~~ for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) tbrough (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not he deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is suhsequently sentenced to the state prison or the women's correctional ~~center~~ *system*, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 215. Section 46-18-225, MCA, is amended to read:

"**46-18-225. Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent felony offender to a term of imprisonment in the state prison or the women's correctional ~~center~~ *system*, the court shall take into account whether:

(1) the interests of justice and the needs of puhlic safety truly require the level of security provided hy imprisonment of the offender in the state prison or the women's correctional ~~center~~ *system*;

(2) the needs of the offender can he better served in the community or in a facility or program other than the state prison or the women's correctional ~~center~~ *system*;

(3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(4) the offender acted under strong provocation;

(5) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

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(6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(8) the charactor and attitude of the offender indicate that the offender is likely to commit another crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on the offender or the offender's family."

Section 216. Section 46-18-235, MCA, is amended to read:

"46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 ~~shall~~ *must* be paid:

(1) by a district court to the county general fund of the county in which the court is held, except that:

(a) if the costs assessed include any district court expense listed in 3-5-901, the money collectod from assessment of these costs must be paid to the state for deposit into the state general fund to the extent the expenses were paid by the state;

(b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, the court may order the money paid into the drug forfeiture account maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose; and

(c) if the fine was imposed for a violation of 45-5-206, 50% of the amount collected must be deposited in the state special revenue fund for use of the department of ~~family~~ *public health and human* services in the battered spouses and domestic violence grant program created by 52-6-101; and

(2) by a justice's court pursuant to 3-10-601."

Section 217. Section 46-18-254, MCA, is amended to read:

"46-18-254. Release of sexual offender — duties of court and department. A sexual offender must be informed in writing at the time of sentencing of the duty to register under 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced. The department of corrections ~~and human services~~ shall obtain the address where the person expects to reside upon release or discharge or suspension of the person's sentence. The department of corrections and ~~human services~~ shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

Section 218. Section 46-18-1001, MCA, is amended to read:

"**46-18-1001. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living area approved by the supervising authority.

(b) When more than one residence or family are located on a single piece of property, the term does not include the residence of any other person who is not part of the social unit formed by the offender's immediate family.

(2) "Home arrest" means the use of a person's home for purposes of confinement.

(3) "Monitoring device" means an electronic device or apparatus that is limited in capability to recording or transmitting information concerning the offender's presence in or absence from the home. The device must be minimally intrusive.

(4) "Supervising authority" means, in the case of an adult felon, the corrections division of the department of corrections ~~and human services~~; in the case of an adult misdemeanant, a court-approved entity other than the corrections division of the department of corrections ~~and human services~~; or, in the case of a juvenile, the juvenile probation division of the youth court or any other person or entity appointed by the court.

(5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery, sexual intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date of the present conviction."

Section 219. Section 46-18-1004, MCA, is amended to read:

"**46-18-1004. Home arrest — ineligibility.** A person being held under a detainer, warrant, or process issued by some other jurisdiction is not eligible for home arrest. A person convicted of a violent felony offense is not eligible for home arrest. However, this section does not prevent the use of a monitoring device as a part of an intensive supervision program or other program of the department of corrections ~~and human services~~."

Section 220. Section 46-19-202, MCA, is amended to read:

"**46-19-202. Proceedings following determination regarding fitness.** (1) If it is found that defendant is mentally fit as provided in 46-19-201, the warden of the Montana state prison shall execute the judgment.

(2) If it is found that ~~he~~ *the defendant* lacks fitness, the execution of judgment must be suspended and the court shall commit ~~him~~ *the defendant* to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution of the department of ~~corrections~~ *public health* and human services for ~~so~~ *as* long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of the Montana state hospital, the county prosecuting officer, or

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the defendant or ~~his~~ *the defendant's* legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the warden must be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged."

Section 221. Section 46-19-303, MCA, is amended to read:

"**46-19-303. Power of governor to enter into contracts.** The governor ~~is hereby empowered to~~ *may* designate the department of corrections ~~and human services~~ to enter into ~~such~~ contracts recommended by the department on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to 46-19-301."

Section 222. Section 46-19-305, MCA, is amended to read:

"**46-19-305. Hearings requested by other states.** The board of pardons *and parole* and the department of corrections ~~and human services~~ shall hold ~~such~~ hearings as may be requested by any other party state pursuant to Article IV(6) of the Western Interstate Corrections Compact."

Section 223. Section 46-19-402, MCA, is amended to read:

"**46-19-402. Effectuation of purposes of compact.** The department of corrections ~~and human services~~ shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within its jurisdiction, including but not limited to the making and submission of ~~such~~ *the* reports as *that* are required by the compact."

Section 224. Section 46-23-103, MCA, is amended to read:

"**46-23-103. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of pardons *and parole* provided for in 2-15-2302.

(2) "Department" means the department of corrections ~~and human services~~ provided for in ~~Title 2, chapter 15, part 23~~ *2-15-2301*.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of ~~his~~ *the prisoner's* term, subject to conditions imposed by the board and subject to supervision of the department of corrections ~~and human services~~."

Section 225. Section 46-23-104, MCA, is amended to read:

"**46-23-104. Board of pardons *and parole*.** (1) The board of pardons *and parole* is responsible for executive clemency and parole as provided in this chapter.

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(2) The board shall meet monthly, and at ~~such~~ other times as *that* the board considers necessary, at the state prison.

(3) The principal office of the board ~~shall be~~ *is* in Deer Lodge.

(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:

(a) parole eligibility;

(b) plans for release on parole; or

(c) revocation hearings."

Section 226. Section 46-23-106, MCA, is amended to read:

"**46-23-106. Information from courts to board.** It ~~shall be~~ *is* the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons *and parole* statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged."

Section 227. Section 46-23-201, MCA, is amended to read:

"**46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person confined in the Montana stato prison or the women's correctional ~~center~~ *system*, except persons under sentonce of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-half of the prisoner's full term, less the good time allowance provided for in 53-30-105. Except as provided in subsection (3), a prisoner designated as a nondangerous offender under 46-18-404 may be paroled after the prisoner has served one-quarter of the prisoner's full term, less the good time allowance provided for in 53-30-105. Any prisoner serving a time sentence may be paroled after the prisoner has served 17 1/2 years of the sentonce.

(3) A prisoner serving a time sentence under 45-9-109 may not be paroled until the prisoner has served at least one-half of the full term, less the good time allowance provided for in 53-30-105.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years, less the good time allowance provided for in 53-30-105.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

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(6) Whenever the department of corrections ~~and human services~~ certifies to the board that the population at either the male or female correctional facility has exceeded its designed capacity for 30 consecutive days, the board shall consider the respective male or female prisoners under the jurisdiction of the department eligible for parole 120 days prior to the eligibility datss provided for in subsections (2) through (4).

(7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration, the provisions of subsection (6) do not apply."

Section 228. Section 46-23-302, MCA, is amended to read:

"**46-23-302. Order for hearing on application for executive clemency.** After the board has duly considered an application for executive clemency and has by majority vote favored a hearing, it must pass an order in substance as follows:

"Whereas, the Board of Pardons *and Parole* has officially received an application for executive clemency concerning...., a convict confined in the stata prison (or to one...., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of.... committed at...., in the county of...., State of Montana, on the.... day of...., 19.., and sentenced for a term of.... years.

Therefore, ~~be~~ it *is* ordered that...., the.... day of...., 19.., ~~be~~ *is* set ~~apart~~ for the consideration of ~~said~~ *the* executive clemency matter; and all persons having an interest ~~therein~~ *in the matter* desiring to be heard either for or against the granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or forfeiture are ~~hereby~~ notified to be present at.... o'clock of ~~said~~ *that* day, at.....

Further, ordered that a copy of this order be printed and published in the.... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at...., in the county of...., once each week for 2 weeks beginning...., 19.., and ending....."

Section 229. Section 46-23-315, MCA, is amended to read:

"**46-23-315. Authority of governor to grant respite — application.** The governor has the power to grant respites after conviction and judgment for any offenses committed against the criminal laws of the state for ~~such~~ *the* time ~~as~~ ~~he~~ *that the governor* thinks proper. The governor may grant a respite upon application of a person authorized te apply for executive clemency and prior te any review or recommendation by the board of pardons *and parole*. A respite must be of temporary duration for a definite period of time. Any respite that is granted that stays the execution of a death warrant has the effect of postponing the execution of the warrant. In ~~such a~~ *that* case, if clemency is not granted, the death warrant is again in effect at the expiration of the period of respite and the execution must take place on the date of expiration of the respite."

Section 230. Section 46-23-401, MCA, is amended to read:

"**46-23-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Applicant" means any prisoner who is eligihle under 46-23-411 and who signs an application te participate in the supervised release program.

(2) "Board" means the board of pardons *and parole* provided for in 2-15-2302.

(3) "Department" means the department of corrections ~~and human services~~ provided for in 2-15-2301.

(4) "Prisoner" means a person sentenced hy a state district court to a term of confinement in the state prison.

(5) "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the supervised release program.

(6) "State prison" means tbe Montana state prison at Deer Lodge or any adult correctional facility designated by the department.

(7) "Supervising agent" means a probation and parole officer of the department."

Section 231. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections ~~and human services~~ provided for in ~~Title 2, chapter 15, part 23~~ *2-15-2301*.

(2) "Sexual offender" means a person who has been convicted of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-505, 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a)."

Section 232. Section 46-23-503, MCA, is amended to read:

"**46-23-503. Release of sexual offender from place of confinement — duties of official in charge.** A sexual offender who is released from the custody of the department of corrections ~~and human services or the department of family services~~ must be informed in writing prior to release of ~~his~~ *the* duty te register under 46-18-254, 46-18-255, and this part by the official in charge of the place of confinement. The official shall ohtain the address where the person expects to reside upon ~~his~~ release and report the address to the department of corrections ~~and human services~~. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

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Section 233. Section 46-23-1001, MCA, is amended to read:

"46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of pardons *and parole* provided for in 2-15-2302.

(2) "Department" means the department of corrections ~~and human services~~ provided for in ~~Title 2, chapter 15, part 23~~ *2-15-2301*.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of ~~his~~ *the prisoner's* term, subject to conditions imposed by the board and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed hy the court and subject to the supervision of the department upon direction of the court."

Section 234. Section 46-23-1024, MCA, is amended to read:

"46-23-1024. Initial hearing after arrest. (1) After the arrest of the prisoner, a hearing ~~shall~~ *must* he held within a reasonable time, unless the hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over the hearing. The hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in ~~his~~ *the parolee's* own behalf and introduce relevant information to the hearings officer.

(2) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to ~~him~~ *the hearings officer*, the hearings officer shall determine whether there is probable cause to hold the parolee for the final decision of the board of pardons *and parole* as provided in 46-23-1025."

Section 235. Section 49-3-204, MCA, is amended to read:

"49-3-204. Licensing. (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. Each state or local governmental agency shall take ~~such~~ appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chaptor. This subsection does not prevent the department of ~~family~~ *public health and human* services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

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(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization."

Section 236. Section 49-4-502, MCA, is amended to read:

"**49-4-502. Definitions.** As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Intermediary interpreter" means a knowledgeable deaf person who, because of ~~his~~ *the person's* intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

(4) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(5) "Qualified interpreter" means an interpreter listed by the department of ~~social and rehabilitation~~ *public health and human* services as provided in 49-4-507."

Section 237. Section 49-4-507, MCA, is amended to read:

"**49-4-507. Coordination of interpreter requests.** (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of ~~social and rehabilitation~~ *public health and human* services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpretor.

(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of ~~social and rehabilitation~~ *public health and human* services with a list of qualified and available interpreters.

(3) The only function of the department of ~~social and rehabilitation~~ *public health and human* services is to maintain the list referred to in subsection (2)."

Section 238. Section 50-1-101, MCA, is amended to read:

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"**50-1-101. Definitions.** Unless the context indicates otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

~~(2)~~*(1)* "Communicable disease" means a disease designated communicable by the department.

~~(3)~~*(2)* "Department" means the department of *public* health and ~~environmental sciences,~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*."

Section 239. Section 50-1-102, MCA, is amended to read:

"**50-1-102. Legal adviser to ~~board and~~ department.** The attorney general is legal adviser to the ~~board and~~ department. If the county atterney fails to act and with the approval of the attorney general, the department may retain special counsel and compensate ~~him~~ *the special counsel* from appropriations to the department."

Section 240. Section 50-1-103, MCA, is amended to read:

"**50-1-103. Enforcement of public health laws.** (1) Either the county attorney of a county where a cause of action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public health laws.

(2) Except as otherwise provided in the public health laws administered by the ~~board or the~~ department, the department may, through the attorney general or appropriate county attorney, sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the ~~board or~~ department."

Section 241. Section 50-1-104, MCA, is amended to read:

"**50-1-104. General penalty.** Anyone who violates a rule adopted by the ~~board or the~~ department for which ~~no~~ *a* penalty is *not* specified is guilty of a misdemeanor."

Section 242. Section 50-1-202, MCA, is amended to read:

"**50-1-202. General powers and duties.** The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administor any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

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(5) after each inspection made under subsection (4) ~~of this section~~, submit a written report on sanitary conditions to the governor and to the director of *the department of* corrections ~~and human services~~ or *the* commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

~~(7) organize laboratory services and provide equipment and personnel for those services;~~

~~(8)~~*(7)* develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

~~(9)~~*(8)* develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

~~(10)~~*(9)* conduct health education programs;

~~(11)~~*(10)* provide consultation to school and local community health nurses in the performance of their duties;

~~(12)~~*(11)* consult with the superintendent of public instruction on health measures for schools;

~~(12)~~*(12)* develop, adopt, and administer rules setting standards for a program to provide services to handicapped children, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

~~(14)~~*(13)* provide consultation to local boards of health;

~~(15)~~*(14)* bring actions in court for the enforcement of the health laws and defend actions brought against the ~~board or~~ department;

~~(15)~~*(15)* accept and expend federal funds available for public health services;

~~(17)~~*(16)* have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

~~(18)~~*(17)* ~~after consultation with the board,~~ adopt rules imposing fees for the tests and services performed by the laboratory of the department *of environmental sciences*. Fees, established on an annual basis, should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees ~~shall~~

must be deposited in the state special revenue fund for the use of the department in performing tests and services.

~~(19)~~*(18)* adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

~~(20)~~*(19)* adopt and enforce rules regarding the transportation of dead human bodies."

Section 243. Section 50-2-101, MCA, is amended to read:

"50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated communicable by the department.

(2) "Department" means the department of *public* health and ~~environmental sciences,~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(3) "Local board" means a county, city, city-county, or district board of health.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(5) "Physician" means a physician legally authorized to practice medicine in this state."

Section 244. Section 50-3-102, MCA, is amended to read:

"50-3-102. Powers and duties of department regarding state fire prevention and investigation — *rules*. (1) For the purpose of reducing the state's fire loss, the department shall:

(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as its budget and other inspection duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of corrections *or the department of public health* and human services for state institutions, or by the department of administration for all other state buildings. A copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of corrections *and the department of public health* and human services, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of corrections, *public health* and human services, and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

(b) inspect public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter;

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(c) assist local fire and law enforcement authorities in arson investigations and may initiate or supervise these investigations when, in its judgment, the initiation or supervision is necessary;

(d) provide fire prevention and fire protection information to public officials and the general public;

(e) serve as the state entity primarily responsible for promoting fire safety at the state level;

(f) encourage coordination of all services and agencies in fire prevention matters to reduce duplication and fill voids in services;

(g) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing stato offices; and

(h) keep a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating to the fires that have been determined by investigations under the provisions of chapter 63. Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, the record must be open at all times to public inspection.

(2) The department may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state.

(3) The department shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the department may maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules."

Section 245. Section 50-4-102, MCA, is amended te read:

"**50-4-102. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Authority" means the Montana health care authority created by 50-4-201.

(2) "Board" means one of the regional health care planning boards created pursuant te 50-4-401.

(3) "Certificate of public advantage" or "certificate" means a written certificate issued by the authority as evidence of the authority's intention that the implementetion of a cooperative agreement, when actively supervised by the authority, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

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(4) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(5) "Data base" means the unified health care data base created pursuant to 50-4-502.

(6) "Health care" includes both physical health care and mental health care.

(7) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in 50-5-101~~(19)~~*(18)*. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(8) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

(9) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(10) "Management plan" means the health care resource management plan required by 50-4-304.

(11) "Region" means one of the health care planning regions created pursuant to 50-4-401.

(12) "Statewide plan" means one of the statewide universal health care access plans for access to health care required by 50-4-301."

Section 246. Section 50-4-201, MCA, is amended to read:

"50-4-201. Montana health care authority — allocation — membership. (1) There is a Montana health care authority.

(2) The authority is allocated to the department of ~~health and environmental sciences~~ *public health and human services* for administrative purposes as provided in 2-15-121.

(3) The authority consists of five voting members appointed by the governor. At least one member must represent consumer organizations. Members of the authority must be appointed as follows:

(a) ~~Within 30 days of May 3, 1993, the~~ *The* speaker and minority leader of the house of representatives shall select an individual with recognized expertise or interest, or both, in health care. The speaker and minority leader and the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

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(b) ~~Within 30 days of May 3, 1993, the~~ *The* president and minority leader of the senate shall select an individual with recognized expertise or interest, or both, in health care. The president and minority leader and the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

(c) ~~Within 90 days of May 3, 1993, the~~ *The* governor shall appoint from those nominated under subsections (3)(a) and (3)(b) five individuals to the authority.

(4) A vacancy must be filled in the same manner as original appointments under subsection (3), except that one individual must be selected under subsection (3)(a) and one under subsection (3)(b). The governor shall appoint from those nominated the individual to fill the vacancy.

(5) The presiding officer of the authority must be elected by majority vote of the voting members. The initial presiding officer must serve a 4-year term.

(6) Members serve terms of 4 years, except that of the members initially appointed, two members serve 4-year terms, two members serve 3-year terms, and one member serves a 2-year term, to be determined by lot.

(7) The ~~directors~~ *director* of the department of ~~social and rehabilitation~~ *public health and human* services ~~and the department of health and environmental sciences~~ and the commissioner of insurance are nonvoting, ex officio members of the authority.

(8) The attorney general is an ex officio, nonvoting member of the authority only for the purpose of the authority's approval or denial of certificatss of public advantage, supervision of cooperative agreements, and revocation of certificates of public advantage pursuant to Title 50, chapter 4, part 6.

(9) A member shall acknowledge a direct conflict of interest in a proceeding in which the member has a personal or financial interest."

Section 247. Section 50-4-304, MCA, is amended to read:

"**50-4-304. Health care resource management plan.** (1) Each statewide plan must contain a health care resource management plan that takes into account the provisions of 50-4-303. The management plan must provide for the distribution of health care resources within the regions established pursuant to 50-4-401 and within the state as a whole, consistent with the principles provided in subsection (2).

(2) The management plan must include:

(a) a statement of principles used in the allocation of resources and in establishing priorities for health services;

(b) identification of the current supply and distribution of:

(i) hospital, nursing home, and other inpatient services;

(ii) home health and mental health services;

(iii) treatment services for alcohol and drug abuse;

(iv) emergency care;

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(v) ambulatory care services, including primary care resources;

(vi) nutrition benefits, prenatal benefits, and maternity care;

(vii) human resources;

(viii) health sciences library resources and services;

(ix) major medical equipment; and

(x) health screening and early intervention services;

(c) a determination of the appropriate supply and distribution of the resources and services identified in subsection (2)(b) and of the mechanisms that will encourage the appropriate integration of these services on a local or regional basis. To arrive at a determination, the authority shall consider the following factors:

(i) the needs of the statewide population, with special consideration given to the development of health care services in underserved areas of the state;

(ii) the needs of particular geographic areas of the state;

(iii) the use of Montana facilities by out-of-state residents;

(iv) the use of out-of-state facilities by Montana residents;

(v) the needs of populations with special health care needs;

(vi) the desirability of providing bigb-quality services in an economical and efficient manner, including the appropriate use of midlevel practitioners; and

(vii) the cost impact of these resource requirements on health care expenditures;

(d) a component that addresses health promotion and disease prevention and that is prepared by the department of *public* health and ~~environmental sciences~~ *human services* in a format established by the authority;

(e) incentives to improve access to and use of preventive care; primary care services, including mental health services; and community-based care;

(f) incentives for healthy lifestyles;

(g) incentives to improve access to health care in underserved areas, including:

(i) a system by wbich the authority may identify persons with an interest in becoming health care professionals and provide or assist in providing health care education for those persons; and

(ii) tax credits and other financial incentives to attract and retain health care professionals in underserved areas; and

(h) a component that addresses integration of the plan, to the extent allowed by state and federal law, with services provided by the Indian health service and by the United States department of veterans affairs and by the medicare and medicaid programs.

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(3) In adopting the management plan, the authority shall consider the regional health resource plans recommended by regional panels.

(4) The management plan must be revised annually in a manner determined by the authority.

(5) Prior to adoption of the management plan, the authority shall hold one or more public hearings for the purpose of receiving oral and written comment on a draft plan. After hearings have been concluded, the authority shall adopt the management plan, taking comments into consideration."

Section 248. Section 50-4-310, MCA, is amended to read:

"**50-4-310. Long-term care study and recommendations.** (1) The authority shall conduct a study of the long-term care needs of state residents and report to the public and the legislature the authority's recommendations, including any necessary legislation, for meeting those long-term care needs. ~~The report must be available to the public on or before September 1, 1996, after which the authority shall conduct public hearings on its report in each region established under 50-4-401. The authority shall present its report to the legislature on or before January 1, 1997.~~

(2) This section does not preclude the authority from recommending cost-sharing arrangements for long-term care services or from recommending that the services be phased in over time. The authority's recommendations must support and may not supplant informal care giving by family and friends and must include cost containment recommendations for any long-term care service suggested for inclusion.

(3) The authority's report must estimate costs associated with each of the long-term care services recommended and may suggest independent financing mechanisms for those services. The report must also set forth the projected cost to Montana and its citizens over the next 20 years if there is no change in the present accessibility, affordability, or financing of long-term care services in this state.

(4) The authority shall consult with the department of ~~social and rehabilitation~~ *public health and human* services in developing its recommendations under this section."

Section 249. Section 50-4-402, MCA, is amended to read:

"**50-4-402. Powers and duties of boards.** (1) A board shall:

(a) meet at the time and place designated by the presiding officer, but not less than quarterly;

(b) submit an annual budget and grant application to the authority at the time and in the manner directed by the authority;

(c) adopt procedures governing its meetings and other aspects of its day-to-day operations as the board determines necessary;

(d) develop regional health resource plans in the format determined by the authority that must address the health care needs of the region and address the

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development of health care services in underserved areas of the region and other matters;

(e) revise the regional plan annually;

(f) hold at least one public hearing on the regional plan within the region at the time and in the manner determined by the regional board;

(g) transmit the regional plan to the authority at the time determined by the authority;

(h) apply to the authority for grant funds for operation of the regional board and account, in the manner specified by the authority, for grant funds provided by the authority; and

(i) seek from public and private sources money to supplement grant funds provided by the authority.

(2) Regional boards may:

(a) recommend that the authority sanction voluntary agreements between health care providers and between health care consumers in the region that will improve the quality of, access to, or affordability of health care but that might constitute a violation of antitrust laws if undertaken without government direction;

(b) make recommendations to the authority regarding major capital expenditures or the introduction of expensive new technologies and medical practices that are being proposed or considered by health care providers;

(c) undertake voluntary activities to educate consumers, providers, and purchasers and promote voluntary, cooperative community cost containment, access, or quality of care projects; and

(d) make recommendations to the department of *public* health and ~~environmental sciences~~ *human services* or to the autbority, or both, regarding ways of improving affordability, accessibility, and quality of health care in the region and throughout the state.

(3) Each regional board may review and advise the authority on regional technical matters relating to the statewide plans required by 50-4-301, the common benefits package, procedures for developing and applying practice guidelines for use in the statewide plans, provider and facility contracts with the state, utilization review recommendations, expenditure targets, and uniform health care benefits and the impact of the benefits upon the provision of quality bealth care within the region."

Section 250. Section 50-5-101, MCA, is amended to read:

"**50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on an intermittent hasis, with the care necessary to ineet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency that plans or assiste in planning for health care facilities.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or ether treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment tbat are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

~~(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

~~(8)~~*(7)* "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any otber property of value had changed hands.

~~(9)~~*(8)* "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(10)~~*(9)* "Challenge period" means a period, not exceeding 1 month, established by department rule during which a person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

~~(11)~~*(10)* "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creatos behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

~~(12)~~*(11)* "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

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~~(13)~~*(12)* "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(14)~~*(13)* "Comparative review" means a joint review of two or more certificate of need applications that are detormined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

~~(15)~~*(14)* "Construction" means the physical erection of a health care facility and any stage of the physical erection, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(15)~~*(15)* "Department" means the department of ~~health and environmental sciences~~ *public health and human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

~~(17)~~*(16)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(15)~~*(17)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(13)~~*(18)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

~~(20)~~*(19)* "Health maintenance organization" means a public or privato organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

~~(21)~~*(20)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home bealth services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(20)~~*(21)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced

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during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(23)~~*(22)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital bas an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~(24)~~*(23)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

~~(25)~~*(24)* "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(23)~~*(25)* "Kidney treatment center" means a facility that specializes in treatment of kidney diseases, including freestanding hemodialysis units.

~~(27)~~*(26)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include adult foster care licensed under 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of corrections ~~and human services~~.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

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(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patiente not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or individuals with related problems.

(e) "Personal care" means the provision of services and care for residents needing some assistance in performing the activities of daily living.

~~(28)~~*(27)* "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.

~~(28)~~*(28)* "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

~~(30)~~*(29)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill individuals, or any combination of these services.

~~(31)~~*(30)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(32)~~*(31)* "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or otber treatment.

~~(32)~~*(32)* "Offer" means the holding out by a health care facility tbat it can provide specific health services.

~~(34)~~*(33)* "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

~~(35)~~*(34)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(35)~~*(35)* "Person" means any individual, firm, partnersbip, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(37)~~*(36)* "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

~~(35)~~*(37)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by

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providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(39)~~*(38)* "Resident" means an individual who is in a long-term care facility for intermediate or personal care.

~~(40)~~*(39)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care te adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(41)~~*(40)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(42)~~*(41)* "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 251. Section 50-5-106, MCA, is amended to read:

"50-5-106. Records and reports required of health care facilities — confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report ~~shall~~ *must* be on forms and contain information specified by the department. Information received by the department ~~or board~~ through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information ~~which~~ *that* would identify a patient ~~shall~~ *must* be dismissed from employment and subject te the provisions of 45-7-401 and 50-16-551, unless the disclosure was authorized in writing by the patient, ~~his~~ *the patient's* guardian, or ~~his~~ *the patient's* agent in accordance with Title 50, chapter 16, part 5. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities ~~will~~ *must* be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, ~~shall~~ *must* be accessible to the public."

Section 252. Section 50-5-114, MCA, is amended to read:

"50-5-114. Administrative enforcement — notice — order for corrective action. (1) If the department believes that a violation of a provision of part 1 or 2 of this chapter or of a rule adopted or a condition or limitation imposed by a license issued pursuant to part 1 or 2 has occurred, it may serve written notice on the alleged violator or the violator's agent personally or by certified mail. The notice must specify the provision of part 1 or 2 of this chapter or the rule or license condition or limitation alleged to have been violated and

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the facts alleged to constitute the violation. The notice must inform the alleged violator of the right to a hearing and that the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing. The notice may include an order to take necessary corrective action, including ceasing new admissions, relocating residents, or ceasing the violation within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the ~~board~~ *department*. On receipt of the request, the ~~board~~ *department* shall schedule a hearing. Until issuance of a contrary decision by the ~~board~~ *department*, a department order concerning corrective action remains effective and enforceable.

(2) If, after a hearing held under subsection (1), the ~~board~~ *department* finds that a violation has occurred, it shall issue an appropriate order for the prevention, abatement, or control of the violation involved or the taking of other corrective action. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease and the time limits for particular action in preventing, abating, or controlling the violation. If, after a hearing on an order contained in a notice, the ~~board~~ *department* finds that a violation has not occurred or is not occurring, it shall declare the ~~department~~ order void.

(3) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted pursuant to this section.

(4) Instead of or in addition to issuing the order provided for in subsection (1), the department may:

(a) require that the alleged violators appear before the ~~board~~ *department* for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under any other applicable provisions of part 1 or 2 of this chapter.

(5) Before acting under this section, the department shall attempt to obtain voluntary compliance through a warning, conference, or any other appropriate means.

(6) In connection with a hearing held pursuant to this section, the ~~board~~ *department* may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of any party."

Section 253. Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of health care facility license — provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has heen convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed te comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation ~~will be~~ *is* in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the ~~board or~~ court."

Section 254. Section 50-5-208, MCA, is amended to read:

"**50-5-208. Hearing required.** (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the ~~board~~ *department*.

(2) Notice ~~shall~~ *must* be given the applicant or licensee of a date, not less than 15 days after mailing or service, for a hearing before the ~~board~~ *department*.

(3) The decision of the ~~board~~ *department* is final 30 days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal ~~shall~~ *must* be in the district court where the facility is located or will be located."

Section 255. Section 50-5-226, MCA, is amended to read:

"**50-5-226. Placement in personal-care facilities.** (1) A personal-care facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.

(2) A resident of a personal-care facility licensed as a category A facility under 50-5-227 may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time.

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(3) A resident of a personal-care facility licensed as a category B facility under 50-5-227 must have a signed statement from a physician agreeing to the resident's admission to the facility if the resident is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

(4) A resident of a personal-care facility who needs skilled nursing care must have a signed statement, renewed on an annual basis for a category A facility and on a quarterly basis for a category B facility, from a pbysician, a physician assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of tbe facility and who:

(a) actually visited the facility within tbe year covered by the statement for a category A facility and within the calendar quarter covered by tbe statement for a category B facility;

(b) bas certified that the particular needs of the resident can be adequately met in the facility; and

(c) bas certified that there bas been no significant cbange in bealth care status that would require another level of care.

(5) The department shall~~, in consultation with the department of social and rehabilitation services,~~ provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, the resident's physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers wbile resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by individuals referred to in subsection (3);

(c) a metbod by whicb the results of any screening decision made pursuant to rules established under subsection (5)(b) may be appealed by tbe facility operator or by or on behalf of a resident or prospective resident;

(d) standards for operating a category A personal-care facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility; and

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(e) standards for operating a category B personal-care facility, which must include the standards for a category A personal-care facility and additional standards for assessment of residents, care planning, qualifications and training of staff, restraint use and reduction, prevention and care of pressure sores, incontinence care, and the storage and administration of drugs."

Section 256. Section 50-5-227, MCA, is amended to read:

"**50-5-227. Licensing personal-care facilities.** (1) The department shall~~, in consultation with the department of social and rehabilitation services,~~ by rule adopt standards for licensing and operation of personal-care facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The following licensing categories must be used by the department in adopting rules under subsection (1):

(a) category A—a facility providing personal care to six or more residents who may not be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications; or

(b) category B—a facility providing personal care to five or fewer residents who may be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications.

(3) The department may by rule establish license fees, inspection fees, and fees for patient screening. Fees must be reasonably related to service costs."

Section 257. Section 50-5-301, MCA, is amended to read:

"**50-5-301. When certificate of need is required — definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies,

surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site te another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is suhmitted to the department; and

(iii) the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;

(d) tbe acquisition hy any person of major medical equipment, provided the acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made hy or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency;

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediato nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(i) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, or inpatient rehabilitation.

(2) For purposes of subsection (1)(h), a change in bed capacity occurs on the dato new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

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(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or residential treatment facility. The term does not include:

(i) a hospital, except te the extent that a hospital is subject to certificato of need requirements pursuant to subsection (1)(i); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include adult foster care, licensed under 52-3-303; community homes for the developmentally disabled, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under tbe authority of the department of corrections ~~and human services~~.

(c) "Obligation for capital expenditure" does not include the autborization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000."

Section 258. Section 50-5-602, MCA, is amended to read:

"50-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~2-15-2101~~ *2-15-2201*.

(2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ system or disease entity.

(3) "Residency training" means a community-based family practice program to train family practice resident physicians, sponsored by one or more

community hospitals and physicians in Montana, for inpatient and outpatient training.

(4) "Resident physician" means any physician in advanced medical specialty training."

Section 259. Section 50-5-1103, MCA, is amended to read:

"**50-5-1103. Definitions.** In this part the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person holding a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of *public* health and ~~environmental sciences~~ *human services provided for in 2-15-2201.*

(4) "Facility" or "long-term care facility" means a facility or part ~~thereof~~ *of a facility* licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility."

Section 260. Section 50-6-102, MCA, is amended to read:

"**50-6-102. Department to establish and administer program.** The department of *public* health and ~~environmental sciences~~ *human services* shall establish and administer an emergency medical services program."

Section 261. Section 50-6-103, MCA, is amended to read:

"**50-6-103. Powers of department.** (1) The department of *public* health and ~~environmental sciences~~ *human services* is authorized to confer and cooperate with any and all other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any and all funds which are now available or which may be donated, granted, or appropriated to the department."

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Section 262. Section 50-6-104, MCA, is amended to read:

"**50-6-104. Interdepartmental cooperation required.** The department of *public* health and ~~environmental sciences~~ *human services*, the department of justice, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis."

Section 263. Section 50-6-203, MCA, is amended to read:

"**50-6-203. Rules.** (1) The board, after consultation with the department of *public* health and ~~environmental sciences~~ *human services*, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of emergency medical technicians and administration of drugs.

(2) The board may, by rule, establish various levels of emergency medical technician certification and shall specify for each level the training requirements, acts allowed, recertification requirements, and any other requirements regarding the training, performance, or certification of that level of emergency medical technician that it considers necessary or desirable."

Section 264. Section 50-6-207, MCA, is amended to read:

"**50-6-207. Construction.** ~~Nothing in this~~ *This* part ~~shall~~ *may not* be construed to detract from the powers granted to the department of *public* health and ~~environmental sciences~~ *human services* to regulate emergency medical services provided for in part 3 of this chapter."

Section 265. Section 50-6-302, MCA, is amended to read:

"**50-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) *(a)* "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include a motor vehicle or aircraft owned by or operated under the direct control of the United States. The term also does not include air transportation services, such as charter or fixed-based operators, regulated by the federal aviation administration, that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

~~(3) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

~~(4)~~*(3)* "Department" means the department of *public* health and ~~environmental sciences,~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

~~(5)~~*(4)* "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

~~(6)~~*(5)* "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

~~(7)~~*(6)* "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule hut may not transport patients.

~~(8)~~*(7)* "Off-line medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers ~~his~~ *the physician's* services as an off-line medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000.

~~(8)~~*(8) (a)* "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(b) The term does not include a person who is nonambulatory and who needs transportation assistance solely because tbat person is confined to a wheelchair as ~~his~~ *the person's* usual means of mobility.

~~(10)~~*(9)* "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States."

Section 266. Section 50-6-308, MCA, is amended to read:

"50-6-308. Cancellation of license. The department may cancel a license if it finds that the licensee has:

(1) violated any provision of this part or any rule of the department or order of the department ~~or board~~; and

(2) failed or refused to remedy or correct the violation."

Section 267. Section 50-6-310, MCA, is amended to read:

"50-6-310. Notice and hearing required. (1) The department may not deny or cancel a license without:

(a) delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) an opportunity to answer at a hearing before the ~~board~~ *department* to show cause, if any, why the license should not be denied or canceled.

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(2) The licensee shall make written request to the ~~board~~ *department* for a hearing within 10 days after notice of the grounds or charges has been received."

Section 268. Section 50-6-314, MCA, is amended to read:

"**50-6-314. Authority of ~~board or~~ department to compel and take testimony.** In any proceeding under this part, the ~~board or~~ department may administer oaths, issue subpoenas, summon witnesses, and take testimony of any person within the state."

Section 269. Section 50-6-315, MCA, is amended to read:

"**50-6-315. County attorney to prosecute violations.** When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person violating this part or any rule of the department or order issued by the department ~~or board~~."

Section 270. Section 50-6-316, MCA, is amended to read:

"**50-6-316. Criminal and civil penalties.** (1) Any person violating any provision of this part or any rule of the department or order issued by the department ~~or board shall be~~ *is* guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense, not less than $75 or more than $200 for the second offense, and for third and subsequent offenses, not less than $200 or more than $500 or imprisoned in the county jail not to exceed 90 days.

(2) A person who violates any provision of this part or any rule of the department or order issued by the department ~~or board~~ is subject to a civil penalty not to exceed $1,000 for each violation. Each day of violation constitutes a separate violation.

(3) An action commenced under subsections (2) through (6) does not bar administrative enforcement of this part as provided in 50-6-327 or an injunction as provided in 50-6-326.

(4) If the department has reason to believe that a person has violated any provision of this part or any rule of the department or order issued by the department ~~or board~~, it shall bring an action in the name of the state against ~~such~~ *the* person to impose, assess, and recover the civil penalties as provided in subsection (2).

(5) Any civil penalty collected under subsections (2) through (6) is in lieu of the criminal penalty provided for in subsection (1).

(6) All penalties collected under subsections (2) through (5) must be transmitted to the state treasurer for deposit in the state general fund."

Section 271. Section 50-6-324, MCA, is amended to read:

"**50-6-324. Advisory committee.** (1) The ~~board or~~ department may establish an advisory committee to assist in making determinations regarding:

(a) a request for waiver of licensing requirements as provided in 50-6-325;

(b) the resolution of a complaint as described in 50-6-323; and

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(c) issuance of an order authorized under this part.

(2) The advisory committee must be established pursuant to rules adopted by the department."

Section 272. Section 50-6-325, MCA, is amended to read:

"**50-6-325. Waiver of licensing requirements.** (1) The department may waive any licensing requirements under this part upon submission and approval of a written application for waiver by a person subject to licensing under this part.

(2) The department may waive a licensing requirement if the person provides sufficient justification to allow a finding by the department that:

(a) the waiver is necessary to avoid significant financial or other hardship; and

(b) granting the waiver would not jeopardize patient care or the public health and safety.

(3) A waiver must be issued on a temporary basis, not exceeding 6 months, and may be renewed by the department upon submission and approval of an additional application for waiver of licensing requirements.

(4) A waiver granted by the department may be revoked for good cause after notice and an opportunity for a hearing before the department have been provided to the person affected by the department's action.

~~(5) The decision of the department to deny or revoke a waiver under this section may be appealed to the board.~~"

Section 273. Section 50-6-326, MCA, is amended to read:

"**50-6-326. Injunction to require compliance.** (1) The department may seek an injunction from an appropriate district court to require compliance with this part or te require compliance with a rule of the department or an order issued by the department ~~or board~~. The court to which the department applies for an injunction may issue a temporary restraining order if there is reasonable cause to believe that the allegations of the department are true.

(2) An action for injunctive relief initiated by the department pursuant to subsection (1) may be commenced in the district court of the county in which the defendant is located, resides, or is doing business. If the defendant cannot be located in Montana, the action may be commenced in the county where the violation is alleged to occur or have occurred, and the court has jurisdiction te restrain the violation and require compliance."

Section 274. Section 50-6-327, MCA, is amended to read:

"**50-6-327. Administrative enforcement.** (1) If the department believes that there is a violation of this part or a violation of a rule of the department, it may serve notice of the violation upon the alleged violator or ~~his~~ *the alleged violator's* agent. Service of notice must be by certified mail and is complete on the date of mailing.

(2) Notice required under subsection (1) must:

(a) specify the provision of this part or the rule alleged to be violated;

(b) contain a statement of the facts alleged to constitute a violation; and

(c) include an order that the alleged violator take necessary corrective action within a reasonable period of time as stated in the order. The order may include corrective action, such as decertification of a specific vehicle or aircraft from use as an ambulance or restriction on the use of a specific individual or type of or level of service in providing emergency medical service.

(3) An order issued pursuant to subsection (2) becomes final unless the person named in the order requests a hearing before the ~~board~~ *department*. ~~Such~~ *The* request for a hearing must be made in writing to the ~~board~~ *department* at least 30 days after the date of service of notice of an alleged violation. On receipt of the request, the ~~board~~ *department* shall schedule a date for a hearing.

(4) If, after a hearing, the ~~board~~ *department* finds that a violation has occurred, it shall either affirm or modify the *corrective action* order ~~issued by the department~~. An order issued by the ~~board~~ *department after hearing* may prescribe the dato by which the violation must cease and may prescribe time limita for corrective action. If, after a hearing, the ~~board~~ *department* finds ~~no~~ *a* violation has *not* occurred, it shall rescind the ~~department's~~ *corrective action* order."

Section 275. Section 50-8-101, MCA, is amended to read:

"50-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~corrections and human services, the department of health and environmental sciences, and the department of family~~ *public health and human* services *provided for in 2-15-2201*.

(2) "Facility" means:

(a) ~~for the department of corrections and human services,~~ nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol/drug treatment or emergency detoxification;

~~(b) for the department of family services:~~

~~(i)~~*(b)* community homes for the developmentally disabled, community homes for physically disabled persons, and adult foster care homes; ~~and~~

~~(ii)~~*(c)* youth care facilities; ~~and~~

~~(c) for the department of health and environmental sciences:~~

~~(i)~~*(d)* public accommodations, including roominghouses and retirement homes, hotels, and motels;

~~(ii)~~*(e)* health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

~~(iii)~~*(f)* freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

~~(iv)~~*(g)* personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for liconsure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

Section 276. Section 50-8-102, MCA, is amended to read:

"**50-8-102. One-step licensing required.** ~~Each~~ *The* department shall provide one-step licensing of all facilities under its jurisdiction. One-step licensing is at a minimum the provision of a designated office within the department or, by agreement between departments, in another department, responsible for issuing facility licenses. The one-step licensing office shall facilitate intradepartmental certifications for licensure. When practicable, one-step licensure also includes:

(1) the coordination of all governmental licensing functions, state and local, required for the licensure of a facility for a program or a service and for health and safety standards. The coordination must include at a minimum the names, addresses, and functions of all governmental authorities enforcing such standards and may include the requirement that the responsible office be a clearinghouse for all forms and applications for other agencies and for assuming tbe responsibility for insuring timely inspections, reviews, and application processing by other agencies.

(2) the use of departmental employees to inspect specified types of facilities for particular health and safety standards as provided in 50-8-105."

Section 277. Section 50-9-102, MCA, is amended te read:

"**50-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "Board" means the Montana state board of medical examiners.

(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "Department" means the department of *public* health and ~~environmental sciences~~ *human services provided for in 2-15-2201*.

(5) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical

technicians, or other emergency services personnel acting within the ordinary course of their professions.

(6) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(7) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process.

(8) "Living will protocol" means a locally developed, community-wide method or a standardized, state-wide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(10) "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

(11) "Qualified patient" means a patient 18 or more years of age who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

(12) "Reliable documentation" means a standardized, state-wide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(14) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short timo."

Section 278. Section 50-10-101, MCA, is amended to read:

"**50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of *public* health and ~~environmental sciences~~ *human services provided for in 2-15-2201.*

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protecol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

Section 279. Section 50-15-101, MCA, is amended to read:

"**50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 tbrough 4, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)~~*(1)* "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

~~(3)~~*(2)* "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

~~(4)~~*(3)* "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

~~(5)~~*(4)* "Fetal death" means a birth after 20 weeks of gestation, or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery, that is not a live birth.

~~(6)~~*(5)* "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

~~(7)~~*(6)* "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

~~(8)~~*(7)* "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

~~(9)~~*(8)* "Person in charge of interment" means a person who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body.

~~(10)~~*(9)* "Physician" means a person legally authorized to practice medicine in this state.

~~(11)~~*(10)* "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data."

Section 280. Section 50-15-113, MCA, is amended to read:

"**50-15-113. Disclosure of information to governmental agencies.** (1) The ~~board may direct the~~ department ~~to~~ *may* disclose information from its records to federal, state, county, or municipal agencies for use only as prescribed by the ~~board~~ *department*.

(2) If ~~no~~ *the* identification of individuals is *not* made, the ~~board~~ *department* may permit the use of data contained in vital statistics records for research purposes.

(3) The department may provide transcripts to the federal agency responsible for vital statistics if it is reimbursed for costs."

Section 281. Section 50-15-206, MCA, is amended to read:

"**50-15-206. Permissible disclosure of birth out of wedlock.** (1) Disclosure of birth out of wedlock or information from which birth out of wedlock can be ascertained may he made only:

(a) upon an order of a court te determine personal or property rights. An adopted person of legal age may apply to the court for ~~such~~ an order.

(b) upon request of the department of ~~social and rehabilitation services, the department of family~~ *public health and human* services, the department of revenue, or a licensed adoption agency for purposes of custody or child support actions, social security eligibility determinations, or Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority unless the child has been placed for adoption.

(2) Except when an order of the court is sought, prior to disclosure, the requesting party must submit in writing to the department:

(a) proof of identity when appropriate;

(b) tbe need for the information; and

(c) the specific purpose for which the information is to he used. The information may be used only for that purpose."

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Section 282. Section 50-15-304, MCA, is amended to read:

"50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of a foreign state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of *public* health and ~~environmental sciences~~ *human services*" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in its files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original certificate to its place in its files and notify the local registrar and county clerk and recorder."

Section 283. Section 50-15-702, MCA, is amended to read:

"50-15-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(2) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

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(3) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a physician licensed to practice medicine in Montana."

Section 284. Section 50-16-101, MCA, is amended to read:

"50-16-101. Public officials and corporations to furnish information on request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of *public* health and ~~environmental sciences~~ *human services*."

Section 285. Section 50-16-102, MCA, is amended to read:

"50-16-102. Information on infant morbidity and mortality. (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of *public* health and ~~environmental sciences~~ *human services*, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an in-hospital staff committee.

(2) A person furnishing information under subsection (1) ~~of this section~~ is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) ~~of this section~~ may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of persons whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or ~~his~~ *the person's* legal representative, is prejudicial error resulting in a mistrial."

Section 286. Section 50-16-602, MCA, is amended to read:

"50-16-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(2) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease. The term does not include vital statistics information gathered under Title 50, chapter 15.

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(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board."

Section 287. Section 50-16-701, MCA, is amended to read:

"50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~2-15-2101~~ *2-15-2201*.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying the emergency services provider of exposure.

(4) "Emergency services provider" means a person employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(6) "Health care facility" means a health care facility as defined in 50-5-101.

(7) "Infectious disease" means a communicable disease transmittable through an exposure, including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.

(8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless."

Section 288. Section 50-16-1003, MCA, is amended to read:

"50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public healtb service.

(2) "Contact" means:

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or

(b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~2-15-2101~~ *2-15-2201*.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(13) "Person" means an individual, corporation, organization, or other legal entity.

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(14) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written matorials developed and provided by the department.

(16) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(17) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

(18) (a) "Writton informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the suhject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf, and that includes at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;

(iii) an explanation of whether and to whom the subject's name and test results may he disclosed;

(iv) a statement that the test may be obtained anonymously if the subject wishes;

(v) the name and address of a health care provider whom the subject approves to receive the subject's test results and te provide the subject with posttest counseling; and

(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive tost result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.

(b) The department shall develop a form agreement that may be used for purposes of this subsection."

Section 289. Section 50-17-102, MCA, is amended to read:

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"50-17-102. **Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved course of treatment" means a course of treatment for tuberculosis which includes medical treatment prescribed by a physician and consistent with acceptod medical standards, as well as appropriate followup to assure public health and safety as set out in the rules of the department.

(2) "Department" means the department of *public* health and ~~environmental sciences,~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(3) "Local board" means a city, county, city-county, or district board of health.

(4) "Tuberculosis" means a disease caused by mycobacterium tuberculosis."

Section 290. Section 50-18-102, MCA, is amended to read:

"50-18-102. **Powers and duties of department.** The department of *public* health and ~~environmental sciences~~ *human services* shall undertake to prevent, control, and prescribe treatments for sexually transmitted diseases and may conduct education campaigns for tbis purpose."

Section 291. Section 50-18-103, MCA, is amended to read:

"50-18-103. **Cooperation with federal agencies — federal funds.** (1) The department of *public* health and ~~environmental sciences~~ *human services* shall cooperate with federal agencies and may expend federal funds made available to the state for tbe prevention, control, and treatment of sexually transmitted diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of sexually transmitted diseases, deposit funds in the stato treasury, and disburse tbe funds."

Section 292. Section 50-18-104, MCA, is amended to read:

"50-18-104. **Serological test for syphilis.** (1) The department of *public* health and ~~environmental sciences~~ *human services* shall approve a standard serological test for syphilis. It shall also approve laboratories ~~which~~ *that* may make ~~such~~ *the* tests.

(2) On request, tbe department shall make laboratory tests required by this chapter."

Section 293. Section 50-18-105, MCA, is amended to read:

"50-18-105. **Rules of department binding.** Rules adopted by the department of *public* health and ~~environmental sciences~~ *human services* for carrying out the provisions of this chapter are binding on all persons and have the effect of law."

Section 294. Section 50-18-109, MCA, is amended to read:

"50-18-109. Permissible release of information concerning infected persons. (1) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

(a) to personnel of the department of *public* health and ~~environmental sciences~~ *human services*;

(b) to a physician who has written consent of the person whose record is requested;

(c) to a local health officer; or

(d) hy the department of *public* health and ~~environmental sciences~~ *human services* or a local health officer or board under the circumstances allowed by Title 50, chapter 16, part 6.

(2) For the purposes of this section, the term "information" includes all knowledge or intolligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, stato, or federal employees or officers engaged in sexually transmitted disease eradication work, and ~~such~~ *the* personnel are privileged.

(3) The purpose of this section is to protect and preserve the principle of confidentiality in sexually transmitted disease work by public personnel, local, state, and federal, sucb confidentiality being all important to the success of all sexually transmitted disease eradication work and endeavor, and to require that the principle of confidentiality in ~~such~~ *the* work remain inviolate."

Section 295. Section 50-18-113, MCA, is amended to read:

"50-18-113. Violation a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department of *public* health and ~~environmental sciences~~ *human services* concerning a sexually transmitted disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor."

Section 296. Section 50-19-101, MCA, is amended to read:

"50-19-101. Definitions. (1) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department."

Section 297. Section 50-19-201, MCA, is amended to read:

"50-19-201. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health and ~~environmental sciences~~ *human services provided for in 2-15-2201*.

(2) "Newborn" means any infant under 28 days of life.

(3) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not."

Section 298. Section 50-19-303, MCA, is amended to read:

"**50-19-303. Definitions.** For purposes of this part, the following definitions apply:

(1) "Council" means the MIAMI project advisory council established in 2-15-2109.

(2) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~2-15-2101~~ *2-15-2201*.

(3) "Low income" means, with respect to an individual or family, income that does not exceed the official federal poverty threshold as defined by the federal office of management and budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(4) "Project" means the MIAMI project established in 50-19-311.

(5) "Service provider" means a person, agency, or organization that has a contract to provide services under the MIAMI project."

Section 299. Section 50-20-104, MCA, is amended to read:

"**50-20-104. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abortion" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth.

(2) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(3) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(4) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure te ~~her~~ *the woman* by the physician who is to perform the abortion of ~~such of~~ the following information ~~as~~ *that* is reasonably chargeable to the knowledge of the physician in ~~his~~ *the physician's* professional capacity:

(a) the stage of development of the fetus, the method of abortion to be utilized, and the effects of such abortion method upon the fetus;

(b) the physical and psychological effects of abortion; and

(c) available alternatives to abortion, including childbirth and adoption.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid."

Section 300. Section 50-21-102, MCA, is amended to read:

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"**50-21-102. Procedure to procure cadavers.** The procedure to procure a human body for use in teaching and demonstrations of anatomy is as follows:

(1) The medical school shall apply to the person or organization having custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy.

(2) The medical school shall file a notarized statement with the department of *public* health and ~~environmental sciences~~ *human services* showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) The body ~~shall~~ *must* be kept at the unit, institution, or hospital for at least 3 weeks after the date of death before it can be used.

(4) The medical school shall pay the costs of special preparation and transportation of the body.

(5) A burial permit ~~shall~~ *must* accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school.

(6) If there was no request by the deceased person that ~~his~~ *the deceased's* body be buried immediately, the person or organization having custody may deliver an unclaimed body to the medical school applying.

(7) The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy."

Section 301. Section 50-21-103, MCA, is amended to read:

"**50-21-103. Limitations on right to perform autopsy or dissection.** The right to perform an autopsy, dissect a human body, or make any postmortem examination involving dissection of any part of a body is limited to cases ~~where~~ *in which*:

(1) specifically authorized by law;

(2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize dissection or autopsy;

(3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;

(4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent ~~so~~ authorized;

(5) the decedent died in a hospital operated by the United States department of veterans affairs, Montana school for the deaf and blind, or an institution in the department of corrections *or the department of public health* and human services, leaving no surviving husband, wife, or next of kin responsible by law for burial and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;

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(6) the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial."

Section 302. Section 50-23-101, MCA, is amended to read:

"**50-23-101. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department of *public* health and ~~environmental sciences~~ *human services*" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(2) "Department of livestock" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(4) "Wild animal" means a skunk, fox, raccoon, or bat. Other species of normally nondomesticated animals known to be capable of transmitting rabies may be added to this list through the adoption of rules by the department of *public* health and ~~environmental sciences~~ *human services* with the approval of the department of livestock."

Section 303. Section 50-23-103, MCA, is amended to read:

"**50-23-103. Quarantine — destruction — testing.** (1) Whenever a person unlawfully possesses a wild animal, the department of *public* health and ~~environmental sciences~~ *human services* or the department of livestock may impound the animal and take any other action considered reasonable to protect public health.

(2) If a wild animal, whether unlawfully or lawfully in the possession of a person, has bitten or otherwise exposed a person to the potentiality of contracting rabies, the animal may be impounded by the department of *public* health and ~~environmental sciences~~ *human services*, the department of livestock, or a local health officer and either quarantined or destroyed and the animal's brain may be tested for rabies.

(3) Any lawfully possessed wild animal that is quarantined pursuant to subsection (2) and found not to be rabid ~~shall~~ *must* be returned to its owner."

Section 304. Section 50-23-105, MCA, is amended to read:

"**50-23-105. Authority to adopt rules.** The department of *public* health and ~~environmental sciences~~ *human services*, with the approval of the department of livestock, may adopt rules necessary for the implementation and administration of this part."

Section 305. Section 50-23-106, MCA, is amended to read:

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"**50-23-106. Injunction — recovery of costs.** (1) In addition to any other remedies provided by law, the department of *public* health and ~~environmental sciences~~ *human services* or, upon the request of the department of *public* health and ~~environmental sciences~~ *human services*, an appropriato county attorney may file an action to enjoin a violation of this part or rule adopted pursuant to it.

(2) The department of *public* health and ~~environmental sciences~~ *human services* or the county attorney, if either prevails in any action brought pursuant to subsection (1) ~~above~~, is entitled to recover from the other party the costs, expenses, and reasonable attorney's fees incurred."

Section 306. Section 50-30-102, MCA, is amended to read:

"**50-30-102. Definitions.** In this chapter, the following definitions apply:

(1) "Commerce" means all commerce within this state and subject to the jurisdiction ~~thereof~~ *of this state* and includes the operation of any business or service establishment.

(2) "Court" means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs.

(3) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(4) "Person" includes an individual, partnership, corporation, or association or its legal representative or agent."

Section 307. Section 50-31-103, MCA, is amended to read:

"**50-31-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department te be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source that is disinfected and placed in a sealed container or package for human consumption.

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(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or te the human body is capable (alone or through reaction with other substance) of imparting color therete.

(b) This term does not include material which has been or is exempted under the federal act.

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tebacco or tebacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer,

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processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed tbe drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and contains not more than 10 parts per million total solids.

(14) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(h) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections *(18)*(a), *(18)*(b), or *(18)*(c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or hy addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22)(a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience te evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intonded for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may bave:

(i) a fat content no greater than the federal standard set forth in 9 ~~C.F.R.~~ *CFR* 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

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(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means any list presented to the patron which states the food items for sale in a food service establisbment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(h) the drug, as a result of investigations to determine its safety and effectiveness for uso under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) "Organic food" means food that conforms to the definition in 50-31-222.

(33) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

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(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(34) "Person" includes an individual, partnership, corporation, and association.

(35) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.~~, secs.~~ 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(36) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(37) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of such food in a package.

(39) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the pharmacopoeia of the United States of America, 1980.

(40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

~~(43) "State board" or "board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(44)~~*(43)* "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

~~(45)~~*(44)* "Water-bottling plant" means any facility in which bottled water is produced.

~~(45)~~*(45)* "Well water" means wator that:

(a) is taken from below the ground through a piping device or similar installed device utilizing external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."

Section 308. Section 50-31-307, MCA, is amended to read:

"**50-31-307. Dispensing of prescription drugs.** (1) A drug intended for use by man that falls in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling any written or oral prescription if the refilling is authorized by the prescriber either in the original prescription or by oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administor the drug.

(3) If the drug is a factery prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of *public* health and ~~environmental sciences~~ *human services* pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale."

Section 309. Section 50-31-501, MCA, is amended to read:

"**50-31-501. Prohibited acts.** The following acts and the causing ~~thereof~~ *of the acts* within the state of Montana are ~~hereby~~ prohibited:

(1) the manufacture, sale or delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adultorated or misbranded;

(2) the adulteration or misbranding of any food, drug, device, or cosmetic;

(3) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;

(4) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of 50-31-205 or 50-31-311;

(5) the dissemination of any false advertisement;

(6) the refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 50-31-106;

(7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state of Montana from whom ~~he~~ *the person* received in good faith the food, drug, device, or cosmetic;

(8) the removal or disposal of a detained or embargoed article in violation of 50-31-509;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, drug, device, or cosmetic if ~~such~~ *the* act is done while ~~such~~ *the* article is held for sale and results in ~~such~~ *the* article being adulterated or misbranded;

(10) forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act;

(11) the using on the labeling of any drug or in any advertisement relating to ~~such~~ *the* drug of any representation or suggestion that an application with respect to ~~such~~ *the* drug is effective under 50-31-311 or that ~~such~~ *the* drug complies with the provisions of 50-31-311;

(12) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor ~~thereof~~ to maintain for transmittal or to transmit to any practitioner licensed by applicable law to administer ~~such~~ *the* drug who makes written request for information as to ~~such~~ *the* drug true and correct copies of all printed matter ~~which~~ *that* is required to be included in any package in which that drug is distributed or sold or ~~such~~ other printed matter as is approved under the federal act. ~~Nothing in this subsection shall be construed to~~ *This subsection does not* exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(13) placing or causing to be placed upon any drug or device or container ~~thereof~~ *of a drug*, with intent to defraud, the trade name, other identifying mark, or imprint of another or any likeness of ~~any of~~ the ~~foregoing~~ *name, mark, or imprint*;

(14) selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container ~~thereof~~ *of the drug or device* with knowledge that the trade name, other identifying

mark, or imprint of another or any likeness of any of the foregoing has been placed ~~thereon~~ *on the drug, device, or container* in a manner prohibited by subsection (13) ~~hereof~~;

(15) making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name, other identifying mark, or imprint of another or any likeness of ~~any of~~ the ~~foregoing~~ *name, mark, or imprint* upon any drug, device, or container ~~thereof~~ *of the drug or device*;

(16) the using by any person to ~~his~~ *the person's* own advantage or revealing, other than to ~~the state board,~~ officers or employees of the department~~,~~ or the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of this chapter concerning any method or process ~~which~~ *that* as a trade secret is entitled to protection;

(17) the distribution in commerce of a consumer commodity, as defined in this chapter, if ~~such~~ *the* commodity is contained in a package or if there is affixed te that commodity a label which does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter. This prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except te the extent that ~~such~~ *the* persons:

(a) are engaged in the packaging or labeling of ~~such~~ *the* commodities; or

(b) prescribe or specify by any means the manner in which ~~such~~ *the* commodities are packaged or labeled.

(18) the labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this chapter."

Section 310. Section 50-34-101, MCA, is amended to read:

"**50-34-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of *public* health and ~~environmental sciences,~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(2) "Flour" means the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) phosphated flour, also known as phosphated white flour or phospbated wheat flour, but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

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(3) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

(4) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, parkerhouse rolls, and hard rolls, such as Vienna rolls, kaiser rolls, yeast-raised sweet rolls, or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and buttorfly rolls.

(5) "White bread" means any bread made with flour, whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread."

Section 311. Section 50-36-101, MCA, is amended to read:

"**50-36-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of *public* health and ~~environmental sciences~~ *human services*, provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(2) "Mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion, or pillow filled with any soft material capable of use for sleeping or reclining purposes."

Section 312. Section 50-40-103, MCA, is amended to read:

"**50-40-103. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(2) "Enclosed public place" means any indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5) "Place of work" means an enclosed room where more than one employee works.

(6) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

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(7) "Smoking area" means a designated area in which smoking is permitted."

Section 313. Section 50-44-102, MCA, is amended to read:

"**50-44-102. Establishment of program.** (1) The department of *public* health and ~~environmental sciences~~ *human services* shall establish a program to provide treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, which will have a lifesaving effect in the care and treatment of ~~such~~ *the* persons. The department shall extend financial assistance to persons suffering from chronic renal diseases in obteining the medical, nursing, pharmaceutical, and technical services necessary to care for ~~such~~ *the* diseases, including the rental or purchase of home dialysis equipment and supplies.

(2) The department shall by rule establish standards for determining the amount or duration of financial assistance to be extended to individuals under this program in order that treatment ~~shall be~~ *is* provided to those who are financially unable to obtain services without causing severe economic imbalance in the family economic unit. ~~Such~~ *The* standards ~~shall~~ *must* be established without reference to maximum or minimum income levels.

(3) The department is not liable to any person for a failure to provide financial assistance to that person under this section if sufficient funds are not appropriated by the legislature."

Section 314. Section 50-49-103, MCA, is amended to read:

"**50-49-103. Definitions.** For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Council" means the state advisory council on food and nutrition established in 2-15-2210.

(2) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* ~~as~~ provided *for* in ~~2-15-2101~~ *2-15-2201*.

(3) "Food programs and nutrition services" means public or private programs to provide food and nutrition assistance to persons who have need. The term includes but is not limited to the food stamp program, food programs for the elderly, and supplemental food programs for women, infants, and children."

Section 315. Section 50-50-102, MCA, is amended to read:

"**50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

~~(2)~~*(1)* "Commercial establishment" means an establishment operated primarily for profit.

~~(2)~~*(2)* "Department" means the department of *public* health and ~~environmental sciences,~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

~~(4)~~*(3)* "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

~~(5)~~*(4)* "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

~~(6)~~*(5)* "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection witb it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

~~(7)~~*(6)* "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establisbment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to ita members.

~~(5)~~*(7)* "Food warehouse" means a commercial establishment and buildings or structures in connection with it used te store food, drugs, or cosmetics for distribution to retail outlets, but does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

~~(9)~~*(8)* "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

~~(10)~~*(9)* "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, stere, or display meat or meat products for sale to the public or for human consumption.

~~(11)~~*(10)* "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

~~(12)~~*(11)* "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

~~(13)~~*(12)* "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment."

Section 316. Section 50-51-102, MCA, is amended to read:

"50-51-102. Definitions. Unless the contoxt requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences.~~

~~(2)~~*(1)* "Commercial establishment" means an establishment operated primarily for profit.

~~(3)~~*(2)* "Department" means the department of *public* health and ~~environmental sciences~~ *human services provided for in 2-15-2201.*

~~(4)~~*(3)* "Establishment" means a hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home.

~~(5)~~*(4)* "Hotol" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

~~(3)~~*(5)* "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, boardinghouse, tourist home, retirement home, or roominghouse.

~~(7)~~*(6)* "Roominghouse", "boardinghouse", or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

~~(3)~~*(7)* "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a privato home when the accommodations are offered for hire or rent for the use of the traveling public.

~~(9)~~*(8)* "Transient guest" means a guest for only a brief stay, such as the traveling public."

Section 317. Section 50-52-101, MCA, is amended to read:

"**50-52-101. Definitions.** As used in this chaptor, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Campground" means a parcel of land available to and principally used hy the public for camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.

(2) "Department" means the department of *public* health and ~~environmental sciences~~ *human services provided for in 2-15-2201.*

(3) "Establishment" means a campground, trailer court, work camp, or youth camp.

(4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous lots, in the possession of, owned by, or managed by the same person.

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(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of a campground, trailer court, work camp, or youth camp.

(6) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(7) *(a)* "Trailer court" means a parcel of land upon which two or more spaces are available to the public and designated for occupancy by trailers or mobile homes for use as residences~~,~~.

(b) ~~except that the~~ *The* term does not includo a parcel composed of platted lots, each lot of which is filed with the county clerk and recorder, contains only one trailer space, and is served by a public water supply system and public sewage system which meet the requirements of rules for such systems adopted pursuant to Title 75, cbapter 6, part 1, and which is located within the boundaries of an incorporated city or town.

(8) "Work camp" means a parcel of land on which housing is provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of ~~such~~ *the* person and the families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited te camping spaces; trailer parking spaces; mobile, modular, or permanent barracks or structures; and any appurtenant wator supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. "Housing" does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

(9) "Youth camp" means a parcel of land on which permanent buildings, tonts, or other structures are maintained as living quarters for 10 or more people and that is used primarily for educational or recreational use by minors. The term includes any appurtenant wator supply and distribution system, sewage collection and disposal system, solid waste collection and disposal systom, or food service and dining facilities. The term does not include any site used solely by the members and their families of a private organization that owns the site."

Section 318. Section 50-53-102, MCA, is amended to read:

"50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of *public* health and ~~environmental sciences,~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

(4) "Person" means a person, firm, partnership, corporation, organization, the stato, or any political subdivision of the state.

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(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(6) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, batbing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of ~~his~~ *the owner's* family, or their invited guests; or

(b) medicinal hot watsr baths for individual use."

Section 319. Section 50-60-204, MCA, is amended to read:

"**50-60-204. Public hearing required — effective date of certain rules.** (1) Except as provided in subsection (2) ~~of this section~~, ~~no~~ *a* rule, amendment, or repeal of the state building code may take effect until after a public hearing by the department.

(2) If a hearing has been held by the department of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the department of *public* health and ~~environmental sciences~~ *human services*, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code."

Section 320. Section 50-70-103, MCA, is amended to read:

"**50-70-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

~~(2) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

~~(3)~~*(2)* "Department" means the department of *public* health and ~~environmental sciences,~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

~~(4)~~*(3)* "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

~~(5)~~*(4)* "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice which is hazardous to health;

(c) has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside ~~his~~ *the person's* employment.

~~(6)~~*(5)* "Occupatienal health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

~~(7)~~*(6)* "Person" means an individual, partnership, firm, association, municipality, public or privato corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

~~(8)~~*(7)* "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

~~(9)~~*(8)* "Sanitary facilities" means toilets, showers, dressing rooms, lunch rooms, sewage disposal systems, and potable water systems.

~~(10)~~*(9)* "Threshold limit values" means airborne concentrations of substances which, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

~~(11)~~*(10)* "Workplace" is a place or location where a person is gainfully employed.

~~(12)~~*(11)* "Worker" is a person gainfully employed at any place."

Section 321. Section 50-70-105, MCA, is amended to read:

"**50-70-105. Duties of department.** The department shall:

(1) enforce ~~board~~ orders by appropriate administrative and judicial proceedings;

(2) secure necessary scientific, technical, administrative, and operational service~~, including laboratory facilities,~~ by contract or otherwise;

(3) prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease;

(4) encourage voluntary cooperation by persons and affected groups to achieve the purpose of this chapter;

(5) encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control;

(6) determine by means of field studies and sampling the degree of health hazard at any workplace in the state;

(7) collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases;

(8) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstato and interlocal agencies, the United States, and interested persons or groups;

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(9) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received by the department under this section ~~shall~~ *must* be deposited in the state treasury to the account of the department.

(10) adopt, amend, and repeal rules implementing and consistent with this chapter;

(11) hold hearings that relate to any aspect of or matter in the administration of this chapter at any place designated by the department;

(12) designate an attorney to assist in conducting hearings and appoint a reporter who must be present at all hearings and who shall take full stenographic notes of all proceedings, transcripts of which are available to the public at cost;

(13) issue orders necessary to carry out this chapter;

(14) require access to records relating to emissions;

(15) establish threshold limit values of airborne contaminants for the state as a whole."

Section 322. Section 50-70-108, MCA, is amended to read:

"50-70-108. Application for federal aid. The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control ~~provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this chapter and any other applicable requirements of law.~~"

Section 323. Section 50-70-109, MCA, is amended to read:

"50-70-109. Confidentiality of records. (1) Records or other information concerning pollutants or operations ~~which~~ *that* are furnished to or obtained by the ~~board or~~ department and ~~which~~ *that*, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or ~~which~~ *that* would tend to affect adversely ~~his~~ *the owner's or operator's* competitive position are only for the confidential use of the ~~board or~~ department in the administration of this chapter unless the owner expressly agrees to their publication or availability to the general public.

(2) This section does not prevent the use of records or information by the ~~board or~~ department in compiling or publishing analyses or summaries relating to the general condition at the workplace if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section."

Section 324. Section 50-70-110, MCA, is amended to read:

"50-70-110. Hearing officer. The ~~board may designate the~~ director of *public* health and ~~environmental sciences~~ *human services may act* as the hearing officer at any hearing set by the ~~board~~ *department* and ~~authorize him to~~ *may* make rulings on evidence and conduct the hearing. The ~~board or~~ the director of

public health and ~~environmental sciences~~ *human services* as hearing officer may compel the attendance of witnesses and the production of evidence at hearings."

Section 325. Section 50-70-111, MCA, is amended to read:

"**50-70-111. Hearings.** (1) ~~No~~ *A* rule, amendment, or repeal ~~shall~~ *may not* take effect except after public hearing on due notice. ~~Such~~ *The* notice ~~shall~~ *must* be given by public advertisement not less than 20 or more than 30 days prior to the date set for the hearing.

(2) ~~Nothing in this~~ *This* section ~~requires~~ *does not require* a hearing prior to the issuance of an emergency order pursuant to 50-70-117.

(3)(a) Any person aggrieved by any order of the ~~board~~ *department* may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(i) The ~~board~~ *department* acted without or in excess of its powers.

(ii) The order was procured by fraud.

(iii) The order is contrary to the evidence.

(iv) The applicant has discovered new evidence material to ~~him which he~~ *the applicant that the applicant* could not, with reasonable diligence, have discovered and produced at the hearing.

(v) Competent evidence was excluded to the prejudice of the applicant.

(b) The petition must be in ~~such~~ *a* form and filed in ~~such~~ *the* time ~~as~~ *that* the ~~board shall~~ *department may* prescribe."

Section 326. Section 50-70-112, MCA, is amended to read:

"**50-70-112. Permits.** (1) The ~~board~~ *department* may by rule prohibit the installation, alteration, or use of any machine, equipment, device, or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit has been obtained from it.

(2) The ~~board~~ *department* may require that applications for permits ~~shall~~ *must* be accompanied by plans, specifications, and ~~such~~ other information ~~as~~ *that* it ~~deems~~ *considers* necessary.

(3) The ~~board~~ *department* shall provide for the issuance, suspension, revocation, and renewal of permits which it may require pursuant to this section.

(4) If a permit is required, the ~~board~~ *department* ~~must~~ *shall* decide within 90 days after receiving application whether or not *to issue* the permit ~~will issue~~. If ~~no~~ *a* decision is *not* rendered within that time, permission ~~shall be deemed~~ *is considered* to have been denied."

Section 327. Section 50-70-113, MCA, is amended to read:

"**50-70-113. Emissions prohibited.** (1) The ~~board~~ *department* may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control

occupational diseases. Except as otherwise provided in or pursuant to this section, ~~such~~ *the* levels, concentrations, or quantities ~~shall~~ *must* be controlled and ~~no~~ emissions in excess ~~thereof shall be lawful~~ *of the limitations are unlawful*. The ~~board~~ *department* may also establish standards for sanitary facilities and lunchrooms.

(2) The ~~board~~ *department* may by rule use any widely recognized measuring system for measuring emissions of pollutants.

(3) ~~Should~~ *If* federal minimum standards of industrial hygiene or occupational health ~~be~~ *are* set by federal law, the ~~board~~ *department* may, if necessary, set more stringent standards by rule."

Section 328. Section 50-70-114, MCA, is amended to read:

"**50-70-114. Variances.** (1) Any person who owns or is in control of any plant, building, structure process, or equipment may apply to the ~~board~~ *department* for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of pollutants. The application ~~shall~~ *must* be accompanied by ~~such~~ *the* information and data ~~as~~ *that* the ~~board~~ *department* may require.

(2) The ~~board~~ *department* may grant the exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(3) ~~No~~ *An* exemption or partial exemption may *not* be granted pursuant to this section except after a public hearing on ~~due~~ notice and until the ~~board~~ *department* has considered the relative interests of the applicant and the worker or workers involved.

(4) ~~No~~ *An* exemption or partial exemption pursuant to this section may *not* he grantsd for a period to exceed 1 year, but an exemption or partial exemption may be renewed ~~for like periods~~ if ~~no~~ *a* complaint is *not* made to the ~~board~~ *department* ~~on account thereof~~ or if, after a complaint has been made and ~~duly~~ considered at a public hearing held by the ~~board~~ *department* on ~~due~~ notice, the ~~board~~ *department* finds that renewal is justified. ~~No~~ *A* renewal may *not* be granted except on application ~~therefor~~. Application for renewal ~~shall~~ *must* be made at least 60 days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give public notice of the application in accordance with the rules of the ~~board~~ *department*. Any renewal pursuant to this subsection ~~shall~~ *must* be on the same grounds and subject to the same limitations and requirements as provided in subsection (2)(a) ~~of this section~~.

(5) An exemption, partial exemption, or renewal ~~thereof~~ is not a right of the applicant or holder but ~~shall be~~ *is* in the discretion of the ~~board~~ *department*.

(6) ~~Nothing in this~~ *This* section and ~~no~~ *any* exemption, partial exemption, or renewal granted may *not* be construed to prevent or limit tbe application of

the emergency provisions and procedures of 50-70-117 to any person or ~~his~~ *the person's* property."

Section 329. Section 50-70-116, MCA, is amended to read:

"**50-70-116. Enforcement.** (1) When the department has reason to believe that a violation of this chapter or rule made under it has occurred, it may have written notice and the facts alleged to constituto a violation served on the alleged violator and may include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, no later than 30 days after the date of notice is received, the person named requests in writing a hearing before the ~~board~~ *department*. On receipt of a request, the ~~board~~ *department* shall hold a hearing.

(2) If, after a hearing held under subsection (1) ~~of this section~~, the ~~board~~ *department* finds that a violation has occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the ~~board~~ *department* finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) Instead of issuing the order provided for in subsection (1) ~~of this section~~, the ~~board~~ *department* may eitber:

(a) require tbat the alleged violator appear before it for a hearing at a time and place specified in a notice and answer tho charges complained of; or

(b) initiate action under 50-70-118.

(4) This chapter does not prevent the ~~board~~ *department* from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

(5) In connection with a hearing held under this section, the ~~board~~ *department* may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of parties."

Section 330. Section 50-70-117, MCA, is amended to read:

"**50-70-117. Emergency procedure.** (1) Any other law to the contrary notwithstanding, if the department finds that a generalized hazard at a workplace exists and tbat it creates an emergency requiring immediate action to protect human health, the department shall order persons causing or contributing to the bazard to reduce or discontinue immediately the emissions creating the bazard. Upon issuance of this order, the department shall fix a place and time, not later than 72 hours ~~thereafter~~ *after issuance*, for a hearing to be held before the ~~board~~ *department*. Not more than 24 hours after the commencement of the hearing and without adjournment, the ~~board~~ *department* shall affirm, modify, or set aside the order ~~of the department~~.

(2) In the absence of a generalized condition as that referred to in subsection (1) ~~of this section,~~ if the department finds that emissions from an operation are

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causing imminent danger to human health, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately without regard to 50-70-116. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in 50-70-116 apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of the declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office."

Section 331. Section 50-71-109, MCA, is amended to read:

"**50-71-109. Duties of department regarding occupational health hazards.** The department shall report occupational health hazards discovered in its investigations and inspection of places of employment to the department of *public* health and ~~environmental sciences~~ *human services* and shall cooperate with the department in carrying out its duties as specified in chapter 70 of this title."

Section 332. Section 50-78-102, MCA, is amended to read:

"**50-78-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in standard industrial classification codes 20 through 39, as defined in the federal Standard Industrial Classification Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

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(7) "Employee" means a person who may be exposed to hazardous chemicals in ~~his~~ *the person's* workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity engaged in business or providing services that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds which is a physical hazard or health hazard as defined by subsection (c) of the OSHA standard and which has been identified as such by the federal occupational safety and health administration or the manufacturer and has been so filed with the federal occupational safety and health administration;

(b) any hazardous chemical as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

(a) the chief of the municipal fire department or ~~his~~ *the chief's* agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or ~~his~~ *the chief's* agent, for any workplace not located within a city or town.

(13) "Manufacturing employer" means an employer with a workplace classified in any standard industrial classification code 20 through 39 who manufactures, uses, or steres a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace in any standard industrial classification code other than 20 through 39.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 C.F.R. 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, which is used in an employer's business and which gives the employer an opportunity to obtain an advantage over competitors.

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(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under this chapter or under subsection (e)(1)(i) of the OSHA standard."

Section 333. Section 52-1-101, MCA, is amended to read:

"**52-1-101. Purpose.** It is the public policy of the legislature to reduce duplication and fragmentation of services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated programs and services, *except youth correctional services,* within available resources, and a planned continuum of services to:

(1) provido protective services to ensure the health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities; *and*

~~(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need of supervision or delinquent youth who are referred or committed to the department; and~~

~~(3)~~*(2)* provide supportive services to enable senior citizens to maintain their independence."

Section 334. Section 52-1-102, MCA, is amended to read:

"**52-1-102. Definitions.** Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Department" means tbe department of ~~family~~ *public health and human* services provided for in ~~2-15-2401~~ *2-15-2201*.

(2) "Director" means the director of ~~family~~ *public health and human* services provided for in ~~2-15-2401~~ *2-15-2201*."

Section 335. Section 52-1-103, MCA, is amended to read:

"**52-1-103. Powers and duties of department.** The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

~~(3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who are referred or committed to the department;~~

~~(4)~~*(3)* provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

~~(5) administer youth correctional facilities;~~

~~(6) provide supervision, care, and control of youth released from a state youth correctional facility;~~

~~(7)~~*(4)* license youth care facilities, child-placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for severely disabled persons, and adult foster care facilities;

~~(8)~~*(5)* act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

~~(8)~~*(6)* administer *the* interstate ~~compacts~~ *compact* for children ~~and delinquent youth~~;

~~(10)~~*(7)* (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

~~(11)~~*(8)* (a) make a written evaluation of each plan developed by the local family services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those portions that will not be implemented, and the reasons for not implementing those portions;

(b) develop a statewide youth services and resources plan that takes into consideration local needs as reflected in plans developed hy the local family services advisory councils;

~~(12)~~*(9)* administer services to the aged;

~~(13)~~*(10)* provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

~~(14) utilize at maximum efficiency the resources of state government in a coordinated effort to:~~

~~(a) provide for children in need of temporary protection or correctional services; and~~

~~(b) coordinate and apply the principles of modern institutional administration to the institutions in the department;~~

~~(15) subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:~~

~~(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and~~

~~(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions in the department;~~

~~(16)~~*(11)* utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

~~(17) propose programs with specific goals and objectives to the legislature to meet the projected long-range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department;~~

~~(18)~~*(12)* contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

~~(16)~~*(13)* adopt rules necessary te carry out the purposes of 41-3-1126~~, 41-5-527 through 41-5-529~~, and this chapter."

Section 336. Section 52-1-110, MCA, is amended to read:

"**52-1-110. County contribution for salaries and travel of protective services employees.** (1) ~~Upon transfer of certain functions of the county welfare department to the department of family services as provided in section 12, Chapter 609, Laws of 1987, the~~ *The* salaries and travel expenses, as provided in 2-18-501 through 2-18-503, of protective services employees must be paid by the department of ~~family~~ *public health and human* services. The board of county commissioners shall reimburse the department of ~~family~~ *public health and human* services from county poor funds in an amount equal to that county's expenditures for salaries, travel expenses, and indirect costs of protective services employees in fiscal year 1987, adjusted for annual inflation.

(2) A county that was state-assumed prior to 1987, but at a later date reassumes responsibility pursuant to 53-2-811, is responsible for reimbursement of salaries, travel expenses, and indirect costs up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

(3) On or before the 20th day of the month following the month for which payments were made for protective services employees' salaries, travel, and indirect costs, the department of ~~family~~ *public health and human* services shall present to the board of county commissioners a claim for the required reimbursement. The board of county commissioners shall make the reimbursement within 20 days after the presentation of the claim."

Section 337. Section 52-2-101, MCA, is amended te read:

"**52-2-101. Definitions.** As used in this part, the following definitions apply:

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(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services ~~(~~especially in predominantly rural areas~~)~~, for the protection and care of abused, dependent, or neglected children.

(2) "Department" means the department of ~~family~~ *public health and human* services provided for in ~~2-15-2401~~ *2-15-2201*.

(3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist, licensed social worker, or special education child study team (established under rules adoptad by the superintandent of public instruction to implement Title 20, chapter 7, part 4) to have:

(i) an identifiable mental health problem as identified in a nationally recognized classification system or as defined in 20-7-401(8); and

(ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a dysfunction in any of the following areas:

(A) relationships;

(B) behavior;

(C) cognition; or

(D) education.

(b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one recognized by rules established by the department.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 338. Section 52-2-111, MCA, is amended to read:

"**52-2-111. Administrative duties of department.** Subject to the authority and regulations of the department and in cooperation with the federal government, the department shall:

(1) adopt rules necessary to carry out the purposes of this part;

(2) administer or supervise all child welfare services of the state ~~except the child welfare services which are administered by the department of health and environmental sciences and the department of social and rehabilitation services.~~"

Section 339. Section 52-2-202, MCA, is amended to read:

"**52-2-202. Definitions.** For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Children with multiagency service needs" means children under 18 years of age who have a need for services that are available from more than one stato agency.

(2) "Services" means publicly funded social services for children, including public education, child protective services, mental health services, child health care, and related services.

(3) "State agency" means:

~~(a) the department of family services provided for in 2-15-2401;~~

~~(b) the department of health and environmental sciences provided for in 2-15-2101;~~

~~(c)~~*(a)* the department of corrections ~~and human services~~ provided for in 2-15-2301;

~~(d)~~*(b)* the board of crime control provided for in 2-15-2006;

~~(e)~~*(c)* the department of ~~social and rehabilitation~~ *public health and human* services provided for in 2-15-2201; and

~~(f)~~*(d)* the superintendent of public instruction provided for in 2-15-701."

Section 340. Section 52-2-203, MCA, is amended to read:

"52-2-203. **Cooperative agreement regarding children's services.** (1) State agencies shall enter into a cooperative agreement for the purpose of coordinating services to children with multiagency service needs. However, the existing state and community interagency service delivery and planning process for developmental disabilities may not be affected by this section.

(2) The cooperative agreement may:

(a) include a functional definition of "children with multiagency service needs";

(b) identify the responsibilities of each state agency in relation to children with multiagency service needs;

(c) describe agreements to recognize duplicated services and to fill gaps in services to children with multiagency service needs;

(d) define a process for the resolution of disputes between stato agencies that relate to specific areas of an agency's service responsibilities;

(e) establish local interagency staffing groups that consist of the following members:

(i) a local representative from each state agency who is authorized to commit resources and make decisions on behalf of the agency ~~he represents~~ *represented*;

(ii) representatives of local school districts, youth probation offices, and other public agencies serving youth; and

(iii) representatives of local private youth service agencies;

(f) provide that if a state agency is not able to provide all the services that a child requires, the agency may submit the child's case history to the local staffing group for the provision of multiagency services to the child;

(g) provide that a local interagency staffing group shall meet at the request of any one of its members to consider the provision of services to a child with multiagency service needs;

(h) provide for confidentiality of a child's case records in the same manner as provided in 41-3-205; and

(i) provide for review and necessary revision of the cooperative agreement at least once annually.

(3) For purposes of this part, the department of ~~family~~ *public health and human* services is designated as the lead agency in coordinating and planning services to children with multiagency service needs. Other state agencies shall cooperate with the department of ~~family~~ *public health and human* services to ~~assure~~ *ensure* minimum duplication and maximum coordination of services for children in Montana."

Section 341. Section 52-2-211, MCA, is amended te read:

"52-2-211. County interdisciplinary child information team. (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

(a) the youth court;

(b) the county atterney;

(c) the department of ~~family~~ *public health and human* services;

(d) the county superintendent of schools;

(e) the sheriff;

(f) the chief of any police force; ~~and~~

(g) the superintendents of public school districts*; and*

(h) the department of corrections.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the information team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) atterneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the information team will serve.

(3) The members of the information team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

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(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able te use in serving a child in the course of their professions and occupations, including but not limited to abused, neglected, dependent, and delinquent children and youth in need of supervision. Information regarding a child that a team member supplies to other team members or that is disseminated to a toam member under 41-3-205, 41-5-602, or 41-5-603 may not be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team."

Section 342. Section 52-2-303, MCA, is amended to read:

"52-2-303. Multiagency service placement plan committee — membership — administration. (1) There is a multiagency service placement plan committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department *of public health and human services*;

(b) an appointee of the superintendent of public instruction; *and*

(c) an appointee of the director of the department of corrections ~~and human services;~~.

~~(d) an appointee of the director of the department of health and environmental sciences; and~~

~~(e) an appointee of the director of the department of social and rehabilitation services.~~

(3) The committee is attached to the department *of health and human services* for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122."

Section 343. Section 52-2-401, MCA, is amended to read:

"52-2-401. Definitions. As used in this part, the following definitions apply:

(1) "Agency" includes a person not related by blood or marriage to a minor child to be adopted.

(2) "Department" means the department of ~~family~~ *public health and human* services provided for in ~~2-15-2401~~ *2-15-2201*.

(3) "Person" includes any individual, partnership, voluntary association, or corporation."

Section 344. Section 52-2-503, MCA, is amended to read:

"52-2-503. **Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of ~~family~~ *public health and human* services *provided for in 2-15-2201.*

(2) "Hard-to-place child" means a minor, as defined by 41-1-101, who is a dependent of a public or voluntary licensed child-placing agency, legally free for adoption, and is not likely to be adopted because of:

(a) pbysical or mental disease or disability;

(b) recognized higb risk of physical or mental disease or disability; or

(c) sibling relationship to another child who is eligible for adoption."

Section 345. Section 52-2-522, MCA, is amended to read:

"52-2-522. **Authorization.** The department of ~~family services and the department of social and rehabilitation~~ *public health and human* services ~~are~~ *is* authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states for:

(1) the protection of children on behalf of whom adoption assistance is being provided; and

(2) the provision of procedures for interstate children's adoption assistance payments, including medical payments."

Section 346. Section 52-2-523, MCA, is amended to read:

"52-2-523. **Federal participation.** Consistent with federal law, the department of ~~family services and the department of social and rehabilitation~~ *public health and human* services, in connection with the administration of services provided and compacts entered into under authority of 52-2-521 through 52-2-528, shall apply for and administer all federal aid for adoption assistance and medical assistance costs in any state plan made pursuant to the Adoption Assistance and Chiid Welfare Act of 1980 (Public Law 96-272), Titles IV (e) and XIX of the Social Security Act, or any other applicable federal laws."

Section 347. Section 52-2-527, MCA, is amended to read:

"52-2-527. **Medical benefits — rules.** (1) The provisions of this section apply only when the compact entered hy this state and the other state under 52-2-521 through 52-2-528 provides that the adoption assistance state, whether it be this state or the other state, shall continue medical assistance to children in accordance with the adoption assistance agreements made by the adoption assistance state after the children have changed their residence to this state or to the other state. All other children entitled te medical assistance in this state are eligible to receive it in accordance with the applicable laws and procedures.

(2) A child with special needs residing in this state who is the subject of an adoption assistance agreement with another state is entitled to receive medical assistance identification from this state upon the filing in the office of the department of ~~social and rehabilitation~~ *public health and human* services

located in the county of the child's residence a copy of the adoption assistance agreement. Medical assistance identification gained pursuant to this section entitles the holder to processing and payment on claims of the holder in the same manner and pursuant to the same conditions and procedures as other recipients of medical assistance.

(3) The department of ~~social and rehabilitation~~ *public health and human* services shall provide coverage and benefits for a child who is in another state who is covered by an adoption assistance agreement entered into in this state for coverage or benefits, if any, provided for under the adoption assistance agreement made in this state but not provided by the residence state. The adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and must be reimbursed for the services. However, there may not be reimbursement for services or benefit amounts covered under any insurance or other third-party medical contract or arrangement held hy the child or the adoptive parents. The department of ~~social and rehabilitation~~ *public health and human* services shall adopt rules implementing this subsection. The additional coverage and benefit amounts provided by this subsection are for services for which there is no federal contribution or for which, if federally aided, contributions are not provided by the residence state. Rules adopted pursuant to this subsection must include procedures to be followed for obtaining prior approval for services covered by this subsection when prior approval is required."

Section 348. Section 52-2-703, MCA, is amended to read:

"**52-2-703. Definitions.** In this part, the following definitions apply:

(1) "Child" means a person under 13 years of age.

(2) "Day care" or "child care" means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours, whether that care is for daytime or nigbttime hours.

(3) "Day-care center" means an out-of-home place in which day care is provided to 13 or more children on a regular basis.

(4) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day-care home, a day-care center, a group day-care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713. The term does not include:

(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day-care facility is required to receive payments as provided in 52-2-713; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older.

(5) "Department" means the department of ~~family~~ *public health and human* services provided for in ~~2-15-2401~~ *2-15-2201*.

(6) "Family day-care home" means a private residence in which day care is provided to three to six children on a regular basis.

(7) "Group day-care home" means a private residence or other structure in which day care is provided to 7 to 12 children on a regular basis.

(8) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(9) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(10) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(11) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify compliance with the prescribed standards and promulgated rules.

(12) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(13) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(14)(a) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(b) The term includes the status of a child described in subsection (14)(a) in a step or adoptive relationship."

Section 349. Section 52-2-704, MCA, is amended to read:

"**52-2-704. ~~Lead agency -- duties~~ *Duties* of department.** (1) The department is ~~designated as the lead agency~~ *responsible* for ~~the purposes of~~ planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

(a) assess child-care needs and resources within the state;

(b) develop a state child-care plan after consultation with the local family services advisory councils established under 52-1-203 and the child-care advisory council established in 52-2-705;

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(c) coordinate child-care programs administered by ~~the department and the departments of social and rehabilitation services, health and environmental sciences, and labor and industry~~ *all state agencies*;

(d) issue licenses to persons to receive children into a day-care center on a regular basis;

(e) prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued;

(f) adopt rules for day-care facilities consistent with the purposes of this part; and

(g) issue registration certificates to a person or persons te receive children inte a family day-care home or group day-care home on a regular basis.

(3) The department may:

(a) enter into interagency agreements to administer and coordinate cbild-care programs;

(b) accept any federal funds made available for the improvement or promotion of child-care services within the state;

(c) administer any state and federal funds that may be appropriated for tho purposes of tbe part."

Section 350. Section 52-2-731, MCA, is amended te read:

"**52-2-731. Standards for day care.** In developing standards, the department shall seek the advice and assistance of the ~~department of health and environmental sciences and~~ superintendent of public instruction, representatives of day-care facilities, specialists in child care, and representatives of parent groups who use the services of day-care facilities. The standards may pertain to:

(1) character, suitability, and qualifications of an applicant and other persons directly responsible for the care of children;

(2) the number of individuals or staff required for adequate supervision and care of children in day-care facilities;

(3) child-care programs and practices necessary to ensure the health, safety, safety in transportation, development, and well-being of children;

(4) adequate and appropriate admission policies;

(5) adequacy of physical facilities and equipment;

(6) general financial ability and competence of an applicant te provide necessary care for children and maintain prescribed standards;

(7) the ages and numbers of children that may be cared for in a day-care facility."

Section 351. Section 52-2-733, MCA, is amended te read:

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"**52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department must visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) The department shall make annual unannounced visits to day-care centers.

(5) Upon request of the department, ~~the department of health and environmental sciences or~~ the state fire prevention and investigation program of the department of justice shall inspect any day care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of ~~his~~ *the licensee's or registrant's* program.

(7) ~~Nothing in this~~ *This* section may *not* be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part."

Section 352. Section 52-2-735, MCA, is amended to read:

"**52-2-735. Health protection — certification required.** (1) The department ~~of health and environmental sciences~~ shall adopt rules for the protection of children in day-care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases. Rules adopted by the department must include rules requiring children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted for care in the facility unless an exemption has been claimed as provided in 20-5-405.

(2) Local public health authorities shall arrange to provide training to day-care center providers and employees regarding health hazards. Upon successful completion of the training the local public health authorities shall issue certificates to the providers and employees.

(3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of approval to child-care center providers.

(4) Each applicant for a license to operate a day-care center shall submit to the department a certificate issued pursuant to subsection (2) or (3) before the department will issue a license.

(5) The local public health authority may charge the applicant a reasonable fee, not to exceed $25, for any inspection necessary to issue a certificate of

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approval, or a fee not to exceed the documented cost for training it provides under this section."

Section 353. Section 52-3-101, MCA, is amended to read:

"**52-3-101. Functions of department of family *public health and human* services.** The department of family *public health and human* services shall:

(1) consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging;

(2) study and identify problems of aging;

(3) review existing programs for the aging and make recommendations to the governor and the legislature for improvements in ~~such~~ *the* programs;

(4) encourage the sponsorship of community projecta which will seek to make optimum use of the time and talents of retired persons;

(5) coordinate, through area councils on aging, the delivery of community-based care, including but not limited to home health care, homemaker services, fostor home care, nutrition, transportation, winterization, information and referral, and recreation."

Section 354. Section 52-3-102, MCA, is amended to read:

"**52-3-102. Grants and gifts to department.** The department of ~~family~~ *public health and human* services may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the grant or gift so that the title ~~shall~~ *will* pass to the state. All grants, grants-in-aid, or gifts ~~shall~~ *must* be deposited with the state treasurer and ~~shall~~ *must* be continuously available to the department."

Section 355. Section 52-3-103, MCA, is amended to read:

"**52-3-103. Designation of area agencies.** (1) The department of ~~family~~ *public health and human* services may designato as an area agency in a geographical area an entity that demonstrates its ability to:

(a) develop and administer an area plan for a comprehensive and coordinated system of services; and

(b) serve as the advocate and focal point for older persons in the planning and service area.

(2) ~~Such an~~ *An* entity may be but is not limited to:

(a) an established office on aging that operates within the geographical area;

(b) an office or agency of a unit of general purpose local government, except a county welfare office or department;

(c) any combination of ~~such~~ offices or units of general purpose local governments; or

(d) any other public or private nonprofit agency, except a regional or local agency of the state."

Section 356. Section 52-3-111, MCA, is amended to read:

"52-3-111. Senior citizens' legislature. (1) The department of ~~family~~ *public health and human* services may contract with a senior citizens' organization for the purpose of establishing a mock legislature to be held in the year preceding the legislative session.

(2) The contract entered into with the senior citizens' organization must provide that ~~such~~ *the* organization match on a one-to-two ~~(~~organization to department~~)~~, ratio any amount contracted for.

(3) The department of ~~family~~ *public health and human* services shall cooperate with the department of administration in assisting the senior citizens' organization designated to establish the mock legislature."

Section 357. Section 52-3-202, MCA, is amended to read:

"52-3-202. Definitions. As used in this part, the following definitions apply:

(1) "Aged person" means an aged person as defined by the department.

(2) "Department" means the department of ~~family~~ *public health and human* services *provided for in 2-15-2201.*

(3) "Disabled adult" means a person 18 years of age or over who is defined by the department as disabled but not developmentally disabled.

(4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department."

Section 358. Section 52-3-302, MCA, is amended to read:

"52-3-302. Definitions. As used in this part, the following definitions apply:

(1) "Adult foster family care homes" means private homes owned by one or more persons 18 years of age or older which offer light personal care or custedial care to disabled adults who are not related to the owner by blood or marriage or which offer light personal care or custedial care to aged persons.

(2) "Aged person" means a person defined by the department as aged.

(3) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for ~~his~~ *the person's* basic needs of food and shelter and having a specific person available to help ~~him~~ *the person* meet ~~his~~ *the person's* basic needs.

(4) "Department" means the department of ~~family~~ *public health and human* services *provided for in 2-15-2201.*

(5) "Disabled adult" means a person 18 years of age or older defined by the department as disabled.

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(6) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration, but not administration of prescriptive medications.

(7) "Skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician."

Section 359. Section 52-3-401, MCA, is amended te read:

"**52-3-401. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of ~~family~~ *public health and human* services *provided for in 2-15-2201.*

(2) "Older Americans Act" means the Older Americans Act of 1965, as amended, 42 U.S.C. 3001, et seq.

(3) "Planning and service area" means a geographic area of the state that is designated for purposes of planning, development, delivery, and overall administration of services under the Older Americans Act.

(4) "Services to the aged" means those services the department administers pursuant te the Older Americans Act.

(5) "State plan" means a plan developed by the department to coordinate and administer delivery of services under the Older Americans Act."

Section 360. Section 52-3-502, MCA, is amended to read:

"**52-3-502. Definitions.** In this part, the following definitions apply:

(1) "Department" means the department of ~~family~~ *public health and human* services *provided for in 2-15-2201.*

(2) "Older Montanan" means a resident of this state who is at least 60 years of age."

Section 361. Section 52-3-603, MCA, is amended to read:

"**52-3-603. Office of legal and long-term care ombudsman services.** Contingent on receipt of federal funds for the purpose, there is an office of legal and long-term care ombudsman services in the department of ~~family~~ *public health and human* services. As required by the Older Americans Act of 1965, as amended (42 U.S.C. 3001, et seq.), and the regulations adopted pursuant thereto, the office:

(1) serves as an advocate for Montana citizens residing in long-term care facilities, regardless of their age or source of payment for care, to ensure that their rights are protected, that they receive quality care, and that they reside in a safe environment; and

(2) coordinates legal services for the elderly."

Section 362. Section 52-3-605, MCA, is amended to read:

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"52-3-605. **Enforcement of access.** (1) A person who violates the provisions of 52-3-604 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department of *public* health and ~~environmental sciences~~ *human services* or, upon request of that department, the county attorney of the county in which the long-term care facility in question is locatod may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty must he deposited in the state general fund.

(2) The department of *public* health and ~~environmental sciences~~ *human services* or, upon request of that department, the county attorney of the county in which the long-torm care facility in question is located may bring an action to enjoin a violation of any provision of 52-3-604 in addition to or exclusive of the remedy in subsection (1)."

Section 363. Section 52-3-804, MCA, is amended to read:

"52-3-804. **Duties of department of ~~family~~ *public health and human* services.** (1) The department shall investigate reports of abuse, sexual ahuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

(2) The department of ~~family~~ *public health and human* services shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, or under Title 52, chapter 4, part 1, for a person alleged to have been abused, sexually abused, neglected, or exploited.

(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding there is probable cause to believe the person is abused, sexually abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older or developmentally disabled person alleged to he abused, sexually abused, or neglected is suffering from abuse, sexual abuse, or neglect that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

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(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in 72-5-317."

Section 364. Section 52-3-805, MCA, is amended to read:

"**52-3-805. Adult protective service teams.** (1) The county attorney or the department of ~~family~~ *public health and human* services shall convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams shall assist in assessing the needs of, formulating and monitering a treatment plan for, and coordinating services to older persons, and developmentally disabled persons who are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of adult protective services of the department of ~~family~~ *public health and human* services or the department's designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county atterney or the county atterney's designee, who is an attorney. Members may include other appropriate persons designated by the county atterney or the department.

(2) When the team considers a matter involving a developmentally disabled adult in the care of a person providing developmental disabilities services, the team must also include a provider of developmental disability services other than the provider involved in the matter under review ~~and a representative of the developmental disabilities division of the department of social and rehabilitation services~~. The team shall make a report to the county attorney that contains a recommendation concerning any criminal prosecution to be brought pursuant to this part."

Section 365. Section 52-3-811, MCA, is amended to read:

"**52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department of ~~family~~ *public health and human* services or its local affiliate;

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department ~~of health and environmental sciences~~. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report ~~to~~

~~the department of family services and~~ to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of ~~family~~ *public health and human* services ~~which~~ *that* may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in whicb the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a developmentally disabled person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the atterney-client privilege applies;

(g) a peace officer or other law enforcement official; and

(h) a person providing services to an older person or a developmentally disabled person pursuant to a contract with a state or federal agency.

(4) Any other person may submit a report as provided in subsection (1)."

Section 366. Section 52-3-813, MCA, is amended to read:

"**52-3-813. Confidentiality.** (1) The case records of the ~~departments of social and rehabilitation services and family~~ *department of public health and human* services, ~~their~~ *its* local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other stato:

(a) a physician who is caring for an older person or a developmentally disabled person wbo the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled person if the identity of the person who made the

report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the developmentally disabled person who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person, if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case; or

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person;

(g) an employee of the department ~~or the department of social and rehabilitation services~~ if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person; and

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a developmentally disabled person is the holder

of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted te the entity that issued the license, permit, or certificate."

Section 367. Section 52-4-101, MCA, is amended to read:

"52-4-101. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Client" means a person for whom voluntary protective services are rendered pursuant to provisions of this part.

(2) "Department" means the department of ~~family~~ *public health and human* services provided for in ~~2-15-2401~~ *2-15-2201*.

(3) "Developmentally disabled person" means a person who by reason of a developmental disability is not able, unassisted, to properly manage or care for ~~his person~~ *the person's self* or ~~his~~ property.

(4) "Protective services" means case management of services directed at preventing or remedying neglect, abuse, or exploitation of developmentally disabled persons.

(5) "Ward" means a person for whom the department has been appointed guardian under Title 72, chapter 5, part 3."

Section 368. Section 52-4-202, MCA, is amended to read:

"52-4-202. Definitions. As used in 52-4-201 through 52-4-205, the following definitions apply:

(1) "Community home for persons with severe disabilities" means a family-oriented residence that is designed to provide residential services for two to eight persons with severe disabilities and that does not provide skilled or intermediate nursing care. This definition does not preclude the provision of skilled or intermediate nursing care by third-person providers.

(2) "Department" means the department of ~~family~~ *public health and human* services ~~established~~ *provided for* in ~~2-15-2401~~ *2-15-2201*.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

(4) "Severe disability" means a permanent disability that substantially limits major life activity, such as walking, self-care, seeing, hearing, speaking, learning, reasoning, judgment, or memory, and that can be diagnosed by a physician. The term includes the condition of a person with severe disabilities as defined in 53-19-102."

Section 369. Section 52-4-204, MCA, is amended to read:

"52-4-204. Health and safety standards. (1) A community home for persons with severe disabilities must be certified annually for fire and life safety by the department of justice. The department of justice shall notify the

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department whenever a community home has been certified or refused certification.

(2) (a) Local health officers shall inspect a community home for persons with severe disabilities to ensure compliance with health and safety standards. If for any reason the local authority cannot complete the inspection in a timely manner, the department of *public* health and ~~environmental sciences~~ *human services* may make the inspection to ensure compliance with the standards.

(b) The inspecting health officer shall notify the department whether a community home is or is not in compliance with applicable standards.

(c) A reasonable fee may be charged by health authorities conducting compliance inspections."

Section 370. Section 52-4-205, MCA, is amended to read:

"**52-4-205. Rulemaking.** (1) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety requirements for community homes for persons with severe disabilities in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

(2) The ~~department of health and environmental sciences and the~~ state fire prevention and investigation program of the department of justice shall provide advice and recommendations to the department concerning licensing requirements for health and safety."

Section 371. Section 52-5-101, MCA, is amended to read:

"**52-5-101. Establishment of state youth correctional facilities — prohibitions.** (1) The department of ~~family services~~ *corrections*, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate youth in need of these services. The youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited to the state youth correctional facilities at the Mountain View school in Helena and the Pine Hills school in Miles City.

(2) A youth alleged or found to be a youth in need of supervision may not be placed in a state youth correctional facility as defined in 41-5-103."

Section 372. Section 52-5-102, MCA, is amended to read:

"**52-5-102. Control and management of youth correctional facilities.** The facilities provided for in 52-5-101 shall exercise their functions under the supervision and general management of the department of ~~family services~~ *corrections*. Except where otherwise provided by law, the department by rules shall establish standards of care and policies of admission, transfers, discharge, and aftercare supervision in order to provide adequate care for children and adequate service to the courts. Policies of admission may include criteria for medical examinations required under 52-5-108. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation."

Section 373. Section 52-5-103, MCA, is amended te read:

"**52-5-103. Cooperative agreements for services with governing body of Indian tribe.** (1) The department of ~~family services~~ *corrections* may enter into agreements with the governing body of an Indian tribe within the state for residential, educational, evaluation, and aftercare services maintained by the department for children who have been adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of Title 53, chapter 1.

(2) Any agreement entered inte under subsection (1) must also satisfy the requirements of Title 18, chapter 11."

Section 374. Section 52-5-107, MCA, is amended te read:

"**52-5-107. Maximum age of commitment.** ~~No~~ *A* child who has attained the age of 18 years ~~shall~~ *may not* be committed by any youth court to the department of ~~family services~~ *corrections*, except, however, that any person under 19 years who prior to attaining the age of 18 years came under the jurisdiction of the youth court by reason of delinquent conduct and whose adjudication of delinquency is not made until after the child reaches the age of 18 years may be committed to the department of ~~family services~~ *corrections*."

Section 375. Section 52-5-108, MCA, is amended to read:

"**52-5-108. Medical examination before admission — records required to accompany child committed.** (1) Before a child is admitted for any purpose or for any length of time to the Mountain View school, the Pine Hills school, or other facility under an order of commitment to the department of ~~family services~~ *corrections*, ~~he~~ *the child* must be examined by a licensed physician. A child committed to one of the schools or the department must be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

(2) The medical examination required under this section must be a current, complete physical examination of the child."

Section 376. Section 52-5-109, MCA, is amended to read:

"**52-5-109. Commitment expenses — arrangement for transportation.** The expenses of committing a child to the Mountain View school, the Pine Hills school, or the department of ~~family services~~ *corrections* and transporting ~~such~~ *the* child to the Mountain View school, the Pine Hills school, or the place designated by the department for it to receive custody and the expense of returning ~~such~~ *the* child to the county of residence ~~shall~~ *must* be borne by the county of residence. The district judge shall arrange for transportation of the child to the place where the department has directed that it will receive custody of ~~such~~ *the* child."

Section 377. Section 52-5-110, MCA, is amended to read:

"**52-5-110. Transfer of child to other facility or institution — notice.** The department of ~~family services~~ *corrections*, upon recommendation of the superintendent of a facility, may transfer a child resident in one of its youth correctional facilities to any other facility or institution under the jurisdiction and control of the department."

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Section 378. Section 52-5-111, MCA, is amended to read:

"52-5-111. Commutation of sentence to state prison and transfer of prisoner to youth correctional facility. (1) Upon the application of a person under 19 years of age who has been sentenced to the state prison or upon the application of the youth's parents or guardian, the governor may, after consulting with the department of corrections ~~and human services and the department of family services~~ and with the approval of the board of pardons *and parole*, commute the sentence by committing the person who may benefit from programs offered at a youth correctional facility to the department of ~~family services~~ *corrections* until the youth is 19 years of age or until sooner placed or discharged.

(2) If the person's behavior after being committed to the department of ~~family services~~ *corrections* indicates that the youth is not a proper person to reside at one of the youth correctional facilities, the governor, after consulting with the department of corrections ~~and human services and the department of family services~~ and with the approval of the board of pardons *and parole*, may revoke the commutation and return the youth to the state prison to serve out the youth's unexpired term, and the time spent by the youth at one of the youth correctional facilities or while a refugee from one of the youth correctional facilities is not considered as a part of the youth's original sentence.

(3) Upon recommendation of the warden and with the approval of the department of corrections ~~and human services and the department of family services~~, a person under 19 years of age who has been sentenced to the state prison and who may benefit from programs offered at a youth correctional facility may be transferred to any youth correctional facility under the jurisdiction and control of the department of ~~family services~~ *corrections*.

(4) If the person's behavior after transfer to a youth correctional facility indicates that the youth might be released on parole or that the youth's sentence might be commuted and the youth be discharged from custody, the superintendent of the facility, with the approval of the department of corrections ~~and human services and the department of family services~~, may make an appropriate recommendation to the board of pardons *and parole* and the governor, who may in their discretion parole ~~such~~ *the* person or commute the youth's sentence.

(5) If the person's behavior after transfer to a youth correctional facility indicates that the youth is not a proper person to reside in the facility, upon recommendation of the superintendent and with the approval of the department of corrections ~~and human services and the department of family services~~, the youth must be returned to the state prison to serve out the unexpired term."

Section 379. Section 52-5-112, MCA, is amended to read:

"52-5-112. University aid to residents of schools. The department of ~~family services~~ *corrections* may, on the recommendation of the superintendent, authorize a resident of the Mountain View school or Pine Hills school who has completed high school and who is otherwise eligible to receive up to $800 per year toward ~~his~~ *the resident's* expenses incurred in attending a unit of the Montana university system. The money may be used for transportation, clothing, books, board, and room and ~~shall~~ *must* be paid in the same manner as

other expenses of the school. The board of regents of higher education may waive fees and tuition for these residents pursuant to 20-25-421. No more than eight residents of each school may receive these benefits each year. The department shall notify the board of regents before August 1 of each year of the residents *that* it has designated to receive the benefits for the ~~forthcoming~~ *next* school year."

Section 380. Section 52-5-113, MCA, is amended to read:

"**52-5-113. Apprehension and return of youth leaving youth correctional facility without permission.** A youth who has left a youth correctional facility of the department of ~~family services~~ *corrections* without permission may be apprehended and returned by any citizen. The term "youth correctional facility of the department" means any facility under the supervision and control of the department of ~~family services which~~ *corrections that* has as its primary function the care, training, custody, and control of youth and specifically includes the Pine Hills school for boys and the Mountain View school for girls."

Section 381. Section 52-5-120, MCA, is amended to read:

"**52-5-120. Youth industries programs.** The department of ~~family services~~ *corrections* may:

(1) establish industries programs in state youth correctional facilities that:

(a) assist in the training and rehabilitation of residents at state youth correctional facilities; and

(b) provide the production or manufacture of products and the rendering of services that may be needed by:

(i) a department or agency of the state of Montana or a unit of local government;

(ii) an agency of the federal government; or

(iii) an office or agency of another state or a political subdivision of another state;

(2) contract with private industry for the sale of goods produced or manufactured at state youth correctional facilities; and

(3) fix the purchase price for goods and services available under the industries program established in subsection (1)."

Section 382. Section 52-5-121, MCA, is amended to read:

"**52-5-121. Rulemaking authority.** The department of ~~family services~~ *corrections* may adopt rules necessary for administration of industries programs authorized in 52-5-120. Rules adopted by the department may include rules regarding:

(1) requirements for participation of youth in industries programs;

(2) the type of training and experience to be provided to youth under these programs;

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(3) the type of goods and services to be sold under the industries programs;

(4) contracts with private industry for the sale of goods produced or manufactured at state youth correctional facilities; and

(5) payment of wages to youth working in industries programs."

Section 383. Section 52-5-126, MCA, is amended to read:

"**52-5-126. Youth aftercare agreement.** (1) A youth released by the department of ~~family services~~ *corrections* from one of the state youth correctional facilities to the supervision, custody, and control of the department shall, before the youth's release, sign an aftercare agreement containing:

(a) a statement of the terms and conditions of the release, including a list of the acts that, if committed by the youth, may result in a return to the facility; and

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before being returned te the facility.

(2) A youth released from a state youth correctional facility for commitment te a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign an aftercare agreement that will remain in effect until the department no longer has custedy of the youth."

Section 384. Section 52-5-127, MCA, is amended to read:

"**52-5-127. Control over youth released under aftercare agreement.** The department of ~~family services~~ *corrections* has control over a youth released under 52-5-126 until the youth attains the age of 19 years unless the youth is discharged by the department before age 19. However, the youth is subject to the continuing jurisdiction of the youth courts of Montana, pursuant to 41-5-205, for acts committed by the youth while under the control of the department."

Section 385. Section 52-5-128, MCA, is amended te read:

"**52-5-128. Detention of youth who violates aftercare agreement.** A youth who violates the terms and conditions of ~~his~~ *the youth's* aftercare agreement may be detained by the department of ~~family services~~ *corrections* or by a law officer of the state, county, or city of the state upon certificates in writing te the officer by the department to the effect that the youth has violated the terms and conditions of ~~his~~ *the youth's* aftercare agreement."

Section 386. Section 52-5-129, MCA, is amended to read:

"**52-5-129. Hearing on alleged violation of aftercare agreement — right to appeal outcome.** (1) When it is alleged by an aftercare counselor that a youth has violated the terms of ~~his~~ *the youth's* aftercare agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that ~~he~~ *the youth* should be returned to the youth correctional facility from which ~~he~~ *the youth* was released

or a different plan for treatment should be pursued by the department of ~~family services~~ *corrections*.

(2) The youth, upon advice of an attorney, may waive ~~his~~ *the* right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of ~~his~~ *the* aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against ~~him~~ *the youth* and the facts constituting the alleged violation;

(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against ~~him~~ *the youth* and to show that there are compelling reasons that justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided hy the referee.

(4) The department shall appoint a referee, who may not be an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation, ~~he~~ *the referee* shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the referee's recommendation.

(6) The youth may appeal from the decision at the hearing to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision. The youth may obtain a written transcript of the hearing from the department hy giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when ~~his~~ *the youth's* detention or care is required to protect the person or property of the youth or of others or ~~he~~ *the youth* may abscond or be removed from the community. The department

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shall determine the place and manner of detention and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of ~~his~~ *the youth's* aftercare agreement are as provided in 41-5-303, 41-5-306, 41-5-311, and 41-5-314.

(8) If the decision is made to return the youth te the youth correctional facility from which ~~he~~ *the youth* was released and the youth appeals that decision, ~~he~~ *the youth* shall await the outcome of the appeal at the facility."

Section 387. Section 52-6-101, MCA, is amended to read:

"52-6-101. Battered spouses and domestic violence grant program created. There is a grant program established within the department of ~~family~~ *public health and human* services for the allocation of grant money te local battered spouses and domestic violence programs."

Section 388. Section 52-6-102, MCA, is amended te read:

"52-6-102. Duties of department. The department of ~~family~~ *public health and human* services:

(1) shall adopt rules necessary to carry out the purposes of this part;

(2) may spend no more than 5% of the appropriated funds for administrative costa of the program;

(3) shall accept federal funds tbat may be available for use in carrying out the provisions of this part;

(4) may use state funds as a match for federal funds if required; and

(5) may conduct research and compile statistics relating to battered spouses and domestic violence."

Section 389. Section 52-6-103, MCA, is amended to read:

"52-6-103. Authorized grantees — criteria for grants. (1) The department of ~~family~~ *public health and human* services ~~must~~ *shall* award battered spouses and domestic violence grants only to local domestic abuse programs that are locally controlled. Grants may be awarded to governmental or nongovernmental agencies or persons.

(2) Battered spouses and domestic violence grants are to be awarded on the following basis:

(a) demonstrated need;

(b) project merit;

(c) administrative design; and

(d) efficiency of administration."

Section 390. Section 52-6-104, MCA, is amended te read:

"**52-6-104. Authorized services of programs.** (1) Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

(a) counseling for victims or their spouses;

(b) shelters or safe homes for victims;

(c) advocacy programs that assist victims in obtaining services and information; and

(d) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

(2) The services authorized in subsection (1) may be provided on a regional basis by a local battered spouses and domestic violence program if so authorized by the department of ~~family~~ *public health and human* services according te regional boundaries established by the department."

Section 391. Section 53-1-105, MCA, is amended to read:

"**53-1-105. Disposition of contraband in correctional institution.** (1) Cash possessed in excess of the amount allowed by the policy of an adult or youth correctional institution or obtained in violation of ~~such~~ a policy may be confiscated and deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.

(2) The department of corrections ~~and human services~~ shall adopt policies for the disposition of other contraband confiscated from inmates or residents in adult or youth correctional institutions. Receipts from the sale of contraband must be deposited in an inmate or resident welfare fund to be used for the intonded purpose of tbat fund."

Section 392. Section 53-1-106, MCA, is amended to read:

"**53-1-106. Exchange of offenders under treaty.** If a treaty in effect between the United States and a foreign country provides for the transfer, by exchange or otherwise, of convicted offenders to the country of which they are citizens or nationals, the governor may, on hehalf of the state and subject to the terms of the treaty, authorize the director of the department of corrections ~~and human services~~ to consent to the transfer or exchange of offenders in Montana institutions and take any other action necessary to initiate the participation of this state in the treaty."

Section 393. Section 53-1-201, MCA, is amended to read:

"**53-1-201. Purpose of department *of corrections*.** The department *of corrections* shall utilize at maximum efficiency the resources of state government in a coordinated effort to:

~~(1)~~*(1)* develop and maintain comprehensive services and programs in the ~~fields~~ *field* of:

~~(a)~~ adult *and youth* corrections;*; and*

~~(b) mental health; and~~

~~(c) chemical dependency;~~

~~(2) provide inpatient institutional care for developmentally disabled persons who require that care according to the requirements of Title 53, chapter 20; and~~

~~(3) provide nursing home care for honorably discharged veterans as provided by law.~~

(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need of supervision or delinquent youth who are referred or committed to the department."

Section 394. Section 53-1-202, MCA, is amended to read:

"**53-1-202. Department of corrections ~~and human services~~.** (1) ~~The following components~~ *Adult and youth correctional services* are in the department of corrections ~~and human services~~ to carry out the purposes of the department~~:~~.

~~(a)~~*(2)* ~~adult~~ *Adult* corrections services ~~consisting~~ *consist* of the following institutional components to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

~~(i)~~*(a)* Montana state prison;

~~(ii)~~*(b)* the Montana women's correctional ~~center~~ *system*; and

~~(iii)~~*(c)* appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

~~(A)~~*(i)* in prerelease centers;

~~(B)~~*(ii)* under intensive supervision;

~~(C)~~*(iii)* under parole or probation pursuant to Title 46, chapter 23, part 2; or

~~(D)~~*(iv)* in other appropriate programs~~;~~.

~~(b) mental health services consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:~~

~~(i) Montana state hospital;~~

~~(ii) Montana center for the aged; and~~

~~(iii) a community services component consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 2;~~

~~(c) chemical dependency services consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;~~

~~(d) institutional and residential components of the developmental disabilities system for those developmentally disabled persons who require that care according to Title 53, chapter 20, consisting of:~~

~~(i) the Montana developmental center; and~~

~~(ii) Eastmont human services center; and~~

~~(e) veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:~~

~~(i) Montana veterans' home; and~~

~~(ii) eastern Montana veterans' home at Glendive.~~

(3) Youth correctional services consist of the following institutional components to diagnose, care for, train, educate, and rehabilitate youth pursuant to Title 52, chapter 5:

(a) Mountain View school;

(b) Pine Hills school; and

(c) any other institution that provides care and services for delinquent youth.

~~(2)~~*(4)* A state institution may not be moved, discontinued, or abandoned without ~~prior~~ *the* consent of the legislature."

Section 395. Section 53-1-203, MCA, is amended to read:

"**53-1-203. Powers and duties of department *of corrections*.** *(1)* The department *of corrections* shall:

~~(1)~~*(a)* adopt *rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and* rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law; ~~however~~ *However*, ~~no such~~ rules *adopted by the department* may *not* amend or altor the statutory powers and duties of the state board of parc'ons *and parole*;

~~(2)~~*(b)* subject to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine ~~which are of such character as to~~ *those that may* be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

~~(3)~~*(c)* contract with private nonprofit Montana corporations to establish and maintain community based prerelease centers for purposes of preparing inmates of the Montana state prison who are approaching parole eligibility or discharge for release into the community; ~~the~~. *The* centers shall provide a less restrictive environment than the prison while maintaining adequate security; ~~the~~. *The* centers ~~shall~~ *must* be operated in coordination with other department

correctional programs, including the supervised release program provided for in Title 46, chapter 23, part 4. ~~Nothing in this~~ *This* subsection ~~shall~~ *does not* affect the department's authority to operate and maintain community based prerelease centers ~~in existence on July 14, 1983~~.

~~(4)~~*(d)* utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

~~(5)~~*(e)* propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; ~~and~~

~~(5)~~*(f)* ~~encourage the establishment of programs at the local level for the prevention and rehabilitation of disabilities as they relate to mental illness and chemical dependency and~~ encourage the establishment of programs at the local and institutional level for the rehabilitation and education of adult felony offenders.*;*

(g) administer all state and federal funds allocated to the department for youth in need of supervision and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of supervision and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of supervision and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need of supervision and who are referred or committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for children in need of temporary protection or correctional services; and

(ii) coordinate and apply the principles of modern institutional administration to the institutions in the department.

(2) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of supervision and delinquent youth in youth care facilities."

Section 396. Section 53-1-204, MCA, is amended to read:

"53-1-204. Responsibility of warden and superintendents of institutions. The warden or superintendents of institutions in the department *of corrections* are responsible for the immediate management and control of

tbeir respective institutions, subject to the general policies and programs established by the department *of corrections.*"

Section 397. Section 53-1-206, MCA, is amended to read:

"**53-1-206. Participation by institutions in research programs.** The department *of corrections* may direct a penal and corrective institution of the stato to participate in and cooperato with programs of research and development being conductod and carried on by any units of the Montana university system, by any of tbe other educational institutions of the stato of Montana, or by any foundation or agency ~~thereof~~*of an educational institution* in the fields of science, health, education, and natural resources. These programs may include the voluntary participation of the inmates of the institution in testing and experimental work conducted as a part ~~thereof~~ *the testing*. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation ~~thereof~~*of the inmates* and may not become a part of the regular budgeted operation of the institution."

Section 398. Purpose of department of public health and human services. The department of public health and human services shall use to maximum efficiency the resources of state government in a coordinated effort to:

(1) develop and maintain comprehensive services and programs in tbe fields of:

(a) mental health; and

(b) chemical dependency;

(2) provide, according te the requirements of Title 53, chapter 20, inpatient institutional care for developmentally disabled persons who require institutional care; and

(3) provide nursing home care for honorably discharged veterans as provided by law.

Section 399. Department of public health and human services. (1) The following components are in the department of public health and human services to carry out the purposes of the department:

(a) mental health services, consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) the Montana state hospital;

(ii) the Montana center for the aged; and

(iii) a community services component, consisting of appropriate services for the care and treatment of the mentally ill pursuant te Title 53, chapter 21, part 2;

(b) chemical dependency services, consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant te Title 53, chapter 24;

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(c) institutional and residential components of the developmental disabilities system for those developmentally disabled persons who require institutional or residential care according to Title 53, chapter 20, which components consist of:

(i) the Montana developmental center; and

(ii) the Eastmont human services center; and

(d) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

(i) the Montana veterans' home; and

(ii) the eastern Montana veterans' home at Glendive.

(2) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature.

Section 400. Powers and duties of department of public health and human services. The department of puhlic health and human services shall:

(1) adopt rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the board of pardons and parole.

(2) subject te the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands te determine those that may be most profitably used for agricultural purposes, taking inte consideration the needs of all institutions for tbe food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(3) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out ita functions under this title;

(4) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

(5) encourage the establishment of programs at the local level for the prevention and rehabilitation of disabilities as they relate to mental illness and chemical dependency.

Section 401. Responsibility of superintendents of institutions. The superintendents of institutions in the department of public health and human services are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department.

Section 402. Section 53-1-301, MCA, is amended to read:

"53-1-301. Permitted institutional industries, powers of department *departments*, and incentive pay to inmates. (1) Except as provided in

subsection (4), the department *of corrections or the department of public health and human services* may:

(a) establish industries in institutions that will result in the production or manufacture of products and the rendering of services as may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured at institutions. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require institutions to purchase needed goods from other institutions;

(g) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(h) provide for construction projects, up to the aggregate sum of $25,000 per project, performed by residents of institutions, except when the construction work is covered by a collective bargaining agreement;

(i) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(j) provide for the manufacture at an institution of moter vehicle license plates and other related articles;

(k) sell manufactured or agricultural products and livestock on the open market;

(l) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(m) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate or resident is working;

(n) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account establisbed under 53-9-109; and

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(o) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) (a) Except as provided for in subsection (2)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for each program, except that inmates employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(3) Premiums for workers' compensation and occupational disease coverage must be paid by the prison industries program or by the department of ~~institutions~~ *corrections*. If the department *of corrections* pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department *of corrections* by the private company contracting with the federally certified prison industries program for services and products.

(4) Except as provided in subsection (5), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(5) Any state institution, facility, or program operated by the department *of corrections* may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4."

Section 403. Section 53-1-303, MCA, is amended to read:

"53-1-303. **Prohibited acts.** Unless permitted by the department *of corrections or the department of public health and human services*, arranging for the labor of a resident of an institution is prohibited."

Section 404. Section 53-1-304, MCA, is amended to read:

"53-1-304. **Supervision of industries program.** The industries program ~~shall~~ *must* be supervised by the director of the department of corrections ~~and human services~~ *or of the department of public health and human services* or ~~his~~ *the director's* designated representative, provided the administration of the industries program is separate from the administration of any institution where the program may be located."

Section 405. Section 53-1-401, MCA, is amended to read:

"53-1-401. **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary charge" means the expense of providing identifiable, direct, resident services, including but not limited to:

(a) physicians' services;

(b) x-ray and laboratory services;

(c) dental services;

(d) speech-language pathology and audiology services;

(e) occupational and physical therapy;

(f) medical supplies;

(g) prescribed drugs; and

(h) specialized medical equipment.

(2) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

(3) "Department" means the department of ~~corrections~~ *public health* and human services provided for in ~~Title 2, chapter 15, part 23~~ *2-15-2201*.

(4) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservater to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

(5) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(6) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. No absence of a resident from the institution due to a temporary or trial visit may be counted as interrupting the accrual of the 120 days required to attain the status of a long-tsrm resident.

(7) "Per diem" means the gross daily budgeted cost of operating an institution or an individual unit of an institution (including certain contracted medical services, depreciation, and associated department costs but excluding the cost of educational programs, federal grants, ancillary charges, and costs not directly identified with patient care) divided by the full-time equivalent resident load.

(8) "Resident" means any person who is receiving care from or who is a resident of an institution listed in 53-1-402.

(9) "Third-party resource" means but is not limited to applicable medicare, medicaid, and personal health care benefits."

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Section 406. Section 53-1-501, MCA, is amended to read:

"**53-1-501. Rates for residential community correctional program board, room, and services charged by the department *of corrections*.** (1) The department *of corrections* shall establish per diem rates for room, board, and services for persons placed in or committed to a community correctional program operated by the department *of corrections*. The department *of corrections* may adopt rules allowing it to order part of a person's employment income to be used to pay restitution, fines, and child or spousal support.

(2) The department *of corrections* shall prescribe rules and procedures for the establishment of rates and charges to residents in any community correctional program that is under contract with the department *of corrections* and that provides room, board, or services or any combination of room, board, and services to residents of those facilities or programs. The amount assessed by these programs must be subject to the resident's ability te pay, based on the rates established as the basis for assessed charges, and subject to approval by the department *of corrections*."

Section 407. Section 53-1-502, MCA, is amended to read:

"**53-1-502. Rates for board, room, and ancillary services charged to correctional facility inmates.** (1) The department *of corrections* may establish and charge reasonable rates for board, room, and ancillary services as described in 53-1-401 for persons incarcerated in an institutional correctional facility.

(2) The department *of corrections* may prescribe rules that establish criteria and a procedure for determining ability to pay. The department *of corrections* may not make an assessment that would place an undue financial burden on the person."

Section 408. Section 53-2-101, MCA, is amended to read:

"**53-2-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services provided for in Title 2, chapter 15, part 22.

(2) "Protective services" means services to children and adults to be provided by the department ~~of family services~~ as permitted by Titles 41 and 53.

(3) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(4) "Needy person" is one who is eligible for public assistance under the laws of this state."

Section 409. Section 53-2-303, MCA, is amended to read:

"**53-2-303. County attorney and clerk — ex officio duties.** The county attorney ~~shall be~~ *is*, ex officio, the legal adviser to the county welfare board and shall render ~~such~~ legal services as *that* the county or department of ~~family~~ *public*

health and human services may require. The county clerk and recorder ~~shall be~~ *is*, ex officio, the secretary and clerk of the county welfare board."

Section 410. Section 53-2-304, MCA, is amended to read:

"**53-2 304. Staff personnel of county department.** (1) Each county board shall select and appoint from a list of qualified persons furnished by the department of ~~social and rehabilitation~~ *public health and human* services ~~such~~ staff personnel ~~as~~ *that* are necessary. The staff personnel in each county ~~shall~~ *must* consist of at least one qualified staff worker (or investigator) and ~~such~~ clerks and stenographers ~~as~~ *that* may be ~~decided~~ necessary. If conditions warrant, the county board, with the approval of the department of ~~social and rehabilitation~~ *public health and human* services, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of ~~social and rehabilitation~~ *public health and human* services may supervise ~~such~~ *the* county employees in respect to the efficient and proper performance of their duties. The county board of puhlic welfare may not dismiss any member of the staff personnel without the approval of the department of ~~social and rehabilitation~~ *public health and human* services. The department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department.

(2) Public assistance staff personnel attached to the county board ~~shall~~ *must* be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the county seat in the performance of their duties, but the county board of puhlic welfare shall reimburse the department of ~~social and rehabilitation~~ *public health and human* services from county poor funds the full amount of the salaries and travel expenses not reimhursed to the department by the federal government and the full amount of the department's administrative costs ~~which~~ *that* are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department hy the federal government. Under circumstances prescribed by the department of ~~social and rehabilitation~~ *public health and human* services, the reimbursement by the county board of public welfare may be less than the county share as prescribed ~~above~~ *in this subsection*. All other administrative costs of the county department ~~shall also~~ *must* be paid from county poor funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department of ~~social and rehabilitation~~ *public health and human* services shall present to the county department of public welfare a claim for the required reimhursements. The county board shall make ~~such~~ reimbursements within 20 days after the presentation of the claim, and the department of ~~social and rehabilitation~~ *public health and human* services shall credit ~~(add)~~ all ~~such~~ reimbursements to its account for administrative costs.

(4) If a county has transferred its public assistance and protective services responsibilities to the stato under part 8 of this chapter, the ~~appropriate~~ department shall select, appoint, and supervise all necessary public assistance

and protective services personnel, including if necessary a supervisor of staff personnel. All ~~such~~ personnel are directly responsible to ~~that~~ *the* department."

Section 411. Section 53-2-305, MCA, is amended to read:

"53-2-305. County departments under supervision of department. County departments are under the supervision of the department of ~~social and rehabilitation~~ *public health and human* services and *are* subject to audit by the department."

Section 412. Section 53-2-306, MCA, is amended to read:

"53-2-306. County department charged with local administration of public assistance. Except in a county that has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the county department of public welfare ~~shall be~~ *is* charged with the local administration of all forms of public assistance operations in the county. All ~~such~~ local administration must conform to federal and state law and the rules ~~as~~ established by the department of ~~social and rehabilitation~~ *public health and human* services."

Section 413. Section 53-2-322, MCA, is amended to read:

"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much of that amount as may be necessary. The board may levy up to an additional 12 mills if approved by the voters in the county. A county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. The department *of public health and human services* shall notify the counties of the number of mills required to be levied. Once an additional levy has been approved, the amount of the approved levy may continue to be levied without voter approval.

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance and protective services purposes as necessary to reimburse the department ~~and the department of family services~~ for the county's proportionate share of the administrative costs and of all public assistance and protective services and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department ~~and the department of family services~~ must be sufficient to make all of these reimbursements in full. The budget must make separate provision for each one of these public assistance and protective services activities, and proper accounts must be established for the funds for all the activities.

(4) The department shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy must be mailed to the department, and at any time before the final adoption of the budget, the department shall make recommendations with regard to changes in any part of the budget

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relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) The county poor fund, irrespective of the source of any part of the fund, may not be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for paying the county's proportionate share of public assistance and protective services or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of money in the county poor fund, whether the money was produced by the mill levy provided for in subsection (1) or from any additional levy authorized by law. The expenditure may be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for tbe building by the department ~~of health and environmental sciences~~ and when the expenditure has been approved by the department ~~of social and rehabilitation services and the department of family services~~.

(8) Money in the county poor fund may be used as matching funds for the receipt of federal money."

Section 414. Section 53-2-501, MCA, is amended to read:

"**53-2-501. Investigations and enforcement actions by department of justice.** (1) When requested by the department of ~~social and rehabilitation~~ *public health and human* services, the department of justice shall:

(a) investigate matters relating to public assistance and vendor payments, including but not limited to the claim for an acceptance of public assistance benefits by public assistance recipients and the receipt and disbursal of public assistance funds by state, county, or other governmental agencies;

(b) institute civil or criminal actions in the appropriate courts to enforce the public assistance laws and violations thereof.

(2) For purposes of the enforcement of and investigations relating to laws governing public assistance and vendor payments, the department of justice is a criminal justice agency, as defined in 44-5-103, and employees designated by the department have peace officer status with the powers of search, seizure, and arrest."

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Section 415. Section 53-2-503, MCA, is amended to read:

"53-2-503. Information made available to department of justice. (1) The department of ~~social and rehabilitation~~ *public health and human* services and its local units shall make available to the department of justice information contained in the public assistance files pertinent to the investigations and judicial actions described in 53-2-501.

(2) Every other state, county, or other governmental agency shall make available to the agents or attorneys of the department of justice all records, files, memoranda, forms, or other papers relating to public assistance mattors, including income tax returns filed with the department of revenue."

Section 416. Section 53-2-602, MCA, is amended to read:

"53-2-602. Grants based on need. Subject to review by the county board, the staff of the county department shall determine grants and changes in grants, based on the needs of each applicant, after investigation in accordance with the rules and standards of assistance prescribed by the department of ~~social and rehabilitation~~ *public health and human* services."

Section 417. Section 53-2-606, MCA, is amended to read:

"53-2-606. Right of appeal. (1) If an application for assistance for food stamps, aid to families with dependent children, or medicaid is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, the applicant or recipient may appeal to the board of ~~social and rehabilitation appeals~~ *public assistance* for a fair hearing by addressing a request for a hearing to the department *of public health and human services.* The board of ~~social and rehabilitation appeals~~ *public assistance* shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing.

(2) The department may upon its own motion review any decision of a county welfare board and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing of the decision. The department may have an additional investigation made and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this title.

(3) If the department reviews a county decision on its own motion, applicants or recipients affected by the decisions of the department shall upon request be given reasonable notice and an opportunity for a fair hearing by the board of ~~social and rehabilitation appeals~~ *public assistance.*

(4) All decisions of the department or the board of ~~social and rehabilitation appeals~~ *public assistance* are final and are binding and must be complied with by the county department."

Section 418. Section 53-2-608, MCA, is amended to read:

"53-2-608. Method of issuing assistance grants. (1) Checks in payment of public assistance must be issued by the department of ~~social and rehabilitation~~ *public health and human* services upon approved certificates of

award and reports of changes of eligible grantees as are forwarded by the county to the state department, and all checks must be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance must be issued in the full approved amount for each eligible approved grantee, and the original monthly payment must be from the state public assistance accounts. All puhlic assistance checks represent cash on demand at full par value to the recipient and vendor.

(2) Whenever the department of ~~social and rehabilitation~~ *public health and human* services, acting pursuant te standards established hy the department, determines that any otherwise eligible recipient of public assistance has, by reason of any physical or mental condition, such inability to manage funds that making payments to the recipient would be contrary te the recipient's welfare, the department may, under standards established under the state plan, make the public assistance payment on hehalf of the recipient to another person found by the department to be interested in or concerned with the welfare of the recipient."

Section 419. Section 53-2-609, MCA, is amended te read:

"**53-2-609. Revocation of assistance.** If the county department or department of ~~social and rehabilitation~~ *public health and human* services has reason to believe, by reason of a complaint or otherwise, that public assistance under this title has been improperly granted, it shall have an investigation made. If it appears as a result of an investigation that the assistance was improperly granted, the department of ~~social and rehabilitation~~ *public health and human* services shall notify the county department that ~~no~~ further payments ~~shall~~ *may not* be authorized for ~~such~~ *the* recipient. The right of appeal is granted recipients whose assistance has been revoked."

Section 420. Section 53-2-610, MCA, is amended te read:

"**53-2-610. County to reimburse department.** (1) On or hefore the 20th of each month, the department of ~~social and rehabilitation~~ *public health and human* services shall present a claim for reimhursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department shall make the reimbursement to the department of ~~social and rehabilitation~~ *public health and human* services within 20 days after the claim is presented.

(2) The counties may not be required to reimburse the department of ~~social and rehabilitation~~ *public health and human* services for:

(a) any portion of public assistance paid to a household eligible for aid to families with dependent children if the household includes an enrolled Indian who is the caretaker relative of a needy dependent child; or

(b) any payment on behalf of any person in a state-operated medical institution.

(3) (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of puhlic assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private

charitable institution are the financial responsihility of the appropriate county as provided in subsections (3)(b) through (3)(d).

(b) Tho county in which commitment of an adult is initiated is considered the county of financial responsibility except where court decree declares the residency to he otherwise. When an adult is transferred from a facility or institution to ono of the facilities listed in subsection (3)(a), the county that initiatod the original commitment is considered tho county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which tho facility is located is considered the county of financial responsibility.

(c) In all cases in which a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, the person may determine the county of residence when the person is restored to competoncy and released. The person becomes the financial responsibility of the now county of residence."

Section 421. Section 53-2-613, MCA, is amended to read:

"53-2-613. Application for assistance — assignmcnt of support rights. (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. Tho application must be submittod, in the manner and form prescribed by the department of ~~social and rehabilitation~~ *public health and human* services, and must contain information required by the department of ~~social and rehabilitation~~ *public health and human* services.

(2) A person by signing an application for public assistance assigns to the state, the department of ~~social and rehabilitation~~ *public health and human* services, and to the county welfare department all rights the applicant may have to support and medical payments from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) Whenever a support obligation is assigned to the department of ~~social and rehabilitation~~ *public health and human* services pursuant to this section, the following provisions apply:

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(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover a delinquent support obligation without notifying the department's child support enforcement division. The department may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice and an opportunity to participate. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county welfare department."

Section 422. Section 53-2-801, MCA, is amended to read:

"**53-2-801. Purpose.** The purpose of this part is to provide for the department of ~~social and rehabilitation~~ *public health and human* services to assume all responsibilities for public assistance programs and ~~for the department of family services to assume all responsibilities~~ for protective services for children and adults that, as of July 1, 1983, are provided by the counties pursuant to Titles 41 and 53. The assumption may become effective only at the option and with the express consent of each individual county requesting state assumption. State assumption allows counties to pay the state the proceeds from the 9-mill levy provided for in 53-2-813 rather than an amount based on the actual cost of providing public assistance and protective services in the county. Counties that opt for state assumption may provide other optional services for indigents with money available from funds derived from the difference between the 9-mill levy and the maximum amount of 13.5 mills permitted by 53-2-322."

Section 423. Section 53-2-802, MCA, is amended to read:

"**53-2-802. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "County department" means the county department of public welfare provided for in part 3 of this chapter.

(2) "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.

(3) "Needy person" is one who is eligible for public assistance under the laws of this state.

(4) "Protective services" means services to children and adults to be provided by the department of ~~family~~ *public health and human* services as permitted by Titles 41 and 53.

(5) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county department, regardless of the original source of assistance.

(6) "State assumption" means the transfer to the department of ~~social and rehabilitation services and the department of family~~ *public health and human* services by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through 53-2-306 and for public assistance and protective services, respectively, provided by the county department pursuant to Titles 41 and 53, except as otherwise specifically provided in this part. A county may continue to provide optional indigent assistance as provided in 53-2-804 and nursing home and hospital services as provided in 7-6-2512."

Section 424. Section 53-2-803, MCA, is amended to read:

"**53-2-803. Authority to adopt rules.** The department of ~~social and rehabilitation services and the department of family~~ *public health and human* services may adopt rules necessary to carry out the purposes of this part, including implementing transfer of the county programs to ~~each~~ *the* department~~, respectively~~."

Section 425. Section 53-2-811 MCA, is amended to read:

"**53-2-811. Transfer of county public assistance and protective services to *the* state departments — reassumption of responsibility.** (1) All responsibility of a county for public assistance and protective services for children and adults pursuant to Titles 41 and 53 may be transferred to the department of ~~social and rehabilitation services and the department of family services, respectively~~ *public health and human services*, except that the county attorney shall continue to provide legal assistance and representation for the purposes of adult and child protective services without charge and all debts and obligations incurred prior to the effective date of state assumption continue as the responsibility of the county.

(2) The board of county commissioners, after public hearing, may by resolution or ordinance transfer to the department of ~~social and rehabilitation services and the department of family~~ *public health and human* services all powers and duties for public assistance and protective services for children and adults~~, respectively~~, including the selection, supervision, and termination of staff personnel associated with the performance of these activities. Upon the effective date of the transfer, the department of ~~social and rehabilitation services and the department of family~~ *public health and human* services shall assume all powers and duties related to public assistance and protective services~~, respectively,~~ and accorded by law to the county welfare department. If

the notice required in subsection (3) is given, the transfer is effective at the start of the next state fiscal year.

(3) Counties opting for stete assumption shall notify the department of ~~social and rehabilitation services and the department of family~~ *public health and human* services by October 1 if the county wishes te change its status on the following July 1. A county that has opted for state assumption prior to July 1, 1995, may reassume responsibility for public assistance and protective services on July 1, 1996, if the county notifies the department prior te September 30, 1995.

(4) Counties opting for state assumption shall permit the department of ~~social and rehabilitation services and the department of family~~ *public health and human* services to use the same facilities currently occupied by the county department or substantially equal facilities, with fair rental value for tbe facilities to be paid by ~~each~~ *the* department. Counties opting for state assumption sball transfer to the ~~appropriate~~ department all materials, equipment, and supplies used in the operation of the county department and which were paid for in whole or in part with federal or state funds."

Section 426. Section 53-2-812, MCA, is amended to read:

"53-2-812. State assumption — permanent transfcr to state — exceptions. Except as provided in this section, a county opting for state assumption does so on a complete and permanent basis. State assumption or reassumption must be made pursuant to the adoption of a resolution or ordinance as provided in 53-2-811(2) and notice te the department of ~~social and rehabilitation services and the department of family~~ *public health and human* services as provided in 53-2-811(3). A county that has opted for state assumption prior to July 1, 1995, may reassume responsibility for public assistance and protective services if notice is provided pursuant te 53-2-811(2) and (3). A county shall notify the department of ~~social and rehabilitation services and the department of family~~ *public health and human* services by October 1 if tbe county wishes te change its status on the following July 1. Under a retention or reassumption, staff personnel continue under the supervision and control of the department. All debts and obligations of the department ~~and the department of family services~~ pertaining te public assistance and protective services at the time of reassumption must be transferred to the county opting for reassumption. A county may not retain or reassume assistance programs partially funded by the federal government."

Section 427. Section 53-2-813, MCA, is amended to read:

"53-2-813. Mill levy for counties transferring public assistance and protective services. (1) For the purpose of this part, 9 mills must be levied annually in those counties opting for state assumption.

(2) For a county electing state assumption, tbe proceeds of the mill levy establisbed in subsection (1) must be deposited in tbe state special revenue fund in the state treasury to the credit of the department of ~~social and rehabilitation~~ *public health and human* services. ~~The general fund authority of the department of social and rehabilitation services must be reduced and the general fund authority of the department of family services must be increased by an amount~~

~~equal to the county's expenditures for child and adult protective services in the fiscal year immediately preceding state assumption.~~"

Section 428. Section 53-3-115, MCA, is amended to read:

"**53-3-115. Legislative findings.** (1) The legislature finds that in order to use the limited resources of the state for the purposes of providing public assistance to persons whom it has determined are in need, certain programs must be eliminated and the provision of public assistance programs must be reorganized for more efficient delivery of services.

(2) The legislature finds that county governments are in the best position to efficiently and effectively deliver services for those in need who are not otherwise eligible for similar services provided by the department of ~~social and rehabilitation~~ *public health and human* services.

(3) (a) The legislature finds that the needs of persons who are aged, infirm, or misfortunate are adequately and appropriately provided for through the following programs:

(i) medicaid;

(ii) aid for dependent children;

(iii) food stamps;

(iv) commodities; and

(v) low-income energy assistance.

(b) The legislature further finds that the counties may in their discretion provide other programs of public assistance that they determine are appropriate and that may be funded with money derived from the county poor fund mill levy.

(4) The legislature finds that the effects of eliminating the state program of general relief are not known and that the administration and financing of public assistance programs by each county may not provide uniform assistance throughout the state."

Section 429. Section 53-4-201, MCA, is amended to read:

"**53-4-201. Definitions.** (1) The term "aid to families with dependent children" means money payments made on behalf of a dependent child pursuant to Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.), including payments to meet the needs of a relative with whom the dependent child is living. The term also includes emergency assistance to families with children as provided by the federal Social Security Act.

(2) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services provided for in ~~Title 2, chapter 15, part 22~~ *2-15-2201*.

(3) (a) The term "dependent child", for public assistance purposes, means:

(i) a child under the age of 18; or

(ii) a person under the age of 19 who is a student under the regulations prescribed by the department.

(b) The child ~~(~~ *described in subsection* (a)(i) or (a)(ii) ~~above)~~ must be deprived of parental support or care by reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of a parent and be living with a relative, as defined in rules adopted by the department.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 430. Section 53-4-203, MCA, is amended to read:

"**53-4-203. Demonstration program — purpose.** (1) The department of ~~social and rehabilitation~~ *public health and human* services shall seek an agreement with the U.S. secretary of health and human services in order to establish a demonstration program as authorized under section 503 of the federal Family Support Act of 1988, Public Law 100-485.

(2) The purpose of the program under subsection (1) is to test a policy that would either eliminate or modify the requirements of 45 CFR 233.100 to allow unemployed recipients of aid to families with dependent children to work more than 100 hours in a month and still retain eligibility for public assistance."

Section 431. Section 53-4-222, MCA, is amended to read:

"**53-4-222. County administration subject to rules prescribed by department.** The county department of public welfare shall administer the provisions of this part in the respective counties subject to the rules prescribed by the department of ~~social and rehabilitation~~ *public health and human* services pursuant to the provisions of this part."

Section 432. Section 53-4-242, MCA, is amended to read:

"**53-4-242. Periodic reconsideration of assistance.** All assistance grants made under this part ~~shall~~ *must* be reconsidered as frequently as may be required by the rules of the department of ~~social and rehabilitation~~ *public health and human* services."

Section 433. Section 53-4-244, MCA, is amended to read:

"**53-4-244. Payments to person interested in child's welfare in lieu of special guardianship.** In lieu of guardianship proceedings, payments may be made in behalf of the child or children to another person found by the county department to be interested in or concerned with the welfare of ~~such~~ *the* needy child or children in accordance with the rules established by the department of ~~social and rehabilitation~~ *public health and human* services."

Section 434. Section 53-4-246, MCA, is amended to read:

"**53-4-246. County share of participation.** Each county where the recipient of aid to families with dependent children resides shall reimburse the department of ~~social and rehabilitation~~ *public health and human* services in the amount of 22.5% of the approved aid to families with dependent children grants, exclusive of the federal share."

Section 435. Section 53-4-702, MCA, is amended to read:

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"53-4-702. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aid to families with dependent children" has the same meaning as provided in 53-4-201.

(2) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services provided for in ~~Title 2, chapter 15, part 22~~ *2-15-2201*.

(3) "Family Support Act of 1988" means the federal Family Support Act of 1988, Public Law 100-485, as amended.

(4) "JOBS program" or "program" means the job opportunities and basic skills training program established in 53-4-703."

Section 436. Section 53-4-719, MCA, is amended to read:

"53-4-719. Rulemaking authority. The department of ~~social and rehabilitation~~ *public health and human* services may adopt rules necessary to implement the provisions of this part."

Section 437. Section 53-5-401, MCA, is amended to read:

"53-5-401. Old-age assistance recovery. (1) Upon the death of any recipient of old-age assistance, the department of ~~social and rehabilitation~~ *public health and human* services shall execute and present a claim against the estato of the person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid ~~under Chapter 82, Laws of 1937, as amended~~. A claim may not be enforced against any real estate of a recipient while it is occupied by the surviving spouse or dependent as a home.

(2) Every transfer of property made by deed, grant, bargain, sale, or gift by any recipient of old-age assistance and recorded subsequent to ~~his having received such~~ *the recipient's receipt of the* assistance is presumed to have been made without value, as the term "value" is defined by 31-2-330, and with the intent to defeat the purposes of this section. These presumptions are disputable and may be controverted by competent evidence.

(3) If the federal law so requires, the federal government is entitled to a share of any amounts collected from recipients or their estates in proportion to the amount that it has contributed to the grants recovered, and the amount due the United States must be promptly paid by the state to the United States government. The remaining portion of the amount collected must be distributed to the state and county in proportion to the total amount paid by each."

Section 438. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program esteblished for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of ~~social and rehabilitation~~ *public health and human* services shall administer the Montana medicaid program.

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(2) Medical assistance previded by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and tbat are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) pbysical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescrihed eyeglasses;

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(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(6) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(7) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(8) The amount, scope, and duration of services provided under this part must be detormined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(9) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(10) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(11) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(12) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and

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program planning that payment te this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 439. Section 53-6-104, MCA, is amended to read:

"**53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor.** (1) The department of ~~social and rehabilitation~~ *public health and human* services shall provide for professional freedom of those licensed practitioners who provide medical assistance under this part and provide reasonable freedom of choice te recipients of medical aid to select the vendor or provider of medical care, services, or prescribed drugs.

(2) ~~Nothing in this~~ *This* section may *not* be construed te prohibit the department from imposing conditions on the payment of provider services and the receipt of medical assistance, as provided for under 53-6-111 and 53-6-113 through 53-6-116."

Section 440. Section 53-6-106, MCA, is amended to read:

"**53-6-106. Health care facility standards — definitions.** (1) For purposes of 53-6-106 through 53-6-108, the following definitions apply:

(a) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services.

(b) "Health care facility" means a health care facility as defined in 50-5-101.

(2) The department ~~and the department of health and environmental sciences~~ may entsr into agreements with appropriato federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

(3) The department of ~~health and environmental sciences~~ *public health and human services* shall adopt rules prescribing minimum standards for the maintenance and operation of health care facilities, including standards for the quality of care provided by those facilities receiving reimbursement under the Montana medicaid program. These standards must include, as a minimum, those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations contained in 42 CFR 430, et seq., as may be amended. The authority to prescribe standards and adopt rules under 53-6-106 through 53-6-108 is in addition to tbe authority granted to the department ~~of health and environmental sciences~~ pursuant to Title 50, chapter 5.

(4) Standards adopted by the department ~~of health and environmental sciences~~ may include but are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration, admission policies, patient care planning, training, medication, health services, rehabilitation services, and social services and activities."

Section 441. Section 53-6-107, MCA, is amended to read:

"**53-6-107. Sanctions — penalties.** (1) The department *of public health and human services* may suspend, terminato, or refuse to renew an agreement with a health care facility that has failed to meet the requirements for certification adopted for the Montana medicaid program under 53-6-106

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through 53-6-108. The department may also impose sanctions in the form of denial of medicaid payments for new admissions or other ponalties as described in 53-6-111.

(2) The department may impose a civil monetary penalty, with interest not to exceed 12% per annum, for each day that a facility is substantially out of compliance with standards adopted by the department ~~of health and environmental sciences~~ under the authority of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and may be applied to the protection of the health and property of residents of health care facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(3) Tho department may appoint temporary management personnel to oversee the operation of the facility and to assure the health and safety of the facility's residents if there is a need for temporary management because:

(a) an orderly closure of the facility is necessary; or

(b) improvements are being made to bring the facility into compliance with applicable standards.

(4) The department shall, in the case of an emergency, close the facility or transfer residents in the facility to other facilities, or both."

Section 442. Section 53-6-108, MCA, is amended to read:

"**53-6-108. Rules governing sanctions or remedies.** The department *of public health and human services* shall adopt rules governing tbe application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the standards adopted hy the department ~~of health and environmental sciences~~ or those federal standards established in 53-6-106 may not exceed $1,000 for each day the deficiency remains uncorrected. A health care facility aggrieved by an action of the department may request a hearing pursuant to Title 2, cbapter 4, part 6."

Section 443. Section 53-6-110, MCA, is amended to read:

"**53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information required in 17-7-111, the department of ~~social and rehabilitation~~ *public health and human* services shall submit a report concerning medicaid funding for the next biennium. This report must include at least tbe following elements:

(a) analysis of past and present funding levels for tbe various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant te 42 U.S.C. 300m-2(a)(2).

(2) As an integral part of the report, the department of ~~social and rehabilitation~~ *public health and human* services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

~~(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of health and environmental sciences.~~

~~(4)~~*(3)* In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

~~(5)~~*(4)* Whenever the department of ~~social and rehabilitation~~ *public health and human* services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting."

Section 444. Section 53-6-111, MCA, is amended to read:

"53-6-111. **Department charged with general administration of medical assistance — adoption of rules to punish fraud.** (1) The department of ~~social and rehabilitation~~ *public health and human* services ~~is hereby authorized and empowered to~~ *may* administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in chapter 2 of this title, as amended, and as contemplated by the provisions of Title XIX of the federal Social Security Act.

(2) The department shall adopt rules establishing a system of penalties and sanctions applicable to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The department shall define, by rule, those activities ~~which~~ *that* are fraudulent, abusive, or improper.

(3) The penalties or sanctions imposed include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

(b) withholding of payments to offset previous improper payments to a provider;

(c) suspension of payments te a provider pending resolution of a dispute involving fraudulent, abusive, or improper activities;

(d) suspension of participation in the program for a specified period of time; and

(e) permanent termination of participation in the medical assistance program.

(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent, abusive, or improper activities, together with interest at the rato set by 15-30-142 for tax deficiencies from the date of ~~such~~ payment.

(5) In all cases in which a penalty or sanction may be imposed, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6."

Section 445. Section 53-6-112, MCA, is amended te read:

"53-6-112. Department to print and distribute copies of part and certain forms. The department of ~~social and rehabilitation~~ *public health and human* services shall have printed and distributo copies of this part to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports, and ~~such~~ other forms as may be necessary in relation to medical assistance."

Section 446. Section 53-6-113, MCA, is amended to read:

"53-6-113. Department to adopt rules. (1) The department of ~~social and rehabilitation~~ *public health and human* services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and as may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as amended.

(2) The department shall adopt rules as are necessary te further define for the purposes of this part the services provided under 53-6-101 and te provide that services utilized are medically necessary and that these services are the most efficient and cost effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set such rates of reimbursement as it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limitod to:

(a) the availability of appropriated funds;

(b) the actual cost of services;

(c) the quality of services;

(d) the professional knowledge and skills necessary for the delivery of services; and

(e) the availability of services.

(4) The department shall specify hy rule those professionals who may deliver or direct the delivery of particular services.

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(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, and confidentiality of applicant and recipient information.

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, or if funds appropriated are not sufficient te provide medical care for all eligible persons.

(8) The department may adopt rules necessary for tbe administration of medicaid managed-care systems. Rules to be adopted may include but are not limited to rules concerning:

(a) participation in managed care;

(b) selection and qualifications for providers of managed care; and

(c) standards for the provision of managed care."

Section 447. Section 53-6-114, MCA, is amended to read:

"**53-6-114. Rules of department binding on county welfare departments.** All rules of the department of ~~social and rehabilitation~~ *public health and human* services made under this part ~~shall be~~ *are* binding upon the county departments of public welfare."

Section 448. Section 53-6-115, MCA, is amended to read:

"**53-6-115. Contracts with other agencies.** The department of ~~social and rehabilitation~~ *public health and human* services may by suitable rules provide for contracting with any state or private agency for processing and payment of claims under ~~such~~ *the* program of medical assistance, and the department ~~shall have the authority to~~ *may* contract with one or more private or state agencies to provide any or all of the enumerated medical services."

Section 449. Section 53-6-116, MCA, is amended to read:

"**53-6-116. Medicaid managed care — capitated health care.** (1) The department of ~~social and rehabilitation~~ *public health and human* services, in its discretion, may develop managed-care and capitated health care systems for medicaid recipients.

(2) The department may contract with one or more persons for the management of comprehensive physical health services and the management of comprehensive mental health services for medicaid recipients. The department may contract for the provision of these services by means of a fixed monetary or capitated amount per recipient.

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(3) A managed-care system is a program organized to serve the medical needs of medicaid recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through appropriate health care professionals.

(4) The provision of medicaid services through managed-care and capitated health care systems is not subject to the limitations provided in 53-6-101 and 53-6-104.

(5) The proposed systems, referred to in subsection (1), must be submitted to the legislative finance committee. The legislative finance committee shall review the proposed systems at its next regularly scheduled meeting and shall provide any comments concerning the proposed systems to the department of ~~social and rehabilitation~~ *public health and human* services."

Section 450. Section 53-6-117, MCA, is amended to read:

"**53-6-117. Participation requirements.** (1) The department of ~~social and rehabilitation~~ *public health and human* services may require medicaid recipients to participate in a managed-care system.

(2) Recipients who are required by the department to participate in a managed-care system shall participate as required in order to remain eligible for medicaid.

(3) The department may require the participation of medicaid recipients in managed-care systems based upon geographical, financial, social, medical, and other factors as the department may determine are relevant to the development and efficient management of managed-care systems."

Section 451. Section 53-6-131, MCA, is amended to read:

"**53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of ~~social and rehabilitation~~ *public health and human* services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.), or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

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(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(6) Notwithstanding any other provision of this chapter, medical assistance must be provided te infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

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(7) A person described in subsection (6) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7)."

Section 452. Section 53-6-132, MCA, is amended to read:

"**53-6-132. Application for assistance.** Application for assistance under this part ~~shall~~ *must* be made to the office of the county department in the county in which the person is residing. The application ~~shall~~ *must* be presented in the manner on the form prescribed by the department of ~~social and rehabilitation~~ *public health and human* services. All individuals wishing to apply ~~shall~~ *must* have the opportunity to do so."

Section 453. Section 53-6-133, MCA, is amended to read:

"**53-6-133. Investigation and determination of eligibility.** (1) The county department shall promptly investigato and determine the eligibility of each applicant under this part in accordance with the rules of the department of ~~social and rehabilitation~~ *public health and human* services. Each applicant ~~shall~~ *must* be informed of ~~his~~ *the* right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this part, and aid ~~shall~~ *must* be furnished promptly to eligible persons. Each applicant shall receive written notice of the decision concerning ~~his~~ *the applicant's* application, and *the* right of appeal ~~shall be~~ *is* secured to the applicant under the procedures of 53-2-606.

(2) The county departments of public welfare and the department of ~~social and rehabilitation~~ *public health and human* services ~~are hereby authorized to~~ *may* accept the federal social security administration's determination of eligibility for supplemental security income, Title XVI of the Social Security Act, as qualifying ~~such~~ *the* eligible individuals to receive medical assistance under this part."

Section 454. Section 53-6-134, MCA, is amended to read:

"**53-6-134. Extension of eligibility for medical assistance to persons terminated from aid to families with dependent children.** (1) In accordance with section 1925 of Title XIX of the Social Security Act (42 U.S.C. 1396r-6), the department of ~~social and rehabilitation~~ *public health and human* services shall provide for the extension of eligibility for medical assistance to persons who lose eligibility for aid to families with dependent children due to:

(a) increased hours or income from employment; or

(b) loss of federally prescribed earned income disregards.

(2) In providing for the extension of eligibility for medical assistance under subsection (1), the department may provide for health insurance or other health coverage in accordance with subsections 1925(a)(4)(B) and 1925(b)(4)(C) of Title XIX of the Social Security Act (42 U.S.C. 1396r-6(a)(4)(B) and 42 U.S.C. 1396r-6(b)(4)(C)), and may exercise the other options contained in section 1925 of Title XIX of the Social Security Act (42 U.S.C. 1396r-6), regarding the provision of medical assistance."

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Section 455. Section 53-6-142, MCA, is amended to read:

"53-6-142. Periodic review of assistance. All medical assistance cases approved under this part ~~shall~~ *must* be reviewed as often as ~~shall be~~ required under the rules of the department of ~~social and rehabilitation~~ *public health and human* services."

Section 456. Section 53-6-143, MCA, is amended to read:

"53-6-143. Limitations on liens and recoveries. (1) An applicant for or recipient of assistance may not be required to execute an agreement creating a lien on ~~his~~ *the applicant's* real property.

(2) A lien may be imposed against the real or personal property of an individual prior to ~~his~~ *the individual's* death for recovery of medical assistance paid or to be paid on ~~his~~ *the individual's* behalf under this chapter only:

(a) pursuant to a judgment of a court for recovery of assistance incorrectly paid on behalf of the recipient; or

(b) on a third-party recovery as provided in 53-2-612.

(3) (a) The department may recover medical assistance correctly paid on behalf of a recipient only:

(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before ~~he~~ *the recipient* reached age 65; or

(ii) as provided in 53-2-612.

(b) The department may recover under 53-2-611 only:

(i) after the death of the recipient's surviving spouse, if any; and

(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and totally disabled.

(4) Recoveries must be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, ~~shall~~ *must* be prorated to reimburse the county share of participation. The provisions of this section are ~~hereby~~ extended to provide for the recovery of all medical assistance paid under this part and ~~likewise~~ to all medical aid to the aged assistance paid by the department of ~~social and rehabilitation~~ *public health and human* services during the period of time July 1, 1965, through June 30, 1967."

Section 457. Section 53-6-150, MCA, is amended to read:

"53-6-150. Statutory appropriation of donated funds. (1) The department of ~~social and rehabilitation~~ *public health and human* services may receive private funds and nonfederal and nonstate public funds for its medical assistance programs. Donated funds must be matched with federal funds whenever possible.

(2) Funds donated to the department for its medical assistance programs are statutorily appropriated to the department as provided in 17-7-502."

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Section 458. Section 53-6-401, MCA, is amended to read:

"53-6-401. Definitions. As used in this part, the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

(2) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services as provided for in ~~Title 2, chapter 15, part 22~~ *2-15-2201*.

(3) "Long-term care facilities" means facilities that are certified by the department ~~of health and environmental sciences~~ to provide skilled or intermediate nursing care services, including intermediate nursing care services for the developmentally disabled.

(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.

(5) "Long-term care preadmission screening and resident review" means an evaluation that results in a determination as to whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities."

Section 459. Section 53-7-101, MCA, is amended to read:

"53-7-101. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services provided for in 2-15-2201.

(2) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(3) "Maintenance" means money payments made in accordance with 53-7-108.

(4) "Occupational license" means a license, permit, or other written authority required hy any governmental unit to engage in an occupation.

(5) "Person with an employment handicap" means the same as "individual with handicaps" as defined in tbe federal Rehabilitation Act of 1973 (,29 U.S.C. 706(8)(A)), as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.

(6) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce the employment handicap of a person within a reasonahle length of time, including but not

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limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(7) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(8) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with employment handicaps. ~~Such~~ *The* barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

(9) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with an employment handicap to become independent and productive or employable.

(10) "Rehabilitation training" means training provided to a person with an employment handicap to rehabilitate the person's employment handicap; ~~including~~. *The term includes* but *is* not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(11) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with an employment handicap to enable the person insofar as possible to become independent and productive or employable.

(12) "Vocational rebabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person."

Section 460. Section 53-7-202, MCA, is amended to read:

"53-7-202. Definitions. (1) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services.

(2) "Severe disability" means a severe physical or mental impairment that seriously limits a person's functional capacities in respect to obtaining employment.

(3) "Sheltered employment" means a recognized program of rehabilitation, remunerative employment, or other occupational rehabilitating activity of an educational or therapeutic nature provided by a nonprofit sheltered workshop provider. Sheltered employment includes job skills and social skills training and remunerative employment.

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(4) "Supervised work program" means a program providing guidance in learning and achieving the requirements of job performance through work activity, sheltered employment, and supported employment.

(5) "Supported employment" means competitive work in an integrated work setting for a person with a severe disability who is in need of assistance in order to become employed or remain employed. Supported employment includes assessment, preplacement preparation, job development, job placement, job skills training, and support services.

(6) "Support services" means continuous or periodic job skills training provided to a person at a worksite to enable the person to perform work. Support services also include services away from the worksito that are necessary to allow a person with a severe disability to participate in a supervised work program, such as transportation, direction and assistance in functional skills, and counseling for family members.

(7) "Work activity" means therapeutic work-related activities provided by a nonprofit work activity center provider to persons whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic work-related activities include training in basic skills of living and any purposeful activity so long as work or production is not the main purpose."

Section 461. Section 53-7-301, MCA, is amended to read:

"**53-7-301. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Blindness" means a visual disability in which:

(i) a person's central visual acuity does not exceed 20/200 in the bettor eye with correcting lenses; or

(ii) a person's visual field at the widest diameter subtends an angle no greater than 20 degrees.

(b) The term includes any visual disability that, in the determination of the department, renders vision seriously defective or causes blindness.

(2) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services provided for in 2-15-2201.

(3) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(4) "Low vision" means a visual impairment that, even with correction, remains so severe as to make performance of daily tasks difficult.

(5) "Maintenance" means money payments made in accordance with 53-7-310.

(6) "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

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(7) "Person with an employment handicap" means the same as "individual with handicaps" as defined in the federal Rehabilitation Act of 1973 (29 U.S.C. 706(8)(A)), as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.

(8) *(a)* "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce an employment handicap caused by blindness or low vision within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances~~;~~.

(b) ~~but excluding~~ *The term does not include* curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(9) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(10) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with blindness or low vision. ~~Such~~ *The* barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

(11) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with blindness or low vision to become independent and productive or employable.

(12) "Rehabilitation training" means training provided to a person with blindness or low vision to rehabilitate the person's employment handicap, including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(13) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with blindness or low vision to enable the person insofar as possible to become independent and productive or employable.

(14) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehahilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person."

Section 462. Section 53-9-105, MCA, is amended to read:

"**53-9-105. Rehahilitation of victims.** The division shall refer to the department of ~~social and rehabilitation~~ *public health and human* services victims who have been permanently disabled through criminally injurious conduct, who are receiving benefits under this part, and who in the opinion of

the division may he vocationally rehabilitated. The department of ~~social and rehabilitation~~ *public health and human* services shall provide for the vocational rehabilitatien of the victims under its rehabilitation programs te the extent funds are available under ~~such~~ *the* programs."

Section 463. Section 53-10-501, MCA, is amended to read:

"**53-10-501. Definitions.** As used in this part, the following definitions apply:

(1) "Block grant" means the federal community services block grant established under 42 U.S.C. 9901, et seq. ~~(95 Stat. 511, et seq.).~~

(2) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services provided for in 2-15-2201.

(3) "Human resource development council" means a nonprofit public or private community organization serving low-income persons in a multicounty area that has the same boundaries as one or more substate planning districts established by executive order of the governor."

Section 464. Section 53-18-101, MCA, is amended to read:

"**53-18-101. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services provided for in ~~Title 2, chapter 15, part 22~~ *2-15-2201*.

(2) "Self-sufficiency trust" means a trust created by a nonprofit corporation that is a 501-C-3 organization under the United States Internal Revenue Code of 1954, as amended, and that was organized under the Montana Nonprofit Corporation Act, Title 35, chapter 2, for the purpose of providing for the care and treatment of one or more persons who are residents of this state and are developmentally disabled, mentally ill, physically handicapped, or otherwise eligible for department services, as defined by the department."

Section 465. Section 53-18-103, MCA, is amended to read:

"**53-18-103. Administration of trust account.** (1) The department may accept money from a self-sufficiency trust for deposit in the self-sufficiency trust account pursuant to an agreement with the self-sufficiency trust naming one or more beneficiaries who are residents of this state and are developmentally disabled, mentally ill, physically handicapped, or otherwise eligible for department services, as defined by the department. The agreement must specify the care or treatment to be provided for each named beneficiary. Money in the trust account must be accounted for separately for each named beneficiary. The department ~~of corrections and human services shall contract with the department to~~ *of public health and human services shall* administer the trust account for beneficiaries who are mentally ill.

(2) (a) The department shall adopt rules te administer the trust account.

(b) The money in the trust account may be spent by the department, pursuant to its rules, only to provide care or treatment for the named beneficiary in accordance with the terms of the agreement.

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(c) If the director of the department determines that the money in the trust account for a named beneficiary cannot be used for the care and treatment of the beneficiary in a manner consistont with the rules of the department and the agreement or upon request of the self-sufficiency trust, the remaining money in the trust account for the named beneficiary, together with any accumulated interest, must be promptly returned to the self-sufficiency trust that provided the money for deposit in the trust account.

(3) The trust account money must be depositod in the state treasury and invested as required by law and the earnings credited to the trust account."

Section 466. Section 53-19-102, MCA, is amended to read:

"53-19-102. Definitions. As used in this part, the following definitions apply:

(1) "Community home for persons with severe disabilities" means a facility licensed by the department ~~of family services~~, as provided for in 52-4-201 through 52-4-205.

(2) "Department" means the department of ~~social and rehabilitation~~ *public health and human* services established in 2-15-2201.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

(4) "Live and function independently" means to have control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(5) "Person with severe disabilities" means the same as "individual with severe handicaps" as defined in the federal Rehabilitation Act of 1973 (29 U.S.C. 706(15)(B)), as may be amended. The term includes an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of ~~his~~ *the* physical or mental disahility that the services provided under this part are required in order for the individual to achieve a greater level of independence in functioning in family or community or in engaging in or continuing in employment."

Section 467. Section 53-20-102, MCA, is amended to read:

"53-20-102. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created hy 2-15-211.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

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(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originatod before the individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of ~~such~~ *the* individual.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable ~~him~~ *the person* to cope more effectively with the demands of ~~his~~ *the individual's* own person and environment and to raise the level of ~~his~~ *the individual's* physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed te a residential facility. The committed person is a member of the team.

(7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified as provided for in 53-20-106 by the department of ~~social and rehabilitation services and the department of corrections~~ *public health* and human services.

(9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:

(a) a licensed physician or osteopath;

(b) a registered nurse; or

(c) a professional program staff person for the residential facility who the department of ~~corrections~~ *public health* and human services determines meets the professional requirementa necessary for federal certification of the facility.

(10) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.

(12) "Residential facility screening team" means a team of persons appointed as provided in 53-20-133.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.

(14) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

(a) is developmentally disabled;

(b) is impaired in cognitive functioning; and

(c) has behaviors that pose an imminent risk of serious barm to self or others or self-help deficits so severe as to require total care or near total care and because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services. (Terminates September 30, 1995—sec. 27, Ch. 381. L. 1991.)

53-20-102. (Effective October 1, 1995) Definitions. As used in this part, tbe following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically bandicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of ~~such~~ *the* individual.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assistod to acquire and maintain those life skills which enable ~~him~~ *the person* to cope more effectively with the demands of ~~his~~ *the individual's* own person and environment and to raise the level of ~~his~~ *the individual's* physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed to a residential facility. The committed person is a member of the team.

(7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

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(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified as provided for in 53-20-106 by the department of ~~social and rehabilitation services and the department of corrections~~ *public health* and human services.

(9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:

(a) a licensed physician or osteopath;

(b) a registered nurse; or

(c) a professional program staff person for the residential facility who the department of ~~corrections~~ *public health* and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.

(12) "Residential facility screening team" means a team of persons appointed as provided in 53-20-133.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to he developmentally disabled and in need of developmental disability services.

(14) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disahled.

(15) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disahility or a combination of botb, rendering a person unable to function in a community-based setting and which has resulted in self-infiicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect ~~his~~ *the person's* life or health."

Section 468. Section 53-20-104, MCA, is amended to read:

"**53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board of inquiry and review to ensure that the treatment of all persons admitted to a residential facility is humane and decent and meets tbe requirements set forth in tbis part.

(2) The board shall review all plans for experimental research or bazardous treatment procedures involving persons admitted to a residential facility to ensure that the researcb project is humane and not unduly bazardous and that

it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services. An experimental research project involving persons admitted te a residential facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visiters.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility that is providing a course of residential habilitation and treatment to any person pursuant te this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the facility.

(5) The board shall inspect the file of eacb person admitted to a residential facility pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board sball inquire concerning all use of restraints, isolation, or otber extraordinary measures.

(6) The board may assist a resident at a residential facility in resolving any grievance the resident may have concerning the resident's admission or course of treatment and habilitation in the facility.

(7) If the board believes that a facility is failing te comply with the provisions of this part in regard te its physical facilities or its treatment of any resident, it shall report its findings at once to the superintendent of the facility and the director of the department of ~~corrections~~ *public health* and human services. If appropriate, after waiting a reasonable time for a response from the superintendent or the director, the board may notify tbe parents or guardian of the resident involved, the next of kin, if known, the responsible person appointed by the court for the resident involved, and the district court that has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning the status of the residential facilities and habilitation programs that it has inspected."

Section 469. Section 53-20-106, MCA, is amended to read:

"**53-20-106. Certification of professional persons.** (1) The department of ~~social and rehabilitation services and the department of corrections~~ *public health* and human services shall certify professional persons for purposes of tbis part.

(2) The department of ~~social and rehabilitation services and the department of corrections~~ *public health* and human services sball adopt rules governing the certification of professional persons. The rules must establish the appropriate combination of education, skills, and experience necessary for certification and set forth qualifications developed by reference te recognized national standards in the field of developmental disabilities."

Section 470. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening — recommendation for treatment at residential facility — hearing. (1) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the person evaluated is seriously developmentally disabled and recommends treatment and habilitation in a residential facility on an extended basis, the team shall file its written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation and shall describe any tests or evaluation devices that have been employed in evaluating the patient.

(2) If ~~no~~ *a* responsible person has *not* yet been appointed, the court may appoint one at this time. If there is no parent or guardian, the court shall appoint a responsible person.

(3) At the request of the respondent, ~~his~~ *the respondent's* parents or guardian, or the responsible person, the court shall appoint counsel for the respondent. If the parents (or guardian) ~~are~~ *is* indigent and if ~~they~~ *the parents or guardian* ~~request~~ *requests* it, the court shall appoint counsel for the parents or guardian.

(4) Notice of the recommendation must be mailed or delivered to the respondent, ~~his~~ *the respondent's* parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

(5) The respondent, ~~his~~ *the respondent's* parents or guardian, the responsible person, or the attorney for any party may request that a hearing be held on the recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time, and place of the hearing to each of the parties listed at the beginning of this subsection. The hearing must be held before the court without jury. The rules of civil procedure must apply.

(6) If the court finds that the respondent is seriously developmentally disabled, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled but not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of ~~social and rehabilitation~~ *public health and human* services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the petition.

(7) If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if admission is not in the best interests of the person."

Section 471. Section 53-20-128, MCA, is amended to read:

"53-20-128. Extension of admission period — hearing. (1) If the qualified mental retardation professional in charge of the resident determines

that the admission to the residential facility should continue beyond the period specified in the court order, ~~he~~ *the professional* shall, at least 15 days before the end of the period set out in the court order, send written notice of ~~his~~ *the professional's* recommendation and request for renewal of the order to the court that issued the order, the resident, ~~his~~ *the resident's* parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and tho responsible person appointed by the court, if any. The recommendation and request must be accompanied by a written report describing the habilitation plan that has been undertaken for the resident and the future habilitation plan that is anticipated by the qualified mental retardation professional.

(2) If any person ~~so~~ notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of tbe persons informed of tbe recommendation. The hearing must be conducted in the mannor set forth in 53-20-125. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require treatment in a residential facility or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall refer the respondent to the department of ~~social and rehabilitation~~ *public health and human* services to be considered for placement in community-based services according to 53-20-209. If the person is placed in community-based services or if the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court may not order continuation of admission to a residential facility that does not have an individualized habilitation plan for the resident. In its order, tbe court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility."

Section 472. Section 53-20-133, MCA, is amended to read:

"53-20-133. Residential facility screening team — referral by court — membership — rules. (1) When the district court considers a porson for commitment to a residential facility under this part, the court shall refer the person to the residential facility screening team for screening to determine whether placement and habilitation in a residential facility are appropriate for the person.

(2) A court may not commit a person to a residential facility under 53-20-125 unless the residential facility screening team determines that placement and habilitation in a residential facility are appropriate for the person.

(3) The residential facility screening team may not determine that placement and habilitation in a residential facility are appropriats unless the residential facility screening team determines that the person is seriously developmentally disabled.

(4) The residential facility screening team shall provide the court with the social and placement information relied upon by the residential facility screening team in making its detormination.

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(5) For purposes of this part, the department of ~~social and rehabilitation services and the department of corrections~~ *public health* and human sorvices shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures te govern the determinations mado by the rosidential facility screening team."

Section 473. Section 53-20-161, MCA, is amended to read:

"**53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records must be considered privileged and confidontial. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing hy the resident, if the resident is capable of giving informed consent, or by ~~his~~ *the resident's* parents or guardian or the responsible person must be permitted access to the resident's records. Information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if ~~he~~ *the resident or former resident* is over the age of majority and is capablo of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or ~~his~~ *the superintendent's* designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or ~~his~~ *the superintendent's* designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or ~~his~~ *the superintendent's* designee as custedian of a resident of that facility whenever release is required by federal or state law or department of ~~social and rehabilitation~~ *public health and human* services rules.

(2) Information may not be released by a superintendent or ~~his~~ *the superintendent's* designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, ~~his~~ *the resident's* parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court tbat ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to detormine whether the release of information should be allowed. Information

may not bo released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the facility tbat is not inconsistont with the needs and rights of the resident. Information may not be released pursuant to these subsections except in accordance with writton policies consistont with the requirements of this part adopted by the facility. Persons receiving notice of a proposed release of information shall also receive a copy of the writton policy of the facility governing release of information.

(3) These records must include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record;

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, including mode of communication;

(e) a record of each physical examination that describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications ~~thereto~~ *to the plan* and an appropriate summary that will guide and assist the resident care workers in implementing the resident's program;

(g) the findings made in monthly reviews of the habilitation plan, which findings must include an analysis of the successes and failures of the habilitation program and direct whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications ~~thereto~~ *to the plan* and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a professional person with a resident;

(k) a summary of the resident's response to ~~his~~ *the resident's* habilitation plan, prepared by a qualified mental retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, ~~such~~ *the* response must be scientifically documentod.

(l) a monthly summary of the extont and nature of the resident's work activities and the effect of the activity upon the resident's progress in the habilitation plan;

(m) a signed order by a qualified mental retardation professional, professional person, or physician for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures, illnesses, injuries, and treatments ~~thereof~~ and immunizations."

Section 474. Section 53-20-163, MCA, is amended to read:

"**53-20-163. Abuse of residents prohibited.** (1) Every residential facility shall prohibit mistreatment, neglect, or abuse in any form of any resident. Alleged violations must be reported immediately to the superintendent of the facility, and there must be a written record that:

(a) each alleged violation has been thoroughly investigated and findings stated; and

(b) the investigation into the alleged violation was initiated within 24 hours of the report of the incident and the results were reported to the director of the department of ~~corrections~~ *public health* and human services.

(2) The reports must also be made to the mental disabilities board of visitors monthly. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members."

Section 475. Section 53-20-202, MCA, is amended to read:

"**53-20-202. Definitions.** As used in this part, the following definitions apply:

(1) "Comprehensive developmental disability system" means a system of services, including but not limited te the following basic services, with the intention of providing alternatives to institutionalization:

(a) evaluation services;

(b) diagnostic services;

(c) treatment services;

(d) day-care services;

(e) training services;

(f) education services;

(g) employment services;

(b) recreation services;

(i) personal-care services;

(j) domiciliary-care services;

(k) special living arrangements services;

(l) counseling services;

(m) information and referral services;

(n) follow-along services;

(o) protective and other social and sociolegal services; and

(p) transportation services.

(2) "Department" means the department of ~~social and rehabilitation services~~ *public health and human services.*

(3) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurological handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of tbe person.

(4) "Developmental disabilities facility" means any service or group of services offering care to the developmentally disabled on an inpatient, outpatient, residential, clinical, or other programmatic basis.

(5) "Planning and advisory council" or "council" means the developmental disabilities planning and advisory council created in 2-15-2204."

Section 476. Section 53-20-213, MCA, is amended to read:

"**53-20-213. Departments to cooperate.** The department of ~~corrections and human services, the department of social and rehabilitation services, the department of health and environmental sciences, the department of family~~ *public health and human* services, and the office of superintendent of puhlic instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled."

Section 477. Section 53-20-214, MCA, is amended to read:

"**53-20-214. Certain transfers of funds authorized.** Funds appropriated to the ~~department of corrections and human services,~~ Montana state hospital, or Montana developmental center may be transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of ~~social and rehabilitation~~ *public health and human* services for comprehensive developmental disability systems if residents of any of those institutions are transferred to a comprehensive developmental disability system resulting in less expenditures at that institution than allowed by legislative appropriation."

Section 478. Section 53-20-302, MCA, is amended to read:

"**53-20-302. Definition of community home — limitation on numher of residents.** A community home for the developmentally disabled is a family-oriented residence or home designed to provide facilities for two to eight

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developmentally disabled persons, established as an alternative to existing state institutions. The number of developmentally disabled persons may not exceed eight in ~~such~~ a community home, except that the department of ~~family~~ *public health and human* services may grant written approval for more than eight but not more than twelve persons."

Section 479. Section 53-20-303, MCA, is amended to read:

"53-20-303. Parties authorized to establish and operate community homes. (1) Nonprofit corporations or associations may be formed or organized in any community for the purposes of establishing a community home or homes for the developmentally disabled under this part and to receive services, facilities, and funds as the department of ~~social and rehabilitation~~ *public health and human* services and other governmental units may be authorized by law to provide.

(2) The department may also establish a community home or homes for the developmentally disabled under this part and receive services, facilities, and funds as the department and other governmental units may be authorized by law to provide."

Section 480. Section 53-20-304, MCA, is amended to read:

"53-20-304. Department contracts with nonprofit corporations — governmental units providing for community homes. (1) The department of ~~social and rehabilitation~~ *public health and human* services may contract with nonprofit corporations or associations to provide facilities and services for the developmentally disabled in community homes for the developmentally disabled and is authorized to expend ~~moneys~~ *money* appropriated or available for that purpose.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized to provide, at their own expense, funds, materials, facilities, and services for community homes for the developmentally disabled."

Section 481. Section 53-20-305, MCA, is amended to read:

"53-20-305. Local control of community homes — departmental licensing, administration, operation, health and safety standards. (1) Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs they believe in the best interest of their homes.

(2) (a) A community home for the developmentally disabled ~~shall~~ *must* be licensed annually by the department of ~~family~~ *public health and human* services.

(b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) ~~(a)~~ The department of ~~family~~ *public health and human* services for the purpose of licensing shall adopt standards and rules concerning the

administration, operation, health, and safety of community homes for the developmentally disabled.

~~(b) The department of health and environmental sciences shall provide advice and recommendations to the department of social and rehabilitation services and the department of family services concerning the standards for health and safety.~~"

Section 482. Section 53-20-306, MCA, is amended to read:

"**53-20-306. Federal aid.** The department of ~~social and rehabilitation~~ *public health and human* services ~~is authorized to~~ *may* apply for and receive federal-aid money or other assistance ~~which~~ *that* ~~may be~~ *is* available for programs in the nature of the program created by this part."

Section 483. Section 53-20-307, MCA, is amended to read:

"**53-20-307. Health and safety standards for licensing.** (1) (a) After initial certification by the state fire prevention and investigation program of the department of justice, community homes must be certified annually for fire and life safety by the department of justice.

(b) The department of justice shall notify the department of ~~social and rehabilitation services and the department of family~~ *public health and human* services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of ~~health and environmental sciences~~ *public health and human services* is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties as defined in 53-20-303 for the health and safety certification."

Section 484. Section 53-20-504, MCA, is amended to read:

"**53-20-504. Powers and duties of department of ~~corrections and human services and department of social and rehabilitation~~ *public health and human* services.** The department of ~~corrections and human services and the department of social and rehabilitation~~ *public health and human* services:

(1) may operate or contract with a nonprofit corporation that demonstrates expertise in and the capability of providing programs for the patient population to be served by the facility and for the operation and management of nursing homes;

(2) shall ensure that any state-owned nursing homes are in compliance with federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or

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federal, state, and local government agencies for the purposes of establishing and operating nursing homes."

Section 485. Section 53-20-505, MCA, is amended to read:

"**53-20-505. Disposition of facility.** ~~Nothing~~ *Section* ~~in~~ 53-20-504 ~~prohibits~~ *does not prohibit* the disposition of the facility as provided in 77-2-302 if an appropriate use for the facility cannot be found by the department of ~~corrections and human services or the department of social and rehabilitation~~ *public health and human* services."

Section 486. Section 53-21-102, MCA, is amended to read:

"**53-21-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of ~~corrections~~ *public health* and human services provided for in ~~Title 2, chapter 15, part 23~~ *2-15-2201*.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its desiguation of the friend of respondent.

(6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcobol; or

(b) drug or alcohol intoxication.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

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(8) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury to others or the imminent threat of injury but whicb:

(a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;

(b) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment as provided in 53-21-127(3), at or through the facility te which the person is to be committed;

(c) has deprived the person of the capacity te make an informed decision concerning treatment;

(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means any sheriff, deputy sheriff, marsbal, policeman, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by tho department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part te be mentally ill or seriously mentally ill.

(15) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat of injury or wbich bas deprived the person afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury. A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because the person is an epileptic or is mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes the person to be seriously mentally ill within tbe meaning of tbis part.

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(16) "State hospital" means the Montana state hospital. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

53-21-102. (Effective July 1, 1997) Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of ~~corrections~~ *public health* and human services provided for in ~~Title 2, chapter 15, part 23~~ *2-15-2201*.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol; or

(b) drug or alcohol intoxication.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(8) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(9) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(10) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(11) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(12) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat of injury or which has deprived the person afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury. A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because the person is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of this part.

(15) "State hospital" means the Montana state hospital."

Section 487. Section 53-21-106, MCA, is amended to read:

"**53-21-106. (Temporary) Certification of professional persons.** (1) The department shall certify professional persons, as defined in 53-21-102, for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons.

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

53-21-106. (Effective July 1, 1997) Certification of professional persons. (1) The department shall certify professional persons as defined in 53-21-102~~(10)(b)~~ for the purpose of this part.

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(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons as defined in 53-21-102.

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification."

Section 488. Section 53-21-138, MCA, is amended to read:

"**53-21-138. Diversion of certain mentally ill persons from jail.** (1) The sheriff or administrator of a jail in each county shall require screening of inmates te identify persons accused of minor misdemeanor offenses who appear to be seriously mentally ill, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed tbat an inmate is seriously mentally ill, the sheriff or administrator of tbe jail shall:

(a) request services from a crisis intervention program establisbed by the department as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in ~~53-21-212~~ *53-21-201*; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are seriously mentally ill.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for serious mental illness can be performed."

Section 489. Section 53-21-139, MCA, is amended to read:

"**53-21-139. Crisis intervention programs.** (1) The department shall, subject to available appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care

of seriously mentally ill persons in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

(3) The department may ~~enter into an interagency agreement with the department of social and rehabilitation services to~~ provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101(3)(j); and

(b) a targeted case management service authorized in 53-6-101(3)(n)."

Section 490. Section 53-21-145, MCA, is amended to read:

"53-21-145. Right to be free from unnecessary or excessive medication. Patients have a right to be free from unnecessary or excessive medication. ~~No~~ *A* medication ~~shall~~ *may not* be administered unless at the written order of a physician. The attending physician ~~shall be~~ *is* responsible for all medication given or administered to a patient. The use of medication ~~shall~~ *may* not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication ~~shall~~ *must* be kept in ~~his~~ *the individual's* medical records. The department of *public* health and ~~environmental sciences~~ *human services* shall adopt rules governing attending physician review of the drug regimen of each patient under ~~his~~ *the physician's* care in a mental health facility, except that the drug regimen of inpatients in hospitals ~~shall~~ *must* be reviewed no less than weekly. Except in the case of outpatients, all prescriptions ~~shall~~ *must* be written with a termination date, which ~~shall~~ *may* not exceed 30 days. Medication ~~shall~~ *may* not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program."

Section 491. Section 53-21-165, MCA, is amended to read:

"53-21-165. Records to be maintained. Complete patient records must be kept by the mental health facility for the length of time required by rules established by the department of *public* health and ~~environmental sciences~~ *human services*. All records kept by the mental health facility must be available te any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records must also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records must include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

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(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation that notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventery of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination that describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications to the plan;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan, required under 53-21-162(4), that analyzes the successes and failures of the treatment program and includes recommendations for appropriate modification of the treatment plan;

(8) a copy of the individualized discharge plan and any modifications to the plan and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status that includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a summary of each significant contact by a professional person with the patient;

(11) documentation of the implementation of the treatment plan;

(12) documentation of all treatment provided to the patient;

(13) chronological documentation of the patient's clinical course;

(14) descriptions of any changes in the patient's condition;

(15) a signed order by a professional person for any restrictions on visitstions and communications;

(16) a signed order by a professional person for any physical restraints and isolation;

(17) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that the staff member has personal knowledge of the incident or specifying any other source of information. The summary of the incident must be initialed within 24 hours by a professional person.

(18) a summary by the professional person in charge of the facility or by an appointed agent of the determination made after the 30-day review provided for in 53-21-163."

Section 492. Section 53-21-201, MCA, is amended to read:

"**53-21-201. Definitions.** As used in this part, the following definitions apply:

(1) "Community mental health center" means a facility, not necessarily encompassed within one building, that is licensed by the department of ~~health and environmental sciences~~ *public health and human services* as a mental health center, as defined in 50-5-101, and that offers comprehensive mental health services that include at least the following services to the public:

(a) outpatient services, including specialized outpatient services for children, the elderly, individuals who have serious mental illness, and residenta of ita service area who have been discharged from inpatient treatment at a mental health facility;

(b) 24-hour-a-day emergency care services;

(c) day treatment or other partial hospitalization services or psychosocial rehabilitation services;

(d) screening for patients being considered for admission to stata mental health facilities to determine the appropriateness of admission; and

(e) consultation and education in mental health.

(2) "Department" means the department of ~~corrections~~ *public health* and human services."

Section 493. Section 53-21-202, MCA, is amended to read:

"**53-21-202. Duties of department.** The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. The means must be utilized to initiate and operate these services in cooperation with lecal agencies as established under this part.

(3) collect and disseminate infermation relating to mental health;

(4) prepare and maintain a comprehensive plan for the develepment of public mental health services in the state;

(5) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(6) establish standards for mental health programs that receive funds from the department;

(7) evaluate performance of programs that receive funds from the department in compliance with federal and state standards;

(8) coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers; and

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(9) appoint an advisory council to make recommendations to the department regarding services for emotionally disturbed children. The members of the advisory council shall serve without compensation and must include but not he limited to a representative of:

(a) the department;

~~(b) the department of family services;~~

~~(c)~~*(b)* the office of public instruction;

~~(d)~~*(c)* a youth court;

~~(e)~~*(d)* parents of emotionally disturbed children; and

~~(f)~~*(e)* service provider groups."

Section 494. Section 53-21-204, MCA, is amended to read:

"**53-21-204. Mental health corporations.** (1) Mental health regions must be established in the state mental health plan and must conform to the mental health regions as established in the state mental health construction plan promulgated by the ~~board of health and environmental sciences~~ *department* under the federal Community Mental Health Centers Act.

(2) The mental health regions must be established under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations may not be considered agencies of the department or the stata of Montana;. ~~however~~ *However*, they may retsin and enter into retirement programs as established under Title 19, chapter 3, ~~The Public Employees' Retirement System Act~~.

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board consists of three members-at-large who must be chosen accor ing to the corporato bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following four groups:

(i) parents of children with emotional disturbances;

(ii) advocatos of mental health services for the elderly;

(iii) health care professionals; or

(iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

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(4) ~~Nothing in this~~ *This* section ~~prohibits~~ *does not prohibit* a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board must be established under guidelines adopted by the bylaws of the corporation. All appointments to the board must be for terms of 2 years, and the department must be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of money and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, taxes, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part must be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members must be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(9) The regional board of mental health with the approval of the department shall establish a schedule of fees for mental health services. The fees may be

received by the board and used to implement the budget in accordance with subsection (6)(d)."

Section 495. Section 53-21-212, MCA, is amended to read:

"53-21-212. Definition. As used in 53-21-211 through 53-21-214, the term "state agency" means:

~~(1) the department of health and environmental sciences provided for in 2-15-2101;~~

~~(2)~~*(1)* the department of ~~social and rehabilitation~~ *public health and human* services provided for in 2-15-2201;

~~(3) the department of corrections and human services provided for in 2-15-2101;~~ and

~~(4)~~*(2)* the mental disabilities board of visiters provided for in 2-15-211."

Section 496. Section 53-21-402, MCA, is amended to read:

"53-21-402. Powers and duties of department of ~~corrections~~ *public health* and human services. The department of ~~corrections~~ *public health* and human services:

(1) shall contract with nonprofit corporations which demonstrate expertise in and the capability of providing rehabilitative and restorative programs for aged citizens for the operation and management of nursing homes established under this part;

(2) shall ensure that nursing homes established and operated under this part are in compliance with all applicable federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) shall provide that geriatric residents of the Montana state hospital have first priority for admission to nursing homes established under this part;

(5) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing and operating nursing homes under this part."

Section 497. Section 53-21-411, MCA, is amended to read:

"53-21-411. Location and function of center for the aged — *rules*. (1) The institution located at Lewistown is the Montana center for the aged. The primary function of the center is the care and treatment of persons 55 years of age or older. Priority must be given to patients referred from the Montana state hospital.

(2) Appropriate admissions to the Montana center for the aged are persons unable to maintain themselves in their homes or communities due to a mental disorder, as defined in 53-21-102, associated with the aging process, but who do not require the intensity of treatment available at the Montana state hospital.

(3) Admissions to the center are voluntary. The department of ~~corrections~~ *public health* and human services may adopt rules concerning specific admission criteria, treatment, and discharge procedures."

Section 498. Section 53-21-412, MCA, is amended to read:

"**53-21-412. Transfer of patients between Montana state hospital and center.** (1) With the approval of the department of ~~corrections~~ *public health* and human services, Montana state hospital patients may be admitted to the center upon voluntary application by the patient or the patient's guardian.

(2) A patient of the center may be voluntarily admitted to Montana state hospital pursuant to 53-21-111 or involuntarily committed pursuant to 53-21-114 through 53-21-127."

Section 499. Section 53-21-413, MCA, is amended to read:

"**53-21-413. Discharge of patients.** The superintendent of the center may authorize the discharge of a patient residing at the center according to rules adopted by the department of ~~corrections~~ *public health* and human services. However, no *a* patient may *not* be detained at the center without the consent of the patient or ~~his~~ *the patient's* guardian."

Section 500. Section 53-21-601, MCA, is amended to read:

"**53-21-601. Location and primary function of hospital.** (1) The facility providing mental health care services at Warm Springs, Montana, is the Montana state hospital and as its primary function provides care and treatment of mentally ill persons.

(2) (a) The Montana state hospital is a mental health facility, as defined in 53-21-102, of the department of ~~corrections~~ *public health* and human services for the care and treatment of mentally ill persons.

(b) The role of the Warm Springs facility is to provide intensive inpatient psychiatric services as one component in a comprehensive continuum of publicly and privately provided programs that emphasize treatment in the least restrictive environment.

(c) The mission of the Warm Springs facility is to stabilize persons with severe mental illness and to return them to the community as soon as possible if adequate community-based support services are available.

(3) The department shall adopt rules to manage the state hospital patient population in a manner that will ensure emergency access to services, protect public and individual safety, provide active treatment, implement effective discharge planning, and ensure access to appropriate community-based services.

~~(4) The department shall prepare a report to the 54th legislature that:~~

~~(a) describes current and projected future use of the Montana state hospital; and~~

~~(b) describes progress toward, and additional steps required for achievement of, accreditation by the joint commission on accreditation of healthcare organizations.~~"

Section 501. Section 53-22-102, MCA, is amended to read:

"**53-22-102. Compact administrator.** The director of the department of ~~corrections~~ *public health* and human services, ~~hereafter called "the director", shall be~~ *is* the compact administrator and ~~shall have the power to~~ *may* make any rules necessary for the administration of the compact. The director shall cooperato with all departments, agencies, and officers of the stato and any political subdivision thereof to facilitato the proper administration of the Intorstato Compact on Mental Health or of any supplementary agreement or agreements entered into thereunder by this state."

Section 502. Section 53-22-104, MCA, is amended to read:

"**53-22-104. Annual budget.** The department of ~~corrections~~ *public health* and human services in its annual budget shall include ~~such~~ amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the Interstate Compact on Mental Health, and the legislature shall appropriate ~~such~~ sums necessary ~~therefor~~ *for carrying out the purposes of the compact.*"

Section 503. Section 53-24-103, MCA, is amended to read:

"**53-24-103. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Alcoholic" means a person who has a chronic illness or disorder of behavior charactorized by repeatod drinking of alcoholic beverages to the extont that it endangers the bealth, interpersonal relationships, or economic function of the individual or public health, welfare, or safety.

(2) "Approved private treatment facility" means a privato agency ~~(whose~~ *that has as its* function ~~is~~ the treatment, rehabilitation, and prevention of chemical dependency~~)~~ ~~and meeting~~, *that meets* the standards prescribed in 53-24-208(1), and *that is* approved under 53-24-208.

(3) "Approved public treatment facility" means:

(a) a treatment agency operating under the direction and control of the department as a state agency and approved under 53-24-208; or

(b) a treatment agency operating under the direction and control of a local government and approved under 53-24-208.

(4) "Chemical dependency" means the use of any chemical substance, legal or illegal, ~~which~~ *that* creates behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, welfare, or safety.

(5) "Department" means the department of ~~corrections~~ *public health* and human services provided for in ~~2-15-2301~~ *2-15-2201*.

(6) "Family member" is the spouse, mother, father, child, or member of the household of a chemically dependent person whose life has been affected by the actions of the chemically dependent person and who may require treatment.

(7) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has ~~his~~ judgment otherwise so impaired that ~~he~~ *the person* is incapable of realizing and making a rational decision with respect to ~~his~~ *a* need for treatment.

(8) "Incompetent person" means a person who has been adjudged incompetent by the district court.

(9) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(10) "Prevention" has meaning on four levels; these are:

(a) education to provide information to the school children and general public relating to chemical dependency treatment and rehabilitative services and to reduce the consequences of life experiences acquired by contact with a chemically dependent person;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services.

(11) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to chemically dependent persons, intoxicated persons, and family members."

Section 504. Section 53-24-204, MCA, is amended to read:

"**53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to chemically dependent persons;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of:

(i) chemical dependency counselors; and

(ii) instructors providing chemical dependency educational courses;

(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(i) cooperate with the board of pardons *and parole* in establishing and conducting programs to provide treatment for chemically dependent and intoxicated persons in or on parole from penal institutions;

(j) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses; and

(k) assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency."

Section 505. Section 53-30-101, MCA, is amended to read:

"53-30-101. Location and function of prison and women's correctional ~~center~~ *system*. (1) The institution at Deer Lodge is the state prison and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult male criminal offenders.

(2) The institution located in ~~accordance with sections 1 through 7, Chapter 651, Laws of 1991,~~ *Billings* is the women's correctional ~~center~~ *system*, and ~~as~~ its primary function ~~provides~~ *is to provide* facilities for the custody, treatment, training, and rebabilitation of adult female criminal offenders. ~~The department of corrections and human services may continue to operate the women's correctional center in a temporary location during the 1994-95 biennium. If the authorized institution does not require the level of services provided for in Chapter 651, Laws of 1991, an alternate site in the Billings area may be identified by department officials, city of Billings officials, and Yellowstone County officials as the site of the women's correctional facility.~~"

Section 506. Section 53-30-102, MCA, is amended to read:

"53-30-102. Qualifications of warden of state prison and warden of women's correctional ~~center~~ *system*. The warden of the state prison and the warden of the women's correctional ~~center~~ *system* ~~shall~~ *must* be persons trained through education and experience in directing a training, rehabilitation, or custodial program in a penal institution."

Section 507. Section 53-30-105, MCA, is amended to read:

"**53-30-105. Good time allowance.** (1) The department of corrections ~~and human services~~ shall adopt rules providing for the granting of good time allowance for inmates employed in any prison work or activity and to implement subsection (5). The good time allowance ~~shall~~ *must* operate as a credit on the inmate's sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules made by the department or the warden. The rules adopted by the department under this subsection may not grant good time allowance te exceed:

(a) 10 days per month for inmates assigned te maximum, close, and medium I security classifications;

(b) 13 days per month for those classified as medium II and minimum security classifications;

(c) 15 days per month for inmates after having been assigned as medium II or minimum security for an uninterrupted period of 1 year;

(d) 13 days per month for those inmates enrolled in school who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) 3 days per month for those inmates participating in self-improvement activities designated by the department.

(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden of the state prison shall advise the department of any attempted escape or violation of rules on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.

(3) A person may not earn good time under this section while the person is on prohation. A person may earn good time while on parole at the rate of 30 days per month. If tho department determines that a person has violated the conditions of parole, it may, in its discretion, deduct good time credit accumulated under this subsection in an amount up te and including all credit accumulated on the date of the violation.

(4) The warden of the state prison *or the warden of the women's correctional system* may request that all or portions of any previously forfeited good time be restored as a result of subsequent good behavior. Any restoration of good time allowance must be approved by the department.

(5) If the population at the Montana state prison or the Montana women's correctional ~~center~~ *system* exceeds the design capacity of the institution, the department may grant an inmate additional good time credits in an amount necessary te permit the inmate to become eligible for parole or te discharge the inmate's sentence. Good time credits for the discharge of a sentence may not exceed 180 days. The award of good time under this subsection must generally be provided to inmates who are nearest te parole eligibility or discharge."

Section 508. Section 53-30-106, MCA, is amended to read:

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"53-30-106. Excessivo inmate population — confinement of inmates in other institutions. (1) If the inmate population of a correctional institution or systom exceeds the emergency capacity for 30 consecutive days, the director of the department of corrections ~~and human services~~ may declare that the emergency capacity has been exceeded and tomporarily stop admissions to the institution or systom. The director shall notify each sheriff and district court that new inmates will not be accepted by the department for admission into the institution or system until the inmate population is reduced to 95% or less of the emergency capacity. Persons committed to the department and persons sought to be admitted remain in the department's legal custody but must be kept in a detention center in the jurisdiction holding them. In the event the jurisdiction holding the inmate is at maximum capacity, the inmate may be placed in an available detention center in another jurisdiction. The department shall reimburse that jurisdiction for the cost of detention for the period beyond the normal time of delivery to a correctional institution administered by the department. Reimbursement must be at a rate mutually agreeable te the department and the jurisdiction holding the person. The rate must cover the reasonable costs of the holding jurisdiction. Expenses for medication, medical services, or hospitalization for persons confined in a detention center under this section must be ~~borne~~ *paid* by the department.

(2) The department may enter inte contracts with the federal government, other states, or the commissioners of counties that have suitable detention centers for confining inmates committed to a correctional institution or system administered by the department, either because a correctional institution or system has exceeded its emergency capacity or because the department has no institution that is adequate for certain inmates.

(3) Within budgetary limits, the department may also enter into contracts with public or private corporations for the confinement of selected inmates if suitable programs have been estsblished."

Section 509. Section 53-30-110, MCA, is amended to read:

"53-30-110. Expense of trial for offenses committed in prison. Whenever a trial of any person takes place under any of the provisions of 45-7-306 and whenever a prisoner in the state prison is tried for any crime committed ~~therein~~ *in prison*, the county clerk of the county where ~~such~~ *the* trial is held shall make out a statement of all the costs incurred by the county for the trial of ~~such~~ *the* case and of guarding and keeping ~~such~~ *the* prisoner, properly certified by a district judge of ~~said~~ *the* county~~,~~. ~~which~~ *The* statement ~~shall~~ *must* be sent to the department of corrections ~~and human services~~ for its approval. After such approval, the department ~~must cause the amount of such~~ *shall pay the* costs ~~to be paid~~ out of the money appropriated for the support of the state prison to the county treasurer of the county where ~~such~~ *the* trial was held."

Section 510. Section 53-30-111, MCA, is amended te read:

"53-30-111. Clothing and money furnished on discharge or parole. The state prison shall furnish suitable clothing to a discharged or paroled inmate. An inmate discharged and delivered to the custody of the federal government or another state shall receive $5~~;~~. ~~all~~ *All* other discharged or paroled inmates may receive "gate money" in an amount up to $100. The department of corrections ~~and human services~~ may establish rules ~~which~~ *that* allow it to deduct

up to one-fourth of an inmate's wages earned under 53-1-301 and hold that money in a special account to be disbursed to the inmate when ~~he~~ *the inmate* is discharged or paroled. This amount ~~shall be~~ *is* in addition to the "gate money"."

Section 511. Section 53-30-131, MCA, is amended to read:

"53-30-131. Prison industries training program — purpose and scope. (1) In addition to any institutional industry operated at the Montana state prison under Title 53, chapter 1, part 3, the department of corrections ~~and human services~~ shall conduct a prison industries training program.

(2) The purpose of the prison industries training program is to:

(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;

(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release.

(3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.

(4) The program may provide training and experience involving cultivation, production, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, livestock, furniture, office and electrical equipment, and motor vehicles. The products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch and products or services of a federally certified prison industries program, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities."

Section 512. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status — prison industries training program — wages and benefits. (1) An inmate participating in the prison industries training program may be granted a good time allowance, not to exceed 15 days per month, notwithstanding the limits contained in 53-30-105, for outstanding participation in the program as defined by rules adopted by the department of corrections ~~and human services~~. The good time allowance has the same effect as a good time allowance granted under 53-30-105, and the provisions of subsections (2) and (3) of 53-30-105 apply to the good time allowance. However, an inmate may not receive good time for participation in this program under any other section or rule that would duplicate the good time authorized in this section.

(2) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage commensurate with their production function. Wages must be established at a rate that encourages efficient production and effective levels of inmate participation. Inmates employed in a federally certified prison industries program must be paid as provided in 53-1-301(2).

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(3) Inmates not working in a federally certified prison industries training program are not employees, either puhlic or private, and employment rights accorded other classes of workers do not apply to the inmatos. Inmatss working in a federally certified prison industry program are entitled to coverage and henefits as provided in 39-71-744.

(4) Ahle-bodied persons committed to the Montana state prison as adult offenders shall be required to perform work as provided for by the department of corrections ~~and human services~~."

Section 513. Section 53-30-133, MCA, is amended to read:

"**53-30-133. Administration of prison industries training program.** (1) (a) The prison industries training program need not be a self-supporting program. The department of corrections ~~and human services~~ may entor into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates. All revenue raised through the program may be used only for the program and payment of inmate wages.

(b) State agencies, local governments, school districts, authorities, and other local government entities are encouraged to explore the possibilities of using the prison industries training program. State agencies shall cooperats with the department of corrections ~~and human services~~ in notifying governmental entities within the state of the program and of the services and products that are available.

(2) (a) The department of corrections ~~and human services~~ sball adopt rules implementing this program. Any price lists established by the department are exempt from the provisions of Title 2, chapter 4, but the department may, if it considers it an effective method of dissemination, publish the price lists in the Montana Administrative Register or the Administrative Rules of Montana, or both.

(b) The department of corrections ~~and human services~~ is subject to program audits of the prison industries training program by the legislative auditor."

Section 514. Section 53-30-141, MCA, is amended to read:

"**53-30-141. Extension of limits of confinement.** (1) The department of corrections ~~and human services~~ may extend the limits of confinement of the Montana state prison for purposes of housing outside the prison fence inmatos who:

(a) are employed in ranch or agricultural industry programs; and

(b) have demonstrated sufficient reliability and trustworthiness.

(2) Housing units outside the confines of the prison fence may be created by renovation of existing buildings or by the erection of modular-type units and associated facilities on the prison ranch.

(3) For the purpose of expediting the acquisition and construction of housing units authorized in subsection (2) the department of administration may exempt tbe project from provisions of Montana law relating to the employment of

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architects, advertising, labor, and wages. The department of administration need not comply with any state bidding requirements that would preclude a sole source purchase."

Section 515. Section 53-30-303, MCA, is amended to read:

"**53-30-303. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections board" means a community corrections board as provided in 53-30-312.

(2) "Community corrections facility or program" means a community-based or community-oriented facility or program, other than a jail, that:

(a) is operated by a unit of local government, a tribal government, or a nongovernmental agency; and

(b) provides programs and services to aid offenders in:

(i) obtaining and holding regular employment;

(ii) enrolling in and maintaining academic courses;

(iii) participating in vocational training programs;

(iv) utilizing the resources of the community to meet their personal and family needs;

(v) obtaining the benefits of specialized treatment services that exist within the community; and

(vi) paying restitution or performing community restitution to crime victims.

(3) "Crime of violence" means:

(a) an offense in which a person uses or possesses and threatens the use of a deadly weapon during the commission or attempted commission of an offense, including felony assault, kidnapping, aggravated kidnapping, robbery, arson, burglary, aggravated burglary, escape, or intimidation;

(b) an offense, other than an offense in which negligence is an element of the offense, in which the person causes serious bodily injury or death to a person other than ~~himself~~ *the person committing the offense* during the commission or attempted commission of an offense; or

(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(4) "Department" means the department of corrections ~~and human services~~ created in 2-15-2301.

(5) "Nongovernmental agency" means a person, private nonprofit agency, corporation, association, labor organization, or other nongovernmental entity.

(6) "Nonviolent felony offender" means a person who has committed a felony other than a crime of violence.

(7) "Offender" means a person who has entered a plea of guilty or has been convicted of a felony. The term ~~excludes~~ *does not include* a person who has committed a crime of violence.

(8) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

(9) "Unit of local government" means a county, city, town, or city-county consolidated government."

Section 516. Section 53-30-401, MCA, is amended to read:

"53-30-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of corrections ~~and human services~~ provided for in 2-15-2301.

(2) "Reduction of sentence" includes changing an incarceration sentence to a grant of probation."

Section 517. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (7), on a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (7), on the third or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less tban $500 or more than $1,000. Except as provided in subsection (7), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operatod by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject te forfeiture unless it appears that

the owner or other person in charge of the vehicle consented te or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or ether act on which the forfeiture is sought.

(4) In addition te the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of ~~corrections~~ *public health* and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of ~~corrections~~ *public health* and human services, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this stato, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited te secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

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(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability te leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chaptor 18, part 10."

Section 518. Section 61-8-722, MCA, is amended to read:

"**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 s[illegible]all be punished by imprisonment for not more tban 10 days and shall be punishe[illegible]by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, ~~he~~ *the person* shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, ~~he~~ *the person* shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operatod by the person at the time of the offense te be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than tbe owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

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(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of ~~corrections~~ *public health* and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this stato or another stato, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

Section 519. Section 69-3-1002, MCA, is amended to read:

"**69-3-1002. Eligibility — rules.** (1) A residential subscriber with single telephone line service at ~~his~~ *the subscriber's* principal residence is eligible for low income telephone assistance if ~~he~~ *the subscriber* is certified by the department of ~~social and rehabilitation~~ *public health and human* services as a recipient of medicaid benefits.

(2) The department shall periodically certify and verify the eligibility of a suhscriber to receive low income telephone assistance.

(3) The department may adopt rules to establish procedures for the certification and verification of eligible subscribers."

Section 520. Section 69-3-1006, MCA, is amended to read:

"**69-3-1006. Federal requirements.** The public service commission, the department of ~~social and rehabilitation~~ *public health and human* services, and participating providers of local telecommunications services shall comply with

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federal requirements for the receipt of matching federal low income telephone assistance."

Section 521. Section 72-16-217, MCA, is amended to read:

"72-16-217. List of deaths to be made by department of *public* health *and human services* — copy to county clerk. The department of *public* health and ~~environmental sciences~~ *human services* shall prepare on or before the fifth of January, April, July, and October of each year a list of all deaths, together with the date of ~~such~~ *the* death, reportod to it during ~~such~~ *the* period and shall send a copy of ~~such~~ *the* list of deaths to the county clerk of each county in the stato."

Section 522. Section 72-17-102, MCA, is amended to read:

"72-17-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of *public* health and ~~environmental sciences~~ *human services* provided for in ~~Title 2, chapter 15, part 21~~ *2-15-2201*.

(4) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(5) "Donor" means an individual who makes a gift of all or part of the individual's body.

(6) "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.

(7) "Hospital" means a facility licensed, accredited, or approved under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(8) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(9) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(10) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estato, trust, partnership, joint venture, association, or any other legal or commercial entity.

(11) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

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(12) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Technician" means an individual who is certified by the state board of medical examiners to remove or process a part."

Section 523. Section 75-2-103, MCA, is amended to read:

"**75-2-103. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

~~(5) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(6)~~*(5)* (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

~~(7)~~*(6)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(8)~~*(7)* "Emission" means a release into the outdoor atmosphere of air contaminants.

~~(9)~~*(8)* "Environmental protection law" means a law contained in or an administrative rule adopted pursuant te Title 75, chapter 2, 5, 10, or 11.

~~(10)~~*(9)* "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant te Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

~~(11)~~*(10)* (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of all or any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired hoilers; or

(iv) wood waste hurners, such as tepee, wigwam, truncated cone, or silo burners.

~~(12)~~*(11)* "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

~~(12)~~*(12)* "Person" means an individual, a partnership, a firm, an association, a municipality, a public or privato corporation, the stato or a subdivision or agency of the state, a trust, an estate, an intorstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

~~(14)~~*(13)* "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

~~(15)~~*(14)* "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

~~(15)~~*(15)* (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, or slash and forest debris regulated under laws administered by the department of state lands."

Section 524. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)~~*(1)* "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(3)~~*(2)* "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(4)~~*(3)* "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsiguificant pursuant to 75-5-301(5)(c).

~~(3)~~*(4)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

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~~(6)~~*(5)* "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(7)~~*(6)* "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

~~(6)~~*(7)* "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(6)~~*(8)* "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

~~(10)~~*(9)* "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(11)~~*(10)* "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(10)~~*(11)* "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(13)~~*(12)* "Mixing zone" means an area established in a permit or final decision on nondegradation issued hy the department where water quality standards may be exceeded, subject to conditions that are imposed hy the department and that are consistent with the rules adopted by the board.

~~(14)~~*(13)* "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(15)~~*(14)* "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(10)~~*(15)* "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(17)~~*(16)* "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(13)~~*(17)* "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

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~~(19)~~*(18)* "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, tasto, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or otber wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(20)~~*(19)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together witb ground water infiltration and surface water present.

~~(21)~~*(20)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(20)~~*(21)* "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

~~(23)~~*(22)* "State waters" means a body of water, irrigation system, or drainage system, either surface or underground; however, this suhsection does not apply te irrigation waters wbere the waters are used up within the irrigation system and the waters are not returned to any other state waters.

~~(24)~~*(23)* "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or otber wastes.

~~(23)~~*(24)* "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(26)~~*(25)* "Wator well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 525. Section 75-6-102, MCA, is amended to read:

"**75-6-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)~~*(1)* "Community water system" means any public water supply system that serves at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents.

~~(3)~~*(2)* "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

~~(4)~~*(3)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(5)~~*(4)* "Drainage" means rainfall, surface, and subsoil water.

~~(3)~~*(5)* "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(7)~~*(6)* "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

~~(8)~~*(7)* "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute stato waters.

~~(9)~~*(8)* "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

~~(10)~~*(9)* "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited te standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

~~(11)~~*(10)* "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

~~(12)~~*(11)* "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, wator bottling plant, water dispenser, or other water supply that is designed to serve or serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

~~(13)~~*(12)* "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at Title 40, CFR, Parts 141 and 142.

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~~(14)~~*(13)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or otber buildings, including discharge from human beings, together with ground water infiltration and surface water present.

~~(15)~~*(14)* "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

~~(15)~~*(15)* "Transient noncommunity water system" means any public water supply system that is not a community water system and that serves persons on a transient basis."

Section 526. Section 75-10-103, MCA, is amended to read:

"**75-10-103. Definitions.** Unless the context clearly requires otherwise, in this part, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)~~*(1)* "Container site" means a solid waste management facility, generally open to the public, for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards.

~~(2)~~*(2)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(4)~~*(3)* "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

~~(5)~~*(4)* "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and wasta suppliers, contract negotiations with private operational managers, and financial and legal consultations.

~~(5)~~*(5)* "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

~~(7)~~*(6)* "Local government" means a county, incorporatod city or town, or refuse disposal district organized under the laws of this state.

~~(8)~~*(7)* "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other stato, federal, or private entity, whether organized for profit or not.

~~(8)~~*(8)* "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(10)~~*(9) (a)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert matorials. ~~"Solid waste"~~

(b) The term does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered hy the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

~~(11)~~*(10)* "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

~~(12)~~*(11)* "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 527. Section 75-10-203, MCA, is amended to read:

"**75-10-203. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)~~*(1)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(2)~~*(2)* "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

~~(4)~~*(3)* "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

~~(5)~~*(4)* "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

~~(5)~~*(5)* "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.

~~(7)~~*(6)* "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(8)~~*(7)* "Resource recovery" means the recovery of material or energy from solid waste.

~~(9)~~*(8)* "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(10)~~*(9)* "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

~~(11)~~*(10)(a)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. ~~"Solid waste"~~

(b) The term does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

~~(12)~~*(11)* "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.

~~(13)~~*(12)* "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

~~(14)~~*(13)* "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(13)~~*(14)* "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 528. Section 75-10-403, MCA, is amended to read:

"75-10-403. **Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)~~*(1)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(3)~~*(2)* "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

~~(4)~~*(3)* "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

~~(5)~~*(4)* "Generation" means the act or process of producing waste material.

~~(6)~~*(5)* "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

~~(7)~~*(6)* (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

~~(8)~~*(7)* "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

~~(9)~~*(8)* "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary sterage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, sterage, or disposal.

~~(10)~~*(9)* "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

~~(11)~~*(10)* "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(12)~~*(11)* "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

~~(12)~~*(12)* "Storage" means the actual or intended containment of regulated substances, hazardous wastes, or both, either on a temporary basis or for a period of years.

~~(14)~~*(13)* "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(13)~~*(14)* "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

~~(16)~~*(15)* "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonbazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

~~(17)~~*(16)* "Underground sterage tank":

(a) means, except as provided in subsections ~~(17)(b)(i)~~ *(16)(b)(i)* through ~~(17)(b)(viii)~~ *(16)(b)(viii)*:

(i) any one or *a* combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected te a storage tank, whether the sterage tank is entirely above ground, partially above ground, or entirely underground;

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (~~,~~49 U.S.C. 1671, et seq.~~)~~;

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (~~,~~49 U.S.C. 2001, et seq.~~)~~; or

(C) state law comparable to the provisions of law referred to in subsection ~~(17)(b)(ii)(A)~~ *(16)(b)(ii)(A)* or ~~(17)(b)(ii)(B)~~ *(16)(b)(ii)(B)*, if the facility is intrastate;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections ~~(17)(b)(i)~~ *(16)(b)(i)* through ~~(17)(b)(vi)~~ *(16)(b)(vi)*."

Section 529. Section 75-10-501, MCA, is amended to read:

"75-10-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)~~*(1)* "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

~~(3)~~*(2)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(4)~~*(3)* "Junk vehicle" means a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, which is not lawfully and validly licensed and remains inoperative or incapable of being driven.

~~(5)~~*(4)* "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

~~(5)~~*(5)* "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a moter vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

~~(7)~~*(6)* "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(3)~~*(7)* "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

~~(9)~~*(8)* "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view."

Section 530. Section 75-10-903, MCA, is amended to read:

"75-10-903. Definitions. As used in 75-10-901 through 75-10-945, the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935 and the rules adopted under 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935.

~~(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(3)~~*(2)* "Certificate" means the certificate of site acceptability issued by the board under 75-10-916 that is required for siting a megalandfill.

~~(4)~~*(3)* "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility into a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

~~(5)~~*(4)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(6)~~*(5)* "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid wasto into or onto the land so that the solid wasto or any constituent of it may enter the environment or be emitted into the air or discharged into any water, including ground waters.

~~(7)~~*(6)* (a) "Megalandfill" or "facility" means, except as provided in subsection ~~(7)(b)~~ *(6)(b)*, any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid wasto or any ash monofill that accepts 35,000 tons or more a year of solid wasto incinerator ash, either fly ash or bottom ash.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

~~(6)~~*(7)* "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(9)~~*(8)* (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal;

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discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(!. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

~~(10)~~*(9)* "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles."

Section 531. Section 75-10-921, MCA, is amended to read:

"75-10-921. Filing fee — accountability — refund -- use. (1) (a) The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application for a certificate. The filing fee must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945. The initial filing fee may not exceed the following scale based upon the megalandfill's projected annual tonnage of waste:

(i) a base fee of $40,000; plus

(ii) 20 cents per ton for every ton of waste over 200,000 tons for a new or existing megalandfill or facility not subject to 75-10-903~~(7)(b)~~*(6)(b)*; or

(iii) 20 cents per ton of waste over 300,000 tons for an existing megalandfill or facility pursuant to 75-10-903~~(7)(b)~~*(6)(b)*.

(b) The department may allow a credit against the fee payable under this section for the applicant's costs of developing information or providing services required under 75-10-901 through 75-10-945 or required for preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, part 1, or the National Environmental Policy Act, 42 U.S.C. 4321, et seq. The applicant may submit the information or a description of the services performed to the department, together with an accounting of the expenses incurred in preparing the information or performing the services. The department shall evaluate the applicability, validity, and usefulness of the data or services and determine the expenses that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that the amount to be credited is necessary to carry out its responsibilities under 75-10-901 through 75-10-945.

(2) (a) The department may contract with an applicant after the filing of a formal application for the development of information or the provision of services required under 75-10-901 through 75-10-945. The contract may continue an agreement entered into pursuant to 75-10-908. Payments made te the department under a contract must be credited against the fee payable under this section. The revenue derived from the filing fee must be sufficient to enable the department and the board to carry out their responsibilities under 75-10-901

through 75-10-945. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department; however, an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The applicant is entitled to an accounting of money spent and to a refund with interest at the rate of 6% a year of the portion of the filing fee not spent hy the department in carrying out its responsibilities under 75-10-901 through 75-10-945. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(4) The revenue derived from the filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out other responsibilities of the department and the board under 75-10-901 through 75-10-945."

Section 532. Section 75-10-950, MCA, is amended to read:

"75-10-950. Definitions. As used in 75-10-950 through 75-10-954, the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

~~(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(3)~~*(2)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(4)~~*(3)* (a) "Megalandfill" means, except as provided in subsection ~~(4)(b)~~ *(3)(b)*, any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

~~(3)~~*(4)* "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule."

Section 533. Section 75-11-203, MCA, is amended to read:

"75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

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~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)~~*(1)* "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

~~(3)~~*(2)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(4)~~*(3)* (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

~~(5)~~*(4)* "Installer" means an individual who installs or closes underground storage tank systems.

~~(6)~~*(5)* "License" means a license issued by the department under 75-11-210 to conduct the installation or closure of underground storage tank systems and the installation of leak detection devices or cathodic protection systems.

~~(7)~~*(6)* "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

~~(8)~~*(7)* "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

~~(9)~~*(8)* "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

~~(10)~~*(9)* "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

~~(11)~~*(10)* "Regulated substance" means a regulated substance as defined in 75-10-403.

~~(12)~~*(11)* "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-10-403, and, for purposes of this part, includes a leak detection device that is external to and not attached to an underground storage tank system."

Section 534. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, sterage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

~~(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(6)~~*(5)* "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

~~(7)~~*(6)* "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related te the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by ~~(b) or (c) of~~ subsection ~~(10)~~ *(9)(b) or (9)(c)*, including upgrading to a design capacity covered by subsection ~~(10)(b)~~ *(9)(b)*, except that the term does not include normal maintenance or repair of an existing facility.

~~(8)~~*(7)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(9)~~*(8)* "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(10)~~*(9)* "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or otber facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existonce or te be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

~~(11)~~*(10)* "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

~~(12)~~*(11)* "Transmission substation" means any structure, device, or equipment assemblage, commonly locatod and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

~~(12)~~*(12)* "Utility" means any person engaged in any aspect of the production, sterage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

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Section 535. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

(3) A person proposing to construct an exempt facility shall pay to the department reasonable costs, if any, incurred by the department in processing the exemption.

(4) This chapter does not apply to a facility defined in 75-20-104~~(10)(c)~~*(9)(c)* that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75, chapter 1, pursuant to Executive Order 4-81 and prior to July 1, 1985."

Section 536. Section 75-20-205, MCA, is amended to read:

"75-20-205. Centerline location. (1) For all facilities defined in 75-20-104~~(10)(b)~~*(9)(b)* and ~~(10)(c)~~*(9)(c)* and associated facilities certified under this chapter, the board shall condition the certificate upon board approval of a final centerline location.

(2) The final centerline location must be determined in a noncontested case proceeding before the board after the submission of a centerline location report by the department. Within 60 days after the commencement of a noncontested case proceeding, the board shall render and record a decision approving a centerline location.

(3) The department shall consult with the certificate holder and the affected landowners prior to making its report.

(4) The department's report must be prepared considering the criteria set forth in 75-20-301 and 75-20-503 and the findings of fact and conclusions of law set out in the board decision.

(5) The department report may be completed on segments of a certified facility as is convenient to the certificate holder.

(6) The certificate holder shall initiate the final centerline location approval process by submitting a proposed centerline location plan to the department. The certificato holder shall pay to the department the actual costs incurred in processing a final centerline location not to exceed 25% of the filing fee paid under 75-20-215."

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Section 537. Section 75-20-208, MCA, is amended to read:

"75-20-208. Certain electric transmission lines — verification of requirements. (1) Prior to constructing a transmission line under 75-20-104~~(10)(b)(ii)~~*(9)(b)(ii)*, the person planning to construct the line must provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless extended by the board for good cause:

(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and

(b) sufficient information for the department to verify to the board that the requirements of 75-20-104~~(10)(b)(ii)~~*(9)(b)(ii)* are satisfied.

(2) The provisions of 75-20-104~~(10)(b)(ii)~~*(9)(b)(ii)* do not apply to any facility for which public notice under 75-20-207 has been given but for which the requirements of subsection (1) have not been complied with."

Section 538. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required under the laws administered by the department of health and the board of health in ~~such~~ *the* form as the board requires under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) for facilities defined in 75-20-104~~(10)(b)~~*(9)(b)* and ~~(10)(c)~~*(9)(c)*, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(v) (A) for facilities as defined in 75-20-104~~(10)(b)~~*(9)(b)* and ~~(10)(c)~~*(9)(c)*, baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104~~(10)(a)~~*(9)(a)*, ~~(10)(d)~~*(9)(d)*, and ~~(10)(e)~~*(9)(e)*, baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) ~~such~~ other information as the applicant considers relevant or as the board and board of health by order or rule or the department and department of health by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) ~~above~~ ~~shall~~ *must* be filed with the department, if ordered, and ~~shall~~ *must* be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(3) An application shall *must* be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of state lands;

(e) department of commerce;

(f) department of transportation.

(4) The copy of the application ~~shall~~ *must* be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application ~~shall~~ *must* also be accompanied by proof that public notice ~~thereof~~ was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 539. Section 75-20-216, MCA, is amended to read:

"**75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies.** (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies ~~therein~~; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it ~~or the board of health~~

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to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months, issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health ~~and the board of health~~ shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the proposed location or any proposed alternate location in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health ~~and the board of health~~. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health ~~or the board of health~~ satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit ~~shall~~ *must* be served upon the department and the board and ~~shall~~ *must* be ~~utilized~~ *used* as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted ~~by the board of health~~, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in ~~(a) and (d) of~~ 75-20-104~~(10)~~*(9)(a) and (9)(d)* and for a facility as defined in ~~(b) and (c) of~~ 75-20-104~~(10)~~*(9)(b) and (9)(c)* which is more than 30 miles in length, and within 1 year for a facility as defined in ~~(b) and (c) of~~ 75-20-104~~(10)~~*(9)(b) and (9)(c)* which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of transportation; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

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Section 540. Section 75-20-225, MCA, is amended to read:

"75-20-225. Certificate renewal — application — contents — filing fee. (1) Any certificate holder for a facility as defined in 75-20-104~~(10)(a)(i)~~*(9)(a)(i)* may apply for renewal of a certificate prior to the certificato lapsing.

(2) An applicant for a renewal of a certificate shall file with the department and department of health a joint application in such form as the board requires by rule.

(3) An application for renewal of a certificate must include updated information on the matters listed in 75-20-211(1)(a) that have changed since the original application and such other information as the board requires by rule for certification. The matters listed in 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate locations must be updated only if the board determines that within the certified location significant changes have occurred to warrant a review of alternate locations.

(4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3) through (5).

(5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in accordance with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the original application for a certificate pursuant to 75-20-215. The fee may not exceed the following scale:

(a) 0.125% of any estimated cost up to $300 million; plus

(b) 0.063% of any estimated cost over $300 million."

Section 541. Section 75-20-302, MCA, is amended to read:

"75-20-302. Conditions imposed. (1) If the hoard determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon ~~such~~ *the* modification, provided that the persons residing in the area affected hy the modification have been given reasonable notice of the modification.

(2) In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104~~(10)(a)(i)~~*(9)(a)(i)*, the hoard may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources."

Section 542. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the hoard shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicahle is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

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(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The board shall issue as part of the certificate the following time limits:

(i) For a facility as defined in ~~(b) or (c) of~~ 75-20-104~~(10)~~*(9)(b) or (9)(c)* that is more than 30 miles in length, construction must be completed within 10 years.

(ii) For a facility as defined in ~~(b) of~~ 75-20-104~~(10)~~*(9)(b)* that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in (a) of 75-20-104~~(10)~~*(9)(a)*, construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended or renewed in accordance with subsection (4)(c) *of this section* or 75-20-225 through 75-20-227, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary stato or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply te any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 543. Section 75-20-304, MCA, is amended to read:

"**75-20-304. Waiver of provisions of certification proceedings.** (1) The board may waive compliance with any of the provisions of 75-20-216 through

75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chaptor upon receipt of notice by a person subject te this cbapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as tbe result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board sball waive compliance with the requirements of ~~subsections (2)(c), (3)(b), and (3)(c) of~~ 75-20-301*(2)(c), (3)(b), and (3)(c)* and tbe requirements of ~~subsections (1)(a)(iv) and (v) of~~ 75-20-211*(1)(a)(iv) and (1)(a)(v)*, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing tbat:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations witbin the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructod within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in whicb the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply te jobs of a temporary or seasonal nature, including but not limitod to construction jobs or job losses during lahor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in ~~subsections (10)(b), (c), (d), or (e) of~~ 75-20-104*(9)(b), (9)(c), (9)(d), or (9)(e)*, for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in ~~subsection (10)(a) of~~ 75-20-104*(9)(a)* te tbe extent tbat the process or portion of tbe facility is not subject to a permit issued by the department of health ~~or board of health~~.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection ~~shall~~ *must* be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

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(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 544. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) "Facility", as defined in 75-20-104~~(10)~~*(9)*, is further defined to include any nuclear facility as defined in subsection (2)(a).

(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy."

Section 545. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons which does not provide skilled or intermediate nursing care;

(2) a youth foster home or youth group home as defined in 41-3-1102;

(3) a halfway house operated in accordance with regulations of the department of *public* health and ~~environmental sciences~~ *human services* for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 546. Section 76-2-412, MCA, is amended to read:

"76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of ~~family~~ *public health and human* services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department *of public health and human services* or any other agency of the state or a political subdivision ~~thereof which~~ *of the state that* is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children.

(4) ~~Nothing in this~~ *This* section ~~shall~~ *may not* be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1)~~, provided such~~ *if the* home is licensed by the department of ~~health and environmental sciences and the department of family~~ *public health and human* services. ~~No~~ *A* city or county may *not* require a conditional use permit in order to maintain a day-care home registered by the department of ~~family~~ *public health and human* services."

Section 547. Section 80-15-102, MCA, is amended to read:

"**80-15-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department of agriculture, in consultation with the Montana state university extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

~~(4) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(5)~~*(4)* "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

~~(5)~~*(5)* "EPA" means the United States environmental protection agency.

~~(7)~~*(6)* "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation.

~~(8)~~*(7)* "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-15-201(3) or (4).

~~(8)~~*(8)* "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that

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are used hy the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

~~(10)~~*(9)* "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

~~(11)~~*(10)* "Nonpoint source" means a diffuse source of agricultural chemicals resulting from activities of man over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

~~(12)~~*(11)* "Nonpromulgated federal standard" means a health advisory or a suggested no adverse response level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

~~(13)~~*(12)* "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

~~(14)~~*(13)* "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

~~(15)~~*(14)* "Person" means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.

~~(16)~~*(15)* "Point of standards application" means the specific location in an aquifer where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of health and environmental sciences to implement the provisions of this chapter.

~~(17)~~*(16)* "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sitos of agricultural chemical spills.

~~(18)~~*(17)* "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Wator Act, a national primary drinking water standard, or an interim drinking wator regulation or other EPA regulation based on federal law.

~~(18)~~*(18)* "Registrant" means a person as defined in 80-8-102 and 80-10-101.

~~(20)~~*(19)* "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by a rule of the board as required by 80-15-201.

~~(21)~~*(20)* "Use" means any act of handling or release of an agricultural chemical or exposure of man or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or transportation."

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Section 548. Section 81-2-106, MCA, is amended to read:

"**81-2-106. Cooperation by public officers.** The department of *public* health and ~~environmental sciences, the board of health and environmental sciences,~~ *human services* and local boards of health of a county, city, or town shall cooperate with and assist the department of livestock in matters which relate to the execution of its sanitary powers regarding livestock and their food products in the manner which the department of livestock prescribes, either by general rule or direct order."

Section 549. Section 81-9-202, MCA, is amended to read:

"**81-9-202. Exceptions of certain producers of meats.** *(1)* The owners or operators of slaughterhouses, packinghouses, meat depots, or other places of business engaged in the production, storage, or transportation of meats or meat foods are not required to procure a license from the department of *public* health and ~~environmental sciences, insofar as~~ *human services regarding* the business of production, storage, or transportation of these food products ~~is concerned~~.

(2) This section does not limit the:

(a) supervision or regulation *by the department of public health and human services* of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale ~~thereat by the department of health and environmental sciences, nor does this section limit the~~ *at those facilities; or*

(b) duties imposed by law on the department of *public* health and ~~environmental sciences~~ *human services* to make sanitary rules for the eradication or control of an epidemic of human disease which may exist in a community."

Section 550. Section 81-9-233, MCA, is amended te read:

"**81-9-233. Cooperation with state and federal authorities.** (1) In carrying out the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the chief shall consult with the department of *public* health and ~~environmental sciences~~ *human services* and any appropriate state laboratory in matters relating te potability of water, sewage systems, and other sanitary conditions of slaughtering and meat processing establishments that might endanger public health. If any official establishment is failing to meet minimum applicable requirements of the department of *public* health and ~~environmental sciences~~ *human services*, inspection service to the establishment must be suspended as provided in 81-9-235 until the condition is remedied.

(2) The board is designated as the agency responsible for cooperating with the U.S. secretary of agriculture in receiving advisory assistance in developing the state program, technical and laboratory assistance and training, and financial assistance for administration of the program."

Section 551. Section 81-21-103, MCA, is amended to read:

"**81-21-103. Exceptions of certain producers of dairy products.** *(1)* The owners or operators of dairies, creameries, butter factories, cheese facteries, or other places of business engaged in the production, storage, or transportation

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of dairy products are not required to procure a license from the department of *public* health and ~~environmental sciences, insofar as~~ *human services regarding* the business of production, storage, or transportation of these food products ~~is concerned~~.

(2) This section does not limit the*:*

(a) supervision or regulation *by the department of public health and human services* of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale ~~thereat by the department of health and environmental sciences, nor does this section limit the~~ *at those facilities; or*

(b) duties imposed by law on the department of *public* health and ~~environmental sciences~~ *human services* to make sanitary rules for the eradication or control of an epidemic of human disease which may exist in a community."

Section 552. Section 81-22-208, MCA, is amended to read:

"**81-22-208. Licenses and schedule of license fees.** (1) Licenses and license fees required under this part must be established by the department for the following facilities and activities:

(a) *a* manufactured dairy products plant~~;~~. ~~however~~ *However*, a plant license is not required of a food service establishment licensed by the ~~Montana~~ department of *public* health and ~~environmental sciences~~ *human services*, as defined in 50-50-102, and ~~no~~ *a* license is *not* required to manufacture nondairy products when only ~~such~~ *nondairy* products are manufactured~~;~~.

(b) *a* cream station~~;~~. ~~however~~ *However*, a license is not required if the cream station is owned and operated by a licensed plant~~;~~, but the milk and cream, equipment, premises, and means of transporting milk or cream is subject to official inspection~~;~~.

(c) *a* dairy producing milk for manufacturing purposes~~;~~, ~~however~~ *However*, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by 81-21-102~~; and~~.

(d) *a* grader-weigher-sampler, tester, and hauler~~;~~. ~~however~~ *However*, a separate grader-weigher-sampler, tester, and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant, or is self-employed.

(2) A license is valid on the date issued through December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date of December 31. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it ~~shall~~ *must* be accompanied by the correct license fee. A license ~~shall~~ *must* be posted in conspicuous view at the place of business. A license is not transferable from place to place or from person te person. A penalty fee in an amount established by a rule of the department may be imposed by it on a person who fails to apply

for renewal of ~~his~~ *the person's* license if under this part that person is required to be licensed.

(3) All license fees collected ~~shall~~ *must* be deposited in the general fund."

Section 553. Section 81-22-209, MCA, is amended to read:

"**81-22-209. License requirements applicable.** The licenses required under this part apply only to those licenses issued by the department. This part does not repeal or abrogate the authority of or the issuance of licenses by the department of *public* health and ~~environmental sciences~~ *human services*."

Section 554. Section 81-22-404, MCA, is amended to read:

"**81-22-404. Removal or destruction of products in case of potential health hazards.** (1) When epidemiological evidence indicates or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale milk or a manufactured dairy product which is adulterated or which may be detrimental to the health or safety of the consumer, the department may request the department of *public* health and ~~environmental sciences~~ *human services* to remove the product from the market or to hold, dispose of, destroy, or treat the product so that it no longer constitutes a potential health hazard.

(2) It is unlawful for a person to violate an order which requires the product's removal from the market or its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject to a fine of not less than $25 or more than $250 or to imprisonment in the county jail for not more than 30 days or both fine and imprisonment."

Section 555. Section 81-22-414, MCA, is amended to read:

"**81-22-414. Pasteurization apparatus and records.** (1) The department may adopt rules which it considers necessary to assure proper control and use of all equipment used in the process of pasteurization. The department may require the operation of devices and apparatus which are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated, including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding 2 months all records pertaining to the pasteurization of any product. These records ~~shall~~ *must* at all times be open to the inspection of the department of livestock, the department of *public* health and ~~environmental sciences~~ *human services*, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(2) Pasteurizing equipment ~~which~~ *that* records temperatures or controls the time of holding ~~shall~~ *must* be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department."

Section 556. Section 81-22-421, MCA, is amended to read:

"**81-22-421. Labeling on manufactured dairy products to conform to requirements.** Labeling on manufactured dairy products shall conform to

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requirements of the Food, Drug, and Cosmetic Act and to the other requirements which are adopted by the department of livestock or the department of *public* health and ~~environmental sciences~~ *human services*."

Section 557. Section 81-23-101, MCA, is amended to read:

"**81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-1802.

(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(g) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(h) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

(i) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

(j) "Licensee" means a person who holds a license from the department.

(k) "Market" means an area of the state designated by the department as a natural marketing area.

(l) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority and also includes those secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

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(m) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections ~~and human services~~ at the Montana state prison.

(n) "Producer" means a person who produces milk for consumption in this state, selling it te a distributor.

(o) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(p) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(q) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail or for consumption on the premises.

(r) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(s) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class which in its discretion it determines to be proper."

Section 558. Section 81-23-103, MCA, is amended to read:

"81-23-103. **General powers of the department.** (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. ~~Nothing in this~~ *This* chapter ~~abrogates or affects~~ *does not affect* the status, force, or operation of any provision of public health laws or the law under which the department of livestcck is constituted together with the department of livestock rules, county board of health rules, or municipal ordinances for the promotion or protection of the public health. The department may cooperate with the department of *public* health and ~~environmental sciences~~ *human services*, the board of livesteck, any county or city board of health, or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and conduct hearings upon any subject pertinent to the administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter and may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness."

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Section 559. Section 87-1-226, MCA, is amended to read:

"87-1-226. Disposition of meat of animals damaging property. (1) The meat of all animals killed or destroyed pursuant to 87-1-225 by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, the department of ~~social and rehabilitation~~ *public health and human* services, or charitable institutions. The department shall provide transportation and distribution of the meat.

(2) Any meat not accepted by state institutions, school lunch programs, the department of ~~social and rehabilitation~~ *public health and human* services, or charitable institutions shall be sold as provided in 87-1-511."

Section 560. Section 87-1-303, MCA, is amended to read:

"87-1-303. Rules for use of lands and waters. (1) The commission may adopt and enforce rules governing uses of lands acquired or held under easement by the commission or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules ~~shall~~ *must* be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements ~~shall~~ *must* itemize uses as listed in 87-1-209.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams which are legally accessible to the public or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules ~~shall~~ *must* be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at desiguated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas which are legally accessible to the public. These rules are subject to review and approval by the department of *public* health and ~~environmental sciences~~ *human services* as to public health and sanitation before becoming effective. Copies of the rules ~~shall~~ *must* show that endorsement."

Section 561. Section 87-2-802, MCA, is amended to read:

"87-2-802. Veterans in VA hospitals and residents of state institutions. Any veteran who is a patient residing at a hospital operated hy the department of veterans affairs, within or outside the state, and residents of all institutions under the jurisdiction of the department of corrections *and the department of public health* and human services, except the Montana stato prison at Deer Lodge *or the women's correctional system*, will be entitled to fish without a license. ~~Such~~ *The* residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license."

Section 562. Section 90-4-201, MCA, is amended to read:

"90-4-201. Weatherization money sources — consolidation. (1) All federal funds and grants available and becoming eligible to Montana under the

provisions of the U.S. department of energy low-income weatherization assistance program, the U.S. department of health and human services low-income home energy assistance program, and any other federal funds intended te increase the energy efficiency of dwellings occupied by persons of low and fixed incomes, except for Title XX of the Social Security Act, are to be coordinated and are appropriated to the department of ~~social and rehabilitation~~ *public health and human* services.

(2) The department of ~~social and rehabilitation~~ *public health and human* services shall allocate and spend for home weatherization programs under this part at least 5% of the funds received from the U.S. department of health and human services low-income home energy assistance program if federal law permits this allocation."

Section 563. Section 90-4-202, MCA, is amended to read:

"**90-4-202. Allocation formula.** (1) The department of ~~social and rehabilitation~~ *public health and human* services may use not more than 5% of the total weatherization funds for administration of the weatherization program.

(2) Each of the human resource development councils or otber public or nonprofit entities shall receive that fraction of the remaining money as the number of eligible households in its geographic area bears to the total number of eligible households in the state.

(3) The department of ~~social and rehabilitation~~ *public health and human* services may transfer weatherization money among the human resource development councils or other public or nonprofit entities if it finds that the money is not being expended in accordance with the terms of the agreements executed to carry out the provisions and purposes of this section and federal laws and regulations.

(4) Each of the human resource development councils or other public or nonprofit entities shall submit plans and proposed agreements to the units of local government in the district for review and comment before the agreements are approved by the department of ~~social and rehabilitation~~ *public health and human* services."

Section 564. Section 90-4-215, MCA, is amended to read:

"**90-4-215. Account established — use.** (1) There is created an energy conservation and energy assistance account within the federal special revenue fund established in 17-2-102.

(2) The amounts deposited in the account and interest and earnings on the account are statutorily appropriated, as provided in 17-7-502, to the department of ~~social and rehabilitation~~ *public health and human* services to fund its low-income energy assistance and home weatherization programs created in 90-4-201. However, the department may use the principal of the account only if the federal grants for either of those programs is reduced below the federal fiscal year 1987 level. The department may not use the principal to increase expenditures to either program above the level of the federal grant for that program for federal fiscal year 1987."

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Section 565. Section 90-7-220, MCA, is amended to read:

"**90-7-220. Montana developmental center loan.** (1) The department of ~~corrections~~ *public health* and human services may entor into a loan agreement with the Montana health facility authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for the developmentally disabled at the Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed $10.5 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and the loan must be payable over a term of not to exceed 30 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used te pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana developmental center facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable solely from the facility revenues obtained by the department from the ownership and operation of and the provision of services at the Montana developmental center, including payments or reimbursements from private users, insurers, and the federal government. All facility revenues obtained from services provided by the Montana developmental center must be deposited in a special revenue fund and must be applied to the payment of the principal and intorest payments as due under the loan agreement. Principal and intorest payments constitute a statutory appropriation within the meaning of 17-7-502. Whenever the foregoing facility revenues exceed the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited to the general fund. As long as the loan remains outstanding and the department provides services for the developmentally disabled, the department shall use the Montana developmental center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to tbe board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior te the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of Title 90, chapter 7.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenues and do not constitute a debt of tbe state or obligate the state to appropriate or apply any funds or revenues of the state, except the facility revenues as provided in this section."

Section 566. Transition. The provisions of 2-15-131 through 2-15-137 apply to [this act].

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Section 567. Repealer. Sections 2-15-2104, 2-15-2401, 50-1-301, 50-1-302, 50-70-106, 52-1-105, and 53-1-101, MCA, are repealed.

Section 568. Coordination. (1) If [this act] is passed and approved but Senate Bill No. 234 is not passed and approved, the code commissioner is instructed to remove all references to the board of health and environmental sciences in the Montana Code Annotated and in material enacted by the 54th legislature. The code commissioner shall make corresponding changes in style and arrangement to accommodate the changes.

(2) The code commissioner is instructed to renumber the following sections into Title 2, chapter 15, part 22: 2-15-2109 and 2-15-2402.

(3) If [this act] is passed and approved but Senate Bill No. 234 is not passed and approved, all references in the Montana Code Annotated and in material enacted by the 54th legislature to "department of health and environmental sciences" are changed to "department of environmental sciences".

(4) If both bills are passed and approved, the department of health and environmental sciences is abolished, 2-15-104(1)(h) is eliminated, and 2-15-2101 is repealed. Any reference in this bill to "department of health and environmental sciences" or "department of environmental sciences", except in 2-15-104 and 2-15-2101, is changed to "department of environmental quality".

Section 569. Executive orders — code commissioner instruction. (1) In all material enacted by the 54th legislature that assigns duties or functions to the department of family services, department of health and environmental sciences, department of social and rehabilitation services, or department of corrections and human services, the governor shall by executive order designate the department of public health and human services or the department of corrections as the agency to perform each duty or function.

(2) The governor shall provide a copy of each executive order to the code commissioner, who shall make the changes necessary to reflect the assignment of each duty or function. The code commissioner shall recodify and rearrange material as necessary to reflect the provisions of [this act].

Section 570. Codification instruction. [Sections 398 through 401] are intended to be codified as an integral part of Title 53, chaptor 1, and the provisions of Title 53, chapter 1, apply to [sections 398 through 401].

Section 571. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 572. Effective date. [This act] is effective July 1, 1995.

Approved April 26, 1995

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CHAPTER NO. 547

[HB 5]

AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1997; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; APPROPRIATING $3.5 MILLION IN GENERAL FUND MONEY FOR SCHOOL FACILITIES; PROVIDING FOR AN ALLOWANCE FOR MAINTENANCE BASED UPON A PERCENTAGE OF CONSTRUCTION COST; REPEALING SECTION 23, CHAPTER 624, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 13], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 13].

(2) "LRBP" means the long-range building program account in the capital projects fund type.

(3) "Other funding sources" means money other than LRBP money, including special revenue fund money, that accrues to an agency under the provisions of the law.

Section 2. Capital projects appropriations. (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBP		Other Funding Sources
DEPARTMENT OF ADMINISTRATION			
ADA Accessibility Modifications,			
Capitol Complex		$100,000	Proprietary
Capitol Restoration, Capitol Complex		696,000	Federal Special Revenue
		5,385,640	Donations
		439,000	Proprietary
		250,000	Capitol Land Grant Revenue
Scagliola Repair and Restoration	$275,400		
Roof Replacements, Statewide	350,000		
Code Compliance, Health and Safety			
Projects, Statewide	350,000		
Upgrade Electrical Systems,			
Capitol Complex	200,000		

Emergency Projects, Statewide	379,000		
DEPARTMENT OF CORRECTIONS & HUMAN SERVICES			
Facility Improvements,			
Center for the Aged	330,000		
Facility Improvements,			
Montana Developmental Center	644,000		
Facility Maintenance, Montana			
Veterans' Home		215,952	State Special Revenue
Correctional Boot Camp			
Expansion		560,000	Federal Special Revenue
Montana State Prison Expansion		1,500,000	Federal Special Revenue
Building Demolition and Asbestos Removal,			
Montana State Hospital	100,000		
DEPARTMENT OF FAMILY SERVICES			
Miscellaneous Improvements, Pine			
Hills School	180,000		
Campus Planning,			
Pine Hills School	100,000		
Montana Youth Alternatives Program			
Boulder	560,000		
DEPARTMENT OF FISH, WILDLIFE & PARKS			
Bluewater Hatchery, Phase II		2,500,000	State Special Revenue
Ulm Pishkun, Phase I		818,000	State Special Revenue
		25,000	State Special Revenue*
		220,000	Federal Special Revenue
Administrative Facilities,			
Improvements		569,520	State Special Revenue
Makoshika State Park		275,000	State Special Revenue
		25,000	State Special Revenue*
		100,000	Federal Special Revenue
Fish Health Lab		344,000	State Special Revenue
Tongue River Reservoir			
State Park		500,000	State Special Revenue
		650,000	Federal Special Revenue

Fish Hatchery Maintenance		192,000	State Special Revenue
Spring Meadow Wildlife Rehabilitation			
and Education Center		600,000	State Special Revenue
		25,000	Federal Special Revenue
Salmon and Placid Lakes			
State Park		140,000	State Special Revenue
		135,000	Federal Special Revenue
Whitefish Lake State Park		150,000	State Special Revenue
		50,000	State Special Revenue*
		200,000	Federal Special Revenue
Lake Elmo State Park,			
Phase III		150,000	State Special Revenue
Cooney Reservoir State Park		250,000	State Special Revenue
		40,000	Federal Special Revenue
DEPARTMENT OF LABOR & INDUSTRY			
Repair and Maintenance			
Local Job Services, Statewide		110,000	Federal Special Revenue
Purchase Land for Job Service			
Parking, Statewide		156,550	Federal Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Repair STARC Armory HVAC			
System, Helena	258,500		
Roof Replacements, Statewide	107,000		
Construct Billings Armory		14,009,800	Federal Special Revenue
Federal Spending Authority		800,000	Federal Special Revenue
State Veterans' Cemetery			
Phase IV		75,000	State Special Revenue
		75,000	Federal Special Revenue
DEPARTMENT OF STATE LANDS			
Maintenance and Improvements,			
Statewide	336,400		
Construct or Purchase Unit Office, Plains	300,000		
DEPARTMENT OF TRANSPORTATION			
Repair, Maintenance, and Minor			

Construction Projects, Statewide		650,000	Highways State Special Revenue
Equipment Storage Buildings, Statewide		1,820,000	Highways State Special Revenue
MONTANA UNIVERSITY SYSTEM			
Repair Old Main Steam Traps,			
UM - Western	55,000		
Repair Brockmann Center,			
MSU - Northern	75,000		
Museum Elevator,			
UM - Montana Tech	350,000		
Replacement of Primary Electrical			
Distribution Systam			
MSU - Billings	300,000		
Roof Replacements,			
University System	714,700		
Life Safety/Code Compliance			
University System	500,000		
ADA Accessibility Modifications			
University System	300,000		
Central Heating Plant, Phase II			
MSU - Bozeman		2,080,000	Auxiliary
Chemistry Building Renovation			
UM - Montana Tech		1,509,000	Donations
Authority Only Projects,			
Montana State University		560,000	Federal, Trust, Higher Education Funds, and Donations
Bioscience Facility		10,815,946	Federal Special Revenue
Authority Only Projects,			
University of Montana		450,000	Federal, Trust, Higher Education Funds, and Donations
Pharmacy/Psychology Building Addition		10,400,000	Federal and Donations
STATE BOARD OF EDUCATION			
Reshingle Cottage Complex, Montana			
School for the Deaf and Blind	120,000		

(2) For the capitol restoration project, the department of administration is authorized to expend private donations, up to $5,385,640, for historic restoration projects and any Montana power company funding for approved energy retrofitting projects. If additional federal special revenue from CTEP funds becomes available, the department of administration is authorized to use those funds for capitol restoration projects. If CTEP funds are used for infrastructure projects, a matching amount of bonding authority in House Bill No. 15 may be used for historic restoration projects in order to reduce the spending authority for private donations. If any federal or bonded funding authorized for the restoration of the capitol building infrastructure is not needed because of a reduction in costs of the approved project, funding may be used for historic restoration projects.

(3) The funding provided to the projects in this section and identified by an asterisk (*) represents lodging facilities use tax that is allocated to the department of fish, wildlife, and parks and that is statutorily appropriated under 15-65-121 for maintenance of facilities in state parks. It is not intended for the project to be reduced by this amount.

(4) It is the intent of the long-range planning subcommittee that the $625,000 appropriated for the Spring Meadow wildlife rehabilitation and education center project be used to transfer the animal shelter from its existing location to the Spring Meadow complex upon an agreement between the department of fish, wildlife, and parks and the donor group for the transfer of the Spring Meadow property and for the planning of additional phases of the project. It is not the intent of the subcommittee to encumber any future legislature with regard to additional phases of the project. The project approved in [this act] is to be a stand-alone project.

Section 3. Land acquisition appropriation. The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreement:

Agency/Project	LRBP	Other Funding Sources
Habitat Montana	$4,600,000	State Special Revenue
Fishing Access Site	800,000	State Special Revenue
Bighorn Sheep Program	652,720	State Special Revenue
BPA Mitigation	1,000,000	Federal Special Revenue

Section 4. River restoration. The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for river restoration:

Agency/Project	LRBP	Other Funding Sources
River Restoration	$ 290,000	State Special Revenue
Tongue River Resteration	1,100,000	State Special Revenue

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Section 5. Dams. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the following dams:

Agency/Project	LRBP	Other Funding Sources
South Sandstone Dam Repair	$264,000	State Special Revenue
Ringy Dingy Dam Repair	50,000	State Special Revenue
Bearpaw Dam Upgrade	210,000	State Special Revenue

(2) In accordance with 85-1-101, the department of natural resources and conservation shall coordinate and manage the projects.

(3) Funds appropriated for the South Sandstone dam are contingent upon the department of fish, wildlife, and parks disposing of its ownership and liability responsibility of the property on which the South Sandstone dam is located. The transfer of ownership should include continued public recreational access. The department is authorized to make the repairs or may pass the funds through to the new owner to reimburse project expenses. If funds remain after completion of the project, the department is authorized to establish an operations and maintenance account for the project.

Section 6. Capital improvements. (1) The following money is appropriated to the department of transportation in the indicated amounts for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Repair, Maintenance, and Minor Construction Projects for Highways, Statewide	$830,000	State Special Revenue
Maintenance and Minor Construction Projects for Aeronautics, Statewide	50,000	State Special Revenue

(2) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Wildlife Habitat Maintenance	$377,000	State Special Revenue
Property Development	165,000	State Special Revenue
Fishing Access Protection, Statewide	625,000	State Special Revenue
	375,000	Federal Special Revenue
Waterfowl Stamp Program	165,000	State Special Revenue
Statewide Road Improvements	1,150,000	State Special Revenue
Miles City Hatchery Pond	110,000	State Special Revenue

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Thompson Chain of Lakes		
Fishing Access Site	200,000	State Special Revenue
Boat "In Lieu" Regional Projects	400,000	State Special Revenue

(3) The following money is appropriated to the department of natural resources and conservation in the indicated amounts for the purpose of the inspection, study, and renovation of dams:

Agency/Project	LRBP	Other Funding Sources
Tongue River Dam Rehabilitation	$3,500,000	State Special Revenue
	31,865,000	Federal Special Revenue
Petrolia Dam Rehabilitation	1,076,000	State Special Revenue

(4) For the appropriation for the Petrolia dam rehabilitation, the legislature finds that the project is in need of costly repairs if operation of the project is to continue and that it is financially unsound for the state to continue to own the project. Any benefits to the public accruing from continued state ownership are outweighed by the cost of repairs and continued maintenance. The legislature finds that the useful life of the project as a state-owned water project is at an end. The department of natural resources and conservation is directed to enter into an agreement for the project's disposition to the Petrolia water users' association. The money appropriated in this section is contingent upon the Petrolia water users' association execution of a valid agreement to accept ownership of all property rights and liabilities associated with the project.

(5) The following money is appropriated to Montana state university in the indicated amount for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBP	Other Funding Sources
Authority Only Projects,		
Montana State University	$200,000	Federal, Trust, Higher Education Funds, and Donations

(6) The following money is appropriated to the university of Montana in the indicated amount for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBP	Other Funding Sources
Authority Only Projects,		
University of Montana	$900,000	Federal, Trust, Higher Education Funds, and Donations

Section 7. Transfer of funds. The department of fish, wildlife, and parks is authorized to transfer money appropriated in [this act] among fund types.

Section 8. State advances and reimbursements for school facilities — general fund appropriations. There is appropriated to the office of public instruction from the general fund $1.5 million for the school fiscal year ending June 30, 1996, and $2 million for the school fiscal year ending June 30, 1997, to pay for state advances and reimbursements for school facilities in accordance with the provisions of House Bill No. 416. The appropriation and authorization

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provided in [this section] are contingent on passage and approval of House Bill No. 416.

Section 9. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred prior to the receipt of other funding sources.

Section 10. Capital projects — contingent funds. If a capital project is financed in whole or in part with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for hid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [sections 1 through 6] for that project; or

(2) the scope of the project is substantially altered or revised from tbe preliminary plans presented for that project in the 1996-97 long-range building program presented to the 54th legislature.

Section 11. Legislative consent. The appropriations authorized in [sections 1 through 10] constitute legislative consent for tbe capital projecte contained in [sections 1 through 10] within the meaning of 18-2-102.

Section 12. Maintenance for state buildings. (1) Subject to legislative determination as provided in subsection (2), a major capital project appropriation by the legislature may include an amount for maintenance as a part of the appropriation. The amount appropriated for maintenance must he deposited in the long-range building account for use in future maintenance.

(2) A state building recommended for construction in the report to the legislature required by 17-7-203 may also be recommended as appropriate for the inclusion of an amount for maintenance. For those buildings recommended for construction, the legislature may allocate an amount not to exceed 2% of the appropriated cost for use in maintenance.

(3) This section does not preclude additional funds, including separate appropriations, donations, grants, or other available funds, from being used for tbe construction or maintenance of state buildings.

Section 13. Percent-for-art. The architecture and engineering division of tbe department of administration is directed to minimize the allocation of funds for the acquisition of works of art, as provided in Title 22, chapter 2, part 4, for capital projects approved by the 1995 legislature.

Section 14. Coordination instruction. (1) If [this act] and House Bill No. 349 are hoth passed and approved, the amounts appropriated for the Bluewater hatchery in [section 2 of this act] and for the Tongue River restoration and river restoration in [section 4 of tbis act] aro appropriated according to the provisions of House Bill No. 349, except that the department of fish, wildlife, and parks may spend up to $250,000 of the funds identified in [section 3(2)] of House Bill

No. 349 from the Bluewater hatchery, and an additional $250,000 from the department's general license account, to contain, control, and mitigate whirling disease in Montana's waterways. [This act] controls as to any conflicts with the allocation of funds in [section 3(2)] of House Bill No. 349.

(2) If [this act] and House Bill No. 512 are both passed and approved, the amounts appropriated for fishing access site acquisition in [section 3] of [this act] are allocated according to the provisions of House Bill No. 512.

Section 15. Codification instruction. [Section 12] is intended te he codified as an integral part of Title 17, chapter 7, part 2, and the provisions of Title 17, chapter 7, part 2, apply to [section 12].

Section 16. Repealer. Section 23, Chapter 624, Laws of 1993, is repealed.

Section 17. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 18. Effective date. [This act] is effective on passage and approval.

Approved April 26, 1995

CHAPTER NO. 548

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECT GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement. (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by this section. Money must be disbursed in priority order, first te projects covered under subsection (2), second to the project listed in subsection (3), and third to the projects listed in subsection (4). The Montana arts council shall disburse money to projects authorized by this section through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in subsection (4).

(2) Money in the cultural and aesthetic projects account is insufficient in the biennium ending June 30, 1995, to fund projects in the amount for which they were approved. All grants not already disbursed at the time of the shortfall have been reduced by 26.68%. If the money in the cultural and aesthetic projects account is insufficient in the biennium ending June 30, 1995, to fund those projects in the amount of the reduced grant for which they were approved, the approved amount for the projects is reappropriated from the account until money has been disbursed to fully cover the grant awards as reduced.

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(3) There is appropriated to the Montana historical society $15,000 for the hiennium ending July 1, 1997, for care and conservation of capitol complex artwork. This appropriation is recommended to be repeated for three successive bienniums and to be reviewed in fiscal year 2001 to determine if it should continue.

(4) The following projects are approved and amounts appropriated to the Montana arts council for the biennium ending June 30, 1997, from the cultural and aesthetic projects account:

(a) Special Projects – $4,500 or Less:

Garden City Ballet Company Ballet for Children - Lecture - Demonstration	3,000
Montana Preservation Alliance Rural Design Technical Assistance and Operating Support	3,900
Carbon County Historical Society A Finnish Country Kitchen	2,500
Montana Agricultural Center and Museum Water and the Farming Culture	3,000
Montana Players, Inc. Technical Assistance for Artistic Diversity	3,000
Clack Museum Foundation Havre Area Promotional Video	4,000

(b) Special Projects:

Montana Committee for Humanities Montana Committee For Humanities Speakers Bureau	24,000
Western Heritage Center Real West - Western Heritsge Center Traveling Exhibit	9,000
Vigilante Theatre Company Artistic Support	9,500
Northern Lights Institute Featuring Montana Artists and Writers	7,500
Montana Historical Society Statewide Conservator Initiative	27,000
Montana Arts Foundation Two-Part Special Project1	9,000

Condition: Grant funds may be used only to pay for the operational costs of the organization.

Montana Arts Council Tribal Arts Education Project	8,000
Writer's Voice of Billings YMCA Writers on the Road	9,000
Montana Performing Arts Consortium Four-Part Special Project	20,000

Condition: Grant funds may be used to pay tour coordinators.

Hockaday Center for the Arts Hockaday Center for the Arts Education Programs	9,000
Alberta Bair Theater Arts Outreach and Education	7,000
MSU Libraries Montana WPA Project	4,500
Montanans For Quality TV Bella Vista - A View of World War II From Montana	5,500
Metis Cultural Recovery Inc. Metis Heritage Center	9,000
Hellgate Writers, Inc. Hellgate Writers Center for Literary Arts, Expansion Phase III	9,000

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Young Audiences of Western MT Artists' Travel Expenses	6,000
Rattlesnake Productions, Inc. Backbone of the World - The Blackfeet1	3,000
Montana Histerical Society Campbell Farm Films - Preservation and Access	8,500
Missoula Community Access TV Montana Media Arts in Education Project	3,000
MonDak Historical and Arts Society Gaslight Theatre Enhancement	2,000
MSU KGLT-FM Live Wire Weekly Live Concerts/Broadcasts	7,000
MSU Montana Public Television Native Voices Public Television Workshop1	5,000
Condition: Grant funds may be used only to pay for the training aspects of the project.	
Paris Gibson Square Museum of Art Collections Storage and Conservation Improvements	3,000
Very Special Arts Montana Clearinghouse/Committee Recognition	4,000
Copper Village Museum and Arts Center Achieving Full Stride	3,000
UM Montana Transport Company 1996-97 Rural Montana Tours	4,000
Bozeman Public Library Montana Women in Rodeo Documentary	7,000
Helena Art Center Helena Art Center Three-Part Project	4,500
Helena Symphony Society Cascade String Quartet Residency	3,500
Beall Park Art Center Membership Campaign/Brochure	1,000
Butte Symphony Orchestra Staff Expansion - Butte Symphony	4,000
Northern Showcase Northern Showcase Performing Arts Series	2,500
Montana Indian Contemporary Arts American Indian Contemporary Arts Symposium IV and V	5,000
Glacier Orchestra and Chorale, Inc. Glacier Orchestra and Chorale Educational Outreach	6,000
Fort Belknap College Fort Belknap College Public Radio Station	5,500
Missoula Symphony Association Concert Support for Elementary Students in Minority Population Schools	2,000
Great Falls Symphony Association Ensemble Outreach	8,770
Montana Assn. Symphony Orchestras National Symphony Orchestras Tour America Program	20,000
(c) Operational Support:	
MSU Shakespeare in the Parks Operational Support Montana Shakespeare in the Parks	26,000
Helena Presents Operational Support for Helena Presents 1995-96 and 1996-97	19,000
Montana Art Gallery Directers Assn. Exhibition Fee Support for Art Galleries/Museums	18,000
Custer County Art Center Operational Support1	4,000

Montana Alliance for Arts Education Operational Support	4,000
Livingston Depot Foundation Livingston Depot Operational Support	3,000
Montana Dance Arts Association Operational Support	3,000
Growth Thru Art, Inc. Operational Support for Growth Thru Art, Inc.	6,000
UM Montana Repertory Theater Operational Support for Montana Tour	10,000
Montana Chorale Operational Support for Montana Chorale	2,500

(d) Capital Expenditure:

Indian Monument/Flag Circle Committee American Indian Monument/MT Tribal Flag Circle	5,000
Butte Center for Performing Arts Renovation of Fox Theatre	15,000
Fort Peck Fine Arts Council Fort Peck Theatre Restoration	4,500
Yellowstone Art Center New Yellowstone Art Center	10,000
Butto-Silver Bow Arts Foundation Renovation of Arts Chateau1	2,000
Missoula Children's Theatre Missoula Children's Theatre Capital Campaign	7,500
Garnet Preservation Association Garnet Ghost Town Restoration Project	3,000
Archie Bray Foundation Save the Beehives - 5-Year Facility Renovation	10,000

Condition: Grant funds will be released only upon receipt of a letter of agreement from the state historic preservation office.

Arlee Historical Society Inc. Install Secure Systom, Outside Light, Paint Museum	3,500
C M Russell Museum Exalted Ruler Acquisition	25,000
Historical Museum at Fort Missoula Drummond Depot RR Exhibit and Education Space	3,000
Prairie Winds Arts Council Cultural Arts and Interpretive Center	6,000
Beaverhead Development Corp. Road Agent's Trail	5,000
Blaine County Wildlife Museum Historic Diorama	5,000
Three Forks Area Historical Society Historic Stained Glass in Museum	550

Condition: Grant funds will be released only upon receipt of a letter of agreement from the state historic preservation office.

(e) Endowment Development:

Billings Preservation Society Billings Preservation Society Endowment Trust	5,000
Billings Studio Theatre Establish Permanent Endowment Billings Studio	2,500
Gallatin County Historical Society Endowment Fund Enhancement	2,500
Billings Symphony Society Endowment Expansion	2,500

(5) An amount not to exceed $11,000 is appropriated from money that may revert from appropriations made in subsection (4) to the Montana arts council for project evaluations. The evaluations must be done after July 1, 1996, and results must be included in a report on the projects funded by subsections (1) through (4) te be submitted to the 55th legislature.

Section 2. Reversion of granted money. (1) On October 1, 1996, money reappropriated in [section 1(2)] but not disbursed reverts to the cultural and aesthetic projects account provided for in 15-35-108.

(2) On July 1, 1997, the unencumbered balance of the 1997 biennium grants reverts to the cultural and aesthetic project account provided for in 15-35-108.

Section 3. Pro rata reduction of grant awards. If money in the cultural and aesthetic project account is insufficient to fund projects at the appropriation levels contained in [section 1(4)], the Montana arts council shall allocato the available money on a pro rata basis to the authorized projects.

Section 4. Effective date. [This act] is effective July 1, 1995.

Approved April 26, 1995

CHAPTER NO. 549

[HB 15]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1997; PROVIDING FOR MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 7], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 7].

(2) "CPF" means the capital projects fund.

(3) "Other funding sources" means money other than CPF money, including special revenue fund money, that accrues to an agency under the provisions of the law.

Section 2. Appropriation of bond proceeds and other funds. The following money is appropriated from the CPF and other funding sources to the department of administration for the capital projects described in this section, contingent upon the respective authorization of general obligation long-range building program bonds by the 54th legislature and the sale of the bonds by the board of examiners:

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Agency/Project	CPF	Other Appropriated Funds
DEPARTMENT OF ADMINISTRATION		
Capitol Restoration, Capitol Complex	$12,559,240	
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES		
Montana Stato Prison Expansion	4,300,000	
MONTANA UNIVERSITY SYSTEM		
Central Heating Plant, Phase II, MSU - Bozeman	3,120,000	
Chemistry Building Renovation UM - Montana Tech	4,536,000	
Underground Utilities Expansion MSU - Bozeman	6,000,000	
Pharmacy/Psychology Building Addition UM - Missoula	2,000,000	
DEPARTMENT OF LABOR AND INDUSTRY		
Job Service Office, Havre		350,000

Section 3. Authorization of bonds. (1) The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $32,865,240 fer the projects described in [section 2] over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1995, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to tbe board by this section is in addition to any other authorization to tbe board to issue and sell general obligation long-range building program bonds.

(2) It is the intent of the 54th legislature that debt service payments for the Havre job service office he paid with federal funds. If federal funds become unavailable, however, the department of labor and industry is directed to reduce operating or personal services costs in order to service the debt. The debt service payments for the job service office are not to be paid with general fund money. The department is also encouraged to pursue tbe purchase of an existing building in Havre as an alternative to new construction.

Section 4. Agreement with department of labor and industry. For the proceeds of the bonds and notes authorized and appropriated by [sections 2 and 3] for the expansion and renovation of the job service office, Havre, the board of examiners and the department of labor and industry may enter into an agreement under which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, an amount, as determined by the stato treasurer, that is sufficient to pay the principal and interest due on the bonds and notes from which the appropriation was made and that is sufficient to accommodate and maintain reserves required under the bonds and notes. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the reserves not required for construction and renovation costs may be credited against the department's payment obligation.

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The agreement must also allow for the accumulation of reserves during the first year that the bonds are outstanding. Payment by the department must be made from funds available therefor.

Section 5. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred prior to the receipt of other funding sources.

Section 6. Capital projects — contingent funds. If a capital project is financed in whole or in part with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not he approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [section 2] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 1996-97 long-range building program presented to the 54th legislature.

Section 7. Legislative consent. The appropriations authorized in [section 2] constitute legislative consent for the capital projects contained in [section 2] within the meaning of 18-2-102.

Section 8. Coordination instruction. If [this act] and House Bill No. 5 are both passed and approved and if both contain authorization for the pharmacy/psychology building addition project at the university of Montana-Missoula, then the amount of authorization for federal and private funding for that project in House Bill No. 5 is reduced by $2 million.

Section 9. Requirements for approval of state debt. Because [section 3] authorizes the creation of a stato debt, a vote of two-thirds of the members of each house is required for enactment of [section 3]. If [section 3] is not approved by the required voto, [this act] is void.

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 26, 1995

CHAPTER NO. 550

[HB 157]

AN ACT INCREASING PENALTIES FOR CERTAIN SEX OFFENSES; INCREASING THE MAXIMUM PENALTY FOR CERTAIN SEX OFFENSES

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TO LIFE IMPRISONMENT PROVIDING THAT CERTAIN SEXUAL OFFENDERS ARE TO REGISTER AS SEXUAL OFFENDERS FOR THE REMAINDER OF THEIR LIVES UNLESS A COURT FINDS THAT PUBLIC PROTECTION NO LONGER DEMANDS REGISTRATION; REGULATING THE DISSEMINATION OF MATERIAL IN THE SEX OFFENDER REGISTER; AND AMENDING SECTIONS 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-625, 46-18-202, 46-23-502, 46-23-506, AND 46-23-507, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-502, MCA, is amended to read:

"**45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for ~~any~~ *a* term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he~~ *the offender* shall be ~~imprisoned~~ *punished by life imprisonment or by imprisonment* in the state prison for ~~any~~ *a* term *of* not less than 2 years or more than ~~20~~ *100* years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" ~~shall include~~ *includes* an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim."

Section 2. Section 45-5-503, MCA, is amended to read:

"**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be ~~imprisoned~~ *punished by life imprisonment or by imprisonment* in the state prison for a term of not less than 2 years or more than ~~20~~ *100* years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be ~~imprisoned~~ *punished by life imprisonment or by imprisonment* in the state prison for ~~any~~ *a* term of not less than ~~2~~ *4* years or more than ~~40~~ *100* years and may be fined not more than $50,000, except as provided in 46-18-222~~. An act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission~~.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present

at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be ~~imprisoned~~ *punished by life imprisonment or by imprisonment* in the state prison for a term of not less than 5 years or more than ~~40~~ *100* years and may he fined not more than $50,000, except as provided in 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender te pay restitution as required by 46-18-242, the court shall require the offender, if able, te pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Section 3. Section 45-5-504, MCA, is amended to read:

"45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying *the person's own* sexual desire ~~of himself~~ or *the sexual desire* of any person, exposes ~~his~~ *the person's* genitals under circumstences in which ~~he~~ *the person* knows ~~his~~ *the* conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, ~~he~~ *the person* shall he fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, ~~he~~ *the person* sball be ~~fined an amount not to exceed $10,000 or be imprisoned~~ *punished by life imprisonment or by imprisonment* in the state prison for a term of not *less than 5 years or* more than 5 *100* years~~, or both~~ *and may be fined not more than $10,000.*"

Section 4. Section 45-5-507, MCA, is amended to read:

"45-5-507. Incest. (1) A person commits the offense of incest if ~~he~~ *the person* knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to ~~herein~~ *in this subsection* include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stopdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be ~~imprisoned~~ *punished by life imprisonment or by imprisonment* in the state prison for ~~any~~ *a* term not to exceed ~~20~~ *100* years or be fined an amount not to exceed $50,000~~, or both~~.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ *the offender* shall ~~be imprisoned~~ *punished by life imprisonment or by imprisonment* in the state prison for ~~any~~ *a* term ~~not to exceed 20~~ *of not less than 4 years or more than 100* years and may be fined not more than $50,000.

(5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 5. Section 45-5-625, MCA, is amended to read:

"**45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person ~~knowingly~~:

(a) *knowingly* employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) *knowingly* photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) *knowingly* persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) *knowingly* processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with intent to sell,~~ exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulatod;

(e) *knowingly* possesses ~~material referred to in subsection (1)(d)~~ *any visual or print medium in which children are engaged in sexual conduct, actual or simulated*; ~~or~~

(f) finances any of the activities described in subsections (1)(a) through (1)(d) *and (1)(g)*, knowing that the activity is of the nature described in those subsections*; or*

(g) possesses with intent to sell any visual or print medium in which children are engaged in sexual conduct, actual or simulated.

(2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ *A* person convicted of the offense of sexual abuse of children shall be ~~fined not to exceed $10,000 or be imprisoned~~ *punished by life imprisonment or by imprisonment* in the state prison for ~~any~~ *a* term not to exceed ~~20~~ *100* years~~, or both~~ *and may be fined not more than $10,000.*

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be ~~fined not to exceed $10,000 or be imprisoned~~ *punished by life imprisonment or by imprisonment* in the state prison for ~~any~~ *a* term ~~not to exceed 50~~ *of not less than 4 years or more than 100* years~~, or both~~ *and may be fined not more than $10,000.*

(c) A person convicted of the offense of sexual abuse of children for the possession of matorial, as provided in subsection (1)(e), shall be fined not to oxceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ *(1)(g)* if the visual or print medium is processed, developed, printod, published, transported, distributed, sold, possessed, or possessed with intent te sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

Section 6. Section 46-18-202, MCA, is amended to read:

"**46-18-202. Additional restrictions on sentence.** (1) The district court may also impose any of the following restrictions or conditions on the sentonce provided for in 46-18-201 that it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of the defendant's owning or carrying a dangerous weapon;

(c) restrictions on the defendant's freedom of association;

(d) restrictions on the defendant's freedom of movement;

(e) any other limitation reasonably related te the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligihle for parole and participation in the supervised release program while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsection (1)(a).

(4) When the district court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.

(5) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction."

Section 7. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(2) "Sexual offender" means a person who has been convictod of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, *45-5-504(2)(c)*, ~~45-5-505,~~ 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a)."

Section 8. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A person required te register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for *the remainder of the person's life, except as provided in subsection (2) of this section or during* a period of ~~10 years after conviction, if not imprisoned during that period. If a person required to register under 46-18-254, 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison~~ *time during which the person is in prison.*

(2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this part.~~ *At any time after 10 years since the date of the offender's last conviction of a sexual offense, the offender may petition a district court for an order relieving the offender of the duty to register under 46-18-254, 46-18-255, and this part. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:*

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) The offender may move that all or part of the proceedings in a hearing under subsection (2) be closed to the public, or the judge may take action on the judge's own motion. Notwithstanding closure of the proceeding to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy

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or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy."

Section 9. Section 46-23-507, MCA, is amended to read:

"**46-23-507. Penalty.** A sexual offender who knowingly fails to register under 46-18-254, 46-18-255, and this part may be sentenced to a term of imprisonment of not ~~less than 90 days~~ *more than 5 years* or ~~a fine~~ *may be fined* not ~~to exceed $250~~ *more than $10,000*, or both."

Section 10. Dissemination of information in register. Information in the register maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that:

(1) the name of a registered sexual offender is public criminal justice information, as defined in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection.

Section 11. Codification instruction. [Section 10] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section 10].

Section 12. Coordination instruction. If [this act] and House Bill No. 214 are both passed and approved, then the amendment to 46-23-502(3)(a) in House Bill No. 214 is void.

Approved April 26, 1995

CHAPTER NO. 551

[HB 396]

AN ACT CLARIFYING WHO IS RESPONSIBLE FOR PAYING THE EXPENSES OF CUTTING OR RAISING UTILITY WIRES OR MOVING UTILITY POLES WHEN THE WIRES OR POLES IMPEDE THE MOVEMENT OF CERTAIN HOUSES, BUILDINGS, DERRICKS, OR OTHER STRUCTURES; AND AMENDING SECTION 69-4-603, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4-603, MCA, is amended to read:

"**69-4-603. Procedure to accomplish move.** (1) ~~It shall then be~~ *In order to accomplish moving a house, building, derrick, or other structure through an area in which utility poles or wires impede the movement, it is* the duty of ~~any~~

the person, firm, or corporation ~~owning or operating said~~ *who owns or controls the* poles or wires ~~after service of~~ *and who has received the* notice~~, as~~ required by 69-4-602~~,~~ to furnish competent ~~workmen or linemen~~ *workers* to ~~remove such poles or~~ raise or cut ~~such~~ *the* wires *or move the poles* as ~~will be~~ necessary to facilitate moving ~~such~~ *the* house, building, derrick, or other structure.

(2) The necessary and reasonable expense of raising or cutting the wires or of ~~removing~~ *moving* the poles for utilities subject to the jurisdiction of the public service commission must be fixed and determined by the public service commission on the average cost per line or pole for time and materials expended. These costs and expenses ~~must be determined at a hearing to be held within 180 days of October 1, 1983, and~~ must be reviewed biennially. Except as provided in subsections (4) and (5), the necessary and reasonable expense of raising or cutting the wires or of ~~removing~~ *moving* the poles ~~shall~~ *must* be shared equally by the person, firm, or corporation owning the structure and the person, firm, or corporation owning or operating the wires, cables, or poles required to be moved.

(3) The rates and charges of rural cooperative electric utilities, rural cooperative telephone utilities, and other persons who occupy and use utility or cooperative poles may not exceed the charges established by the public service commission for utilities subject to its jurisdiction. The charges assessed by ~~such~~ utilities ~~shall~~, *other than utilities subject to the jurisdiction of the public service commission, must* be apportioned as *provided* in subsection (2).

(4) *(a)* ~~Owners of prefabricated structures built with the intention of moving shall pay the~~ *Except as provided in subsection (4)(b), to facilitate the movement of a house, building, derrick, or other structure, the* necessary and reasonable costs of raising or cutting wires or cables or moving poles to facilitate the movement *must be paid by the owner of:*

(i) a prefabricated structure that is intended to be moved from the place of fabrication; or

(ii) the sixth and each subsequent structure that exceeds 25 feet in height while being moved and that is to be moved from a single site. When structures are moved in a group or in a continuous caravan formation and when only a single line cut or movement is necessary, the move must count as only a single-structure move for purposes of this subsection (4)(a)(ii). For the purposes of this subsection (4)(a)(ii), a single site includes but is not limited to a development complex, housing complex, military base, or institutional complex. The whole of an incorporated municipality is not a single site as the term is used in this subsection.

(b) The necessary and reasonable costs of raising or cutting wires or cables or moving poles to facilitate the movement of a structure by a person for occupancy by that person must be shared equally as provided in subsection (2).

(5) *(a)* ~~No~~ *A* person, firm, or corporation ~~owning~~ *who owns* or ~~engaged in moving any~~ *moves a* house, building, derrick, or other structure ~~shall~~ *may not* raise, cut, or in any way interfere with any ~~such~~ poles or wires~~,~~ unless the ~~persons or authorities owning or having control of~~ *person, firm, or corporation who owns or controls* the ~~same shall refuse to do so~~ *poles or wires refuses,* after

having been notified, as required by 69-4-602~~; then~~, *to raise or cut the wires or move the poles.*

(b) When the person who owns or controls the poles or wires refuses to raise or cut the wires or move the poles, the person, firm, or corporation who owns or moves the house, building, derrick, or other structure shall ensure that only competent and experienced ~~workmen or linemen shall be employed in such work, and in such case~~ *workers raise or cut the wires or move the poles.*

(c) The following procedure must be followed:

(i) ~~the~~ *The* necessary and reasonable expense ~~shall~~ *incurred by the owner or mover of the house, building, derrick, or other structure as a result of raising or cutting the wires or moving the poles must* be paid by the owners of the poles ~~and~~ *or* wires handled.

(ii) The work ~~shall~~ *of raising or cutting the wires or moving the poles must* be done in a careful ~~and workmanlike~~ manner~~, and~~.

(iii) ~~the~~ *The* poles and wires ~~shall~~ *must* be promptly replaced and ~~the damages thereto~~ *any damage to the poles or wires must be* promptly repaired."

Approved April 26, 1995

CHAPTER NO. 552

[HB 471]

AN ACT EXTENDING THE TERMINATION DATE OF THE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS; PROVIDING THAT THE COMMITTEE MAY SPECIFY THE DATE BY WHICH RETIREMENT PROPOSALS MUST BE SUBMITTED TO THE COMMITTEE FOR REVIEW; PROVIDING APPROPRIATIONS; AMENDING SECTION 5-21-105, MCA, AND SECTION 9, CHAPTER 549, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-21-105, MCA, is amended to read:

"**5-21-105. (Temporary) Duties of committee — committee review and report.** (1) The committee on public employee retirement systems shall:

(a) consider the fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board and the public employees' retirement board, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles;

(d) solicit and review proposed statutory changes to any of the stato's public employee retirement systems;

(e) report to the legislature on each legislative proposal reviewed by the committee. The report must include but is not limited to:

(i) a summary of the fiscal implications of the proposal;

(ii) an analysis of the effect that the proposal may have on other public employee retirement systems;

(iii) an analysis of the soundness of the proposal as a matter of public policy;

(iv) any amendments proposed by the committee; and

(v) the committee's recommendation on whether the proposal should be enacted by the legislature.

(f) attach the committee's report to any proposal that the committee considered and that is or has been introduced as a bill during a legislative session; and

(g) publish, for legislators' use, an information book on the state's public employee retirement systems.

(2) ~~A proposal subject to review under subsection (1)(d) must be submitted to the committee at least 45 days before the first day of the next regular legislative session unless this time limitation is waived by a majority vote of the committee~~ *The committee may specify in its study plan, which may be adopted and amended by a majority vote of committee members, the date by which proposals affecting a retirement system must be submitted to the committee.* (Terminates June 30, 1995—sec. 9, Ch. 549, L. 1993.)"

Section 2. Section 9, Chapter 549, Laws of 1993, is amended to read:

"Section 9. **Termination.** [This act] terminates June 30, ~~1995~~ *1997*."

Section 3. Appropriations. (1) There is a biennial appropriation not to exceed $13,800 to the legislative council from the pension trust funds for the committee on public employee retirement systems. Of the total appropriation, 37% must be made from the teachers' retirement pension fund. The remaining 63% must be made from the various pension trust funds administered by the public employees' retirement board in proportion to the membership of each system.

(2) There is appropriated from the state special revenue fund to the legislative council for the biennium ending June 30, 1997, up to $10,000 in contributions received for the committee on public employee retirement systems pursuant to 5-21-104(3).

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 26, 1995

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CHAPTER NO. 553

[HB 493]

AN ACT CREATING THE SAFE DRINKING WATER TREATMENT REVOLVING FUND ACT; AUTHORIZING THE ISSUANCE OF $10 MILLION IN GENERAL OBLIGATION BONDS TO PROVIDE THE STATE MATCHING FUNDS FOR THE SAFE DRINKING WATER TREATMENT REVOLVING FUND; AUTHORIZING THE ISSUANCE OF $5 MILLION IN GENERAL OBLIGATION BONDS TO PROVIDE THE STATE MATCHING FUNDS FOR THE STATE WASTE WATER TREATMENT REVOLVING FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 75-5-1112, 75-5-1113, AND 75-5-1121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the board of health and environmental sciences and the board of natural resources and conservation to implement a new state financial assistance program for communities that need to improve their public water systems. The legislature understands and anticipates that the program will provide low interest loans and grants te Montana entities to construct needed improvements for water supply and treatment systems and that the program will be supported through federal grant funds and state matching funds raised through the issuance of general obligation bonds and repaid by interest charges of the loan. The bill requires rulemaking by both boards to establish procedures and criteria by which these loans and grants are awarded. In developing these rules, the legislature desires that the application review process should be straightforward and efficient for both the agencies and the applicant. Also, the criteria for awarding grants and loans should be clear and maximize the potential for state grants and loans to communities that need the funding.

Fundamentally, the legislature views this bill as providing a funding source for Montana entities required to meet drinking water standards or faced with upgrading or expanding their systems. Therefore, the rules should facilitate availability of this funding to the widest number of eligible entities at the lowest possible costs, taking into consideration the state's interest in protecting the viability of the program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 15] may be cited as the "Safe Drinking Water Treatment Revolving Fund Act".

Section 2. Definitions. Unless the context requires otherwise, in [sections 1 through 15], tbe following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to:

(a) costs of servicing loans and issuing debt;

(b) program startup costs;

(c) financial, management, and legal consulting fees; and

(d) reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a project, all capital costs incurred or to be incurred for a public water system, including but not limited to:

(a) engineering, financing, and other fees;

(b) interest during construction; and

(c) a reasonable allowance for contingencies te the extent permitted by the federal act and rules promulgated under the federal act.

(3) "Federal act" means the federal Safe Drinking Water Act.

(4) "Governmental agency" means a city, county, watsr and sewer district, or other local government unit having authority to own, construct, or operato a public water system.

(5) "Grant" means a grant of money from the revolving fund for project costs.

(6) "Indian tribe" means an Indian tribe within the state of Montana that is recognized by the secretary of the U.S. department of interior.

(7) "Investor-owned public wator system" means a public water system that is not owned by a governmental agency, an intergovernmental agency, a nonprofit organization, an Indian tribe, or a combination of governmental entities.

(8) "Loan" means a loan of money from the revolving fund for project costs.

(9) "Nonprofit organization" means an organization tbat is organized under Montana law and that qualifies as a tax-exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code.

(10) "Program" means the safe drinking water treatment revolving loan program established by this part.

(11) "Project" means improvements that are:

(a) to be undertaken for a public water system and that are of a type that will facilitate compliance with the national primary drinking water regulations applicable to the system; or

(b) to further tbe health protection objectives of the federal act.

(12) "Public water system" means a system for the provision to the public of piped water for human consumption, if that system has at least 15 service connections or regularly serves at least 25 individuals. The term includes any collection, treatment, storage, and distribution facilities under control of an operator of a system that are used primarily in connection with a system and any collection or pretreatment storage facilities not under control of the operator and that are used primarily in connection with a system.

(13) "Revolving fund" means the safe drinking water treatment revolving fund established by [section 6].

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Section 3. Safe drinking water treatment revolving fund program. There is a program under which the stato may provide financial assistance to public water systoms. The program must be administered in accordance with [sections 1 through 15] and the federal act.

Section 4. Authorization of agreement — content. (1) The department may enter into a capitalization grant agreement or other agreement with the U.S. environmental protection agency to implement tbe program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into an agreement, the director of the department may commit the state to:

(a) accept grant payments from the U.S. environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in [section 6];

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by [section 6] on or before the date on which each federal grant payment is made te the state;

(c) provide financial and technical assistance to a public water system in accordance with [sections 1 through 15] in an amount equal to 120% of the amount of each grant payment within a period not to exceed 1 year after receipt of a grant;

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(f) expend each grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(h) make annual reports to the U.S. environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(i) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of [sections 1 through 15] and the federal act.

(3) as a condition of making a loan or providing other financial assistance from the revolving fund, the department shall require that the public water system maintain project accounts in accordance with generally accepted government accounting standards.

Section 5. Rulemaking authority. The board and the board of natural resources and conservation may adopt rules within their respectivo authorities established within the provisions of this part, including rules:

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(1) prescribing the form and content of applications for loans and grants;

(2) governing the application of tho criteria for awarding loans and grants;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements;

(4) establishing ceilings on the amount of individual loans and grants te be made if considered appropriate and necessary for the successful administration of the program;

(5) regarding other matters that may be required to ensure compliance of the program with the provisions and the federal act and rules promulgated under the federal act, unless these matters are specifically governed by [sections 1 through 15]; and

(6) to maintain the financial integrity of the program.

Section 6. Revolving fund. (1) There is established in the state treasury a separate account designated as the safe drinking water treatment revolving fund. The corpus of the fund must be available in perpetuity for providing assistance under [sections 1 through 15]. There are established within the revolving fund a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account all amounts received by the state pursuant to the federal act as capitalization grants for a stato revolving fund to assist construction of or improvements to public water systems;

(b) the state allocation account the net proceeds of bonds of the state issued pursuant to [section 15] and other money appropriated by the legislature;

(c) the administration account 4% of the federal capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs;

(d) the investment account all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account the interest portion of loan repayments.

(3) Each loan made as authorized by [section 15] must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to [section 15] and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

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(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund that it considers necessary to account for the program money and to ensure compliance with the federal act and [sections 1 through 15].

Section 7. Use of revolving fund. (1) Money in the revolving fund must be used for providing financial assistance that is in the form of loans and grants to public water systems and that is of the type provided in [sections 1 through 15].

(2) (a) Financial assistance may be used by a public water system only for expenditures that the U.S. environmental protection agency has determined through its regulations are appropriate. Financial assistance may be used for acquisition, from willing sellers at fair market value, of real property or interests that are integral to establishing a public water system.

(b) Financial assistance may not be used for expenditures related to monitoring, operation, and maintenance.

Section 8. Wellhead protection — assessment and viability program. The department may use up to 4% of the federal capitalization grants annually, to:

(1) establish wellhead protection programs;

(2) establish and implement source water assessment programs; and

(3) develop a viability program and assessment of viability programs consistent with Title 75, chapter 6, and the federal act.

Section 9. Statutory appropriation. Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for tho purposes of providing financial assistance to public water systems. Money in the administration account authorized by [section 6] is subject te legislative appropriation, and expenditures from this account must be made from temporary appropriations, as described in 17-7-501(1) or (2), that are made for that purpose.

Section 10. Grant program. The department may make grants only to public water systems owned by a governmental agency, an intergovernmental agency, a nonprofit organization, an Indian tribe, or any combination of those entities that the state finds to be experiencing financial hardship or disadvantages. Grants may not be made in an aggregate amount that exceeds the sum of the interest collected on deposits in the revolving fund plus amounts deposited in the revolving fund by the state pursuant to [section 6]. The department shall estsblish rules for evaluating and determining financial hardship.

Section 11. Loan program. The department may provide financial assistance in the form of a loan to public water systems owned by a governmental agency, an intergovernmental agency, a nonprofit corporation, an Indian tribe, or any combination of those entities, subject to the requirements in [sections 12 through 14]. The department may provide financial assistance only in the form of a loan to an investor-owned public water system according to priorities established by the department, based on greatest public health needs and financial needs. Prior to making a loan to an investor-owned public water

system, the department shall determine that the system has the ability to repay the loan according to its terms and conditions and may require a dedicated source of repayment and impose additional requirements. A loan to an investor-owned public water system is subject te the requirements of [sections 12 through 14].

Section 12. Evaluation of projects. After consultation with the department of natural resources and conservation, the department shall evaluate projects for loans and grants and place them on a priority list or intended use plan. In evaluating projects, the department shall consider the following facters:

(1) the viability of the public water system;

(2) the ability of the public water system to pay the costs of the project without the requested financial assistance;

(3) the amount available for financial assistance in the revolving fund;

(4) the total amount requested by other applications that have been received or that are likely to be received;

(5) the need for and the benefit te be derived from the project; and

(6) any other criteria that the department determines to be appropriate, considering the purposes of the program and the federal act.

Section 13. Applications for loans and grants. (1) The department shall, after consultation with the department of natural resources and conservation, establish loan and grant application procedures, including forms for the applications. Each application for a loan must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of tbe project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

(f) a statement as te whether, at the time of application, there are any outstanding bonds, notes, or other obligations payable from the revenue of the public water system and, if so, a description of the bonds, notes, or other obligations; and

(g) any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability te repay the loan, including but not limited te:

(i) engineering reports;

(ii) economic feasibility studies; and

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(iii) legal opinions.

(2) Each application for a grant must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the grant to pay the cost of the project;

(e) a statement as te whether, at the time of application, there are any outstanding bonds, notes, or other obligations payable from the revenue of the public water system and, if so, a description of the bonds, notes, or other obligations;

(f) an explanation as to why a grant rather than a loan is requested; and

(g) any other information that the department or the department of natural resources and conservation may require.

Section 14. Loan conditions. (1) Upon approval of an application hy the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a public water system to pay part or all of the cost of a project. The loan is subject to the applicant complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the applicant of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the public water system or the applicant's financial authority;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than 20 years;

(c) agreeing to maintain proper financial records in accordance with generally accepted government accounting standards and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural

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resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adoptod to implement that act;

(g) complying with plan and specification requirements for public water systoms established by the board; and

(h) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) (a) Subject to the limitations of the federal act, the interest rate on a loan must ensure that tbe interest payments on the loan and on other outstanding loans will be sufficient, if timely paid in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to [section 15].

(b) The interest rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rate may be fixed or variable, may be calculated according to a formula, and may differ from the rate established for any other loans.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the borrower, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, noto, or other evidence must include provisions required by the federal act and must be consistent with the provisions of [sections 1 through 15]. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private concern. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in [section 6]; or

(b) in the administrative account provided for in [section 6]. In determining into which account the administrative fees are deposited, the department shall take into consideration the needs and requirements of the programs. Money deposited in the special administrative costs account or the administration account must be used for the payment of administrative costs of the program.

Section 15. Authorization of bonds — appropriation of proceeds. (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the stato as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are

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pledged for payment of the principal and interest. The bonds must he issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of tho bonds, other than any premium and accrued interest received, the amounts te be used to pay interest on the bonds, or the costs of issuing the bonds, are appropriated to the state allocation account of the revolving fund. Any premium and accrued interest and bond proceeds te be used to pay interest must he deposited in the debt service account of the revolving fund. Proceeds of bonds to be used to pay the costs of issuing the bonds must he deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may creato separate accounts or subaccounts to provide for the payment security of the honds and may pledge the revolving fund and the interest component of the loan repayments credited to the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the power of a trustee inside or outside the state.

(a) If the board of examiners elects to issue honds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chaptor.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, to provide for the rights of the bondholders, and to ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custedy, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the stato treasurer, department, or department of natural resources and conservation, upon reasonahle notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of stato.

Section 16. Creation of debt. The legislature, through enactment of this section, authorizes the creation of state debt in an amount not to exceed $10 million and authorizes the issuance and sale of general obligation bonds in this amount for the purpose of providing the stato's share of the drinking water program.

Section 17. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made hy permanent law that authorizes spending by a stato agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listod in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; *[section 9];* 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In suhsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 18. Section 75-5-1112, MCA, is amended to read:

"75-5-1112. Evaluation of ~~applications~~ *projects*. After consultation with the department of natural resources and conservation, the department shall evaluate *projects* ~~and annually rank applications~~ for loans and other financial assistance *and place them on a priority list or intended use plan*. In ~~ranking the~~ ~~applications~~ *evaluating projects*, the department ~~must~~ *shall* consider the following factors:

(1) the ability of the municipality or private concern to pay the costs of the project without the requested financial assistance;

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(2) the amount available for financial assistance in the revolving fund;

(3) the total amount requested by other applications that have been received or that are likely to be received;

(4) the need for and benefit to be derived from the project;

(5) in the case of an application to refinance an outstanding obligation, the benefit of refinancing as measured by a decrease in interest rates and whether the refinancing permits the construction of an additional project by the municipality; and

(6) any otber criteria that tbe department determines appropriate, considering the purposes of the federal act and the program."

Section 19. Section 75-5-1113, MCA, is amended to read:

"**75-5-1113. Loans.** (1) Upon approval of ~~an application~~ *a project* by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private concern to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private concern complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to assure sufficient revenues to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan te the extent permitted by tbe applicable law governing the municipality's obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, whicb may not be less than 20 years;

(c) agreeing to maintain proper financial records in accordance with recognized government accounting procedures and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements for public wastewater systems established by the board; and

(h) providing for proper construction inspection and project management.

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(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of whicb must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) Subject to the limitations of the federal act, tbe interest rate on a loan must ensure that the intorest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to enable the state te pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

(a) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

(b) The rate may include any additional rato that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rato may be fixed or variable or may be calculated according to a formula, and it may differ from the rate establisbed for any other loan.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or privato concern, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private concern. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may creats for that purpose outside the revolving fund provided for in 75-5-1106; or

(b) in the administration account. Money deposited in tbe ~~special administrative costs account or the~~ administration account *established in [section 6]* must be used for the payment of administrative costs of the program. *Money deposited in the special administration costs account must be used for the payment of administrative costs of the program unless not required for that purpose, in which case the money may be transferred to other funds and accounts in the program.*"

Section 20. Section 75-5-1121, MCA, is amended to read:

"**75-5-1121. Authorization of bonds — appropriation of proceeds.** (1) ~~The board of examiners is authorized, upon~~ *Upon* request of the department of natural resources and conservation *and upon certification by the department of natural resources and conservation that the state has entered into a capitalization grant agreement or other agreement with the United States government pursuant to [section 4] and that fedsral capitalization grants have been made to the state for the program, the board of examiners is authorized* te

issue and sell bonds of the state ~~in an aggregate principal amount not exceeding $10 million~~ *as authorized by the legislature* to provide money for the revolving loan program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must bo issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received or amounts to be used to pay interest on the bonds or tbe costs of issuing the bonds, are appropriated to the state allocation account of the wastewater treatment works revolving fund. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account. Proceeds of bonds te be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by tbe board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of sections 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available te the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to he secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by tbe board of examiners, hold one or more of the funds and accounts created pursuant to tbis chapter.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions tbat:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state."

Section 21. Creation of debt. The legislature through enactment of [this section], authorizes the creation of state debt in an amount not to exceed $5 million and the issuance and sale of general obligation bonds in this amount for

the purpose of providing the state's share of the waste water treatment works revolving loan program.

Section 22. Two-thirds vote required. Because [sections 16 and 21] authorize the creation of stata debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 23. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 24. Codification instruction. [Sections 1 through 15] are intended to be codified as an integral part of Title 75, chapter 6, and the provisions of Title 75, chapter 6, apply to [sections 1 through 15].

Section 25. Effective date. [This act] is effective on passage and approval.

Approved April 27, 1995

CHAPTER NO. 554

[HB 524]

AN ACT REVISING THE POPULATION AND ECONOMIC WELL-BEING REQUIREMENTS TO QUALIFY AS A RESORT COMMUNITY; EXCLUDING GOODS AND SERVICES SOLD FOR RESALE FROM THE RESORT TAX; REQUIRING NOTICE PRIOR TO THE ELECTION OF THE GOODS AND SERVICES SUBJECT TO THE RESORT TAX; AMENDING SECTIONS 7-6-4461, 7-6-4463, AND 7-6-4464, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4461, MCA, is amended to read:

"7-6-4461. Resort tax — definitions. As used in 7-6-4461 through 7-6-4469, the following definitions apply:

(1) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, or any necessities of life.

(2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(3) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-tbe-counter medications.

(4) "Resort area" means an area that:

(a) is an unincorporated area and is a defined contiguous geographic area;

(b) has a population of less than 2,500 according to the most recent federal census or federal estimate;

(c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort area prior to its establishment by the county commissioners as provided in 7-6-4468.

(5) "Resort community" means a community that:

(a) is an incorporated municipality;

(b) has a population of less than ~~2,500~~ *5,500* according to the most recent federal census or federal estimate;

(c) derives ~~the major~~ *the primary* portion of its economic well-being *related to current employment* from businesses catering to the recreational and personal needs of persons traveling te or through the municipality for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort community."

Section 2. Section 7-6-4463, MCA, is amended to read:

"**7-6-4463. Limit on resort tax rate — goods and services subject to tax.** (1) The rate of the resort tax must be established by the election petition or resolution provided for in 7-6-4464, but the rate may not exceed 3%.

(2) (a) The resort tax is a tax on the retail value of all goods and services sold, *except for goods and services sold for resale,* within the resort community or area by the following establishments:

(i) hotels, motels, and other lodging or camping facilities;

(ii) restaurants, fast food stores, and other food service establishments;

(iii) taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink; and

(iv) destination ski resorts and other destination recreational facilities.

(b) Establishments that sell luxuries ~~must~~ *shall* collect a tax on such luxuries."

Section 3. Section 7-6-4464, MCA, is amended to read:

"**7-6-4464. Resort tax — election required — procedure — *notice.*** (1) A resort community or area may not impose or, except as provided in 7-6-4465, amend or repeal a resort tax unless the resort tax question has been submitted to the electerate of the resort community or area and approved by a majority of the electors voting on the question.

(2) The resort tax question may be presented to the electers of:

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(a) a resort community by a petition of the electors as provided by 7-1-4130, 7-5-132, and 7-5-134 through 7-5-137 or by a resolution of the governing body of the resort community; or

(b) a resort area by a resolution of the board of county commissioners, following receipt of a petition of electors as provided in 7-6-4468.

(3) If a resort area is in more than one county, the resort tax question must be presented to and approved by the electors in the resort area of each county.

(4) The petition or resolution referring the taxing question must state:

(a) the rate of the resort tax;

(b) the duration of the resort tax;

(c) the date when the tax becomes effective, which date may not be earlier than 35 days after the election; and

(d) the purposes that may be funded by the resort tax revenue.

(5) Upon receipt of an adequate petition, the governing body may:

(a) call a special election on the resort tax question; or

(b) have the resort tax question placed on the ballot at the next regularly scheduled election.

(6) (a) Before the resort tax question is submitted to the electorate of a resort community or area, the governing body of the resort community or the board of county commissioners in the county in which the resort area is located shall publish notice of the goods and services subject to the resort tax, in a newspaper that meets the qualifications of subsection (6)(b). The notice must be published twice, with at least 6 days separating publications. The first publication must be no more than 30 days prior to the election and the last no less than 3 days prior to the election.

(b) The newspaper must be:

(i) of general, paid circulation with a second-class mailing permit;

(ii) published at least once a week; and

(iii) published in the county where the election will take place.

~~(6)~~*(7)* The question of the imposition of a resort tax may not be placed before the electors more than once in any fiscal year."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 26, 1995

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CHAPTER NO. 555

[HB 547]

AN ACT PROHIBITING, FOR THE REST OF THEIR LIVES, THE PURCHASE OR POSSESSION OF FIREARMS BY CERTAIN CRIMINALS; ALLOWING THE SENTENCING ORDER TO INCORPORATE BY REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED RELEASE; AMENDING SECTION 46-18-801, MCA; AND PROVIDING APPLICABILITY PROVISIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-801, MCA, is amended to read:

"**46-18-801. Effect of conviction — civil disabilities.** (1) Conviction of ~~any~~ *an* offense ~~shall~~ *does* not deprive the offender of ~~any~~ *a* civil or constitutional ~~rights~~ *right*, except *as provided in the Montana constitution or* as ~~they shall be~~ specifically enumerated by the sentencing judge as *a* necessary ~~conditions~~ *condition* of the sentence directed toward the objectives of rehabilitation and the protection of society. *If the sentencing judge incorporates by reference in the sentencing order rules of the department of corrections and human services or the board of pardons setting conditions of probation, parole, or supervised release with which the offender is required to comply, the incorporation by reference constitutes a specific enumeration of the conditions for purposes of this section.*

(2) ~~No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.~~

~~(3) When~~ *Except as provided in the Montana constitution, if* a person has been deprived of ~~any of his~~ *a* civil or constitutional ~~rights~~ *right* by reason of conviction for an offense and ~~his~~ *the person's* sentence has expired or ~~he~~ *the person* has been pardoned, ~~he shall be~~ *the person is* restored to all civil rights and full citizenship, the same as if ~~such~~ *the* conviction had not occurred."

Section 2. Unlawful possession of firearm by convicted person. (1) A person commits the offense of unlawful possession of a firearm by a convicted person if the person purposely or knowingly purchases or possesses a firearm after the person has been convicted of:

(a) a felony for which the person received an additional sentence under 46-18-221; or

(b) an offense under the law of another stete or of the United States that is equivalent to an offense that when committed in Montana is subject to an additional sentence under 46-18-221.

(2) A person convicted of unlawful possession of a firearm by a convicted person shall be imprisoned in a state prison for not less than 2 years or more than 10 years.

(3) A person who has been issued a permit under [section 3] may not be convicted of a violation of this section.

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Section 3. Lifetime firearms supervision of certain convicted persons. (1) For the purposes of rehabilitation and public protection, a person convicted of an offense referred to in [section 2] shall, as part of the sentence imposed, he sentenced to life supervision by the state for the purpose of restricting the person's right to purchase and possess firearms. Active supervision by a probation or parole officer is not required but may be imposed by the court. "Supervision" means that the person may not violate [section 2] and must comply with other state and federal law restrictions on the purchase and possession of firearms.

(2) (a) A person subject to subsection (1) may apply to the district court for the county in which the person resides for a permit to purchase and possess one or more firearms. The person shall show good cause for the possession of each firearm sought to be purchased and possessed. The grant or denial of the application does not prevent the person from making another application, except that if an application is denied, another application may not be made for the next 12 months.

(b) The application must contain the following information:

(i) tbe person's full name and any past or present aliases;

(ii) the person's date and place of birth;

(iii) the person's address;

(iv) the person's occupation;

(v) the make and model of each firearm sought to be purchased and possessed;

(vi) the date and place of each conviction of an offense referred to in [section 2], the name of the offense, the state and county in which the offense occurred, the sentence imposed, the place or places of incarceration, and the date of discharge from supervision for the last offense;

(vii) the name and husiness address of the person's last probation or parole officer; and

(viii) any other information considered necessary hy the court.

(c) The person shall, at the time of filing the application with the court, mail a copy to the county attorney and county sheriff.

(d) The county attorney or county sheriff may file a written objection with the court. If no objection is filed, the court may grant the permit if it finds that the person has shown good cause te purchase and possess the firearm or firearms listed in the application. If an objection is filed, a hearing must be held within 60 days after the filing of the objection. If the court first finds that the person has shown good cause to purchase and possess the firearm or firearms listed in the application and that, hut for the objection, the court would have granted a permit, the court shall decide whether the objection is valid and overrides the good cause showing and requires denial of the permit.

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Section 4. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45 apply to [sections 2 and 3].

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Applicability—retroactive applicability. (1) [Section 2(1)] does not apply to a person convicted of an offense referred to in [section 2(1)] before [the effective date of this act].

(2) [Section 3] applies only to sentences imposed after [the effective date of this act].

(3) [Section 1] applies retroactively, within the meaning of 1-2-109.

Approved April 27, 1995

CHAPTER NO. 556

[HB 576]

AN ACT REVISING THE TYPES OF FUNDS SUBJECT TO APPROPRIATION; GENERALLY REVISING THE LAW CONCERNING BUDGET AMENDMENTS; REQUIRING CERTAIN FEES AND CHARGES TO BE COMMENSURATE WITH COSTS; REQUIRING AN AUDIT AND BUDGET ANALYSIS OF CERTAIN FUND TYPES; AMENDING SECTIONS 2-8-304, 17-2-103, 17-7-402, AND 17-8-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-8-304, MCA, is amended to read:

"**2-8-304. Review of privatized programs.** (1) If during audits of state agencies, the legislative auditor identifies programs being conducted by an agency under contract that may be administered more cost effectively directly by the agency or identifies services performed by an agency that may be performed more cost effectively by the private sector, ~~he~~ *the legislative auditor* shall submit this information to the legislative audit committee.

(2) Members of the public, elected bargaining agents or employee representatives, elected officials, legislators, and agency directers may submit to the legislative audit committee a request to review programs being conducted under contract by an agency that may be administered more cost effectively directly by the agency.

(3) The office of budget and program planning shall submit to the legislative audit committee, by July 1 of each odd-numbered year:

(a) a list of all programs accounted for in an enterprise fund or an internal service fund; and

(b) a request for privatization review under subsection (1) of at least two of the programs identified in subsection (3)(a), including any available information and criteria required under 2-8-303.

~~(3)~~*(4)* The legislative audit committee shall review the information and requests provided under subsections (1) and (2) and may direct the legislative auditor to conduct a review of any contracted program or program administered directly by the agency, or both. The review must include a report to the legislative audit committee that includes the information required in a privatization plan under 2-8-303.

~~(4)~~*(5)* The report required by subsection ~~(3)~~ *(4)* must be provided to the legislative audit committee and released to the public. Not less than 30 days after the release of the report, the legislative audit committee shall conduct a public hearing on the report at which public comments and testimony must be received. Upon completion of the hearing on the report, the legislative audit committee may make recommendations *that* it believes appropriate concerning the program."

Section 2. Section 17-2-103, MCA, is amended to read:

"**17-2-103. Previous definitions of funds — identification or segregation of moneys and funds.** (1) It is the intent of the legislature that the definitions in 17-2-102 supersede all previous definitions of public funds which are inconsistent with the definitions found in this part.

(2) Any laws enacted in the future or any contracts entered into in the future in pursuance of law that require the segregation of moneys in the stato treasury by means of a separate treasury fund shall be interpreted as permitting the segregation of such moneys by means of a subfund or account within one of the funds created by 17-2-102.

(3) Each federal grant or other federal money within any subfund or account of one of the funds created by 17-2-102(1)(a) through (1)(c) must be identifiable as a separate accounting entity, reporting center, responsibility center, or revenue identification code, and an account must be made of each such grant or other money by income and expenditure for each federal grant year or fiscal year as may be applicable.

(4) Unless otherwise specifically provided in the statutes pertaining to the tax, the portion of taxes collected by tbe state that, pursuant to a statute, are to be ~~wholly or partially~~ allocated or distributed to units of local government, school districts, authorities, or other local governmental entities shall be accounted for in ~~the state special revenue~~ *a fiduciary* fund, established in 17-2-102, *as prescribed by the department in accordance with generally accepted accounting principles.*"

Section 3. Section 17-7-402, MCA, is amended to read:

"**17-7-402. Budget amendment requirements.** (1) Except as provided in subsection (6), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue~~;~~*;*

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(ii) additional tuition collected by the Montana university system~~;~~*;*

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies~~;~~*;*

(iv) Montana historical society enterprise revenue resulting from sales to the public~~;~~*; or*

(v) additional revenue deposited in funds, other than the general fund, from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91~~, or a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter~~;

(b) by the approving authority~~, which~~ *if the budget amendment* contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority, for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure;

(d) by the approving authority, unless it will provide additional services;

(e) by the approving authority, for any mattor of which the requesting agency bad knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, *except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature*; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) All budget amendments must itemize planned expenditures by fiscal year.

(3) Each budget amendment must be submitted by the approving authority to the budget director and the office of the legislative fiscal analyst.

(4) Money from nonstato or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is subject to the review process provided in 17-7-114 and is exempt from the requirements of this part.

(5) An appropriation that would usually be the subject of a budget amendment that is submitted to the legislature for approval during a legislative session may not include authority te spend money beyond the first fiscal year of tbe next biennium.

(6) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

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Section 4. Section 17-8-101, MCA, is amended to read:

"17-8-101. Appropriation and disbursement of money from treasury. (1) ~~Money~~ *Except as provided in subsection (5), money* deposited in the general fund, the special revenue fund type (except money depositod in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), ~~the enterprise fund type, the internal service fund type,~~ and the capital projects fund type, with the exception of refunds authorized in subsection (3), must be paid out of the treasury only on appropriation made by law.

(2) Money deposited in the *enterprise fund type, the internal service fund type, the* debt service fund type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, the stato special revenue fund from nonstato and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, and agency fund type may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting the disbursement.

(3) ~~Money~~ *Subject to the provisions of subsection (8), money* paid into the state treasury through error or under circumstances, such that the state is not legally entitled to retoin it and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the department of administration.

(4) Authority te expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

(5) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(6) The office of budget and program planning shall include in the budget submitted to the legislature a report on:

(a) enterprise funds, including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(b) internal service fund type fees and charges, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Internal service fund type fees and charges must be approved by the legislature in the general appropriations act. Fees and charges in any biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

(7) Any accounts in the enterprise fund or the internal service fund created after July 1, 1995, must be approved by the dspartment, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning

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and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and otherwise requires an appropriation."

Section 5. Effective date. [This act] is effective July 1, 1995.

Approved April 26, 1995

CHAPTER NO. 557

[HB 594]

AN ACT PROVIDING FOR THE FINANCING OF INSTITUTIONAL FACILITIES; AUTHORIZING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO ENTER INTO A LOAN AGREEMENT WITH THE MONTANA HEALTH FACILITY AUTHORITY FOR THE PURPOSE OF FINANCING THE COSTS OF ACQUIRING, CONSTRUCTING, AND EQUIPPING FACILITIES FOR THE MENTALLY ILL AT THE MONTANA STATE HOSPITAL IN WARM SPRINGS, INCLUDING THE ESTABLISHMENT OF RESERVES AND THE PAYMENT OF THE COSTS OF THE FINANCING; AUTHORIZING THE CREATION OF A SPECIAL LIMITED OBLIGATION OF THE DEPARTMENT; PROVIDING A STATUTORY APPROPRIATION AND AN APPROPRIATION OF LOAN PROCEEDS; AUTHORIZING THE PAYMENT OF THE SPECIAL LIMITED OBLIGATION FROM FACILITY REVENUE; EXPANDING THE ADULT CORRECTIONS SERVICES TO INCLUDE THE FORENSIC UNIT AT WARM SPRINGS; AUTHORIZING THE USE OF INMATE LABOR FOR CERTAIN PROJECTS; AMENDING SECTIONS 17-7-502, 53-1-202, 53-1-413, AND 90-7-317, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana state hospital loan. (1) The department of corrections and human services may enter into a loan agreement with the authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for the mentally ill at the Montana state hospital in Warm Springs, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed $21 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs. The loan must be payable over a term not to exceed 25 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise that are not inconsistent with this section and that the department approves. Investment earnings on tbe authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana ststo hospital facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments

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required by that agreement are payable from the facility revenue obtained by the department from the ownership and operation of and the provision of services at the Montana state hospital and the Montana center for the aged, including payments or reimbursements from private users, insurers, and the state or federal government. All facility revenue obtained from services provided by the Montana state bospital and the Montana center for the aged must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments due under the loan agreement. Principal and interest payments constitute a statutery appropriation within the meaning of 17-7-502. Whenever the foregoing facility revenue exceeds the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited as provided in 53-1-413. As long as the loan remains outstanding and the state provides services for the mentally ill, the department shall use the Montana state hospital and the Montana center for the aged for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding the provisions of 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of Title 90, chapter 7.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenue of the Montana state hospital and the Montana center for the aged and do not constitute a debt of the state or obligate the stete to appropriate or apply any funds or revenue of the state, except the facility revenue as provided in this section.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a stato agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutery appropriation must comply with both of the following provisions:

(a) The law containing the statutery authority must be listed in subsection (3).

(b) The law or portion of the law making a statutery appropriation must specifically stete that a statutery appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007;

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19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; *[section 1];* 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notos, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entored into agreements authorized by the laws of Montana to pay the stato treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as detormined by the stato treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 torminates July 1, 1995.)"

Section 3. Section 53-1-202, MCA, is amended to read:

"53-1-202. **Department of corrections and human services.** (1) The following components are *included* in the department of corrections and human services to carry out the purposes of the department:

(a) adult corrections services consisting of the following institutional components to incarcerato and rehabilitato felons pursuant to Title 46, chapter 18:

(i) *the* Montana state prison;

(ii) the Montana women's correctional center; ~~and~~

(iii) the forensic unit at Warm Springs; and

~~(iii)~~*(iv)* appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(A) in prerelease centers;

(B) under intensive supervision;

(C) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(D) in other appropriate programs;

(b) mental health services consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) *the* Montana state hospital;

(ii) *the* Montana center for the aged; and

(iii) a community services component consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 2;

(c) chemical dependency services consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(d) institutional and residential components of the developmental disabilities system for those developmentally disabled persons who require that care according te Title 53, chapter 20, consisting of:

(i) the Montana developmental center; and

(ii) *the* Eastmont human services center; and

(e) veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

(i) *the* Montana veterans' home; and

(ii) *the* eastern Montana veterans' home at Glendive.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 4. Section 53-1-413, MCA, is amended to read:

"**53-1-413. Deposit of payments.** (1) Except as provided in 90-7-220, *[section 1],* and subsection (2) of this section, the department shall deposit payments of per diem and ancillary charges in the state treasury to the credit of the general fund.

(2) Payments from the Montana veterans' home ~~shall~~ *must* be deposited in the federal special revenue fund for the benefit of the home, and payments from the Montana state hospital alcohol program ~~shall~~ *must* be deposited to an alcohol state special revenue account."

Section 5. Section 90-7-317, MCA, is amended to read:

"**90-7-317. Capital reserve account.** (1) There is a capital reserve account in the enterprise fund provided for in 90-7-202(17).

(2) The authority shall deposit into the capital reserve account:

(a) funds from state appropriations received for deposit inte the account, as provided in 90-7-319, for bonds issued te finance capital projects for community health facilities that contract with the state to provide health care services or bonds issued to finance the ~~facility~~ *facilities* described in 90-7-220 *and [section 1]*;

(b) proceeds from the sale of bonds or notes to tho extent provided in the resolutions or indentures of tho authority authorizing their issuance;

(c) ~~revenues~~ *revenue* from fees and charges imposed by the authority;

(d) income from the investment of funds belonging to the authority; and

(e) any other funds that may be available to the authority for the purpose of the account from any other source, including loans authorized under 90-7-320."

Section 6. Legislative consent. The appropriation authorized in [section 1] constitutes legislative consent for the capital project contained in [section 1] within the meaning of 18-2-102.

Section 7. Authorization of inmate labor for demolition — exemptions. (1) The director of the department of corrections and human services may authorize the use of inmate labor for purposes of demolishing abandoned and existing buildings at the Montana stato hospital at Warm Springs.

(2) The department of administration may exempt the demolition projects authorized in subsection (1) from the provisions of any applicable Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements.

Section 8. Appropriation of loan proceeds. The proceeds of the loan authorized in [section 1] are appropriatod to the department of administration to be used for the construction of the Montana state hospital in Warm Springs.

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 90, chaptsr 7, part 2, and the provisions of Title 90, chapter 7, part 2, apply to [section 1].

Section 11. Effective dates. (1) [Sections 1, 2, 4 through 10, and this section] are effective on passage and approval.

(2) [Section 3] is effective 20 days after the governor, by executive order, declares that the construction of a new forensic unit at the Montana state hospital complex in Warm Springs, Montana, is complete.

Approved April 26, 1995

CHAPTER NO. 558

[HB 601]

AN ACT REPEALING THE LICENSE REQUIREMENTS FOR PUBLIC CONTRACTORS; AMENDING SECTIONS 15-50-101, 15-50-205, 15-50-206, AND 18-1-106, MCA; REPEALING SECTIONS 37-71-101, 37-71-102, 37-71-103, 37-71-104, 37-71-105, 37-71-201, 37-71-202, 37-71-203, 37-71-204, 37-71-211, 37-71-212, 37-71-213, 37-71-301, AND 37-71-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-50-101, MCA, is amended to read:

"**15-50-101. ~~Definition~~ *Definitions.*** *As used in this chapter, the following definitions apply:*

(1) "Department" means the department of revenue as provided in 2-15-1301.

(2) ~~In this chapter, for the purposes hereof, "gross~~ *"Gross* receipts" means all receipts from sources within the state, whether in the form of money, credits, or other valuable consideration, received from, engaging in, or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense whatsoever. However, gross receipts ~~shall~~ *does* not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, or payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person.

(3) (a) "Public contractor", means any person who submits a proposal to perform or enters into a contract for performing public construction work in the state with the federal government or state of Montana; with any board, commission, or department of the state; with any board of county commissioners, any city or town council, or any agency of any of them; or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price of which exceeds the sum of $5,000.

(b) The term public contractor includes subcontractors undertaking to perform work within their field of contracting and within the limits of their class of license covered by the original contract or any part of the contract when the contract cost, value, or price of which exceeds the sum of $5,000."

Section 2. Section 15-50-205, MCA, is amended to read:

"**15-50-205. ~~Additional license tax~~ *Tax* imposed *on gross receipts from public contracts.*** (1) ~~In addition to the fees enumerated in 37-71-204, each~~ *A* public contractor, unless ~~he~~ *the contractor* constructs or works on a federal research facility, shall pay to the department of revenue ~~an additional~~ *a* license fee in a sum equal to 1% of the gross receipts, as defined in 15-50-101, from public contracts during the income year ~~for~~ *in* which the ~~license is issued~~ *public contractor receives payment.*

(2) The ~~additional~~ license fee ~~shall~~ *must* be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as specified in ~~37-71-101(3)~~ *this section.*"

Section 3. Section 15-50-206, MCA, is amended to read:

"**15-50-206. Withholding license fee from payments — refunds.** (1) The prime contractor shall withhold the ~~additional~~ 1% license fee from payments to ~~his~~ subcontractors and inform the department of revenue on prescribed forms of the amount of the ~~additional~~ 1% license fee in ~~his~~ *the prime contractor's* account to be allocated and transferred to the subcontractor. The notification to transfer portions of the ~~additional~~ 1% license fee must be filed

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within 30 days after each payment is made to subcontractors. If any prime contractor fails to file the required allocation and transfer report at the time required by or under the provisions of this chaptor, a penalty computod at the rato of 10% of the ~~additional~~ 1% license fee withheld from subcontractors ~~shall~~ be *is* due from tbe prime contractor.

(2) The state, county, city, or any agency or department thereof, as described in ~~37-71-101(3)~~ *15-50-205*, for whom the contractor is performing public work shall withbold, in addition to other amounts withheld as provided by law, 1% of all payments due the contractor and shall transmit ~~such moneys~~ *that money* to tbe department of revenue. ~~In the event that~~ *If* the 1% of gross receipts, as defined in 15-50-101, is not withheld as provided, the contractor shall make payment of these amounts to the department within 30 days after the dato on which the contractor receives each increment of payment for work performed by the contractor.

(3) Any overpayment of the 1% of gross receipts, as defined in 15-50-101, witbbeld or paid by any contractor ~~hereunder shall~~ *must* be refunded by the department of revenue at the end of the income year upon writton application ~~therefor~~."

Section 4. Inspection of books of contractor. The books and records of a public contractor must be subject to inspection by the department during reasonable hours.

Section 5. Estimation of tax upon failure to file statement or pay tax — notice. (1) If a person fails, neglects, or refuses to file the statoment required by 15-50-206 within the time required or fails to pay the tax required by this chapter on or before the dato payment is due, tbe department shall proceed to inform itself as best it may regarding the total gross income of the person from its contracting business within this state during the quartor.

(2) Tbe department shall compute the amount of license taxes due from the person and shall mail to the person a lettor and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The lettor must advise that if payment is not made, a warrant for distraint may be filed.

Section 6. Penalty and interest for delinquency — waiver. (1) License taxes due under this chaptor become delinquent if not paid within 30 days after payment to the contractor. The department shall add to the amount of all delinquent license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction of a month, computed on the total amount of license taxes. Interest is computed from the dato the license taxes were due to the dato of payment.

(2) Tbe 10% penalty may be waived by the department if reasonahle cause for tbe failure or neglect to file the statoment required by 15-50-206 or pay the tax due is provided to the department.

Section 7. Warrant for distraint. If all or part of the tax imposed by this cbapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand that is filed and recorded after tbe warrant is issued.

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Section 8. Disposal of license taxes. License taxes collected under this chapter must be deposited by the department with the state treasurer, who shall credit them te the general fund of the state.

Section 9. Section 18-1-106, MCA, is amended te read:

"**18-1-106. Department of commerce to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence.** (1) The department of commerce shall determine whether or not certain contracters~~, issued public contractor's licenses under the provisions of Title 37, chapter 71,~~ are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103. Any public agency charged by law with the responsibility for the execution of any contract subject to the provisions of 18-1-102 may request that a determination of resident/nonresident status he made by the department. All requests must specify the name and address of the licensed public contractor for whom a determination of resident/nonresident status is required.

(2) If a determination is made that a ~~licensed~~ public contracter is not a resident but ~~he~~ thereafter qualifies as ~~such~~ *a resident*, ~~he~~ *the contractor* may apply to the department of commerce for a redetermination of ~~his~~ residency. If, upon redetermination, the ~~licensed~~ puhlic contracter is found te qualify as a resident, ~~he shall~~ *the contractor must* be furnished a letter by the department attesting to ~~such~~ *resident* status.

(3) The determination of the department of commerce that a ~~licensed~~ public contracter is or is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact."

Section 10. Codification instruction. [Sections 4 through 8] are intended to be codified as an integral part of Title 15, chapter 50, part 3, and the provisions of Title 15, chapter 50, apply to [sections 4 through 8].

Section 11. Repealer. Sections 37-71-101, 37-71-102, 37-71-103, 37-71-104, 37-71-105, 37-71-201, 37-71-202, 37-71-203, 37-71-204, 37-71-211, 37-71-212, 37-71-213, 37-71-301, and 37-71-302, MCA, are repealed.

Seetion 12. Effective date. [This act] is effective on passage and approval.

Approved April 26, 1995

CHAPTER NO. 559

[SB 38]

AN ACT ESTABLISHING THE JOB INVESTMENT ACT; AUTHORIZING THE DEPARTMENT OF COMMERCE TO ADMINISTER A PORTION OF THE PERMANENT COAL TAX TRUST FUND FOR LOANS TO BUSINESSES TO CREATE AND RETAIN JOBS; REVISING THE ADMINISTRATION OF PERMANENT COAL TAX TRUST FUNDS FOR SEED CAPITAL AND RESEARCH AND DEVELOPMENT PROJECTS; AMENDING SECTION 17-6-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] gives the department of commerce authority to adopt administrative rules for the administration of the Job Investment Act. The act is intended te provide funding for loans to Montana businesses as part of a financing package to permit business expansion, job creation, and job retention. The act is intended to expand the current capabilities of the economic development portion of the federal community development block grant program, which is highly effective but satisfies only a small portion of the existing need.

The job investment loans are intended to provide a portion of the financing necessary to permit business expansion, job creation, and job retention and may be used only in conjunction with equity and other debt financing in cases in which other funding would not satisfy the total need and would not be available without additional financing under the Job Investment Act.

The community development block grant program has also been used to leverage other forms of public and private financing to support job expansion and retention. The approximately $2.6 million of community development block grant program economic development funding for the current fiscal year amounts to funding for less than one-half of the funding requests received during the first 4 months of the current fiscal year. If annualized, this year's funding experience would result in requests in excess of $10 million. There is opportunity for significant economic impact from an expansion of the stato's investment in projects that create and retain jobs which would not be fully funded from existing sources.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Job Investment Act".

Section 2. Legislative findings — purpose. (1) The legislature finds and declares that:

(a) it is the policy of the state to foster and encourage economic development within the state in order to promote the general welfare of the people; and

(b) access to capital for the creation, expansion, and retention of qualified businesses, particularly for working capital, is a serious problem that inhibits tbe growth of businesses, jobs, and tax revenue.

(2) The purpose of [sections 1 through 9] is to create a job investment program that encourages and assists in the creation, development, and financing of businesses whose primary obstacle to expansion or retention of employment is access to the appropriate type and amount of financing. This financial need is particularly acuto in areas of the stato that are economically depressed, and emphasis should be given to projects that will be located in these areas if the projects meet the requirements of [sections 1 through 9] and rules adopted pursuant to [section 5] and meet acceptable levels of financial risk as determined by the loan review committee.

Section 3. Definitions. As used in [sections 1 through 9], unless the context requires otherwise, the following definitions apply:

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(1) "Board" means the Montana board of science and technology development provided for in 2-15-1818.

(2) "Department" means the department of commerce provided for in 2-15-1801.

(3) "Loan review committee" means the committee that is established by the department to consider economic development loan applications for funding by the federal community development block grant program and that is responsible for reviewing and recommending to the board the approval or denial of job investment loans subject to [sections 1 through 9] and rules implementing [sections 1 through 9].

(4) "Qualified business" means a business entorprise that either is or will he located in the state and that produces goods or provides services that will, as a result of receiving a job investment loan, create jobs for Montana workers.

Section 4. Loan applicant endorsement. Applicants for job investment loans must be endorsed by local government entities or local economic development corporations.

Section 5. Rulemaking authority. The department shall adopt rules to implement the provisions of [sections 1 through 9], including rules:

(1) determining the amount of interest and the method of computation and payment of interest charged to recipienta of job investment loans and specifying amortization schedules and other terms and conditions for job investment loans as necessary. The rate of interest charged on a loan may not bo less than the prevailing market rate.

(2) establishing criteria for determining nonperformance and declaring default for a job investment loan;

(3) specifying security and collateral requirements that must he met as a condition of receiving a job investment loan;

(4) encouraging financial institutions to participato to the greatest extent possible in the financing of joh investment projects;

(5) requiring that the joh investment loan may not exceed the funding provided by private lenders and that at least one private lender must be a financial institution. The board shall secure the most favorable collateral position possible on any job investment loan.

(6) establishing appropriate loan loss reserves; and

(7) providing for an application process and a loan review process that:

(a) incorporate the funding criteria adopted by the department to implement the federal community development block grant program pursuant to 90-1-103(5);

(h) minimize the amount of Job Investment Act funds required; and

(c) require financial institution review and contingent approval of the project before Job Investment Act funds are committed.

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Section 6. Job investment administrative account. There is a job investment administrative account in the state special revenue fund. The department shall deposit up to 20% of interest payments on job investment loans into the account. Money in the account must be used to pay the costs of administering [sections 1 through 9], including personnel costs, operating costs, and administrative costs.

Section 7. Loan review committee — conflict of interest — servicing of loans. (1) The department shall establish a loan review committee to administer [sections 1 through 9]. The committee shall accept and review loan applications pursuant to rules adopted by the department. The committee shall recommend to the board the approval or disapproval of loans. A loan may not exceed $500,000.

(2) If a member of the committee has a financial interest in a business that submits a job investment loan application, then the application must be denied.

(3) The department shall contract for the servicing of loans.

Section 8. Legislative oversight. The department shall report to the revenue oversight committee annually on the performance of the job investment program. The report to the committee must include:

(1) a summary of all loans made during the year;

(2) an analysis of job creation goals and performance;

(3) a summary of loan terms and conditions;

(4) a summary of funds leveraged with job investment loans; and

(5) an analysis of the job investment portfolio performance including calculations for returns on investments.

Section 9. Grants, gifts, and donations. The department may accept grants, gifts, and donations for purposes of [sections 1 through 9]. The department may expend the funds pursuant to laws and conditions governing the funds.

Section 10. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions ~~as~~ *determined by* the board ~~determines~~ and must be repaid from ~~revenues of the board~~ *revenue* realized from the exercise of ~~its~~ *the board's* powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the ~~revenues~~ *revenue* to the bonds and notes.

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(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer ~~$15.5~~ *$12.5* million of the permanent coal tax trust fund for seed capital project loans *or mezzanine financing loans* and ~~$8.1~~ *$11.1* million of the permanent coal tax trust fund for research and development project ~~loans pursuant only to the provisions of Title 90, chapter 3~~ *matching funds for projects at Montana public universities*. This authority does not extend beyond June 30, 1997, for seed capital project loans and beyond June 30, ~~1995~~ *1997*, for research and development ~~project loans~~ *projects*. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board ~~of investments~~ pursuant to the provisions of 17-6-201. *As seed capital and mezzanine financing loans made pursuant to this subsection are repaid, the Montana board of science and technology development may reinvest the principal in new loans.*

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

Section 11. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 17, chapter 6, and the provisions of Title 17, chapter 6, apply to [sections 1 through 9].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 26, 1995

CHAPTER NO. 560

[SB 56]

AN ACT SHORTENING THE EXTENSION OF TIME FOR FILING AN INCOME TAX RETURN FROM 6 MONTHS TO 4 MONTHS; CLARIFYING THE INFORMATION THAT MUST BE CONTAINED IN A WRITTEN APPLICATION FOR EXTENSION; REDUCING THE AMOUNT OF THE CURRENT YEAR TAX LIABILITY THAT MUST BE PAID WHEN APPLYING FOR AN EXTENSION; PROVIDING FOR AN ADDITIONAL 2-MONTH EXTENSION UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 15-30-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-144, MCA, is amended to read:

"**15-30-144. Time for filing — extensions of time.** (1) Returns ~~shall~~ *must* be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return ~~shall~~ *must* be made on or before the 15th day of April following the close of the calendar year. Each return ~~shall~~ *must* set forth ~~such~~ *those* facts ~~as~~ *that* the department considers necessary for the proper enforcement of this chapter. There ~~shall~~ *must* be annexed to ~~such~~ *the* return the affidavit or affirmation of the persons making the return to the effect that the statements contained ~~therein~~ *in the return* are true. Blank forms of return ~~shall~~

must be furnished by the department upon application, but failure to secure the form ~~shall~~ *does* not relieve any taxpayer of the obligation to make any return required under this law. ~~Every~~ *Each* taxpayer liable for a tax under this law shall pay a minimum tax of $1.

(2) An automatic ~~6-month~~ *4-month* extension of time for filing a return is allowed, provided that:

(a) on or before the due data of tbe return, an application is made on forms available from the department or in writing to the department~~; and~~. *If the application is made in writing, it must include substantially the same information as is required on the department's forms.*

(b) the applicant has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax ~~95%~~ *90%* of the current year's tax liability or 100% of tbe previous year's tax liability.

(3) Before the expiration date of the automatic 4-month extension, an applicant may request in writing an additional 2-month extension of time for filing a return. The department may, in its discretion, grant the request upon a showing of good cause by the applicant, provided that the applicant has satisfied the requirements of subsection (2)(b)."

Section 2. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax returns due after December 31, 1994.

Approved April 26, 1995

CHAPTER NO. 561

[SB 86]

AN ACT CLARIFYING THE DEFINITION OF "DEPARTMENT" AS THE TERM APPLIES TO TAXES ON FUEL; ALLOWING TAXES PAYABLE TO THE DEPARTMENT OF TRANSPORTATION TO BE PAID BY ELECTRONIC FUNDS TRANSFER; AUTHORIZING THE DEPARTMENT TO REQUIRE THAT CERTAIN TAX RETURNS AND INFORMATION BE PROVIDED IN ELECTRONIC FORMAT; AUTHORIZING THE DEPARTMENT TO ADOPT RULES; AMENDING SECTIONS 15-1-101, 15-1-201, AND 15-1-801, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because tbe department of transportation is required in [section 7] to adopt rules relating to the filing of certain tax returns by electronic means and to the payment of certain taxes by electronic funds transfer. It is anticipated that the department will adopt rules that address, at a minimum:

(1) coordinating tbe filing of tax returns with the payment of taxes by electronic funds transfer;

(2) specifying the form and content of electrenic funds transfer messages in order te ensure the proper receipt and crediting of the tax payment; and

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(3) specifying the form and content of information required by the department in an approved, computer-generated, magnetic media data format in order to ensure the proper receipt of the information.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in tbis section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers te:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value te a dealer prior to reconditioning and the profit margin shewn in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except preperty described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function ef a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that:

(i) has similar use, function, and utility; ~~that~~

(ii) is influenced by the same set of economic trends and pbysical, governmental, and social facters; and ~~that~~

(iii) has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g)*(i)* "Department", *except as provided in subsection (1)(g)(ii),* means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term "improvemente" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed te land. When the department determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may he determined to be permanently located only when it is attached te a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriato classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on tbe leasehold improvements.

(k) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, and domestic ungulates.

(l) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(m) The term "personal property" includes everything that is the subject of ownership but tbat is not included within the meaning of the terms "real estate" and "improvements".

(n) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(o) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. Tbis definition may not be construed to authorize the taxation of the stocks of any company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(p) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or rigbt to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining te ~~the~~ mines, minerals, quarries, and timber.

(q) "Research and development firm" means an entity incorporated under tbe laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(r) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board."

Section 2. Section 15-1-201, MCA, is amended to read:

"**15-1-201. Administration of revenue laws.** (1) (a) The department has general supervision over the administration of the assessment and tax laws of the stato, except Title 15, ~~chapter~~ *chapters* 70 *and 71*, and over any officers of municipal corporations having any duties to perform under ~~any of~~ the laws of this state relating to taxation to the end that all assessments of property ~~be~~ *are* made relatively just and equal, at true value, *and* in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) The department sball adopt rules specifying which types of property within the several classes are considered "comparable property" as ~~described~~ *defincd* in 15-1-101.

(c) The department shall also adopt rules for determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department sball confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information, *in a form prescribed by the department,* about the assessment of property, collection of taxes, receipts from licenses and other sources, ~~the~~ expenditure of public funds for all purposes, and other information as may be ~~needful~~ *necessary* and helpful in the work of the department ~~in a form prescribed by the department~~. It is the duty of all public officers to fill out properly and return promptly to the department all forms and

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to aid the department in its work. The department shall examine the records of all municipal corporations for purposes considered ~~needful~~ *necessary* or helpful."

Section 3. Section 15-1-801, MCA, is amended to read:

"**15-1-801. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, ~~which~~ *that* is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(3) "Taxes" means the taxes provided for in this title, *except chapters 70 and 71.*"

Section 4. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of transportation as provided for in 2-15-2501.

(2) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic torminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(3) "Taxes" means the taxes provided for in this chapter.

Section 5. Taxes payable by electronic funds transfer. Taxes due the state may be paid by electronic funds transfer. If the payment of taxes is by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment must be made on the first business day following the Saturday, Sunday, or legal holiday.

Section 6. Electronic filing of tax returns and required information. The department may require any person, including an importer, exporter, common carrier, private carrier, or contract carrier, who receives or dispenses taxable fuels and who is licensed or not licensed under this chapter, to file tax returns and information required by the department in an approved, computer-generated, magnetic media data format.

Section 7. Rules. The department shall adopt rules necessary to implement [sections 4 through 7], including but not limited to rules:

(1) coordinating the filing of tex returns by electronic means with the payment of taxes hy electronic funds transfer;

(2) specifying the form and content of electronic funds transfer messages in order to ensure the proper receipt and crediting of the tax payment; and

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(3) specifying the form and content of information required by the department in an approved, computer-generated, magnetic media data format in order to ensure the proper receipt of the information.

Section 8. Codification instruction. [Sections 4 through 7] are intended to be codified as an integral part of Title 15, chapter 70, and the provisions of Title 15, chapter 70, apply to [sections 4 through 7].

Section 9. Effective date. [This act] is effective July 1, 1995.

Approved April 26, 1995

CHAPTER NO. 562

[SB 136]

AN ACT GENERALLY REVISING LAWS CONCERNING ETHICS; CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE INTERESTS RAISING THE APPEARANCE OF IMPROPRIETY AND TO VOTE ON MATTERS AS PROVIDED IN LEGISLATIVE RULES; PROVIDING REQUIREMENTS FOR A PUBLIC EMPLOYEE, PUBLIC OFFICER, OR LEGISLATOR TO RECEIVE MORE THAN ONE PUBLIC SALARY FOR OVERLAPPING HOURS OF EMPLOYMENT; PROHIBITING PUBLIC OFFICERS AND PUBLIC EMPLOYEES FROM USING PUBLIC TIME, EQUIPMENT, FACILITIES, SUPPLIES, PERSONNEL, OR FUNDS FOR ANY CAMPAIGN ACTIVITY; RESTRICTING EMPLOYMENT BY CURRENT AND FORMER PUBLIC OFFICIALS AND EMPLOYEES; PROVIDING FOR EDUCATION AND TRAINING ON ETHICAL MATTERS; PROVIDING ENFORCEMENT PROVISIONS FOR ETHICS VIOLATIONS; CREATING AN ETHICS COMMISSION TO PROVIDE REVIEW OF ETHICS DECISIONS IN CASES INVOLVING STATE OFFICERS AND STATE EMPLOYEES; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-104, 2-2-105, 2-2-111, 2-2-112, 2-2-121, 2-2-125, 2-2-131, 2-2-302, 2-18-102, 5-7-213, AND 13-35-226, MCA; REPEALING SECTION 2-2-132, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of prohibiting conflict between public duty and private interest for members of the Legislature and for all stato and local government officers and employees.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-102, MCA, is amended te read:

"**2-2-102. Definitions.** As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money~~, thing of value~~, or economic benefit conferred on or received by any person in return for services rendered or to he rendered by ~~himself~~ *the person* or another.

~~(3) "Employee" means any temporary or permanent employee of the state or any subdivision thereof or member of the judiciary, including a member of a board, commission, or committee except a legislator and an employee under contract to the state.~~

~~(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:~~

~~(a) an ownership interest in a business;~~

~~(b) a creditor interest in an insolvent business;~~

~~(c) an employment or prospective employment for which negotiations have begun;~~

~~(d) an ownership interest in real or personal property;~~

~~(e) a loan or other debtor interest; or~~

~~(f) a directorship or officership in a business.~~

(3) (a) "Gift of substantial value" means a gift with a value of $50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

~~(5)~~*(3)* "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, ~~which~~ *that* involves the use of discretionary authority.

(4) "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Public employee" means:

(a) any temporary or permanent employee of the state or any subdivision of the state;

(b) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(c) a person under contract to the state.

(6) "Public officer" includes any state officer ~~except a legislator or member of the judiciary~~ or any elected officer of any subdivision of the state.

(7) *(a)* "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other esteblishments of the state government ~~except the courts~~.

(b) The term does not include the judicial branch.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

Section 2. Section 2-2-103, MCA, is amended to read:

"2-2-103. Public trust — *public duty*. (1) The holding of public office or employment is a public trust, created by the confidence ~~which~~ *that* the electorate reposes in the integrity of public officers, legislators, and *public* employees. A public officer, legislator, or *public* employee shall carry out ~~his~~ *the individual's* duties for the benefit of the people of the stete.

(2) A public officer, legislator, or *public* employee whose conduct departs from ~~his fiduciary~~ *the person's public* duty is liable to the people of tbe state ~~as a trustee of property, is liable to a beneficiary under 72-34-105,~~ and ~~shall suffer such other liabilities as a private fiduciary would suffer~~ *is subject to the penalties provided in this part* for ahuse of ~~his~~ *the public's* trust. ~~The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.~~

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(3) ~~The following sections set~~ *This part sets* forth various rules of conduct, the transgression of any of which is~~, as such,~~ a violation of ~~fiduciary~~ *public* duty, and various ethical principles, the transgression of any of which ~~is not, as such, a violation of fiduciary duty~~ *must be avoided.*

(4) (a) The enforcement of this part for:

(i) state officers, legislators, and state employees is provided for in [sections 15 and 16];

(ii) legislators, involving legislative acts, is provided for in [section 14] and for all other acts is provided for in [sections 15 and 16];

(iii) local government officers and employees is provided for in [section 21].

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government."

Section 3. Section 2-2-104, MCA, is amended to read:

"2-2-104. Rules of conduct for ~~all~~ public officers, legislators, and *public* employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ *the actor's public* duty. A public officer, legislator, or *public* employee may not:

~~(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or~~

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) ~~which~~ *that* would tend improperly to influence a reasonable person in ~~his~~ *the person's* position to depart from the faithful and impartial discharge of ~~his~~ *the person's* public duties; or

(ii) ~~which he~~ *that the person* knows or ~~which~~ *that* a reasonable person in ~~his~~ *that* position should know under the circumstances is primarily for the purpose of rewarding ~~him~~ *the person* for official action ~~he has~~ taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of ~~such~~ *the* services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices."

Section 4. Section 2-2-105, MCA, is amended to read:

"2-2-105. Ethical ~~principles~~ *requirements* for public officers and *public* employees. (1) The ~~principles~~ *requirements* in this section are intended as ~~guides to~~ *rules of* conduct, and ~~do not constitute~~ violations ~~as such~~ *constitute a breach* of the public trust *and public duty* of office or employment in state or local government.

(2) ~~A~~ *Except as provided in subsection (4), a* public officer or *public* employee ~~should~~ *may* not acquire an interest in any business or undertaking ~~which he~~ *that the officer or employee* has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by ~~his~~ *the officer's or employee's* agency.

(3) ~~A~~ public officer or *public* employee ~~should~~ *may* not, within ~~the~~ *12* months following the voluntary termination of ~~his~~ office or employment, obtain employment in which ~~he~~ *the officer or employee* will take direct advantage, unavailable to others, of matters with which ~~he~~ *the officer or employee* was directly involved during ~~his~~ *a* term *of office* or *during* employment. These matters are rules, other than rules of general application, ~~which he~~ *that the officer or employee* actively helped to formulate and applications, claims, or contested cases in the consideration of which ~~he~~ *the officer or employee* was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

~~(4)~~*(5)* A public officer or *public* employee ~~should~~ *may* not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when ~~he~~ *the officer or employee* has a substantial ~~financial~~ *personal* interest in a competing firm or undertaking."

Section 5. Section 2-2-111, MCA, is amended to read:

"**2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached ~~his fiduciary~~ *the legislator's public* duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except ~~his~~ *the* official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for ~~himself~~ *the legislator* or solicit a contract for ~~his~~ *the legislator's* services by the use of ~~his~~ *the* office."

Section 6. Section 2-2-112, MCA, is amended to read:

"**2-2-112. Ethical ~~principles~~ *requirements* for legislators.** (1) The ~~principles~~ *requirements* in this section are intended ~~only~~ as ~~guides to~~ *rules for* legislator conduct, and ~~do not constitute~~ violations ~~as such~~ *constitute a breach* of the public trust of legislative office.

(2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (5). The legislator may, subject to legislative rule, vote on an issue on which the legislator has a conflict, after disclosing the interest.

~~(2)~~*(3)* When a legislator ~~must~~ *is required to* take official action on a legislative matter as to which ~~he~~ *the legislator* has a conflict created by a personal or ~~financial~~ *private* interest ~~which~~ *that* would ~~be~~ directly ~~and substantially affected by~~ *give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to* the legislative matter, ~~he should consider disclosing or eliminating~~ *the legislator shall disclose* the interest creating the conflict ~~or abstaining from~~ *prior to participating in* the official action, *as provided in subsections (2) and (5) and the rules of the legislature.* In making ~~his~~ *a* decision, ~~he should~~ *the legislator shall* ~~further~~ consider:

(a) whether the conflict impedes ~~his~~ *the legislator's* independence of judgment;

(b) the effect of ~~his~~ *the legislator's* participation on public confidence in the integrity of the legislature; ~~and~~

(c) whether ~~his~~ *the legislator's* participation is likely to have any significant effect on the disposition of the matter; *and*

(d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

~~(3)~~*(4)* A conflict situation does not arise from legislation *or legislative duties* affecting the ~~entire~~ membership of a *profession, occupation, or* class.

~~(4)~~*(5)* ~~If a~~ *A* legislator ~~elects to~~ *shall* disclose ~~the~~ *an* interest creating ~~the~~ *a* conflict, ~~he shall do so~~ as provided in the ~~joint~~ rules of the legislature. *A legislator who is a member of a profession, occupation, or class affected by legislation is*

not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in [section 14]."

Section 7. Section 2-2-121, MCA, is amended to read:

"**2-2-121. Rules of conduct for ~~state~~ *public* officers and ~~state~~ *public* employees.** (1) Proof of commission of any act enumerated in ~~this section~~ *subsection (2)* is proof that the actor has breached ~~his fiduciary~~ *a public* duty.

(2) A ~~state~~ *public* officer or a ~~state~~ *public* employee may not:

(a) use ~~state~~ *public* time, facilities, *equipment, supplies, personnel, or funds* ~~or equipment~~ for ~~his~~ *the officer's or employee's* private business purposes;

(b) engage in a substantial financial transaction for ~~his~~ *the officer's or employee's* private business purposes with a person whom he *the officer or employee* inspects or supervises in the course of ~~his~~ official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from ~~his~~ *the officer's or employee's* agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any ~~state~~ agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which ~~he~~ *the officer or employee* either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom ~~he~~ *the officer or employee* regulates in the course of ~~his~~ official duties without first giving written notification to ~~his~~ *the officer's or employee's* supervisor and department director.

(3) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds for any campaign activity persuading or affecting a political decision unless the use is:

(a) authorized by law; or

(b) properly incidental to another activity required or authorized by law, such as the function of an elected public official, the official's staff, or the legislative staff in the normal course of duties.

(4) A state employee may not participate in a proceeding when an organization of which the employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the employee represents the state.

(5) A state officer or state employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the officer's or employee's job duties. The provisions of this subsection do not prohibit an officer or employee from performing charitable fundraising activities if approved by the employee's supervisor or authorized by law.

~~(3)~~*(6)* A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding *the provisions of* subsection (2)(e) if ~~his~~ participation is necessary to the administration of a statute and if ~~he~~ *the person* complies with the ~~voluntary~~ disclosure procedures under 2-2-131.

~~(4)~~*(7)* Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless ~~he~~ *the member* is also a full-time ~~state~~ *public* employee.

(8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $1,000, by imprisonment in the county jail for not more than 6 months, or by both. A civil proceeding under [section 15] or [section 21] does not preclude an action under this subsection."

Section 8. Section 2-2-125, MCA, is amended to read:

"2-2-125. Rules of conduct for local government officers and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ *a public* duty *subjecting the actor to disciplinary action by the employing entity.*

(2) An officer or employee of local government may not:

(a) engage in a substantial financial transaction for ~~his~~ *the officer's or employee's* private business purposes with a person whom ~~he~~ *the officer or employee* inspects or supervises in the course of ~~his~~ official duties; or

(b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which ~~he~~ *the officer or employee* either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) ~~A~~ *Notwithstanding the provisions of subsection (2), a* member of the governing body of a local government may perform an official act ~~notwithstanding this section~~ when ~~his~~ *the member's* participation is necessary to obtain a quorum or otherwise enable the body to act~~.~~ ~~if he complies with the voluntary disclosure procedures under 2-2-131~~ *The member shall disclose the interest creating the appearance of impropriety."*

Section 9. Section 2-2-131, MCA, is amended to read:

"2-2-131. ~~Voluntary disclosure~~ *Disclosure.* A public officer or *public* employee ~~may~~ *shall*, prior to acting in a manner ~~which~~ *that* may impinge on ~~his fiduciary~~ *public* duty, *including the award of a permit, contract, or license,* disclose the nature of ~~his~~ *the* private interest ~~which~~ *that* creates the conflict. ~~He~~ *The public officer or public employee* shall make the disclosure in writing to the secretary of state, listing the amount of ~~his financial~~ *private* interest, if any, the

purpose and duration of ~~his~~ *the person's* services rendered, if any, and the compensation received for the services or ~~such~~ other information ~~as~~ *that* is necessary to describe ~~his~~ *the* interest. If ~~he~~ *the public officer or public employee* then performs the official act involved, ~~he~~ *the officer or employee* shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act."

Section 10. Section 2-2-302, MCA, is amended to read:

"**2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice.** (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply te:

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days; ~~or~~

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom ~~he~~ *the person* is related assumed the duties of the office;

(e) the employment of election judges; or

(f) the employment of pages or temporary session staff by the legislature.

(3) Prior to the appointment of a person referred to in subsection (2), the school district trustees shall give written notice of the time and place of their intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located."

Section 11. Section 2-18-102, MCA, is amended to read:

"**2-18-102. Personnel administration — general policy setting.** (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the stato and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for permanent, seasonal, temporary, and other types of positions and

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for the improvement of employee effectiveness, including training, *ethical conduct,* safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made ~~thereunder~~ *under parts 1 and 2* and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ *under parts 1 and 2* and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the stato service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that ~~such~~ *the* agencies remain in compliance with policies, procedures, timetables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state. Adequate public notice shall *must* be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are te take effect.

(4) The department shall develop model rules of conduct for all state employees based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional rules appropriate to the specific circumstances of the agency."

Section 12. Section 5-7-213, MCA, is amended to read:

"5-7-213. Disclosure ~~by elected officials~~. (1) *(a)* Prior to December 15 of each even-numbered year, each elected official ~~or official-elect~~ *or department director* shall file with the commissioner a business disclosure statement on a form provided by the commissioner. *An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.*

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) The statement ~~shall~~ *must* provide the following information:

(a) the name, address, and type of business of ~~such~~ *the* individual ~~and each member of such individual's immediate family;~~

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description. ~~For this purpose "immediate family" includes the individual's spouse and minor children only.~~

~~(2)~~*(3)* ~~No such~~ *An* individual may *not* assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until ~~such~~ *the* statement has been filed *as provided in subsection (1).*

~~(3)~~*(4)* The commissioner shall make ~~such~~ *the* business disclosure statements available to any individual upon request."

Section 13. Section 13-35-226, MCA, is amended to read:

"**13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in paying ~~his~~ employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises ~~(~~express or implied~~)~~, calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an employer to exhibit in a place where ~~his~~ *the employer's* workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected, work in ~~his~~ *the employer's* place or establishment will cease, in whole or in part, or will be continued or increased; ~~his~~ *the employer's* place or establishment will be closed; the salaries or wages of ~~his~~ *the* workers or employees will be reduced or increased; or other threats or promises ~~(~~express or implied~~)~~, intended or calculated to influence the political opinions or actions of ~~his~~ *the employer's* workers or employees. This section ~~shall apply~~ *applies* to corporations, individuals, and public officers and employees.

(2) ~~No~~ *A* person ~~may~~ *not* attempt to coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(3) ~~No~~ *A* public employee may *not* solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at ~~his~~ *the* place of employment. However, ~~nothing in~~ *subject to 2-2-121,* this section is *not* intended to restrict the right of a public employee to express ~~his~~ personal political views.

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(4) Any person who violates the provisions of this section shall be fined *an amount* not to exceed $1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense."

Section 14. Ethics committees. (1) Each house of the legislature shall establish an ethics committee. The committee must consist of two members of each political party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

Section 15. Enforcement for state officers, legislators, and state employees. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner shall request any information necessary to make a determination from the complainant or the person who is the subject of the complaint and may issue subpoenas.

(b) Unless the complaint is referred to the county attorney under subsection (1)(c), the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

(2) If the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than $50 or more than $1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the employing agency discipline the employee. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) The decision of the commissioner may be appealed to the ethics commission as provided in [section 16].

(4) Except for records made public in the course of a hearing, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are not open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part.

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Section 16. Administrative appeal. (1) The ethics commission shall provide a hearing on the record, when requested in writing by a party to an issue that has been decided by the commissioner of political practices. The appeal must be requested within 60 days of a decision by the commissioner.

(2) The hearing is limited to matters contained in the record established before the commissioner. Tbe commission may affirm, modify, or reverse a decision of the commissioner.

(3) A decision is rendered when signed by three or more commission members subscribing to the decision and must be issued witbin 30 calendar days after submission of tbe request for an opinion.

(4) If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award costs and fees to the prevailing party.

Section 17. Ethics commission. (1) There is an ethics commission attached to the office of the commissioner of political practices for administrative purposes only.

(2) The commission consists of five members. The members are appointed in the same manner as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as provided in subsection (6) of this section. A member of the commission must be a citizen of the United Statos and a resident of Montana. A member of the commission may not be a:

(a) public official;

(b) public employee, except as the fifth member, who must be chosen by consensus of the other members;

(c) candidate;

(d) lobbyist or lobbyist's principal; or

(e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

(3) A member of the commission serves a term of 4 years. However, the initial members of the commission shall serve the following terms:

(a) One member sball serve a term of 1 year.

(b) One member shall serve a term of 2 years.

(c) One member shall serve a term of 3 years.

(d) Two members shall serve terms of 4 years.

(4) An individual may not serve more than two consecutive terms as a member of the commission. A member of the commission continues in office until a successor is appointed and has qualified.

(5) (a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall appoint a successor.

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(b) If at the time that a vacancy occurs the appointing authority is of a different political party than that of the original appointing authority, the majority or minority leader in the same house who is of the same political party as the appointing authority that made the original appointment of the commissioner whose position is vacated shall appoint the successor.

(6) The presiding officer and vice presiding officer of the commission must be elected by a majority of the memhers of the commission. The presiding officer and vice presiding officer shall serve in those positions for 1 year and may be reelected. The presiding officer presides at meetings of the commission. The vice presiding officer presides in the absence or disability of the presiding officer.

(7) A member of the commission may not receive a salary but is entitled to expenses as provided in Title 2, chaptor 18, part 5.

Section 18. Meetings — quorum. The ethics commission shall meet at the call of the presiding officer or a majority of its members when an appeal from a decision of the commissioner of political practices under this part is requested. A quorum consists of three or more members. An affirmative vote of three or more members is necessary for the issuance of a decision.

Section 19. Prohibition on political activity by commission members. A member of the ethics commission may not participate in political activity or in a political campaign during the term of office. A member of the commission may not:

(1) make a financial contribution to a candidate;

(2) make a financial contribution to a political committee; or

(3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

Section 20. Prohibition on lobbying activity. A member of the ethics commission may not be a registered lobbyist or participate in lobbying activities that would require the individual to register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are permitted under state law.

Section 21. Enforcement for local government. (1) Except as provided in subsection (5), a person alleging a violation of tbis part hy a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county atterney shall request from the complainant or the person who is tbe subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than $50 or more than $1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.

(3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court

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seeking a civil fine of not less than $50 or more than $1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court detormines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.

(4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part.

(5) (a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated.

(b) In a local government that establishes a panel under this subsection, a complaint must be referred te the panel prior to making a complaint te the county attorney.

(6) For purposes of this section, "local government" means a county, an incorporated city or town, a consolidated government, or a school district.

Section 22. Repealer. Section 2-2-132, MCA, is repealed.

Section 23. Codification instruction. [Sections 14 through 21] are intended to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1, apply to [sections 14 through 21].

Section 24. Code commissioner instruction. The code commissioner shall renumber section 5-7-213 as an integral part of Title 2, chapter 2, part 1.

Section 25. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Effeetive date. [This act] is effective July 1, 1995.

Approved April 26, 1995

CHAPTER NO. 563

[SB 198]

AN ACT GENERALLY REVISING THE METHOD OF VALUING IRRIGATED AGRICULTURAL LAND; ESTABLISHING A BASE WATER COST FOR COMPUTING NET INCOME FROM IRRIGATED LAND; ESTABLISHING AN ENERGY COST BASE YEAR FOR IRRIGATED LAND; LIMITING ALLOWABLE WATER COSTS TO A MAXIMUM OF $35 PER ACRE OF IRRIGATED LAND; REVISING THE PHASEIN OF THE TAXABLE VALUE OF AGRICULTURAL LAND; AMENDING SECTIONS 15-7-201 AND

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15-7-221, MCA; REPEALING SECTION 15-7-221, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-201, MCA, is amended to read:

"15-7-201. (~~Applicable~~ *Temporary — applicable* to ~~1994~~ *1995 and 1996* ~~and later~~ land valuation schedules) **Legislative intent — value of agricultural property.** (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by production categories. Production categories are determined from the productive capacity of the land based on yield.

(4) In computing the agricultural land valuation schedules to take effect ~~on January 1, 1994, and, thereafter, on the effective date~~ when each revaluation cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula V = I/R where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and is equal to 6.4%. This capitalization rate must remain in effect until new agricultural land valuation schedules are computed as required by law.

(5) (a) Net income must be determined separately in each land use based on production categories.

(b) Net income must be based on commodity price data, grazing fees, crop share arrangements, and water cost data for the base period~~.~~, *as follows:*

(i) Commodity price data and grazing fees for the base period must be obtained from the Montana Agricultural Statistics and from the Montana crop and livestock reporting service.

(ii) Crop share arrangements are based on the rental value of the land and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs ~~and~~, energy costs of irrigation, *and a base water cost of $5.50 for each acre of irrigated land. Total allowable water costs may not exceed $35 for each acre of irrigated land. Labor and energy costs must be determined as follows:*

(A) Labor costs are zero for pivot sprinkler irrigation systems; $4.50 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and $9 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in 1992. By July 1, 1993, an owner of irrigated land sball provide the department, on a form prescribed by the department, witb energy costs incurred in 1992. In the event that no energy coste were incurred in 1992, the owner of irrigated land shall provide the department witb energy costs from the most recent year available. Tbe department shall adjust the most recent year's energy costs to reflect costs in 1992.

(c) Tbe base crop for valuation of irrigated land is alfalfa bay, adjusted to 80% of sales price, and the base crop for valuation of nonirrigated land is wheat. Tbe base unit for valuation of grazing lands is the average grazing fee for a 1,000-pound animal.

(d) Tbe base period used to determine net income must be the most recent 7 years for which data is available prior te the date the revaluation cycle ends. Commodity price data and grazing fees referred to in subsection (5)(b) must be averaged for tbe 7-year period, but the average must exclude tbe lowest and highest commodity prices or grazing fees in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics to compile and review the data required by subsections (4) and (5). The advisory committee shall include one member of the Montana state university, college of agriculture, staff. The advisory committee shall recommend agricultural land valuation schedules to the department. With respect to irrigated land, the value of irrigated land may not be below the value that the land would have if it were not irrigated."

Seetion 2. Section 15-7-201, MCA, is amended to read:

"15-7-201. (Applicable to ~~1994~~ *1997* and later land valuation scbedules) Legislative intent — value of agricultural property. (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by production catogories. Production categories are determined from the productive capacity of the land based on yield.

(4) In computing the agricultural land valuation scbedules to take effect ~~on January 1, 1994, and, thereafter,~~ on the ~~effective~~ date when each revaluation

cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula V = I/R where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and is equal te 6.4%. This capitalization rate must remain in effect until new agricultural land valuation schedules are ~~computed as required by law~~ *adopted by the department, after considering the recommendations from the advisory committee as provided in subsection (7).*

(5) (a) Net income must be determined separately in each land use based on production categories.

(b) Net income must be based on commodity price data, grazing fees, crop share arrangements, and water cost data for the base period~~.~~, *as follows:*

(i) Commodity price data and grazing fees for the base period must be obtained from the Montana Agricultural Statistics and from the Montana crop and livestock reporting service.

(ii) Crop share arrangements are based on the rental value of the land and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs ~~and~~, energy costs of irrigation, *and a base water cost of $5.50 for each acre of irrigated land. Total allowable water costs may not exceed $35 for each acre of irrigated land. Labor and energy costs must be determined as follows:*

(A) Labor costs are zero for pivot sprinkler irrigation systems; $4.50 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and $9 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in ~~1992~~ *the energy cost base year, which is the calendar year immediately preceding the year specified by the department in 15-7-103(5).* By July 1~~, 1993~~, *of the year following the energy cost base year,* an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in ~~1992~~ *that energy cost base year.* In the event that no energy costs were incurred in ~~1992~~ *the energy cost base year,* the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in ~~1992~~ *the energy cost base year.*

(c) The base crop for valuation of irrigated land is alfalfa hay, adjusted te 80% of sales price, and the base crop for valuation of nonirrigated land is wheat. The base unit for valuation of grazing lands is the average grazing fee for a 1,000-pound animal.

(d) The base period used to determine net income must bo the most recent 7 years for which data is available prior to the date the revaluation cycle ends. Commodity price data and grazing fees referred to in subsection (5)(b) must be

averaged for the 7-year period, but the average must exclude the lowest and highest commodity prices or grazing fees in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics to compile and review the data required by subsections (4) and (5). The advisory committee shall include one member of the Montana state university, college of agriculture, staff. The advisory committee shall recommend agricultural land valuation schedules to the department. With respect to irrigated land, the value of irrigated land may not be below the value that tbe land would have if it were not irrigated."

Section 3. Section 15-7-221, MCA, is amended to read:

"15-7-221. **Phasein of the taxable value of agricultural land.** The increase or decrease in taxable value of agricultural land resulting from the change in the method of determining productive capacity value under 15-7-201 must be phased in beginning January 1, ~~1994~~ *1995*, as follows:

(1) For the year beginning January 1, ~~1994~~ *1995*, and ending December 31, ~~1994~~ *1995*, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, ~~1993~~ *1994*, value by ~~25%~~ *one-third* of the difference between the product of the productive capacity value of agricultural land for ~~1994~~ *1995* determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, ~~1993~~ *1994*.

(2) For the year beginning January 1, ~~1995~~ *1996*, and ending December 31, ~~1995~~ *1996*, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, ~~1993~~ *1994*, value by ~~50%~~ *two-thirds* of the difference between the product of the productive capacity value of agricultural land for ~~1994~~ *1995* determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, ~~1993~~ *1994*.

~~(3) For the year beginning January 1, 1996, and ending December 31, 1996, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, 1993, value by 75% of the difference between the product of the productive capacity value of agricultural land for 1994 determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, 1993.~~

~~(4)~~ Beginning January 1, 1997, the taxable value of agricultural land in each land use and production category is equal to 100% of the productive capacity value of agricultural land determined under 15-7-201 times tbe class three tax rate."

Section 4. Repealer. Section 15-7-221, MCA, is repealed.

Section 5. Effective dates. (1) [Sections 1, 3, 6, and this section] are effective on passage and approval.

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(2) [Section 2] is effective January 1, 1997.

(3) [Section 4] is effective January 1, 1998.

Section 6. Applicability. (1) [Sections 1 and 3] apply retroactively, within the meaning of 1-2-109, to tax years heginning after December 31, 1994.

(2) [Section 2] applies to tax years beginning after December 31, 1996.

Approved April 26, 1995

CHAPTER NO. 564

[SB 206]

AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND REMOVAL OF A CHILD FROM THE HOME IN A CASE OF SUSPECTED ABUSE OR NEGLECT; AND AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-202, 41-3-205, AND 41-3-206, MCA.

WHEREAS, the Legislature finds it necessary to restore public confidence in the child protective system and to provide protection of individual and family civil rights as guaranteed by the stato and federal constitutions.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-101, MCA, is amended to read:

"**41-3-101. Declaration of policy.** (1) It is ~~hereby declared to be~~ tbe policy of the stato of Montana to:

(a) ~~insure~~ *ensure* that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; ~~and~~

(d) preserve the unity and welfare of the family whenever possible*; and*

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect.

(2) It is the policy of this state to*:*

(a) protect, whenever possible, family unity;

(b) provide for the protection of children whose health and welfare are or may be adversely affected and further tbreatened by the conduct of those responsible for their care and protection*; and*

(c) ensure that whcnever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(3) It is intended that the mandatory reporting of ~~such~~ *abuse or endangerment* cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life ~~wherever~~ *whenever* appropriate."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chaptor, the following definitions apply:

(1) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent;

(b) a staff person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) ~~Nothing in this~~ *This* chapter may *not* be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, ~~nothing in~~ this chapter may *not* be construed to limit the administrative or judicial authority of the stato to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare~~, as defined in subsection (8)~~; or

(ii) threatened harm te a child's health or welfare~~, as defined in subsection (15)~~.

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

(6) "Department" means the department of family services provided for in 2-15-2401.

(7) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has been transferred to a licensed agency.

(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

~~(c)~~*(d)* causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

~~(d)~~*(e)* abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or ~~by~~ willfully ~~surrendering~~ *surrenders* physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

~~(e)~~*(f)* is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(9) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

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(12) *(a)* "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent.

(13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(14) "Social worker" means an employee of the department ~~whose duties generally involve the provision of either child or adult protective services, or both~~ *who, prior to the employee's field assignment, has been educated or trained or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.*

(15) "Tbreatened harm te a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(16) *(a)* "Withholding of medically indicatod treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions. ~~However, the~~

(b) The term does not include ~~the~~ failure te provide treatment (other than appropriate nutrition, hydration, or medication) te an infant when, in the treating physician's or physicians' reasonable medical judgment:

~~(a)~~*(i)* the infant is chronically and irreversibly comatose;

~~(b)~~*(ii)* the provision of treatment would:

~~(i)~~*(A)* merely prolong dying;

~~(ii)~~*(B)* not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

~~(iii)~~*(C)* otherwise be futile in terms of the survival of the infant; or

~~(c)~~*(iii)* the provision of treatment would be virtually futile in terms of the survival of tbe infant and the treatment itself under tbe circumstances would be inhumane. For purposes of this subsection *(16)*, "infant" means an infant less than 1 year of age or an infant 1 year of age or older wbo has been continuously bospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed te imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

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(17) "Youth in need of care" means a youth who is dependent, abused, or neglected ~~as defined in this section~~."

Section 3. Section 41-3-202, MCA, is amended to read:

"**41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surreunding the injury of the child, and into all other nonfinancial matters ~~which~~ *that* in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

(2) An initial investigation into the home of the child may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

~~(2)~~*(3)* The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer ~~shall~~, consistent with reasonable medical practice, ~~have~~ *has* the right of access to the child for intorviews, photographs, and securing physical evidence and ~~have~~ *has* the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(4) If the child's interview is videotaped, an unedited videotape with audio track must be made available, upon request, for unencumbered review by the family.

~~(3)~~*(5)* If from the investigation it appears that tbe child suffered abuse or neglect, the department shall provide protective services to tbe child *pursuant to 41-3-301* and may provide protective services to any other child under the same care. The department ~~will~~ *shall* advise the county attorney *and the child's family* of its investigation.

~~(4)~~*(6)* The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department *and, upon request, to the family.* The department shall maintain a record system containing child abuse and neglect cases.

~~(5)~~*(7)* Any person reporting abuse or neglect ~~which~~ *that* involves acts or omissions on the part of a public or private residential institution, home, facility, or agency ~~shall be~~ *is* responsible for ensuring that the report is made to the

department ~~of family services~~, its local affiliate, and the county attorney of the county in which the facility is located."

Section 4. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department of social and rehabilitation services, the department ~~of family services~~ and ite local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chaptsr and all records concerning reports of child abuse and neglect must be kept confidential, except as provided by this section. ~~Any~~ *Except as provided in subsections (4) and (5), a* person who permits or encourages the unauthorized dissemination of ~~their~~ *the* contents *of case records* is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigato reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed bealth or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, ~~or~~ guardian, *or person designated by a parent or guardian* of the child who is the subject of a report in the records or otber person responsible for the child's welfare, without disclosure of the identity of any person who reportod or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

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(j) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(k) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect;

(l) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(m) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(n) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in subsection (3); or

(o) members of a local interagency staffing group provided for in 52-2-203.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). *However, this subsection may not be construed to compel a family member to keep the proceedings confidential.*

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

~~(5)~~*(6)* ~~Nothing in this~~ *This* section is *not* intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 5. Section 41-3-206, MCA, is amended to read:

"**41-3-206. Procedure in case of child's death.** (1) ~~Any~~*A* person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report ~~his~~ *the person's* suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report ~~his~~ *the person's* suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit ~~his~~ findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, *the family of the deceased child,* and, if the person making the report is a physician, the physician."

Approved April 26, 1995

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CHAPTER NO. 565

[SB 224]

AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

~~(2)~~*(3)* "Board" means the board of realty regulation provided for in 2-15-1867.

~~(3)~~*(4)* "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual

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undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or ~~salesman~~ *salesperson* the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections ~~(3)(a)~~ *(4)(a)* through ~~(3)(f)~~ *(4)(f)*.

~~(4)~~*(5)* "Broker associate" means a broker who associates, *as an employee or independent contractor,* with a broker owner and does not own an interest in a real estate firm.

~~(5)~~*(6)* "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(7) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

~~(6)~~*(11)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization as provided in [section 4]. An in-house buyer or seller agent designate may not be considered a dual agent.

~~(7)~~*(13)* "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(14) "In-house buyer agent designate" means a broker associate or salesperson employed by or associated as an independent contractor with a broker owner and designated by the broker owner as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(15) "In-house seller agent designate" means a broker associate or salesperson employed by or associated as an independent contractor with a broker owner and designated by the broker owner as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(16) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(17) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

~~(8)~~*(18)* "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

~~(9)~~*(19)* "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

~~(10)~~*(20)* "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

~~(11)~~*(22)* ~~"Salesman"~~ *"Salesperson"* includes an individual who for a salary, commission, or compensation of any kind is associated, either directly,

indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(23) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(26) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

Section 2. Section 37-51-321, MCA, is amended to read:

"37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name in the franchise name or logotype or does not conspicuously display, on the broker's letterhead and other printed materials available to the public, a statement that the broker's office is independently owned and operated and the trade name, if any, by which the office is known. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

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(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits which *that* may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with an ~~owner or lessee~~ *a seller or buyer* if the broker or salesperson knows that the ~~owner~~ *seller or buyer* has a written, outstanding ~~contract~~ *listing agreement or buyer broker agreement* in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that capacity by a person;

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(s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

(t) conviction of a felony.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1)."

Section 3. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the common law as applied to these relationships. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller's agent is obligated to the seller to:

(a) act solely in the best interests of the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller's agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller's agent;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller's agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller's agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer's agent any adverse material facts that concern the property and that are known to the seller's agent, except that the seller's agent is not required to inspect the property or verify any statements made by the seller;

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(b) disclose to a buyer or the buyer's agent when the seller's agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer's agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer's agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer's agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer's agent;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer's agent's possession; and

(g) comply with all applicahle federal and state laws, rules and regulations.

(5) A buyer's agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer's agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller's agent when the buyer's agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a seller's agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer's agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller's agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

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(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller's agent and is obligated to a buyer in the same manner as a buyer's agent under this section, except as follows:

(a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; and

(b) a dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(i) the fact that the buyer is willing to pay more than the offered purchase price;

(ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(iii) factors motivating either party to buy or sell; and

(iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(9) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure required by law or to prevent the commission of a crime;

(iii) the information being disclosed by someone other than the broker or salesperson; and

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(iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(10) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

Section 4. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures:

(a) to the seller at the time the listing agreement is executed or, if the seller agent is acting as a seller subagent, at the time negotiations commence; and

(b) to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures:

(a) to the buyer at the time the buyer broker agreement is executed or, if the buyer agent is acting as a buyer subagent, at the time negotiations commence; and

(b) to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosure to the buyer and seller at the time negotiations commence.

(5) A buyer agent or seller agent who subsequently becomes a dual agent shall disclose the relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises.

(6) A disclosure required by this section must be signed and dated by the party to whom the disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the following information:

(a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your agent or subagent in the sale of your property located at (address of property). Your seller agent is obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to give this consent, your opportunity to sell your property to that buyer may be lost.

Your seller agent is obligated to you as follows:

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(1) to act solely in the best interests of the seller to the exclusion of all other interests, including those of the seller agent;

(2) to obey promptly and efficiently all lawful instructions of the seller;

(3) to disclose to the seller all relevant and material information that concerns the real estate transaction and that is known by the seller agent and not known by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the seller's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established in the listing agreement;

(6) to fully account to the seller for all funds or property of the seller coming into the seller agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the listing agreement."

(b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with respect to the seller's property located at (address of property). Although the seller agent is primarily obligated to the seller, the seller agent is obligated to you as specified below.

A seller agent is obligated to a buyer as follows:

(1) to disclose to a buyer any adverse material facts that concern the property and that are known to the seller agent;

(2) to deal in good faith with the buyer; and

(3) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property. The term may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony."

(c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your agent or subagent in the purchase of real property of the nature described in the buyer broker agreement. Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller of property that you become interested in, a dual agency may be created. In a dual agency relationship, the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with a dual agent disclosure. A buyer agent cannot act

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as a dual agent without your consent and that of the seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller declines to give this consent, your opportunity to acquire the seller's property may be lost.

Your buyer agent is obligated to you as follows:

(1) to act solely in the best interests of the buyer to the exclusion of all other interests, including those of the buyer agent;

(2) to obey promptly and efficiently all lawful instructions of the buyer;

(3) to disclose to the buyer all relevant and material information that concerns the real estate transaction and that is known by the buyer agent and not known by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the buyer's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established in the buyer broker agreement;

(6) to fully account to the buyer for all funds or property of the buyer coming into the buyer agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the buyer broker agreement."

(d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with respect to the seller's property located at (address of property). Although the buyer agent is primarily obligated to the buyer, the buyer agent is obligated to you as specified below.

A buyer agent is obligated to a seller as follows:

(i) to disclose to a seller any adverse material facts that concern the ability of the buyer to perform on any purchase offer and that are known to the buyer agent;

(ii) to deal in good faith with the seller; and

(iii) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."

(e) Statutory broker disclosure to the buyer and seller: "(Name of statutory broker) will be involved as a statutory broker with respect to the purchase and sale of real property located at (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in executing a sale of the

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property. A statutory broker is obligated to the buyer and seller as specified below.

A statutory broker is obligated to the parties as follows:

(1) to disclose to a buyer any adverse material fact that concerns the property and that is known to the statutory broker and not known to the buyer. However, the statutory broker is not required to conduct an independent inspection of the property or to verify any representation made by the seller.

(2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to perform on the purchase offer and that is known to the statutory broker and not known to the seller;

(3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the property; and

(4) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."

(f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer interested in purchasing the property and of the seller of the property located at (address of property). A dual agent is obligated to the buyer and seller as follows:

(1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests including the dual agent's;

(2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

(3) to disclose to the buyer and seller all relevant and material information that concerns the real estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives as established in the listing agreement and buyer broker agreement;

(5) to fully account to the buyer and seller for all funds or property of the buyer and seller coming into the dual agent's possession;

(6) to comply with all applicable federal and state laws, rules, and regulations;

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(7) to carry out the terms of the buyer broker agreement; and

(8) to safeguard the buyer's and seller's confidences, subject to the obligation to disclose to a buyer or a seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations. The following may not be disclosed without the written consent of the party to whom the information is confidential:

(a) that the buyer is willing to pay more than the buyer has offered for the property;

(b) that the seller is willing to accept less than the asking price for the property;

(c) factors motivating the buyer to buy or the seller to sell; and

(d) any other information that a party specifically indicates in writing to the dual agent is to be kept confidential and that is not an adverse material fact.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented bealth risk to occupants of the property, but may not include the fact that an occupant of tbe property has or has had a communicable disease or tbat the property was tbe site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

Upon signing this disclosure form, the buyer and seller acknowledge that they understand the obligations owed by a dual agent to them and consent to the dual agent representing them as a dual agent."

(7) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction.

Section 5. Vicarious liability. (1) A party to a real estate transaction is not liable for a misrepresentation made by the party's agent or subagent unless:

(a) the party has actual knowledge of the misrepresentation; or

(b) the agent or subagent is repeating a misrepresentation made by the party.

(2) A broker is not liable for a misrepresentation made by the broker's broker associate or subagent unless:

(a) the broker has actual knowledge of the misrepresentation;

(b) a broker associate making the misrepresentation is an employee of the broker and not an independent contractor or subagent; or

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(c) a broker associate or subagent is repeating a misrepresentation made by the broker.

(3) An agent is not liable for a misrepresentation made by the principal unless the agent has actual knowledge of the misrepresentation.

Section 6. Name change — directions to code commissioner. In Title 37, chapter 51, or in material enacted by the 54th legislature that is to be codified in Title 37, chapter 51, wherever the name "salesman" appears, the code commissioner is directed to change the name to "salesperson".

Section 7. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part 3, apply to [sections 3 through 5].

Approved April 26, 1995

CHAPTER NO. 566

[SB 292]

AN ACT CREATING THE "WOMAN'S RIGHT-TO-KNOW ACT"; PROVIDING FOR THE PUBLICATION AND DISSEMINATION OF INFORMATION CONCERNING ABORTION; CLARIFYING INFORMED CONSENT; PROVIDING CIVIL REMEDIES FOR FAILURE TO OBTAIN INFORMED CONSENT; AMENDING SECTIONS 50-20-104, 50-20-106, AND 50-20-112, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 8] may be cited as the "Woman's Right-to-Know Act".

Section 2. Legislative purpose and findings. (1) The legislature finds that:

(a) it is essential to the psychological and physical well-being of a woman who is considering an abortion that the woman receive complete and accurate information on alternatives;

(b) the knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between the alternatives of giving birth and having an abortion;

(c) in most instances, the only contact with a physician that a woman who has an abortion has occurs simultaneously with the abortion procedure, with little opportunity to receive counseling concerning the decision;

(d) the decision to abort is an important and often stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences;

(e) the medical, emotional, and psychological consequences of an abortion are serious and can be lasting;

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(f) some abortion facilities or providers offer only limited or impersonal counseling opportunities; and

(g) some abortion facilities or providers hire untrained and unprofessional counselors whose primary goal is to sell abortion services.

(2) Based on the findings in subsection (1), it is the purpose of [sections 1 through 8] to:

(a) ensure that every woman who is considering an abortion receive complete information on alternatives and that every woman submitting to an abortion do so only after giving informed consent to the abortion procedure;

(b) protect unborn children from a woman's uninformed decision to have an abortion; and

(c) reduce the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that the decision was not fully informed.

Section 3. Definitions. As used in [sections 1 through 8], unless the context requires otherwise, the following definitions apply:

(1) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(2) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

(3) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the woman's body.

(4) "Unborn child" means the offspring of human beings from conception until birth.

Section 4. Publication of materials. (1) The department shall publish and annually update easily comprehensible printed, unbiased materials that are geographically indexed and designed to inform women of public and private agencies and services available to assist a woman through pregnancy, during childbirth, and while a woman's child is dependent. The materials must:

(a) include adoption agencies;

(b) include a comprehensive list of the agencies, a description of the services offered, and the telephone numbers and addresses of the agencies;

(c) inform a woman about medical assistance benefits for prenatal care, childbirth, neonatal care, and child support obligations of a father of a child.

(2) The department shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service. The materials must include a toll-free, 24-hour telephone number that may be called to orally obtain a list and

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description of agencies in the locality of the caller and of the services offered by the agencies.

(3) The materials must state that:

(a) it is unlawful for any individual to coerce a woman to undergo or not to undergo an abortion;

(b) a physician who performs an abortion on a woman without the woman's informed consent may be liable to the woman for damages in a civil action; and

(c) the law allows adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care.

(4) The materials must inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at 2-week gestational increments from fertilization to full term, including pictures or drawings representing the development of unborn children at 2-week gestational increments. The pictures or drawings must contain the dimensions of the unborn child and must be realistic. The materials must include any relevant information on the possibility of the unborn child's survival at each stage depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials must contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion, the possible detrimental psychological effects of adoption, and the medical risks associated with carrying a child to term.

(5) The materials must be printed in a clearly legible typeface.

(6) The materials required to be produced under this section must be provided at no cost upon request and must be provided in appropriate quantities to any person, facility, or hospital.

Section 5. Emergency. When a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert the woman's death or that a 24-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

Section 6. Physician reporting requirements — penalty — action — department report. (1) Within [90 days after the effective date of this section], the department shall prepare a reporting form to be used by physicians that contains a reprint of this chapter and on which the physician shall list:

(a) the number of women to whom the physician provided the information described in 50-20-104(5)(a), including:

(i) the number of women provided the information by telephone and the number to whom it was provided in person; and

(ii) the number of women in each group referred to in subsection (1)(a)(i) to whom the physician provided the information in the capacity of a referring

physician and the number to whom it was provided in the capacity of a physician who is to perform the abortion;

(b) tbe number of women to whom the physician or an agent of the physician provided the information described in 50-20-104(5)(b), including:

(i) the number of women to whom the physician provided the information by telephone and the number to whom it was provided in person;

(ii) the number of women in each group referred to in subsection (1)(b)(i) to whom the physician provided the information in the capacity of a referring physician and the number to whom it was provided in the capacity of a physician who is to perform the abortion; and

(iii) the number of women in each group referred to in subsection (1)(b)(ii) to whom information was provided by the physician and the number to whom it was provided by an agent of the physician;

(c) the number of women who availed themselves of the opportunity to obtain a copy of the printed information described in [section 4] and the number who did not;

(d) of each of the numbers described in subsections (1)(a) tbrough (1)(c), the number who, to the best of the reporting physician's information and belief, obtained an abortion; and

(e) the number of abortions that were performed by the physician but in which information otberwise required to be provided at least 24 hours before the abortion was not provided because:

(i) an immediate abortion was necessary to avert the woman's death; or

(ii) a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

(2) The department shall ensure that copies of the reporting forms described in subsection (1) are provided:

(a) by [120 days after the effective date of this section] to all physicians licensed in this state;

(b) to each pbysician licensed to practice after [the effective date of tbis section], at the time of licensure;

(c) by December 1 of each succeeding year, to all physicians licensed to practice in tbis state.

(3) By February 28 of each year, each physician or the physician's agent who provided information to one or more women in accordance with 50-20-106 shall submit a copy of the reporting form described in subsection (1) to the department with the requested data entered accurately and completely.

(4) Reports that are not submitted by March 31 are subject to a penalty of $500 for each 30-day period that the reports are overdue. A physician who is required to report but who, more than 1 year after the due date, has not submitted a report or who has submitted an incomplete report may, in an action

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brought by the department, be directed by a district court to submit a complete report within a period stated in the court order or be subject to sanctions for civil contempt.

(5) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year submitted in accordance with this section for each of the items listed in subsection (1). Each report must provide the statistics for all previous calendar years, adjusted to reflect information from late or corrected reports. The department shall ensure that none of the information included in the public reports could reasonably lead to the identification of an individual who was provided information in accordance with 50-20-106. The department shall design the reporting process to ensure that confidentiality regarding the physician or the physician's agent is maintained in the department records.

(6) The department may, by rule, alter the dates established by subsection (2)(c), (3), or (5) or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience, achieve fiscal savings, or reduce the burden of reporting requirements. However, reporting forms must be sent to all licensed physicians at least once a year, and the report described in subsection (5) must be issued at least once a year.

Section 7. Civil remedies. (1) A person who performs an abortion in knowing or reckless violation of this chapter may be liable for actual and punitive damages in an action brought by the woman upon whom an abortion was performed or, if the woman is under 18 years of age or is physically or mentally incapacitated for purposes of being able to decide whether to bring and pursue an action, then, on the woman's behalf, by either:

(a) the father of the unborn child who was the subject of the abortion; or

(b) the grandparent of an unborn child who was the subject of the abortion.

(2) A person who attempts to perform an abortion in knowing or reckless violation of this chapter may be liable for actual and punitive damages in an action brought hy the woman upon whom an abortion was attempted.

(3) If the department fails to issue the public report required in [section 6], a group of 10 or more citizens may seek an injunction, in a court of competent jurisdiction, against the director of the department to require that a complete report be issued within a period established by court order. Failure to comply with an injunction subjects the director to sanctions for civil contempt.

(4) If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall award reasonable attorney fees in favor of the plaintiff against the defendant.

(5) An abortion or attempted abortion performed in violation of this chapter is the basis for a professional disciplinary action under 37-3-322.

Section 8. Protection of privacy in court proceedings. In a civil or criminal proceeding under this chapter, the court shall determine whether the anonymity of a woman upon whom an abortion has been performed or attempted must be preserved from public disclosure, unless tbe woman waives anonymity. The court shall make a ruling and, upon determining that the woman's

anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and the exclusion of individuals from the proceedings to the extent necessary to safeguard the woman's identity from public disclosure. Each order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved, why the order is necessary, how the order is tailored to protect the woman's privacy, and why no less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, a person other than a public official who brings an action under [section 7(1)] shall do so under a pseudonym.

Section 9. Section 50-20-104, MCA, is amended to read:

"50-20-104. Definitions. As used in this chapter, the following definitions apply:

(1) "Abortion" means ~~the performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth~~ *the use or prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.*

(2) "Attempted abortion" or "attempted" means an act or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in violation of this chapter.

~~(2)~~*(3)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(3)~~*(4)* "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

~~(4)~~*(5)* "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to her *the woman* by:

(a) the physician who is to perform the abortion of ~~such~~ of the following information ~~as is reasonably chargeable to the knowledge of the physician in his professional capacity~~:

~~(a)~~*(i)* the ~~stage of development of the fetus, the method of~~ *particular medical risks associated with the particular* abortion *procedure* to be utilized *employed, including*, ~~and the effects of such abortion method upon the fetus~~ *when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent pregnancies, and infertility*;

~~(b)~~*(ii)* the ~~physical and psychological effects of~~ *probable gestational age of the unborn child at the time the* abortion *is to be performed*; and

~~(c)~~*(iii)* ~~available alternatives to abortion, including childbirth and adoption~~ *the medical risks of carrying the child to term*;

(b) the physician or an agent of the physician:

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(i) that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(ii) that the father is liable to assist in the support of the child, even in instances in which the father has offered to pay for the abortion; and

(iii) that the woman has the right to review the printed materials described in [section 4]; and

(c) the physician or the agent that the printed materials described in [section 4] have been provided by the department and that the materials describe the unborn child and list agencies that offer alternatives to abortion.

~~(5)~~*(6)* "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid."

Section 10. Section 50-20-106, MCA, is amended to read:

"50-20-106. ~~Consent to abortion~~ *Informed consent.* (1) No *An* abortion may *not* be performed ~~upon any woman in the absence of~~ *without the* informed consent *of the woman upon whom the abortion is to be performed. The informed consent must be received at least 24 hours prior to the abortion and certified prior to or at the time of the abortion.*

(2) Informed consent ~~may~~ *must* be evidenced *certified* by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that he *the physician* has made the full disclosure provided in 50-20-104~~(4)~~*(5)* and in which the woman upon whom the abortion is to be performed acknowledges that the ~~above~~ disclosures have been made to ~~her~~ *the woman* and that she *the woman* voluntarily consents to the abortion.

(3) If a woman chooses to review the written materials described in [section 4], the materials must be provided to her at least 24 hours before the abortion or be mailed to the woman by certified mail, with delivery restricted to the addressee, at least 72 hours before the abortion.

(4) The information required in 50-20-104(5)(a) may be provided by telephone without conducting a physical examination or tests of the patient. The information may be based on facts supplied to the physician by the woman and other relevant information that is reasonably available to the physician. The information may not be provided by a tape recording but must be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician. If a physical examination, tests, or the availability of other information subsequently indicates, in the medical judgment of the physician, a revision of information previously provided to the patient, the revised information may be communicated to the patient at any time prior to the performance of the abortion.

(5) The information required in 50-20-104(5)(b) may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials.

~~(3)~~*(6)* The ~~above~~ informed consent or consent *provided for in this section* is not required if a licensed physician certifies *that* the abortion is necessary to

~~preserve the life of the mother~~ *because of a medical emergency as defined in [section 3].*

~~(4)~~*(7)* No *An* executive officer, administrative agency, or public employee of the state or of any local governmental body ~~has power to~~ *may not* issue any order requiring an abortion or shall coerce any woman to have an abortion~~,~~. ~~nor shall any~~ *A* person *may not* coerce any woman to have an abortion.

~~(5)~~*(8)* Violation of subsections (1) and ~~(4)~~ *through (7)* of this section is a misdemeanor."

Section 11. Section 50-20-112, MCA, is amended to read:

"**50-20-112. Penalties.** (1) A person convicted of deliberate, mitigated, or negligent homicide under this chapter is subject to the penalties prescribed by 45-5-102 through 45-5-104.

(2) A person convicted of a felony other than deliberate, mitigated, or negligent homicide under this chapter is subject to a fine not to exceed $1,000, imprisonment in the state prison for a term not to exceed 5 years, or both.

(3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed $500, imprisonment in the county jail for a term not to exceed 6 months, or both.

(4)(a) A penalty may not be imposed against the woman upon whom the abortion is performed or attempted to be performed.

(b) A penalty may not be imposed for failure to comply with the provision of 50-20-106 that requires a written certification that the woman has been informed of the opportunity to review the information referred to in [section 4] if the department has not made the written materials available at the time that the physician or the physician's agent is required to inform the woman of the right to review the materials."

Section 12. Construction. [Sections 1 through 10] may not be construed as creating or recognizing a right to abortion. [Sections 1 through 10] do not make lawful any abortion that is currently unlawful.

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 8].

Section 15. Effective date. [This act] is effective July 1, 1995.

Approved April 26, 1995

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CHAPTER NO. 567

[SB 333]

AN ACT REQUIRING THAT A FIRST-TIME OFFENDER OF DRIVING UNDER THE INFLUENCE OR WITH EXCESSIVE ALCOHOL CONCENTRATION WHO IS DIAGNOSED AS CHEMICALLY DEPENDENT RECEIVE TREATMENT; REQUIRING THAT A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH EXCESSIVE ALCOHOL CONCENTRATION RECEIVE TREATMENT BASED UPON THE FINDINGS OF A CERTIFIED CHEMICAL DEPENDENCY COUNSELOR PURSUANT TO DIAGNOSIS AND PATIENT PLACEMENT RULES ADOPTED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; REQUIRING AT LEAST 1 YEAR OF TREATMENT FOLLOWUP AFTER A SECOND OR SUBSEQUENT CONVICTION; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"**61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (7), on a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (7), on the third or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000. Except as provided in subsection (7), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that

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the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may~~, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor,~~ include alcohol or drug treatment, or both. *Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of corrections and human services.* On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which must include alcohol or drug treatment, or both. ~~Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.~~ As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol *or drug* problem, *or both,* as determined by ~~the judge based upon the recommendation from the~~ *a* certified chemical dependency counselor *pursuant to diagnosis and patient placement rules adopted by the department of corrections and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors. On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or counselor may not require attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend the information course or treatment program, the counselor shall notify the court of the failure.*

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

Section 2. Section 61-8-722, MCA, is amended to read:

"61-8-722. **Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, ~~he~~ *a person* shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, ~~he~~ *a person* shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

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(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may *must* include alcohol or drug treatment, or both, ~~if considered necessary by the counselor conducting the program~~ *in accordance with the provisions of 61-8-714*. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

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Approved April 26, 1995

CHAPTER NO. 568

[SB 386]

AN ACT EXEMPTING CERTAIN NONCOMMERCIAL FARM AND RESIDENTIAL UNDERGROUND STORAGE TANKS THAT ARE 1,100 GALLONS OR LESS IN CAPACITY FROM THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT; EXCLUDING CERTAIN NONCOMMERCIAL FARM AND RESIDENTIAL UNDERGROUND STORAGE TANKS THAT ARE 1,100 GALLONS OR LESS IN CAPACITY FROM REIMBURSEMENT FOR EXPENSES CAUSED BY A RELEASE; CREATING A VOLUNTARY COMPLIANCE PROCEDURE FOR REIMBURSEMENT; AMENDING SECTIONS 75-10-403 AND 75-11-209, MCA; REPEALING SECTION 75-11-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-403, MCA, is amended to read:

"75-10-403. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

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(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(10) "Manifest" means the shipping document originated and signed by the generator and ~~which~~ *that* is used to identify the hazardous waste~~;~~ *and* its quantity, origin, and destination during its transportation.

(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(12) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction ~~thereof~~ *of crude oil*, ~~which~~ *that* is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

(13) "Storage" means the actual or intended containment of regulated substances, hazardous wastes, or both, either on a temporary basis or for a period of years.

(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological

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character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(17) "Underground storage tank":

(a) means, except as provided in subsections (17)(b)(i) through ~~(17)(b)(viii)~~ *(17)(b)(xi)*:

(i) any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely ~~above-ground~~ *aboveground*, partially ~~above-ground~~ *aboveground*, or entirely underground;

(b) does not include:

(i) a farm or residential tank that was installed as of [the effective date of this act], that has a capacity of 1,100 gallons or less, and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of [the effective date of this act], that has a capacity of 1,100 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of [the effective date of this act] and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

~~(i)~~*(iv)* a septic tank;

~~(ii)~~*(v)* a pipeline facility, ~~(~~including gathering lines~~)~~, regulated under:

~~(~~A) the Natural Gas Pipeline Safety Act of 1968, ~~(~~49 U.S.C. 1671, et seq.~~)~~;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, ~~(~~49 U.S.C. 2001, et seq.~~)~~; or

(C) state law comparable to the provisions of law referred to in subsection ~~(17)(b)(ii)(A)~~ *(17)(b)(v)(A)* or ~~(17)(b)(ii)(B)~~ *(17)(b)(v)(B)*, if the facility is intrastate;

~~(iii)~~*(vi)* a surface impoundment, pit, pond, or lagoon;

~~(iv)~~*(vii)* a storm water or wastewater collection system;

~~(v)~~*(viii)* a flow-through process tank;

~~(vi)~~*(ix)* a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

~~(vii)~~*(x)* a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

~~(viii)~~*(xi)* any pipe connected to a tank described in subsections (17)(b)(i) through ~~(17)(b)(vi)~~ *(17)(b)(ix)*."

Section 2. Section 75-11-209, MCA, is amended to read:

"75-11-209. Permits — requirement for licensed installer. (1) A person may not install or close, or cause to be installed or closed, an underground storage tank system without a permit issued by the department as provided in 75-11-212.

(2) In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank system unless tbe installation or closure is:

~~(a)~~ inspected by a department inspector or a designated local inspector as provided in 75-11-213~~; or~~

~~(b) exempt from the requirement for a licensed installer, as provided in 75-11-217~~."

Section 3. Voluntary compliance — reimbursement. (1) For the purposes of this section, a tank is:

(a) a farm or residential underground storage tank installed as of [the effective date of this act] with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(b) a farm or residential underground storage tank installed as of [the effective date of this act] witb a capacity of 1,100 gallons or less that is used for storing heating oil for consumptive use on the premises where it is stored; or

(c) farm or residential underground pipes installed as of [tbe effective date of this act] used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less.

(2) If an owner or operator of a tank voluntarily complies with the requirements under Title 75, cbapters 10 and 11, that owner may be eligible for reimbursement subject to the requirements of 75-11-307.

Section 4. Repealer. Section 75-11-217, MCA, is repealed.

Section 5. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 75, chapter 11, part 2, and the provisions of Title 75, chapter 11, part 2, apply to [section 3].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Termination. [Section 3] terminates December 31, 1995.

Approved April 27, 1995

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CHAPTER NO. 569

[SB 409]

AN ACT ALLOWING ACCREDITED NONPUBLIC SCHOOLS TO USE DYED SPECIAL FUEL IN BUSES THAT TRANSPORT PUPILS FOR NONSECTARIAN SCHOOL-RELATED PURPOSES; AMENDING SECTION 15-70-356, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-356, MCA, is amended to read:

"15-70-356. Refund or credit authorized. (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines, tractors used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel so used. The refund may not exceed the tax paid or to be paid to the state.

(2)*(a)* The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on tbe accounts declared wortbless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is

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not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund."

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved April 26, 1995

CHAPTER NO. 570

[SB 417]

AN ACT REDUCING THE TAX RATE ON BUSINESS EQUIPMENT FROM 9 PERCENT TO 6 PERCENT; PROVIDING THAT THE REDUCTION IN TAX RATES IS PHASED IN; REIMBURSING LOCAL TAXING JURISDICTIONS; PROGRESSIVELY REDUCING THE REIMBURSEMENTS; PROGRESSIVELY REDUCING THE CURRENT REMITTANCE TO COUNTY TREASURERS TO REIMBURSE LOCAL GOVERNMENTS FOR THE PREVIOUS REDUCTION IN PERSONAL PROPERTY TAX RATES; ESTABLISHING A TASK FORCE TO REVIEW LOCAL GOVERNMENT FUNDING AND TO EXAMINE ALL ASPECTS OF TAXATION IN MONTANA AND MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE ON SHORT-TERM AND LONG-TERM TAX POLICY STRATEGIES; APPROPRIATING FUNDING FOR THE TASK FORCE; REVISING LOCAL GOVERNMENT DEBT AND INDEBTEDNESS LIMITATIONS TO OFFSET THE TAX REDUCTION; AMENDING SECTIONS 7-7-2101, 7-7-2203, 7-7-4201, 7-7-4202, 15-1-111, 15-6-138, 15-24-102, AND 20-9-406, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all trailers and semitrailers, including those prorated under 15-24-102, except those subject to taxation under 61-3-504(2) or exempt under 15-6-201(1)(v);

(e) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class;

(f) buses and trucks having a rated capacity of more than 1 ton, including those prorated under 15-24-102;

(g) truck toppers weighing more than 300 pounds;

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(h) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(i) x-ray and medical and dental equipment;

(j) citizens' band radios and mobile telephones;

(k) radio and television broadcasting and transmitting equipment;

(l) cable television systems;

(m) coal and ore haulers;

(n) theater projectors and sound equipment; and

(o) all other property not included in any other class in this part, except that property subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at:

(a) 9% of its market value *for tax years ending on or before December 31, 1995;*

(b) 8% of its market value for tax year 1996;

(c) 7% of its market value for tax year 1997; and

(d) 6% of its market value for tax years beginning afte. December 31, 1997."

Section 2. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions. (1) On or before January 1, 1996, for the reduction in payment under subsection (4) and by June 1 of 1996, 1997, and 1998, for all other reimbursements in this section, the department of revenue shall determine a reimbursement amount associated with reducing the tax rate in 15-6-138 and provide that information to each county treasurer. The reimbursement amount must be determined for each local government taxing jurisdiction that levied mills on the taxable value of property described in 15-6-138 in the corresponding tax year. However, the reimbursement does not apply to property described in 15-6-138 that has a reduced tax rate under 15-24-1402.

(2) (a) The reimbursement amount to be used as the basis for the payment reduction under subsection (4) is the product of multiplying the tax year 1995 taxable value of property described in 15-6-138 for each local government taxing jurisdiction by the tax year 1995 mill levy for the jurisdiction and then multiplying by 1/9th.

(b) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1996 is the amount determined under subsection (2)(a)

unless the tax year 1996 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1996 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1996 is the result of subtracting the simulated 1996 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1996 tax for the particular jurisdiction is the actual tax year 1996 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1996 tax is greater than the 1995 tax, the reimbursement amount is zero.

(c) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1997 is the amount determined under subsection (2)(a) multiplied by two unless the tax year 1997 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1997 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1997 is the result of subtracting the simulated 1997 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1997 tax for the particular jurisdiction is the actual tax year 1997 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1997 tax is greater than the 1995 tax, the reimbursement amount is zero.

(d) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1998 is the amount determined under subsection (2)(a) multiplied by three unless the tax year 1998 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1998 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1998 is the result of subtracting the simulated 1998 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1998 tax for the particular jurisdiction is the actual tax year 1998 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1998 tax is greater than the 1995 tax, the reimbursement amount is zero.

(3) (a) For purposes of this section, "local government taxing jurisdiction" means a local government rather than a state taxing jurisdiction that levied mills against property described in 15-6-138, including county governments,

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incorporated city and town governments, consolidated county and city governments, tax increment financing districts, local elementary and high school districts, local community college and vocational-technical center districts, miscellaneous districts, and special districts. The term includes countywide mills levied for equalization of school retirement or transportation.

(b) The term does not include county or state school equalization levies provided for in 20-9-331, 20-9-333, and 20-9-360 or the university levy provided for in 15-10-106. It also does not include any state levy for welfare programs provided for in 53-2-813.

(c) Each tax increment financing district must receive the benefit of the state mill on the incremental taxable value of the district.

(4) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1996 by an amount equal to 38% of the reimbursement amount determined under subsection (2)(a) for all of the local government taxing jurisdictions in the county.

(5) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1996 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(6) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(7) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(8) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(9) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(10) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1999 by an amount equal to 69% of the reimbursement amount for tax year 1998 for all of the local government taxing

jurisdictions in the county, as determined by the department under subsection (2).

(11) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of the years 1999 through 2007 by an amount equal to 31% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(12) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of the years 2000 through 2008 by an amount equal to 69% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(13) (a) The reimbursement amount for tax year 1999 and each subsequent tax year for 9 years must be progressively reduced each year by 10% of the reimbursement amount for tax year 1999, according to the following schedule:

Tax Year	Percentage of 1999 Reimbursement Amount
1999	90
2000	80
2001	70
2002	60
2003	50
2004	40
2005	30
2006	20
2007	10
2008 and following years	0

(b) The reimbursement amount for each tax year must be the basis for reducing the amount remitted to the state for the levy imposed under 20-9-360 in December of the same year and June of the following year.

(14) The county treasurer shall use the funds from the reduced payment to the state for the levy imposed under 20-9-360 to reimburse each local government taxing jurisdiction in the amount determined by the department under subsection (2). The reimbursement must be distributed to funds within local government taxing jurisdictions in the same manner as taxes on property described in 15-6-138 are distributed. The reimbursement in June must be distributed based on the prior year's mill levy, and the reimbursement in December must be based on the current year's mill levy.

(15) Each local government taxing jurisdiction receiving reimbursements shall consider the amount of reimbursement that will be received and lower the mill levy otherwise necessary to fund the budget by the amount that would otherwise have to be raised by the mill levy.

(16) A local government taxing jurisdiction that ceases to exist after [the effective date of this act] will no longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 1996, will not be considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January

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of 1996 is split between two or more taxing jurisdictions or is annexed to or is consolidated with another taxing jurisdiction, the department shall determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions.

Section 3. Task force — review of taxation and local government funding. (1) There is a Montana tax policy task force to study all aspects of taxation in Montana and to make findings regarding the burden of state and local taxation borne by various segments of the state's economy and by various categories of individual taxpayers. The task force in its study shall consider but not limit itself to:

(a) the existing sources and levels of taxation, with particular attention given to the classification of property and the taxable percentages applied to that property, and an evaluation of the sources and levels of taxation;

(b) the relationship between federal income tax laws and state income tax laws and the impact of federal tax laws on the state;

(c) the relative portion of the total amount of taxes that is collected from each segment of the business community and each category of individual taxpayer;

(d) the impact of state and local taxation on economic development;

(e) the relationship between taxes and the revenue needs of the state and local governments;

(f) the relationship between tax burden, ability to pay, and benefits received from government;

(g) alternative methods of taxation from existing sources as well as new sources of revenue and an evaluation of the alternative methods and new sources; and

(h) funding for local governments, other than public schools, because local governments have come under increasing financial pressures over the last several years and it is clear that viable solutions to funding issues must be found in order for Montana citizens to continue to receive those services traditionally provided by local governments.

(2) Based on the findings pursuant to the study required under subsection (1), the task force shall develop recommendations, alternatives, or both, for 2-year, 10-year, and 25-year tax policy strategies for Montana.

(3) The task force, in its deliberations, shall solicit the knowledge and advice of economists, tax policy experts, representatives of tax reform coalitions, local governments, small business organizations, large industries, agriculture, the Montana chamber of commerce, appropriate state agencies, and the general public.

(4) In reviewing local government funding, the task force shall study:

(a) the current sources of funding for local government services, other than public schools;

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(b) the continued viability of current funding sources;

(c) the need for additional or alternative funding sources;

(d) the financial and funding restraints currently imposed on local governments;

(e) the challenges facing local governments in providing traditional services in the future;

(f) the need for more flexibility in meeting future financial challenges;

(g) the ability of local governments to meet their budget requirements in the future; and

(h) other issues related to local government finances.

(5) The task force is allocated to the department of revenue for administrative purposes only as provided in 2-15-121.

Section 4. Membership — appointment — vacancies. (1) The task force created by [section 3] is composed of the following members:

(a) eight members appointed by the governor, who are broadly representative of taxpayer groups, business and industry, labor organizations, local government, and consumers of governmental services;

(b) four members of the house of representatives, of which no more than two may be of the same political party, appointed by the speaker of the house; and

(c) four members of the senate, of which no more than two may be of the same political party, appointed by the committee on committees.

(2) Task force members must be appointed and designated no later than July 15, 1995.

(3) The task force shall elect its presiding officer.

(4) A vacancy occurring on the task force must be filled in the same manner as the original appointment.

Section 5. Remuneration. (1) Each member of the task force provided for in [section 3], except the legislative members, is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

(2) Each legislative member of the task force is entitled to compensation as provided in 5-2-301 and 5-2-302, as applicable.

(3) In addition to expenditures referred to in subsections (1) and (2), task force funds may be spent for staff support, contracted services, and other expenses required to fulfill the purpose and needs of the task force.

Section 6. Meetings — report to governor and legislature. (1) The task force provided for in [section 3] shall meet by September 15, 1995, and at the request of the presiding officer thereafter.

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(2) The task force shall submit its findings and recommendations to the governor and the legislature on or before October 1, 1996.

Section 7. Gifts and grants. The task force provided for in [section 3] may accept payments, contributions, gifts, and grants, in money or otherwise, for the purposes set forth in [section 3]. All payments, monetary contributions, gifts, and grants received by the task force must be deposited in an account in the state special revenue fund provided for in [section 8].

Section 8. Special revenue account. There is an account in the state special revenue fund. The account consists of all payments, monetary contributions, gifts, and grants received pursuant to [section 7].

Section 9. Section 15-1-111, MCA, is amended to read:

"15-1-111. Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation. (1) Prior to September 1, 1990, the department's agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:

(a) the number of mills levied in the jurisdiction for tax year 1989;

(b) the number of mills levied in the jurisdiction for tax year 1990;

(c) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and

(d) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property secured by real property.

(2) After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, *prior to 1994*, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145, *prior to 1994*. The department shall total the amounts for all taxing jurisdictions within the county.

(3) (a) The department shall remit to the county treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31.

(b) For tax year 1993 ~~and for each tax year thereafter~~ *through tax year 1998*, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(c) (i) For tax year 1999 through tax year 2008, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, progressively reduced by 10% of the 1991 amount each year, in accordance with the following schedule:

Tax Year	*Percentage of 1991 Remittance Amount*
1999	*90*
2000	*80*
2001	*70*
2002	*60*
2003	*50*
2004	*40*
2005	*30*
2006	*20*
2007	*10*
2008 and following years	*0*

(ii) The amount remitted must be adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(4) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(5) For the purposes of this section and subject to subsection (7), "taxing jurisdiction" means a jurisdiction levying mills against personal property and includes but is not limited to a county, city, school district, tax increment financing district, and miscellaneous taxing district and the state of Montana.

(6) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on personal property.

(7) The following apply to taxing jurisdictions that were altered after tax year 1989:

(a) A taxing jurisdiction that existed in tax year 1989 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1989 and that is split into two or more taxing jurisdictions *or that is annexed to or is consolidated with another taxing jurisdiction* is entitled to reimbursement based on the portion of 1989 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1989 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 1989 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (7)(b)."

Section 10. Section 15-24-102, MCA, is amended to read:

"15-24-102. Valuation of interstate fleets — determination of aggregate tax due — exemption from mill levies. The department of revenue shall assess the taxable vehicles of any interstate motor vehicle fleet making application for proportional registration, as follows:

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(1) The purchase price of the taxable vehicles depreciated by a schedule as prescribed by the department determines the depreciated value.

(2) The depreciated value multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, is the market value.

(3) The sum of the market value of all taxable vehicles included in the fleet multiplied by ~~9%~~ *the tax rate for class eight property in 15-6-138* is the taxable value for the entire fleet as provided in 15-6-138.

(4) To determine the amount of tax due, the taxable value of the entire fleet must be multiplied by the statewide average county mill levy plus state levies as provided in 15-24-103.

(5) To determine the tax due under this chapter, state levies applicable to interstate motor vehicle fleets include but are not limited to levies imposed under 15-10-101, 15-10-106, 20-9-331, 20-9-333, 20-9-360, and 53-2-813.

(6) All taxes and fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in 15-24-105."

Section 11. Section 7-7-2101, MCA, is amended to read:

"**7-7-2101. Limitation on amount of county indebtedness.** (1) A county may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness, *plus, for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 23%.*

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 12. Section 7-7-2203, MCA, is amended to read:

"**7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), a county may not issue general

obligation bonds for any purpose that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds, *plus, for general obligation bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 11.25%.*

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, when necessary to do so, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, *to be ascertained by the last assessment for state and county taxes, plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 27.75%,* for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings on the site and furnishing and equipping the buildings for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, *plus the adjustments permitted by 7-7-2101.*

(4) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 13. Section 7-7-4201, MCA, is amended to read:

"7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as otherwise provided, no *a* city or town may *not* issue bonds or incur other

indebtedness for any purpose in an amount ~~which~~ *that* with all outstanding and unpaid indebtedness will exceed 28% of the taxable value of the property ~~therein~~ *in the city or town* subject to taxation, to be ascertained by the last assessment for state and county taxes, *plus, for bonds to be issued or other indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the city or town for tax year 1995, for bonds to be issued or other indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the city or town for tax year 1995, and for bonds to be issued or other indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, in each case of class eight property, multiplied by 28%.*

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town."

Section 14. Section 7-7-4202, MCA, is amended to read:

"**7-7-4202. Special provisions relating to water and sewer systems.** (1) Notwithstanding the provisions of 7-7-4201, for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town ~~which~~ *that* owns and controls the water supply and water system and devotes the ~~revenues therefrom~~ *revenue from the water supply and water system* to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both ~~such~~ *of the* purposes, including all indebtedness ~~theretofore~~ *that is* contracted ~~which~~ *and that* is unpaid or outstanding, may not in the aggregate exceed 55% over and above the 28%, referred to in 7-7-4201, of the taxable value of the property ~~therein~~ *in the city or town* subject to taxation as *to be* ascertained by the last assessment for state and county taxes, *plus, for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the city or town for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the city or town for tax year 1995, and for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, in each case of class eight property, multiplied by 55%.*"

Section 15. Section 20-9-406, MCA, is amended to read:

"**20-9-406. Limitations on amount of bond issue.** (1) (a) Except as provided in subsection (1)(c), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation as *to be* ascertained by the last completed assessment for state, county,

and school taxes previous to the incurring of the indebtedness, *plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, in each case of class eight property, multiplied by 45%.*

(b) Except as provided in subsection (1)(c), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation as *to be* ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness, *plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, in each case of class eight property, multiplied by 90%.* The total indebtedness of the high school district with an attached elementary district must be limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for bigh school program purposes, *adjusted as provided in this section.*

(c) The maximum amount for which an elementary district or a high school district that qualifies for guaranteed tax base aid under the provisions of 20-9-367 may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(2) The maximum amounts determined in subsection (1), however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of the amount are void, except as provided in this section.

(3) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(4) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly."

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Section 16. Appropriation. There is appropriated from the general fund to the department of revenue $15,000 for the use of the task force provided for in [section 3].

Section 17. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 15, chapter 1, and the provisions of Title 15, chapter 1, apply to [section 2].

Section 18. Termination. [Sections 3 through 8] terminate June 30, 1997.

Section 19. Coordination. If House Bill No. 497 is not passed and approved, then [this act] is void.

Approved April 27, 1995

CHAPTER NO. 571

[HB 90]

AN ACT EXEMPTING THE FIRST 3 BARRELS A DAY OF STRIPPER WELL PRODUCTION FROM THE STATE SEVERANCE TAX IF THE AVERAGE PRICE PER BARREL OF OIL RECEIVED DURING A CALENDAR QUARTER IS LESS THAN $30; EXCLUDING NONWORKING INTEREST OWNERS FROM THE STRIPPER WELL EXEMPTION; AMENDING SECTIONS 15-36-101 AND 15-36-121, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-101, MCA, is amended to read:

"**15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption.** (1) ~~Every~~ *Each* person ~~engaging in or carrying on the business of producing~~ *who produces* petroleum, other mineral or crude oil, or natural gas within this state or ~~engaging in or carrying on the business of owning, controlling, managing, leasing, or operating~~ *who owns, controls, manages, leases, or operates* within this state any well or wells from which any ~~merchantable or~~ marketable petroleum, other mineral or crude oil, or natural gas is ~~extracted or~~ produced shall, except as provided in 15-36-121, ~~each year when engaged in or carrying on the business in this state~~ pay to the department of revenue a state severance tax for deposit in the *state* general fund, ~~of the state of Montana~~ plus a local government severance tax in lieu of a tax on net proceeds for replacement of property taxes formerly levied on net proceeds. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in *15-36-121 and in* subsections (1)(b) through (1)(f) *of this section*, a 5% state severance tax on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value, as defined in subsection (8)(a)(ii), of all the petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit; but in determining the amount of the state severance tax and local government

severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the gross taxable value, as defined in subsection (8)(a)(ii), of all natural gas produced by the person, other than new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) except as provided in subsection (4)(a), a 3% state severance tax on the gross taxable value of the incremental production of petroleum and other mineral or crude oil produced from a secondary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a secondary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002. For purposes of this section, a secondary recovery project must meet each of the following requirements:

(i) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(iii) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of petroleum or mineral or crude oil that may potentially be recovered. For purposes of this section, secondary recovery methods include but are not limited to:

(A) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of petroleum or mineral or crude oil from the producing formation to a producing well bore; or

(B) any other method approved by the board as a secondary recovery method.

(d) a 2.5% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit

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in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet each of the following requirements:

(i) The project must be approved as a tertiary recovery project by the board of oil and gas conservation. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(iii) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the board as a tertiary recovery method.

(e) except as provided in subsection (4)(b), a 2% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 3.3% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a tertiary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002. The tertiary recovery project must meet the requirements of subsections (1)(d)(i) through (1)(d)(iii).

(f) a 5% local government severance tax on the gross taxable value, as defined in subsection (8)(a)(ii), of all petroleum and other mineral or crude oil produced by the person other than new production produced by *from* a stripper well, as defined in subsection (9).

(2) For purposes of this section, the following definitions apply:

(a) "Board" means the board of oil and gas conservation.

(b) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(c) "Existing enhanced recovery project" means an enhanced recovery project tbat began development before January 1, 1994.

(d) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the change of injection pattern, or other operating cbanges to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered.

(e) "Incremental production" means:

(i) the volume of oil produced by either a well in primary recovery recompleted as a horizontally completed well or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(A) the commencement of the recompletion of a well as a horizontally completed well;

(B) expansion of the existing enhanced recovery project; or

(C) commencing a new enhanced recovery project; or

(ii) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of petroleum or mineral or crude oil from the enhanced recovery project.

(f) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

(g) "Operator" or "producer" means the person responsible for the actual physical operation of an enhanced recovery project.

(h) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(i) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded secondary recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department of revenue by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under subsection (1)(c) or (1)(e).

(j) "Secondary recovery project" means an enhanced recovery project that is not a tertiary recovery project.

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(k) "Tertiary recovery project" means an enhanced recovery project using a tertiary recovery method described in subsection (1)(d)(iii).

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(2) and under subsections (1)(a) through (1)(f) of this section.

(4) (a) Incremental production from a secondary recovery project is subject to the tax rate imposed in subsection (1)(c) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a secondary recovery project is taxed as provided in subsection (1)(a) for production occurring in that quarter.

(b) Incremental production from a tertiary recovery project is subject to the tax rate imposed in subsection (1)(e) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a tertiary recovery project is taxed as provided in subsection (1)(d) for production occurring in that quarter.

(5) For the purposes of *15-36-121(3) and for the purposes of* subsections (4)(a) and (4)(b) *of this section*, the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(6) ~~Nothing in this~~ *This* part may *not* be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum,

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other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within this state within the meaning of this section.

(7) Every *Each* person required to pay the state or local government severance tax under this section shall pay the tax in full for the person's own account and for the account of each of the other owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including an owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(8) For purposes of this section, the following definitions apply:

(a) (i) "Gross taxable value", for the purpose of computing the state severance tax, means the gross value of the product as determined in 15-36-103.

(ii) "Gross taxable value", for the purpose of computing the local government severance tax, means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit.

(9) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels a day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365."

Section 2. Section 15-36-121, MCA, is amended to read:

"15-36-121. Exemption from state severance tax — imposition of local government severance tax. (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year shall *must* be taxed as provided in this section. Production must be

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determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production per well is exempt from all of the state severance tax imposed by 15-36-101. The first 30,000 cubic feet of average daily production per well is subject to a local government severance tax of 10% on the gross taxable value, as defined in 15-36-101(6)(a)(ii). Everything over 30,000 cubic feet of gas produced is taxed at 1.59% on the gross taxable value for the state severance tax, plus a local government severance tax of 10% on the gross taxable value, as defined in 15-36-101(6)(a)(ii)*(8)(a)(ii)*.

(3)(a) Except as provided in subsection (3)(b), the first 3 barrels a day of petroleum and other mineral or crude oil produced by a stripper well are exempt from the state severance tax imposed by 15-36-101, but not from the local government severance tax, if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in 15-36-101(5), the first 3 barrels a day of stripper well production are taxed as provided in 15-36-101(1)(a) for production occurring in that quarter.

(b) The exemption allowed under subsection (3)(a) does not apply to the gross value paid in cash or apportioned in kind to a nonworking interest owner.

(3)*(4)* Notwithstanding the provisions of subsection *subsections* (2) *and (3)*, all reporting requirements under the state severance tax remain in effect."

Section 3. Coordination instruction. If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is amended as provided in subsections (1) and (2) of this section and the distribution of revenue must be modified as provided in subsection (3) of this section. If necessary, the code commissioner shall correct all erroneous internal references within Senate Bill No. 412 caused by this section.

(1) The definition section, [section 3], of Senate Bill No. 412, is amended by adding the following definition, in alphabetical order, and renumbering subsequent subsections:

"(20) "Stripper exemption" means the first 3 barrels a day for petroleum and other mineral or crude oil produced by a stripper well if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper exemption in that quarter. The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter."

(2)(a) The section imposing tax rates, [section 4], of Senate Bill No. 412, is amended by amending subsection (4)(b) as follows:

Following: (ii) post-1985 wells"

Insert: " (iii) stripper exemption production "

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(A) pre-1985 wells [a%] [b%]

(B) post-1985 wells [a%] [c%]

(b) The rate "a%" is 5 percentage points less than the rate for stripper oil production working interest pre-1985 and post-1985, including all changes to that rate resulting from bills other than [this act]. The rate "b%" is the same rate as stripper oil production nonworking interest pre-1985, including all changes to that rate resulting from bills other than [this act]. The rate "c%" is the same rate as stripper oil production nonworking interest post-1985, including all changes to that rate resulting from bills other than [this act].

(3) The department of revenue shall, by rule, change the formula under [section 18] of Senate Bill No. 412 for distribution of taxes collected under [section 4] of Senate Bill No. 412. In recalculating distribution rates for the revenue raised by Senate Bill No. 412, the department of revenue shall determine the revised rate according to a formula that presumes that the reduction in the tax rate for a working interest between subsections (4)(b)(iii)(A) and (4)(b)(iii)(B) of [section 4] of Senate Bill No. 412 is to be borne by the state and not local governments.

Section 4. Contingent voidness. In order to maintain a balanced budget, because [this act] reduces revenue, it may not be transmitted to the governor unless a corresponding identified reduction in spending is contained in House Bill No. 2. If a corresponding identified reduction in spending is not contained in House Bill No. 2, [this act] is void.

Section 5. Effective date — applicability. [This act] is effective July 1, 1995, and applies to all oil produced during the quarters beginning on or after July 1, 1995.

Approved May 1, 1995

CHAPTER NO. 572

[HB 293]

AN ACT PROVIDING FOR THE MODERNIZATION OF THE STATE INCOME TAX WITHHOLDING AND OLD FUND LIABILITY TAX LAWS BY PROVIDING THE OPTION OF USING MODERN TECHNOLOGY TO FILE AND REMIT TAXES; ALIGNING THE TIMING OF PAYMENT OF WITHHOLDING TAX AND OLD FUND LIABILITY TAX WITH THE PAYMENT OF FEDERAL WITHHOLDING TAX, THUS REDUCING PAPERWORK FOR BOTH THE EMPLOYERS AND THE STATE; REDUCING THE PERIOD DURING WHICH INTEREST DOES NOT HAVE TO BE PAID ON REFUNDS OF OVERPAYMENT OF INCOME TAXES FROM 6 MONTHS TO 45 DAYS; AMENDING SECTIONS 15-30-149, 15-30-201, 15-30-204, 39-71-2501, AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Electronic funds transfer and electronic reporting — employer option. (1) An employer, within 30 days of notification of the

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employer's remittance schedule as required by 15-30-204, may elect to remit and file state income tax withholding and old fund liability tax electronically. An election form must be provided with the notification of the employer's remittance schedule and, when returned to the department, is valid for the next 12 months. An employer may cancel the election provided in this section by providing written notice of the cancellation to the department.

(2) An employer who elects pursuant to subsection (1) to remit tax payments through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the department in a format established and approved by the department.

Section 2. Signature alternatives for electronically filed returns. For purposes of this part, the director of revenue may prescribe, by rule, methods for the signing, subscribing, or verifying of the electronically filed tax returns required to be filed by this part. Returns electronically filed in accordance with the methods adopted by rule have the same validity and consequences as physical forms signed by a taxpayer.

Section 3. Remittance of old fund liability tax. An employer who is not required to withhold wages pursuant to 15-30-202 but who had an old fund liability tax obligation under 39-71-2503 during the preceding lookback period, as defined in 15-30-201, is subject to the same remittance schedules and filing requirements provided in 15-30-204 as employers paying wages subject to state income tax withholding under 15-30-202.

Section 4. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision ~~thereof~~ *of the state* or any agency or instrumentality of the United States, the state of Montana, or a political subdivision thereof *of the state*. The term "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "employer" means the person having control of the payment of wages.

(4) "Lookback period" means the 12-month period ending the preceding June 30.

~~(4)~~*(5)* "Wages" means all remuneration, (other than fees paid to a public official), for services performed by an employee for his *the* employer, including

the cash value of all remuneration paid in any medium other than cash, except that the term does not include remuneration paid:

(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(b) for agricultural labor ~~as defined in subsection (1)~~;

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection ~~(4)(d)~~ *(d)*, an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during a quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, ~~(as determined under subsection (4)(d)(i))~~ *(5)(d)(i)*, by the employer in the performance of service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by ~~a duly~~ *an* ordained, commissioned, or licensed minister of a church in the exercise of ~~his~~ *the* ministry or by a member of a religious order in the exercise of duties required by the order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by ~~him~~ *the individual* at a fixed price, ~~his~~ *the individual's* compensation being based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged ~~to him~~, whether or not ~~he~~ *the individual* is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when the payments are in the form of lodgings or meals and the services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program ~~which~~ *that* benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

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(j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

(k) as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(l) by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection ~~(4)(k)~~ *(5)(k)* terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 5. Section 15-30-204, MCA, is amended to read:

"15-30-204. **~~Quarterly or weekly~~** ***Weekly, monthly, or annual*** **payment.** (1) ~~Except as provided in subsection (3), on or before the last day of April, July, October, and January, every~~ *An* employer subject to the provisions of 15-30-202 and 15-30-203 *whose total liability for withholdings during the preceding lookback period was $12,000 or greater* shall file a return in ~~such~~ *the* form and containing ~~such~~ *the* information as *that* may be required by the department and~~, except as provided in subsection (2),~~ shall pay ~~therewith~~ the amount required by 15-30-202 to be deducted and ~~withheld~~ by the employer from wages paid during the preceding ~~quarter~~ *payroll period. The payment must be submitted on or before the date on which federal income tax weekly withholding payments are due. On or before the last day of April, July, October, and January, the employer shall file a return in the form and containing the information required by the department.* ~~Quarterly~~ *The quarterly* returns for employers ~~paying weekly shall~~ *subject to this subsection must* be used to summarize and adjust payments and *to* request refunds of overpayments. *The employer shall also file the annual statement as required by 15-30-207.*

(2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings ~~equaled or exceeded $300,000 for the preceding calendar year~~ *during the preceding lookback period was less than $12,000 but greater than $1,199* shall remit a ~~weekly~~ *monthly* payment to the department for the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding ~~week~~ *month*. The ~~weekly~~ *monthly* payment must be submitted on or before the ~~date on which federal income tax weekly withholding payments are due~~ *15th day of the month following the payment of the wages. The employer subject to this subsection shall, on or before February 28 of the year following payment of the wages, file an annual return in the form and containing the information required by the department and the annual statement required by 15-30-207. The annual returns for employers subject to this subsection must be used to summarize and adjust payments and to request refunds of overpayments.*

(3) *(a)* If the total amount of the tax withheld by an employer under the provisions of 15-30-202 upon the wages of all employees of any employer is less than ~~$10 in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in subsection (1), but in lieu thereof such~~ *$1,200 for the preceding lookback period, the* employer shall, on or before February 28 of the year succeeding that in which ~~such~~ *the* wages were paid, file an annual return in ~~such~~

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the form ~~as may be~~ required by the department, *together with the annual statement required by 15-30-207,* and shall *at the same time* pay ~~therewith~~ the amount required to be deducted and withheld by the employer from all wages paid during the preceding calendar year.

(b) An employer subject to the provisions of this subsection (3) may elect to remit monthly payments. If an employer elects to make monthly payments, the employer shall remit monthly payments during the entire year and is subject to the same interest and penalty provisions as employers subject to the provisions of subsection (2).

(c) If an employer subject to the provisions of this subsection (3) does not file the annual return required by subsection (3)(a), the employer is subject to the payment and filing provisions of subsection (2) until the department determines from the employer's subsequent filing history that the employer will file in a timely fashion.

(4) (a) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period.

(b) A new employer or an employer with no filing history is subject to the provisions of subsection (2) until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

~~(4)~~*(5)* If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of income tax."

Section 6. Section 39-71-2501, MCA, is amended to read:

"**39-71-2501. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

(3) (a) "Employer" means, except as provided in subsection (3)(b), the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.

(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "employer" means the person who has control of the payment of wages.

(4) ~~"Employer's payroll" means wages paid for each of the calendar quarters ending March 31, June 30, September 30, and December 31.~~

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~~(5)~~ "State fund" means the state compensation insurance fund.

~~(6)~~*(5)* "Tax" means the workers' compensation old fund liability tax provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~(7)~~*(6)* "Tax account" means the workers' compensation tax account created by 39-71-2504.

~~(8)~~*(7)* "Wages" means all remuneration for services performed *in this state* by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection ~~(8)(a)~~ *(a)*, an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ *(7)(a)(i)*, by the employer in the performance of service during the preceding calendar quarter;

(b) for services not in the course of the employer's trade or business, to the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at the request of and for the convenience of the employer;

(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club activities;

(d) as wages or compensation, the taxation of which is prohibited by federal law."

Section 7. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the ~~employer's payroll in the preceding calendar quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding week~~ *wages paid by the employer:*

(i) for the preceding payroll period for employers subject to the payment schedule contained in 15-30-204(1);

(ii) for the preceding month for employers subject to the payment schedule contained in 15-30-204(2); and

(iii) for the preceding year for employers subject to the payment schedule contained in 15-30-204(3)(a).

(b) There is imposed on each employee, except workers engaged in the rail industry who are under the jurisdiction of the federal railroad administration, United States department of transportation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages ~~in the preceding calendar quarter~~. *Each employer making payment of wages for services performed in this state shall deduct and withhold the tax from the wages.*

(c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager.

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

(g) Each employer shall maintain the records *that* the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an

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employee's wages or fails to remit to the state the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section.

(2) All collections of the tax must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) ~~On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter and in addition shall remit withholdings for employees' old fund liability taxes at the same time.~~

~~(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings for employees' old fund liability taxes at the same time.~~

(c) Tax payments *and returns* required by subsections (1)(a) and (1)(b) must be made ~~with the return filed~~ pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

~~(d)~~*(b)* Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall~~, on July 1, 1991, or as soon after that date as possible,~~ give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. ~~After the lists have been given to the department, the~~ *The* department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data

bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

Section 8. Section 15-30-149, MCA, is amended to read:

"**15-30-149. Credits and refunds — period of limitations.** (1) If the department discovers from the examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes. Interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the taxable year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(a) the overpayment is refunded within 6 months *45 days* from the date the return is due or the date the return is filed, whichever date is later;

(b) the overpayment results from the carryback of a net operating loss; or

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(c) the amount of interest is less than $1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

Section 9. Remittance of tax for fourth quarter of 1995 — filing of required employer returns. Notwithstanding the provisions of [sections 1 and 6], the provisions of 15-30-204 and 15-30-207, as they read on January 1, 1995, govern and control the payment of tax for wages paid during 1995 and the filing of all required employer returns.

Section 10. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and the provisions of Title 39, chapter 71, part 25, apply to [section 3].

Section 11. Effective date — applicability. [This act] is effective on passage and approval and applies to tax years beginning after December 31, 1995, and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter.

Approved May 1, 1995

CHAPTER NO. 573

[HB 418]

AN ACT INCREASING THE PRIVILEGE AND LICENSE TAX ON PRODUCERS OF OIL AND NATURAL GAS; AMENDING SECTION 82-11-131, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-131, MCA, is amended to read:

"**82-11-131. Privilege and license tax.** (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter and expenses of the board, an operator or producer of oil and gas shall pay an assessment not to exceed ~~2/10~~ *3/10* of 1% of the market value of each barrel of crude petroleum originally produced, saved and marketed, or stored within the state or exported from the state and the same rate on the market value of each 10,000 cubic feet of natural gas produced, saved and marketed, or stored within the state or exported ~~therefrom~~ *from the state*.

(2) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix the amount of the assessment and may from time to time reduce or increase the amount thereof *of the assessment* as the expenses chargeable against the oil and gas conservation fund may

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require. However, the assessment fixed by the board may not exceed the limits prescribed in this section. The amount of the assessment shall *must* be a percentage factor, (not to exceed 100%), of the rate set forth in subsection (1) above, and the same percentage factor shall *must* be applied by the board in fixing the amount of the assessment on each barrel of crude production *petroleum produced* and each 10,000 cubic feet of natural gas mentioned in that subsection *produced*. A producer of the crude petroleum and natural gas shall pay the assessment on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced for himself *the producer*, as well as for another, including a royalty holder. ~~, and the~~ *The* producer shall *must* be reimbursed for the payments made on crude oil and natural gas produced for another in the same manner as he *the producer* is reimbursed for net proceeds tax paid under 15-23-607 on crude petroleum or natural gas produced for another.

(3) The department of revenue shall collect the privilege and license tax assessment in the same manner as the oil and gas severance tax is collected under Title 15, chapter 36."

Section 2. Coordination instruction. (1) If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is further amended as follows:

(a) The section imposing tax rates, [section 4] of Senate Bill No. 412, must be amended by subtracting 0.2% from all tax rates for oil and natural gas, for both the working interest and nonworking interest. The 0.2% decrease must be made regardless of other changes to those rates resulting from bills other than [this act].

(b) The section imposing tax rates on natural gas and oil production, [section 4] of Senate Bill No. 412, is amended by adding the following subsection:

"(6) The tax rates imposed under subsections (2) and (4) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131."

(c) The department of revenue shall, by rule, change the formula under [section 18] of Senate Bill No. 412 for distribution of taxes collected under [section 4] of Senate Bill No. 412. In recalculating distribution rates for the revenue raised by Senate Bill No. 412, the department of revenue shall determine the revised rate according to a formula that distributes an amount equal to the rate adopted by the board pursuant to 82-11-131 for expenses of the board of oil and gas conservation as provided in 82-11-135.

(d) The repealer section, [section 49] of Senate Bill No. 412, which repeals 82-11-131, is amended to strike that section in [section 49]. The title provision of Senate Bill No. 412 relating to repealing sections is amended to strike 82-11-131.

(2) If Senate Bill No. 412 is passed and approved, then 82-11-131(2) as amended by [this act] is further amended by striking the last sentence in that subsection as follows:

"~~*The* producer shall *must* be reimbursed for the payments made on crude oil and natural gas produced for another in the same manner as he *the producer* is~~

~~reimbursed for net proceeds tax paid under 15-23-607 on crude petroleum or natural gas produced for another.~~"

(3) If Senate Bill No. 412 is passed and approved, then 82-11-131(3) is amended to read as follows:

"(3) ~~The department of revenue shall collect~~ *For the purposes of this section, the provisions of [sections 1 through 20 of Senate Bill No. 412] apply to* the privilege and license tax assessment ~~in the same manner as the oil and gas severance tax is collected under Title 15, chapter 36.~~"

Section 3. Effective dates — applicability. (1) Except as provided in subsection (2), [this act] is effective July 1, 1995, and applies to oil and gas production occurring after June 30, 1995.

(2) [Section 2(2) and (3)], which amend 82-11-131(2) and 82-11-131(3), respectively, are effective January 1, 1996.

Approved May 1, 1995

CHAPTER NO. 574

[HB 497]

AN ACT RELATING TO PROPERTY TAXES; PROVIDING FOR A PAYMENT TO CERTAIN TAXPAYERS FOR PROPERTY TAXES PAID; REQUIRING A CLAIM FORM FOR A PROPERTY TAX PAYMENT TO BE SENT TO THE TAXPAYER; INCREASING THE EXEMPT VALUE OF RESIDENTIAL PROPERTY AND THE INCOME ELIGIBILITY SCHEDULE UNDER THE PROPERTY TAX ASSISTANCE PROGRAM; CHANGING THE APPLICATION DATE FOR THE PROGRAM FROM MARCH 1 TO MARCH 15; PROVIDING MORE INFORMATION IN THE DEPARTMENT'S NOTICE OF CLASSIFICATION, INCLUDING INFORMATION FOR COMPARISON OF MILLS AND TAXES FOR THE PRIOR YEAR; INCREASING THE MAXIMUM PROPERTY TAX CREDIT FOR THE ELDERLY TO $1,000 FROM $400; APPROPRIATING FUNDS FOR REIMBURSEMENT PAYMENTS AND FOR ADMINISTRATION OF REIMBURSEMENTS; AMENDING SECTIONS 15-6-134, 15-6-151, 15-7-102, AND 15-30-176, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Homeowner's tax payment — definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Claimant" means an individual natural person who is eligible under [sections 1 through 7] to file a claim.

(2) "Claim period" means the current property tax year that corresponds to the calendar year in which the property is assessed and the first property tax payment is due.

(3) "Household" means an association of individuals who live in the same dwelling and who share its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(4) "Owner-occupied residence" means a single-family residence, including a trailer or mobile home described in 15-6-134(1)(b), or a condominium unit that is subject to property taxes and that is owned by a claimant, individually or jointly. The residence includes all improvements used for residential purposes and associated outbuildings. A taxpayer with a life estate is an owner for purposes of [sections 1 through 7].

Section 2. Homeowner's tax payment — eligibility. (1) In order to be eligible to make a claim for payment under [sections 1 through 7], the claimant must:

(a) have occupied an owner-occupied residence in Montana as the owner or contractor for deed for at least 7 months of the claim period;

(b) be the owner on January 1 of the claim period of an owner-occupied residence that the claimant also owned on January 1, 1993;

(c) be the owner of the owner-occupied residence described in subsection (1)(b) that had a market value for the 1993 tax year that was more than 15% greater than the market value on January 1 of the 1992 tax year.

(2) A claimant may own and occupy more than one owner-occupied residence in this state during the year and still meet the occupancy requirement in subsection (1)(a) if the total occupancy is for 7 months or more.

(3) In determining the increase in values required by [section 5] and subsection (1)(c) of this section, new construction and any remodeling or additions to existing improvements may not be considered.

(4) If the claimant meets the requirements of subsection (1) on any one owner-occupied residence, all other owner-occupied residences owned by the claimant that meet the requirements of subsection (1) are eligible for the payment, whether or not the owner-occupied residence was occupied by the owner for the required time. However, a claimant may elect a payment only for a single owner-occupied residence and the payment may not be made for a residence that was leased or rented for more than 5 months during the claim period.

Section 3. Homeowner's tax payment — filing date. (1) Except as provided in subsection (2), in order to receive payment, a claim for payment must be completed and must be submitted to the department by December 31 of the claim period or within 30 days of receiving a claim form, whichever is later.

(2) The department may grant a reasonable extension of time for filing a claim whenever, in its judgment, good cause exists.

(3) If an individual who would have a claim under [sections 1 through 7] dies before filing the claim, the estate of the decedent may file the claim.

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Section 4. Homeowner's tax payment — claim form. The department shall mail a claim form to each person owning residential property on January 1 of the claim period if the residential property, exclusive of new construction and remodeling or additions to existing improvements, increased in value by more than 15% from the 1992 tax year to the 1993 tax year. The claim form must be mailed at approximately the same time as property tax notices required by 15-16-101 are mailed. The claim form must include all information necessary for the owner of the residence to claim the homeowner's tax payment. The claim form may require information necessary for the department to verify the claim.

Section 5. Homeowner's tax payment — amount. (1) Each claimant meeting the requirements of [sections 1 through 7] shall receive a homeowner's tax payment from the department if the amount of the payment exceeds $25.

(2) The amount of the payment is determined by multiplying:

(a) the amount of market value of the residence identified in [section 2(1)(b)], including land and improvements, for the 1993 tax year that exceeds 115% of the market value for the 1992 tax year; times

(b) the tax rate that applied to the residence in tax year 1993; times

(c) the mill levy that applied to the residence in tax year 1993.

(3) A payment may not exceed $1,000.

Section 6. Homeowner's tax payment — limitations. (1) Only one claimant per household is entitled to a payment in a claim period.

(2) A claim is not allowed for an owner-occupied residence that is not subject to property taxes in Montana during the claim period.

Section 7. Homeowner's tax payment — fraudulent claim — penalty — interest. If the claimant does not timely pay the property taxes for the claim period, if a false or fraudulent claim has been paid, or if a tax appeal renders the claimant ineligible the claimant shall return any payment. The amount paid may be recovered as any other debt owed the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt, excluding penalty, hears interest, at the rate of 3/4% a month or fraction of a month, from the date of the original payment of the claim until paid.

Section 8. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land, except that specifically included in another class;

(b) all improvements, including trailers or mobile homes used as a residence, except those specifically included in another class;

(c) the first ~~$80,000~~ *$100,000* or less of the market value of any improvement on real property, including trailers or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least ~~10~~ 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise

tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than ~~$10,000~~ *$15,000* for a single person or ~~$12,000~~ *$20,000* for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least 9 *nine* holes and not less than 3,000 lineal yards; and

(e) all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(2), including 1 acre of real property beneath the agricultural improvements. The 1 acre must be valued at market value.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a), (1)(b), and (1)(e) is taxed at 3.86% of its market value.

(b) (i) Property described *qualifying under the property tax assistance program* in subsection (1)(c) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
~~$0—$1,000~~ *$ 0 - $ 6,000*	~~$0—$1,200~~ *$ 0 - $ 8,000*	~~0%~~ *20%*
~~1,001—2,000~~ *6,001 - 9,200*	~~1,201—2,400~~ *8,001 - 14,000*	~~10%~~ *50%*
~~2,001—3,000~~ *9,201 - 15,000*	~~2,401—3,600~~ *14,001 - 20,000*	~~20%~~ *70%*
~~3,001—4,000~~	~~3,601—4,800~~	~~30%~~
~~4,001—5,000~~	~~4,801—6,000~~	~~40%~~
~~5,001—6,000~~	~~6,001—7,200~~	~~50%~~
~~6,001—7,000~~	~~7,201—8,400~~	~~60%~~
~~7,001—8,000~~	~~8,401—9,600~~	~~70%~~
~~8,001—9,000~~	~~9,601—10,800~~	~~80%~~
~~9,001—10,000~~	~~10,801—12,000~~	~~90%~~

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of ~~1986~~ *1995*; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

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(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

~~(3) After July 1, 1986, an adjustment may not be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111.~~

(4) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 9. Section 15-6-151, MCA, is amended to read:

"15-6-151. Application for certain class four classifications. (1) A person applying for classification of property *under the property tax assistance program* described in subsection ~~(1)(c)~~ of 15-6-134 *(1)(c)* shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(a) his *the person's* income;

(b) the fact that he *the person* maintains the land and improvements as his *the person's* primary residential dwelling, where *when* applicable; and

(c) such other information as *that* is relevant to the applicant's eligibility.

(2) This application must be made before March ~~1~~ *March 15* of the year after the applicant becomes eligible. The application remains in effect in subsequent years unless there is a change in the applicant's eligibility. The taxpayer shall inform the department of any change in eligibility. The department may inquire by mail whether any change in eligibility has taken place and may require a new statement of eligibility at any time *that* it considers necessary.

(3) The affidavit is sufficient if the applicant signs a statement affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department ~~of revenue~~. This signed statement shall *must* be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing."

Section 10. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) *(a)* The department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

~~(a)~~*(i)* change in ownership;

~~(b)~~*(ii)* change in classification;

~~(c)~~*(iii)* change in valuation; or

~~(d)~~*(iv)* addition or subtraction of personal property affixed to the land.

(b) The notice must include the following for the taxpayer's informational purposes:

(i) the total amount of mills levied against the property in the prior year;

(ii) the amount of the prior year's taxes resulting from levied mills;

(iii) an estimate of the current year's taxes based on the prior year's mills; and

(iv) a statement that the notice is not a tax bill.

(c) Any misinformation provided in the information required by subsection (1)(b) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

~~(2)~~ (a) The department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 15 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the ~~true and~~ correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

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(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 15 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 11. Section 15-30-176, MCA, is amended to read:

"15-30-176. Residential property tax credit for elderly — computation of relief. The amount of the tax credit granted under the provisions of 15-30-171 through 15-30-179 is computed as follows:

(1) In the case of a claimant who owns the homestead for which a claim is made, the credit is the amount of property tax paid less the deduction specified in subsection (4).

(2) In the case of a claimant who rents the homestead for which a claim is made, the credit is the amount of rent-equivalent tax paid less the deduction specified in subsection (4).

(3) In the case of a claimant who both owns and rents the homestead for which a claim is made, the credit is:

(a) the amount of property tax paid on the owned portion of the homestead less the deduction specified in subsection (4); plus

(b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction specified in subsection (4).

(4) Property tax paid and rent-equivalent tax paid are reduced according to the following schedule:

Household income	Amount of reduction
$ 0-999	$0
1,000-1,999	$0
2,000-2,999	the product of .006 times the household income
3,000-3,999	the product of .016 times the household income
4,000-4,999	the product of .024 times the household income

5,000-5,999	the product of .028 times the household income
6,000-6,999	the product of .032 times the household income
7,000-7,999	the product of .035 times the household income
8,000-8,999	the product of .039 times the household income
9,000-9,999	the product of .042 times the household income
10,000-10,999	the product of .045 times the household income
11,000-11,999	the product of .048 times the household income
12,000 & over	the product of .050 times the household income

(5) In no case may the credit granted exceed ~~$400~~ *$1,000*."

Section 12. Appropriations. (1) There is appropriated from the general fund to the department of revenue $7,500,000 for fiscal year 1996 and $7,500,000 for fiscal year 1997 for the homeowner's tax payment provided for in [sections 1 through 7]. Any unexpended funds may be carried over to fiscal year 1998.

(2) There is appropriated from the general fund to the department of revenue $200,000 for fiscal year 1996 and $165,000 for fiscal year 1997 for administering [sections 1 through 7]. Any unexpended funds from fiscal year 1996 are reappropriated for fiscal year 1997.

(3) There is appropriated from the general fund to the department of revenue $11,500 for fiscal year 1996 and $3,000 for fiscal year 1997 for outreach costs associated with the property tax assistance program.

Section 13. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 15, chapter 1, and the provisions of Title 15, chapter 1, apply to [sections 1 through 7].

Section 14. Effective date — applicability. (1) [This act] is effective on passage and approval.

(2) (a) Except as provided in subsection (2)(b), [this act] applies to tax years beginning after December 31, 1995.

(b) [Sections 1 through 7 and 11] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Section 15. Termination. [Sections 1 through 7] terminate December 31, 1996.

Approved May 1, 1995

CHAPTER NO. 575

[HB 543]

AN ACT REVISING THE REQUIREMENTS FOR POSTING OF SECURITY WHEN AN INJUNCTION OR RESTRAINING ORDER IS SOUGHT; REQUIRING SECURITY IN AN AMOUNT NOT EXCEEDING $50,000 TO COVER LOST WAGES, SALARIES, AND BENEFITS WHEN AN INDUSTRIAL OPERATION OR ACTIVITY IS ENJOINED OR RESTRAINED; AND AMENDING SECTIONS 27-19-306, 27-19-307, AND 27-19-403, MCA.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-19-306, MCA, is amended to read:

"27-19-306. Security for damages. (1) ~~On~~ *Subject to 25-1-402, on* granting an injunction or restraining order, the ~~court or~~ judge shall require a written undertaking to be given by the applicant~~, in such sum as the court considers proper~~, for the payment of such *the* costs and damages ~~as~~ *that* may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. ~~The~~ *Except as provided in subsection (2), the* undertaking:

(a) must be fixed at a sum that the judge considers proper; and

(b) may not be required *waived:*

(i) in domestic disputes; or ~~when the state or a state agency, a county or subdivision thereof, or a municipal corporation is the party seeking the injunction or restraining order. In any case, the court in its discretion may waive the undertaking in~~

(ii) in the interest of justice.

(2)(a) If a party seeks an injunction or restraining order against an industrial operation or activity, the judge shall require a written undertaking to be filed by the applicant. The amount of the written undertaking must be set in an amount that includes all of the wages, salaries, and benefits of the employees of the party enjoined or restrained during the anticipated time that the injunction or restraining order will be in effect. The amount of the written undertaking may not exceed $50,000 unless the interests of justice require. The written undertaking must be conditioned to indemnify the employees of the party enjoined or restrained against lost wages, salaries, and benefits sustained by reason of the injunction or restraining order.

(b) As used in subsection (2)(a), "industrial operation or activity" includes but is not limited to construction, mining, timber, and grazing operations.

~~(2)~~*(3)* Within 5 *30* days after the service of the injunction, the party enjoined may except *object* to the sufficiency of the sureties. If ~~he~~ *the party enjoined* fails to ~~do so~~ *object*, ~~he waives~~ all objections to them *the sufficiency of the sureties are waived*. When excepted *objected* to, the applicant's sureties, upon notice to the party enjoined of not less than 2 or more than 5 days, must *shall* justify before a judge or clerk in the same manner as upon bail on arrest. If ~~they~~ *the sureties* fail to justify or if others in their place fail to justify at the time and place appointed, the order granting the injunction must be dissolved.

(4) This section does not prohibit a person who is wrongfully enjoined from filing an action for any claim for relief otherwise available to that person in law or equity and does not limit the recovery that may be obtained in that action."

Section 2. Section 27-19-307, MCA, is amended to read:

"27-19-307. New undertaking for security following hearing. On a hearing to show cause, the ~~court or~~ judge may require a new undertaking, in the same or a different sum, to be given by the party who obtained the order, with like *similar* sureties and to the like *same* effect as upon granting of the original order. The persons executing the new undertaking become liable

thereon as if they had executed it *the surety* upon the granting of the original order. The persons who executed the original undertaking remain liable thereon *only* until the new undertaking is given and approved, and no longer. *A new undertaking must comply with the provisions of 27-19-306.*"

Section 3. Section 27-19-403, MCA, is amended to read:

"**27-19-403. New undertaking for security following hearing.** Upon the hearing, the court or judge may require a new undertaking, in the same or a different sum, to be given by the party who obtained the order, with like *similar* sureties and to the like *same* effect as the undertaking executed upon the granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it *the surety* upon the granting of the original order. The persons who executed the original undertaking remain liable thereon *only* until the new undertaking is given and approved, and no longer. *A new undertaking must comply with the provisions of 27-19-306.*"

Approved May 1, 1995

CHAPTER NO. 576

[HB 565]

AN ACT REVISING THE TAXATION OF CERTAIN LIVESTOCK; ALLOWING AN OWNER OF LIVESTOCK TO ELECT TO BE ASSESSED FOR TAXATION ON AN AVERAGE INVENTORY BASIS; PROVIDING THAT LIVESTOCK THAT ARE TAXED ON AN AVERAGE INVENTORY BASIS MUST BE TAXED ON AN AVERAGE INVENTORY BASIS FOR THE PER CAPITA LIVESTOCK LEVY; AMENDING SECTIONS 15-6-207, 15-24-303, 15-24-902, 15-24-903, 15-24-920, AND 15-24-922, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-902, MCA, is amended to read:

"**15-24-902. Assessment of livestock — *election for assessment on average inventory basis.*** *(1)* The *Except as provided in subsection (2), the* department *of revenue* shall assess all nonexempt livestock in each county where they are located on February 1 of each year. The livestock must be assessed to the person by whom they were owned or claimed or in whose possession or control they were at midnight of February 1 in that year.

(2) An owner of livestock may elect to have nonexempt livestock assessed on the average inventory basis as provided in [section 3]. The owner shall file an election with the department on the statement required under 15-24-903. An owner of livestock making an election to have nonexempt livestock assessed on the average inventory basis is bound by that election for 6 years. After 6 years, the election to have nonexempt livestock assessed on the average inventory basis remains in effect unless the owner otherwise notifies the department before February 1."

Section 2. Section 15-24-903, MCA, is amended to read:

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"**15-24-903. Duty of owner to assist in assessment.** (1) *(a)* The *Except as provided in subsection (1)(b), the* owner of livestock, as defined in 15-24-901, or the owner's agent, shall at the time of assessment make and deliver to the department *of revenue* for the county or counties where the owner's livestock were located on February 1 a written statement, under oath, listing the owner's different kinds of livestock within the county or counties, together with a listing of their marks and brands.

(b) If the owner of livestock is assessed on the average inventory basis, as provided in [section 3], the owner or the owner's agent shall, in the manner and timeframe provided in subsection (1)(a), report to the department the county or counties where the livestock were located in the prior tax year and show the months during the prior tax year that the livestock were within the county or counties.

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on the assessment date."

Section 3. Average inventory — computation of estimated value of livestock. (1) If the owner's livestock are assessed on the average inventory basis, the estimated value of livestock in a county on assessment day is computed by adding the assessed value of all livestock more than 24 months of age owned by the taxpayer in the county on the last day of each month of the prior tax year and dividing the sum by 12.

(2) The taxpayer shall file a statement on or before February 1 setting forth the number of all livestock more than 24 months of age owned by the taxpayer in each county on the last day of each month during the prior tax year.

Section 4. Section 15-24-922, MCA, is amended to read:

"**15-24-922. Board of livestock to prescribe per capita levy — refunds — *per capita levy on average inventory.*** (1) The board of livestock shall annually prescribe the amount of the per capita levy to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) The per capita tax levy must be calculated each year to provide not more than 110% of the average annual revenue that was generated in the 3 previous years~~, beginning with revenue generated by 81-7-104 and this section in the taxable years 1985, 1986, and 1987~~. The calculation shall *must* apply a reasonable factor for nonpayment and late payment of taxes and for reimbursement to the counties pursuant to 15-24-925 for collection of the levy.

(3) (a) A livestock owner taxed under 15-24-920 is entitled to a refund of the per capita levy collected under 15-24-921 based on the number of months the livestock have taxable situs in the state. The amount of the refund is equal to the ratio of the number of months *that* the livestock do not have taxable situs in the state to the number of months in the tax year, multiplied by the original per capita levy due. A taxpayer shall apply to the board of livestock on a form prescribed by the board for a refund allowed under this subsection by January 31 following the taxable year. The application must include a statement showing the date when the livestock were moved out of the state.

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(b) ~~For~~ *Except as provided in subsection (3)(c), for* the purposes of 15-24-921 and this section, the per capita levy may not be prorated.

(c) A taxpayer whose livestock are taxed on the average inventory basis for property tax purposes must also be taxed on an average inventory basis for the purposes of 15-24-921 and this section. All other livestock subject to the per capita tax levy must be reported on February 1 of each year."

Section 5. Section 15-6-207, MCA, is amended to read:

"**15-6-207. Agricultural exemptions.** (1) The following agricultural products are exempt from taxation:

(a) all unprocessed agricultural products on the farm or in storage and owned by the producer;

(b) all producer-held grain in storage;

(c) all unprocessed agricultural products, except livestock;

(d) except as provided in subsection (1)(e), livestock that have not attained the age of 24 months as of February 1 *or as of the last day of any month of the prior tax year if assessed on the average inventory basis as provided in 15-24-902(2)*;

(e) swine that have not attained the age of 6 months as of January 1;

(f) poultry and the unprocessed products of poultry; and

(g) bees and the unprocessed product of bees.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if such *the* implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area."

Section 6. Section 15-24-303, MCA, is amended to read:

"**15-24-303. Proration of tax on personal property — refund.** (1) The tax on personal property brought, driven, coming into, or otherwise located in the state on or after the assessment date must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year. This section does not apply to motor vehicles taxed under Title 61, chapter 3, part 5, *or to livestock assessed under 15-24-902(2).*

(2) If property upon which taxes have been paid is removed from the state, the taxpayer may obtain a refund of a prorated portion of the taxes, subject to the requirements of 15-16-613."

Section 7. Section 15-24-920, MCA, is amended to read:

"**15-24-920. Election for proration of tax on livestock — refunds — additional assessment.** (1) An owner of livestock who moves the livestock interstate may elect to have the nonexempt livestock taxed on a prorated basis.

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(2) The owner shall file an election with the department on the statement required in 15-24-903. The statement must indicate the number of months the owner's livestock will be in the state.

(3) If a livestock owner elects to be taxed on a prorated basis, the tax on livestock that are moved interstate must be prorated according to the ratio of the number of months the livestock have taxable situs in the county to the total number of months in the taxable year. Livestock must be prorated as provided in this section regardless of when the livestock gain taxable situs in the county during the taxable year.

(4) Subject to the provisions of 15-16-603 through 15-16-605, a taxpayer whose nonexempt livestock are assessed under subsection (3) for a period longer than the actual number of months that the livestock have taxable situs in the state is entitled to a refund. The amount of the refund is equal to the difference between the original prorated amount paid and the subsequent amount owed after the actual number of tax situs months are determined at the end of the tax year. A taxpayer shall apply for a refund allowed under this subsection by January 31 following the year of assessment. The application must include a statement showing the date when the livestock were moved out of the state.

(5) A taxpayer whose nonexempt livestock are assessed under subsection (3) for a period shorter than the actual number of months that the livestock have taxable situs is subject to additional taxes for the number of additional months that the livestock has taxable situs in the state.

(6) A taxpayer whose livestock are assessed under 15-24-902(2) is not entitled to a refund under this part."

Section 8. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 15, chapter 24, part 9, and the provisions of Title 15, chapter 24, part 9, apply to [section 3].

Section 9. Applicability. [This act] applies to tax years beginning after December 31, 1995.

Approved May 1, 1995

CHAPTER NO. 577

[HB 569]

AN ACT REVISING THE ALLOCATION OF THE METAL MINES LICENSE TAX; ALLOCATING A PORTION OF THE TAX TO THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM ACCOUNT AND TO THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM ACCOUNT; ANNUALLY ALLOCATING $240,000 FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM ACCOUNT TO MONTANA STATE UNIVERSITY - NORTHERN; INSERTING LANGUAGE RELATING TO THE GROUND WATER ASSESSMENT ACCOUNT TO CONFORM TO SENATE BILL NO. 46, WHICH WAS ENACTED AS CHAPTER 31, LAWS OF 1995; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 15-38-202, 20-9-231, 85-1-604, AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the state resource indemnity trust fund, ~~15.5%~~ *8.5%* of total collections each year;

(d) *to the ground water assessment account established in 85-2-905, 2.2% of total collections each year;*

(e) to the reclamation and development grants program state special revenue account, 4.8% of total collections each year; and

(f) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection ~~(1)(d)(i)~~ *(1)(f)(i)* to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection ~~(1)~~(d) *(1)(f)* in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection ~~(1)~~(d) *(1)(f)*. The allocation to the county described by subsection ~~(1)~~(d) *(1)(f)* is a statutory appropriation pursuant to 17-7-502."

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Section 2. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) beginning in fiscal year 1995, $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at northern Montana college to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;

(iv) $1,025,000 to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(v) $2,200,000 to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(vi) beginning in fiscal year 1994, $250,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(b) The remainder of the interest income is allocated as follows:

(i) Thirty-eight percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Fifteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty-one and one-half percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

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(iv) Five and one-half percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

15-38-202. (Effective July 1, 1995) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) *At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university - northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs.*

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) ~~beginning in fiscal year 1995, $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science water quality instructional programs at northern Montana college to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;~~

~~(iv)~~ beginning in fiscal year 1996, $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

~~(v)~~*(iv)* beginning in fiscal year 1996, $3 million to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

~~(vi)~~*(v)* beginning in fiscal year 1996, $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

~~(b)~~*(c)* The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 3. Section 85-1-604, MCA, is amended to read:

"85-1-604. Renewable resource grant and loan program state special revenue account created — revenues *revenue* allocated — limitations on appropriations from account. (1) There is created a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) all revenues *revenue* of the works and other money as provided in 85-1-332;

(b) ~~38%~~ of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619;

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(d) any fees or charges collected hy the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests; and

(e) ~~20%—~~of the resource indemnity tax proceeds *as provided in 15-38-106(2)(b).*

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for the following purposes and subject to the following conditions:

(a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202~~(2)~~(b)*(2)(b)(iii)* must be used for renewable resource grants.

(b) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (b) is greater than that necessary for operation and maintenance expenses, the excess may he appropriated as provided in subsection (3)(c).

(c) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(b) and only that amount may be appropriated from the account for expenditures that meet the policies and objectives of the renewable resource grant and loan program. If the amount of money available for appropriation under this subsection (c) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(d).

(d) An amount less than or equal to that paid into the account from the sources provided for in subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be appropriated from the account for loans and grants for renewable resource projects; for purchase of liens and operation of property as provided in 85-1-615; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants."

Section 4. Section 90-2-1104, MCA, is amended to read:

"**90-2-1104. Reclamation and development grants account.** (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202; and

(b) the resource indemnity trust tax under the provisions of 15-38-106*; and*

(c) the metal mines license tax proceeds as provided in 15-37-117(1)(e).

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(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded prior to funding of projects."

Section 5. Section 7-6-2225, MCA, is amended to read:

"7-6-2225. County hard-rock mine trust reserve account — expenditure restrictions. (1) The governing body of a county receiving an allocation under 15-37-117~~(1)~~(d)*(1)(f)* shall establish a county hard-rock mine trust reserve account.

(2) Money received by a county pursuant to 15-37-117 or 90-6-331 must remain in the account and may not be appropriated by the governing body until:

(a) a mining operation has permanently ceased all mining related activity; or

(b) the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

(3) If the circumstances described in subsections *subsection* (2)(a) or (2)(b) occur, the governing body of the county must allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county, and may use the remaining funds in the account to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining work force described in subsection (2)(b);

(b) decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within the jurisdiction of a local government unit;

(d) attract new industry to the impact area;

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by tbe changes in mining activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

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(5) Money in the reserve account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account."

Section 6. Section 7-6-2226, MCA, is amended to read:

"7-6-2226. Metal mines tax reserve account. (1) The governing body of a county receiving tax collections under 15-37-117~~(1)(d)~~*(1)(f)* may establish a metal mines tax reserve account to be used to hold the collections. The governing body may hold money in the account for any time period ~~deemed~~ *considered* appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose provided by law.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve account must be credited to the account."

Section 7. Section 20-9-231, MCA, is amended to read:

"20-9-231. Metal mines tax reserve fund. (1) The governing body of a local school district receiving tax collections under 15-37-117~~(1)(d)~~*(1)(f)* may establish a metal mines tax reserve fund to be used to hold the collections. The governing body may hold money in the fund for any time period considered appropriate by the governing body. Money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose provided by law.

(3) Money in the fund must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund under the provisions of this title."

Section 8. Coordination instruction. If Senate Bill No. 46 and [this act] are both passed and approved, then the amendment to 15-37-117(1)(c) contained in Senate Bill No. 46, relating to the percentage allocation to the resource indemnity trust fund, is void.

Section 9. Effective date. [This act] is effective July 1, 1995.

Approved May 1, 1995

CHAPTER NO. 578

[HB 587]

AN ACT GENERALLY REVISING CIGARETTE AND TOBACCO LAWS IN TITLE 16, CHAPTERS 10 AND 11, MCA; CLARIFYING PROVISIONS RELATING TO THE MONTANA CIGARETTE SALES ACT, THE CIGARETTE SALES TAX, THE TAX ON TOBACCO PRODUCTS, AND THE

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YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; AMENDING SECTIONS 3-10-301, 16-10-102, 16-10-103, 16-10-104, 16-10-201, 16-10-204, 16-10-301, 16-10-303, 16-10-402, 16-10-403, 16-11-102, 16-11-111, 16-11-113, 16-11-114, 16-11-115, 16-11-116, 16-11-117, 16-11-118, 16-11-121, 16-11-131, 16-11-132, 16-11-133, 16-11-143, 16-11-144, 16-11-145, 16-11-148, 16-11-149, 16-11-201, 16-11-202, 16-11-203, 16-11-204, AND 16-11-308, MCA; REPEALING SECTION 16-10-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Licensure as both wholesaler and retailer allowed. This chapter does not prevent a person from being licensed as both a wholesaler and a retailer.

Section 2. Section 3-10-301, MCA, is amended to read:

"**3-10-301. Civil jurisdiction.** (1) Except as provided in subsection ~~(2)~~ and in 3-11-103 *and in subsection (2) of this section*, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $5,000, exclusive of court costs;

(b) in actions for damages not exceeding $5,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding $5,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed $5,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding $5,000, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $5,000, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $5,000, exclusive of court costs;

(h) to issue temporary restraining orders as provided in 40-4-121(3)*;*

(i) in actions initiated by civil complaints for violations of 16-11-305(1).

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 3. Section 16-10-102, MCA, is amended to read:

"16-10-102. Declaration of policy. The advertising, offering for sale, or sale of cigarettes below cost in the retail and wholesale trades ~~with the intent of injuring competitors or lessening competition~~ is an unfair and deceptive business practice. It is the policy of the state to promote the public welfare, and it is the purpose of this chapter to carry out that policy in the public interest, stabilize the sale of cigarettes, and maximize and protect the state revenues from this source."

Section 4. Section 16-10-103, MCA, is amended to read:

"16-10-103. Definitions. When used in this chapter, ~~the following words and phrases shall have the meaning ascribed to them in this section,~~ except ~~where~~ *when* the context clearly indicates a different meaning, *the following definitions apply*:

(1) ~~"Administrative agency" or "department" shall mean the state department of revenue of Montana and, where the meaning of the context so requires, all deputies and employees duly authorized by such department.~~

~~(2)~~ "Basic cost of cigarettes" ~~shall mean~~ *means* the ~~invoice~~ *list* cost of cigarettes ~~to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower~~ *as reported to the department by the manufacturer without any deductions for discounts or taxes of any kind.*

~~(3)~~*(2)* "Business day" ~~shall mean~~ *means* any day other than a Sunday or a legal holiday.

~~(4)~~*(3)* "Cigarettes" ~~shall mean~~ *means* any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not ~~such~~ *the* tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of *nontobacco* paper or any other substance or material except tobacco.

~~(5)(a)~~*(4)(a)* The term "cost to the retailer" ~~shall mean~~ *means* the ~~"basic cost of cigarettes" to the retailer~~ *cost to the wholesaler from whom the cigarettes were purchased by the retailer* plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the retailer in his *the retailer's* determination of costs for income tax reporting purposes for the total operation of his *the retailer's* establishment. *Cost of doing business by the retailer includes* ~~and shall include within said costs~~, without limitation:

(i) labor costs (including salaries of executives and officers);

(ii) rent;

(iii) depreciation;

(iv) selling costs;

(v) maintenance of equipment;

(vi) delivery costs;

(vii) all types of licenses;;

(viii) all types of business taxes;;

(ix) all types of insurance, and;

(x) all types of advertising, including;

(xi) any rebates, *patronage dividends*, or concessions, no matter how defined, and;

(xii) expenses prior to opening for business, including all startup costs, land acquisition costs, construction costs, costs for marketing studies, and similar expenses;

(xiii) any district, central, regional, and national administrative and operation costs and expenses; and

(xiv) any and all other indirect or overhead costs with respect to the operation of the establishment *business* of the retailer.

(b) The cost of doing business by the retailer must be expressed as a percentage and applied to the "basic costs of cigarettes"; provided, however, that any *cost to the wholesaler from whom the cigarettes were purchased.*

(c) A retailer who purchases *directly* from the *a* manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining " *the* cost to the retailer" pursuant to this subsection, add the "cost of doing business by the wholesaler", as determined in subsection (6)(b) *(5)(b)*, to the "basic cost of cigarettes" to said *the* retailer, as well as the "cost of doing business by the retailer".

(b)*(d)* In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" shall be *is* presumed to be 10% of the "basic cost of cigarettes" to the retailer *cost to the wholesaler*.

(c) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer" who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler shall be presumed to be 10% of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler".

(6)(a) *(5)(a)* The term "cost to the wholesaler" shall mean *means* the "basic cost of cigarettes" to *purchased by* the wholesaler *from a manufacturer* plus the "cost of doing business by the wholesaler" as evidenced by the standards and methods of accounting regularly employed by the wholesaler in his *the wholesaler's* determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, *the wholesaler's business. The cost of doing business by the wholesaler includes,* without limitation;:

(i) labor costs (including salaries of executives and officers);;

(ii) rent~~,~~;

(iii) depreciation~~,~~;

(iv) selling costs~~,~~;

(v) maintenance of equipment~~,~~;

(vi) delivery costs~~,~~;

(vii) all types of licenses~~,~~;

(viii) all types of business taxes~~,~~;

(ix) all types of insurance~~, and~~;

(x) all types of advertising;

(xi) any rebates, patronage dividends, or concessions, no matter how defined;

(xii) expenses prior to opening for business, including all startup costs, land acquisition costs, construction costs, costs for marketing studies, and similar expenses;

(xiii) any district, central, regional, and national administrative and operation costs and expenses; and

(xiv) all other indirect or overhead costs with respect to the operation of the wholesaler.

(b) The cost of doing business by a wholesaler shall ~~also include any rebates, patronage dividends, or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the wholesaler,~~ *must be* expressed as a percentage and applied to the "basic cost of cigarettes".

~~(b)~~*(c)* In the absence of the filing with the department of proof which *that* the department declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be *is* presumed to be 5% of the "basic cost of cigarettes" to the wholesaler plus cartage to the retail outlet if performed or paid for by the wholesaler~~, which~~. *The* cartage cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, shall be *is* considered to be 3/4 of 1% of the "basic cost of cigarettes" to the wholesaler.

(6) "Department" means the department of revenue provided for in 2-15-1301 and, when the meaning of the context requires, includes its employees.

(7) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose of resale.

~~(7)~~*(8)* "Person" shall ~~mean~~ *means* ~~and include any~~ *an* individual, firm, association, company, partnership, corporation, ~~for profit or nonprofit corporation, joint stock company, club, agency, syndicate, cooperative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, and conservator~~ *or other business entity, however formed.*

~~(8)~~*(9)* "Retailer" ~~shall mean~~ *means* ~~and include any~~ *a* person who operates a store, stand, booth, ~~or~~ concession, *or other outlet* for the purpose of ~~making~~ ~~sales of~~ *selling* cigarettes at retail.

~~(9)~~*(10)* "Sale" ~~shall mean~~ *or "sell" means* any transfer *of cigarettes* for a consideration, exchange, barter, gift, offer for sale, and *or* distribution, in any manner or by any means ~~whatever~~.

~~(10)~~*(11)* "Sell at retail", "sale at retail", and *or* "retail sales" ~~shall mean and~~ include *means* any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the ~~seller's~~ *retailer's* business, to the purchaser for consumption or use.

~~(11)~~*(12)* "Sell at wholesale", "sale at wholesale", and *or* "wholesale sales" ~~shall mean~~ *means* and ~~include~~ *includes* any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(13) "Sole distributor" means a person who either causes a unique brand of cigarettes to be manufactured according to distinctive specifications and acts as the exclusive distributor of the cigarettes or is the exclusive distributor of a brand of cigarettes within the continental United States.

~~(12)~~*(14)* ~~(a)~~ "Wholesaler" ~~shall include any~~ *means a* person who *services retail outlets by maintaining an established place of business for the purchase of cigarettes and who*:

~~(i)~~*(a)* purchases cigarettes ~~directly~~ from the *a* manufacturer *for the purpose of selling cigarettes to retailers*; *or*

~~(ii)~~*(b)* purchases cigarettes from ~~any other person who purchases from the manufacturer and who acquires such cigarettes solely~~ *a sole distributor, another wholesaler, or any other person* for the purpose of ~~bona fide resale to retail~~ dealers *selling cigarettes to retailers*~~; or~~

~~(iii) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and distribution of cigarettes.~~

~~(b) Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this chapter.~~"

Section 5. Section 16-10-104, MCA, is amended to read:

"**16-10-104. Powers of department.** *(1)* In addition to the penalties and rights imposed and set forth in ~~16-10-401~~ and 16-10-402, the department shall enforce the provisions of this chapter.

(2) The department ~~shall have~~ *has* the power to adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter."

Section 6. Section 16-10-201, MCA, is amended to read:

"16-10-201. Wholesaler-to-wholesaler sales. When one wholesaler sells cigarettes to any other wholesaler, the former shall *may* not be required to include in his *the* selling price to the latter *the* "cost to the wholesaler", as provided by 16-10-103, except that no such sale shall *may* be made at a price less than the "basic cost of cigarettes", as defined in 16-10-103, but the latter wholesaler, upon resale to a retailer, shall be *is* considered to be the wholesaler governed by the provisions of 16-10-103(6)*(5)*."

Section 7. Section 16-10-204, MCA, is amended to read:

"16-10-204. Determining cost — fictitious prices *below cost* — free merchandise. (1) In determining *the* "cost to the retailer" and *the* "cost to the wholesaler", the department or a court shall receive and consider as bearing on the bona fides of such cost evidence tending to show that any person complained against under any of the *accused of violating the* provisions of this chapter purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price *below either the cost to the retailer or the cost to the wholesaler, depending upon the status of the person accused,* or upon terms or in such a manner or under such invoices as to *that* conceal the true cost, discounts, or terms of purchase. and *Further, the department or a court* shall also receive and consider as bearing on the bona fides of such cost evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or *this* state.

(2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer thereof *of the merchandise* for display, advertising, promotion purposes, *any type of discount,* or otherwise shall *may* not be considered in determining the cost of cigarettes to the retailer or wholesaler."

Section 8. Section 16-10-301, MCA, is amended to read:

"16-10-301. Sales below cost — evidence of unlawful intent. (1) It shall be *is* unlawful and a violation of this chapter:

(a)*(1)* for any retailer or wholesaler with intent to injure a competitor or substantially lessen competition to:

(i)*(a)* advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be;

(ii)*(b)* offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a concession of any kind or nature whatever in connection with the sale of cigarettes which *that* are sold by said *the* wholesaler or retailer in the ordinary course of his trade or business if such *the* rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which such *the* rebate or concession may lawfully be given;

(b)*(2)* for any retailer to:

(i)*(a)* induce or attempt to induce or procure or attempt to procure the purchase of cigarettes at a price less than *the* "cost to the wholesaler", as defined in this chapter;

~~(ii)~~*(b)* induce or attempt to induce or procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

~~(2) Evidence of advertisement, offer to sell, or sale of cigarettes by any retailer or wholesaler at less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or business, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which such rebate or concession may lawfully be given, or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer shall be prima facie evidence of intent to injure competitors or substantially lessen competition.~~"

Section 9. Section 16-10-303, MCA, is amended to read:

"16-10-303. Cost survey as evidence. ~~Where~~ *When* a cost survey pursuant to cost accounting practices~~, including those defined in 16-10-103(6)(a),~~ *used for income tax reporting purposes* has been made by the department, ~~or by~~ a trade association, ~~or other~~ *an* industry group, *a wholesaler, or a retailer* ~~for the trading area in which the offense is committed~~ to establish *either* the lowest "cost to the retailer" and *or* the lowest "cost to the wholesaler", said *or both, for the state, the* cost survey ~~shall be considered to be~~ *is* competent evidence for use in proving the cost to the person complained against within the provisions of this chapter."

Section 10. Section 16-10-402, MCA, is amended to read:

"16-10-402. Injunctive and other civil relief. (1) In addition to ~~penalties~~ *the penalty* provided by ~~16-10-401~~ *16-10-403*, any person *injured or any trade association that represents a person* injured by any violation of this chapter ~~or any trade association which is representative of such a person~~ may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such *the* violation. If in ~~such~~ *the* action a violation of this chapter ~~shall be~~ *is* established, the court shall enjoin and restrain or otherwise prohibit ~~such~~ *the* violation and, in addition ~~thereto~~, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable ~~attorney's fee~~ *attorney fees*. In ~~such~~ *the* action, it ~~shall~~ *is* not be necessary that actual damages to the plaintiff be alleged or proved, but ~~where~~ *when* alleged and proved, the plaintiff in ~~said~~ *the* action, in addition to such injunctive relief and fees and costs of suit, ~~shall be~~ *is* entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(2) ~~In the event no~~ *If* injunctive relief is *not* sought or required, any person injured by a violation of this chapter may maintain an action for damages alone in any court of competent jurisdiction. The measure of damages in ~~such~~ *the* action ~~shall be~~ *is* the same as prescribed in subsection (1) of this section."

Section 11. Section 16-10-403, MCA, is amended to read:

"16-10-403. Revocation or suspension of license or permit — *civil penalty*. (1) The department ~~is given full power and authority to~~ *may* revoke or

suspend the license *of,* ~~or permit of~~ *impose a civil penalty not to exceed $500 on, or order any combination of revocation, suspension, and penalty to be imposed on* any ~~wholesale or retail cigarette dealer in the state of Montana~~ *licensed wholesaler or retailer* upon sufficient cause appearing of the violation of this chapter or upon the failure of such *the* licensee ~~or permittee~~ to comply with any of the provisions of this chapter.

(2) No *A* license ~~or licenses shall~~ *may not* be suspended or revoked except upon notice to the licensee and after a hearing prescribed by said *the* department at its principal office. The department, upon a finding by it that the licensee has failed to comply with any provisions of this chapter or any rule promulgated thereunder *under this chapter*, shall, in the case of the *a* first offender, suspend the license ~~or licenses~~ of the said licensee for a period of not less than 5 or more than 20 consecutive business days and, in *impose a civil penalty in an amount not to exceed $500, or order both the suspension and the penalty. In* the case of a second or plural offender, *the department* shall suspend said *the* license or licenses for a period of not less than 20 consecutive business days or more than 12 months, ~~and in~~ *impose a civil penalty in an amount not to exceed $500, or order both the suspension and the penalty. In* the event the department finds the offender has been guilty of willful and persistent violations, it may revoke such *the* licensee's license ~~or licenses~~ *and, in its discretion, may impose a civil penalty in an amount not to exceed $500.*

(3) Any person whose license ~~or licenses have~~ *has* been so revoked may apply to the department at the expiration of 1 year for a reinstatement of ~~his~~ *the* license ~~or licenses~~. Such *The* license ~~or licenses~~ may be reinstated by the department if it ~~shall appear~~ *appears* to the satisfaction of said *the* department that the licensee will comply with the provisions of this chapter and the rules promulgated thereunder *under this chapter.*

(4) ~~No~~ *A* person whose license has been suspended or revoked ~~shall~~ *may not* sell cigarettes or permit cigarettes to be sold during the period of such *the* suspension or revocation on the premises occupied by ~~him~~ *the person* or upon other premises controlled by ~~him~~ *the person* or others or in any other manner or form whatever. ~~Nor shall any~~ *A* disciplinary proceedings or action be *is not* barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the provisions of the "cigarette tax law", as provided in [articles of chapter 11 of the Revised Codes of Montana, 1947].

(5) Any determination by the department and any order of suspension or revocation of a license ~~or licenses thereunder~~ or refusal to reinstate a license or licensee after revocation ~~shall be~~ *is* reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction."

Section 12. Section 16-11-102, MCA, is amended to read:

"16-11-102. Definitions. (1) As used in this chapter, the following definitions apply, unless the context requires otherwise:

(a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

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(b) "Department" means the department of revenue provided for in 2-15-1301.

(c) "Person" means an individual, firm, fiduciary~~,~~ partnership, corporation, ~~trust, organization, or~~ association, *company, or other business entity,* however formed.

(2) As used in this part, the following definitions apply, unless the context requires otherwise:

(a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that he *the person* operates for a profit in premises or locations other than his *the person's* own. That person must he treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer.

(b) "Full face value of insignia" means the total amount of the tax levied under this part.

(c) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under the provisions of this part.

(d) "Licensed retailer" means any person, other than a wholesaler, subjobber, or cigarette vendor, who is licensed under the provisions of this part.

(e) "Licensed subjobber" means a subjobber licensed under the provisions of this part. *The person* he must be treated as a wholesaler.

(f) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

(g) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose of resale.

~~(g)~~*(h)* "Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

~~(h)~~*(i)* "Record" means an original document, a legible facsimile, or an electronically preserved copy.

~~(i)~~*(j)* "Retailer" means a person~~, other than a wholesaler, subjobber, or cigarette vendor, who is engaged in the business~~ *who operates a store, stand, booth, concession, or other outlet for the purpose* of selling cigarettes at retail.

~~(j)~~*(k)* "Sale" and *or* "sell" ~~mean~~ *means* any transfer of cigarettes ~~by sale, as defined by 30-2-106, or by gift, barter, or exchange~~ *for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.*

(l) "Sole distributor" means a person who either causes a unique brand of cigarettes to be manufactured according to distinctive specifications and acts as the exclusive distributor of the cigarettes or is the exclusive distributor of a brand of cigarettes within the continental United States.

~~(k)~~*(m)* "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.

~~(l)~~*(n)* "Wholesaler" means ~~any~~ *a* person *who services retail outlets by maintaining an established place of business for the purchase of cigarettes and who:* ~~resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells, or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes within this state.~~

(i) purchases cigarettes from a manufacturer for the purpose of selling cigarettes to retailers; or

(ii) purchases cigarettes from a sole distributor, another wholesaler, or any other person for the purpose of selling cigarettes to retailers."

Section 13. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax — exemption for sale to tribal member. (1) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is 18 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to ~~a cigarette sale if the sale is made:~~

~~(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana; and~~

~~(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located~~ *quota cigarettes.*

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

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(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

Section 14. Section 16-11-113, MCA, is amended to read:

"**16-11-113. Tax insignia.** (1) Except as provided in this section, the ~~distributor or dealer~~ *wholesaler* of any cigarettes shall cause to be securely affixed to the cigarettes the required insignia denoting the applicable tax. A ~~person specifically exempted under the provisions of 16-11-132(2) is not considered to be acting unlawfully under this section.~~

(2) The insignia must be properly applied prior to sale, under regulations that the department may prescribe.

(3) ~~Wholesalers and retailers~~ *Retailers* licensed under this part may buy, sell, or have in their possession only cigarettes that have on each package the insignia provided for in this part. The insignia provided for in this part may be sold only to and must be affixed only by licensed wholesalers ~~and licensed retailers~~.

(4) If any cigarettes without the insignia affixed are found in the place of business of any unlicensed wholesaler, retailer, or other person, the presumption is that the cigarettes are kept in that place of business in violation of the provisions of this part.

(5) ~~Except as provided in 16-11-132(2), the insignia provided for in this part must be affixed before the sale of the cigarettes by a wholesaler~~ *This section does not apply to a wholesaler who has cigarettes in possession that are either to be shipped or consigned to an Indian tribe that has entered into a cooperative agreement with the state or to a military reservation.*"

Section 15. Section 16-11-114, MCA, is amended to read:

"**16-11-114. Insignia discount.** Every *Each* licensed wholesaler and ~~licensed retailer shall be~~ *is* entitled to purchase said *an* insignia at full face value

less the following percentage of the face value upon payment ~~therefor~~ *for the insignia* as defrayment of the costs of affixing insignia and precollecting ~~such~~ *the* tax on behalf of the state of Montana:

(1) 6% for the first 2,580 cartons or portion thereof purchased in any calendar month;

(2) 4% for the next 2,580 cartons or portion thereof purchased in any calendar month; and

(3) 3% for purchases in excess of 5,160 cartons in any calendar month."

Section 16. Section 16-11-115, MCA, is amended to read:

"16-11-115. Tax meter machine — tax stamp-applying machine — purchase of stamps. (1) The department may authorize any wholesaler or retailer of cigarettes licensed under this part to use a tax meter machine to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state. The insignia must be one approved by the department. Each package of cigarettes imported into or delivered or sold in this state must be marked with the proper insignia of the tax-stamping meter, and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler ~~or retailer~~ licensed under this part. The department shall supervise and check the operation of the tax meter machines. Before using the machine, the operator of the machine shall take the machine's meter to the county treasurer of the county in which the machine is operated. The county treasurer shall set the meter for the number of packages specified and required by the operator. Prior to setting the meter, the county treasurer shall charge the operator the amount of money proper for the setting, less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The county treasurer shall report to the department on forms prescribed by it the name of the licensed wholesaler ~~or licensed retailer~~ and the number of packages for which the meter was set and shall forward to the department any amounts collected from the licensee.

(2) (a) The department may authorize a licensed wholesaler ~~or licensed retailer~~ to affix tax stamps to packages of cigarettes with a heat-applied machine approved by the department. The department shall supervise and check the operation of the stamp-applying machine.

(b) Tax stamps applied as provided in this subsection must be purchased from the department, and payment for the stamps must accompany the order unless the department has allowed the purchaser to delay payment as provided in 16-11-117."

Section 17. Section 16-11-116, MCA, is amended to read:

"16-11-116. Resale of insignia prohibited — rebate. A wholesaler ~~or retailer~~ may not resell to any other wholesaler ~~or retailer~~ any insignia purchased ~~by him~~ from the department. A wholesaler ~~or retailer~~ who has on hand any meter settings or tax insignia at the time of discontinuing his *the* business of selling cigarettes may apply to the department and be paid the face value of the meter settings or tax insignia less the amount of the expense defrayment allowed by 16-11-114."

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Section 18. Section 16-11-117, MCA, is amended to read:

"16-11-117. When payment for insignia due. The department ~~shall~~ *may* permit a licensed wholesaler ~~or licensed retailer~~ to pay for the insignia purchased, or affixation of insignia, within 30 days. ~~after the date of purchase and shall require such licensee to~~ *To be eligible to defer payment, a wholesaler shall* file with the department *either* a *surety* bond ~~issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state~~ *or other cash security, as approved by the department*, for such *the* amount ~~as~~ *that* the department may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any 30-day period in the previous calendar year~~; provided, however, that~~ *. Any* newly licensed wholesaler ~~or licensed retailer~~ shall pay on a cash basis for 1 complete calendar year, after which the department may permit ~~him~~ *the wholesaler* 30 days to pay for the purchase or affixation of insignia and shall require a bond *or security* as ~~hereinabove~~ provided *in this section*."

Section 19. Section 16-11-118, MCA, is amended to read:

"16-11-118. Records of ~~tax meter users and stampers~~ *wholesalers*. All ~~tax meter users and stampers~~ *wholesalers* shall keep for 5 years all invoices of cigarettes purchased and imported ~~by them~~, all receipts issued ~~by them~~ and insignia purchased, and an accurate record of all sales of cigarettes ~~by the tax meter users or stampers~~, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and *the* destination. ~~The tax meter users or stampers~~ *A wholesaler* shall permit the department and the department of justice and their assistants, authorized agents, or representatives to examine all ~~taxable items of~~ cigarettes, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine *compliance with this chapter.* ~~whether the tax meter machine or tax stamp applying machine has been used as required or the insignia required by this part had been purchased and used or to determine the amount of the tax as may be due or unpaid.~~"

Section 20. Section 16-11-121, MCA, is amended to read:

"16-11-121. Vending machines not places of business. Cigarette vending machines ~~shall~~ *may* not be considered as places of business per se, but a report of each ~~and all machines~~ *machine* shall *must* be made on forms prescribed by the department. ~~which shall state~~ *The form must include* the name and address of the cigarette vendor, the assigned location of each machine, with best machine identification available, type of business, and such other information as *that* the department may require for proper administration of this part."

Section 21. Section 16-11-131, MCA, is amended to read:

"16-11-131. Transporting cigarettes without insignia a misdemeanor — invoices and delivery tickets required — stop and inspection authorized. (1) It is unlawful for a person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any cigarettes that do not bear the insignia (stamps) required by this part~~, except for a person specifically exempted in 16-11-132(2)~~.

(2) (a) When transporting unstamped cigarettes, a person shall possess invoices or delivery tickets for the cigarettes that show the name and address of the consignor or seller, the name of the consignee or purchaser, and the quantity and brands of the cigarettes being transported. ~~If the cigarettes are consigned to or purchased by a person in this state, the consignee or purchaser must be authorized by 16-11-132 to possess unstamped cigarettes in this state.~~

(b) The cigarettes transported are subject to seizure, forfeiture, and sale as provided in 16-11-141, 16-11-147, 16-11-158, and this section if:

(i) there are no invoices or delivery tickets;

(ii) the name or address of the consignee or purchaser is falsified; or

(iii) the consignee or purchaser is not authorized to possess unstamped cigarettes.

(3) Transportation of cigarettes from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, the department of justice, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this section, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

(5) A person violating the provisions of this section is guilty of a misdemeanor."

Section 22. Section 16-11-132, MCA, is amended to read:

"16-11-132. Unlawful to sell cigarettes without valid license — exceptions. (1) ~~No~~ *A* person shall *may not* sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, unless his *the person's* license is current and valid under the provisions of this part.

(2) ~~No~~ *A* person shall *may not* sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, or retailer who is not licensed under this part or who is not licensed by the state in which he *the person* sells, offers to sell, or intends to sell cigarettes, ~~except that~~ *However,* a resident wholesaler, resident subjobber, or retailer licensed under the provisions of this chapter may sell cigarettes to ~~a resident or~~ nonresident *any* person, wholesaler, subjobber, or retailer not licensed under this chapter if:

(a) ~~such resident or nonresident~~ *the* person, wholesaler, subjobber, or retailer is exempt from state cigarette taxation provisions;

(b) ~~such resident or nonresident~~ *the* person, wholesaler, subjobber, or retailer furnishes documentary evidence ~~that he is exempt~~ *of exemption* from state cigarette taxation provisions; and

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(c) ~~such resident or nonresident~~ *the* person, wholesaler, subjobber, or retailer signs a receipt of purchase for any cigarettes evidencing ~~that he is~~ exempt *an exemption* from state cigarette taxation provisions.

(3) Any *A* person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided *in this part*, and all cigarettes in his *the person's* possession shall *must* be seized and forfeited to the state."

Section 23. Section 16-11-133, MCA, is amended to read:

"16-11-133. Sale and use of cigarettes without insignia unlawful. Every *A* person who sells any package of cigarettes which *that* does not bear the insignia required by this part and every *a* person who uses or consumes a cigarette within this state, taken from a package which *that* does not bear the required insignia, is guilty of a misdemeanor ~~and shall be punished as hereinafter provided, except that a person specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully under this section.~~"

Section 24. Section 16-11-143, MCA, is amended to read:

"16-11-143. Penalty for unpaid cigarette tax. (1) If any *a* person fails or refuses to pay the tax required by this part when due, the department shall proceed to determine the tax due from such *the* information as *that* the department can obtain and shall assess the tax so determined *plus a penalty that is the greater of 5% of the tax or $50* against such *the* person and notify him *the person* of the amount. ~~After such notice such tax shall become due and payable, together with a penalty of 5% of such tax or $5 per day for each day after the date of such notice, whichever is greater.~~

(2) In the case of any violation of this chapter, the department ~~shall be entitled to~~ *may* sue, in the district where the department maintains its principal office, for the amount of the unpaid tax, *penalty*, and costs, including reasonable expense of the department in effecting collection of the unpaid tax *and penalty*. ~~Where~~ *When* the court finds *that* the failure to pay the tax has been willful, the court must *shall*, in addition, assess damages in treble the amount of the tax found to be due."

Section 25. Section 16-11-144, MCA, is amended to read:

"16-11-144. Revocation or suspension of license. (1) The department may revoke or suspend the license of any wholesaler, subjobber, retailer, or cigarette vendor for failure to comply with any provision of this part, ~~or of~~ The Montana Cigarette Sales Act (Title 16, chapter 10) ~~and with any lawful~~, *or any* rule of the department made pursuant to ~~said~~ *those* laws.

(2) Any *A* person aggrieved by such *a* revocation or suspension may apply to the department for a hearing, which shall *must* be open to the public. and *If the person is aggrieved by the decision of the department, the person* may further appeal to the court.

(3) When a license has been duly revoked, no *a* license ~~shall again issue to~~ such *may not be issued to the* licensee for a period of 1 year thereafter. When a

license has been duly suspended, the suspension may be for any period not to exceed 1 year.

(4) Any *A* person who ~~shall sell~~ *sells* cigarettes after ~~his~~ *the person's* license has been revoked or suspended is guilty of a misdemeanor and shall be punished as ~~hereinafter~~ provided *in this part*, and all cigarettes in ~~his~~ *the person's* possession shall *must* be seized and forfeited to the state."

Section 26. Section 16-11-145, MCA, is amended to read:

"16-11-145. Place where violations committed a public nuisance. ~~Every~~ *Each* person having possession or control of or who maintains a building or place where cigarettes are sold in violation of this part or *who* permits the ~~same to be done~~ *cigarettes to be sold in violation of this part* in any place or building possessed, controlled, or maintained by him *that person* is guilty of maintaining and keeping a nuisance~~, and the~~. *The* building or place so used, together with the personal property and fixtures used in connection therewith, ~~shall be deemed~~ *is considered* a nuisance. Such *The* person shall *must* be enjoined and such *the* building or place, personal property, and fixtures abated as a nuisance at the instance of the state."

Section 27. Section 16-11-148, MCA, is amended to read:

"16-11-148. Violation a misdemeanor unless otherwise provided — penalties. Unless ~~hereinbefore expressly~~ otherwise provided, the violation of any provision of this part ~~shall constitute~~ *constitutes* a misdemeanor ~~and any~~. *A* person violating any ~~such~~ provision *of this part* shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 30 days or more than 6 months, or by both. ~~such fine and imprisonment and, if such~~ *If the* person is the holder of a license issued under this part, ~~such~~ *the* license shall *must* be revoked by the department for ~~a period~~ of 1 year."

Section 28. Section 16-11-149, MCA, is amended to read:

"16-11-149. Hearings before state tax appeal board. Any *A* person aggrieved by any action of the department or its authorized agents under the provisions of this part, *except for a revocation of a license pursuant to 16-11-144,* may apply to the state tax appeal board, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The board shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the board may make any further or other order in the premises as it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated."

Section 29. Section 16-11-201, MCA, is amended to read:

"16-11-201. Definitions. As used in this part, the following definitions shall apply, unless the context requires otherwise:

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(1) ~~The word "retailer"~~ *"Retailer"* ~~shall mean~~ *means* any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

(2) ~~The words "sale"~~ *"Sale"* or "sell" ~~shall mean and include~~ *means* any transfer *of tobacco products* for a consideration, exchange, barter, gift, offer for sale, and *or* distribution, in any manner or by any means ~~whatever, of tobacco products other than cigarettes~~.

(3) "Tobacco product" means a substance other than cigarettes that is intended for human consumption and that contains tobacco.

~~(3)~~*(4)* ~~The words "wholesale price" shall mean~~ *"Wholesale price" means* the established price for which a manufacturer sells a tobacco product ~~other than~~ cigarettes to a wholesaler or ~~unclassified acquirer~~ *any other person* before any discount or other reduction.

~~(4)~~ *(5)* ~~The word "wholesaler" shall mean~~ *"Wholesaler" means* any person who purchases tobacco products ~~other than cigarettes~~ directly from the manufacturer or ~~who purchases tobacco products other than cigarettes~~ from any other person who purchases from the manufacturer and who acquires such *the* products for ~~the purpose of bona fide sales~~ *sale* to retail dealers ~~or who services retail outlets by the maintenance of an established place of business for the purchase of tobacco products other than cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and distribution of tobacco products~~."

Section 30. Section 16-11-202, MCA, is amended to read:

"16-11-202. Tax on sale of tobacco other than cigarettes — imposed on retail consumer — rate of tax. (1) All taxes paid pursuant to the provisions of this section ~~shall be exclusively presumed~~ *are considered* to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, ~~such~~ *the* payment ~~shall be~~ *is* considered as an advance payment and ~~shall~~ *must* be added to the price of tobacco products ~~other than cigarettes~~ and recovered from the ultimate consumer or user. Any person selling tobacco products ~~other than cigarettes~~ at retail shall state or separately display in the premises where such *the* products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section ~~shall in no way~~ *do not* affect the method of collection of such *the* tax as hereinafter provided *in this part*.

(2) There ~~is hereby levied, imposed, and assessed upon tobacco products other than cigarettes sold or possessed in this state and there shall~~ *must* be collected and paid to the state of Montana a tax of 12 1/2% of the wholesale price of such *all tobacco* products to the wholesaler, ~~excepting therefrom such products as may be~~. *Tobacco products* shipped from Montana and destined for retail sale and consumption outside the state ~~of Montana~~ *are not subject to this tax*."

Section 31. Section 16-11-203, MCA, is amended to read:

"**16-11-203. Wholesaler to precollect tax.** The tax imposed ~~shall~~ *must* be precollected and paid by the wholesaler to the department prior to the sale of tobacco products ~~other than cigarettes to the purchaser from the wholesaler~~."

Section 32. Section 16-11-204, MCA, is amended to read:

"**16-11-204. Wholesaler's sale without tax prepayment a misdemeanor — penalty.** Any *A* wholesaler who ~~shall sell~~ *sells* any tobacco products ~~other than cigarettes~~ without first making payment of the tax provided for by this part ~~in the manner and~~ *or* at the time specified shall be guilty of a misdemeanor and ~~further shall~~ *must* be enjoined by an action pursued in the district court of ~~the county of~~ Lewis and Clark *County*, Montana, from making further sale of tobacco products ~~other than cigarettes~~ for a period not less than 1 month or more than 1 year."

Section 33. Section 16-11-308, MCA, is amended to read:

"**16-11-308. Penalties.** (1) Failure to obtain a license as required by 16-11-303 or to post signs as provided in 16-11-304 is punishable by a civil penalty of $100.

(2) A person who violates 16-11-305(1) ~~may be punished by~~ *is subject to* a civil penalty of $100. A subsequent violation within 1 year ~~is punishable by~~ *subjects the person to* a civil penalty of $200. A third violation ~~is punishable by~~ *subjects the person to* a civil penalty of $300 if two violations occurred within the 2-year period prior to that violation. A fourth violation ~~is punishable by~~ *subjects the person to* a civil penalty of $500 if three or more violations occurred within the 2-year period prior to that violation.

(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction ~~is liable for a civil penalty of~~ *may be fined* not more than $100 for the first violation. A subsequent violation is punishable by a ~~civil penalty~~ *fine* of not more than $200. A third or subsequent violation is punishable by a ~~civil penalty~~ *fine* of not more than $500.

(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by ~~his~~ *the license holder's* employee or agent if the sale was without the knowledge of the license holder and the license holder shows that the license holder bad in place a system to prevent violations of 16-11-305(1).

(5) *A justice's court has civil jurisdiction over a civil complaint regarding a violation of 16-11-303, 16-11-304, or 16-11-305(1) and may impose the penalty prescribed in subsection (2) upon a finding by a preponderance of the evidence that the violation occurred.* The county attorney of the county in which a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of the penalty."

Section 34. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapters 10 and 11, part 1, and the provisions of Title 16, chapters 10 and 11, part 1, apply to [section 1].

Section 35. Repealer. Section 16-10-401, MCA, is repealed.

Section 36. Coordination instruction. If House Bill No. 539 is passed and approved and if it includes a section that amends 16-11-308 by imposing a

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tobacco education fee, then [sections 2 and 33 of this act], amending 3-10-301 and 16-11-308, respectively, are void.

Section 37. Effective date. [This act] is effective July 1, 1995.

Approved May 1, 1995

CHAPTER NO. 579

[HB 591]

AN ACT PROVIDING FOR A STATEWIDE TRAUMA CARE SYSTEM; CREATING AN EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL AND A TRAUMA CARE COMMITTEE; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CREATE AND ADMINISTER THE SYSTEM; REQUIRING THE DEPARTMENT TO ADOPT RULES; PROVIDING FOR DESIGNATION OF TRAUMA CARE FACILITIES; PROVIDING FOR REGIONAL TRAUMA CARE ADVISORY COMMITTEES; PROVIDING FOR CONFIDENTIALITY OF TRAUMA DATA AND QUALITY IMPROVEMENT RECORDS; AMENDING SECTION 50-6-103, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the Legislature recognizes that trauma is the leading cause of death and disability for Montanans under 44 years of age and causes the loss of more years of human life than all other causes of death combined; and

WHEREAS, the death rate from injury in Montana is higher than the national norm, resulting in an economic loss to the state because of the productive years of life lost and the cost of treatment and rehabilitation; and

WHEREAS, organized systems of trauma care have been shown to reduce the number of deaths and disabilities resulting from trauma; and

WHEREAS, the people of the State of Montana would benefit from establishment and coordination of a statewide trauma care system.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4(2)] requires the department of health and environmental sciences to adopt rules to implement a statewide trauma care system. It is the intent of the legislature that the rules adopted by the department:

(1) determine trauma regions by existing patient flow patterns;

(2) specify procedures that ensure due process in the designation and revocation of designation of trauma facilities;

(3) adopt protocols that will be used to screen and classify trauma patients to ensure that they are sent to the most appropriate treatment facilities and receive the most appropriate treatment;

(4) adopt standards for the state and hospital trauma registers in order to ensure that data on trauma cases is collected and organized in a manner allowing analysis of the quality of trauma care and the improvement of that care; and

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(5) establish four levels of trauma care facilities, each having a different capacity for trauma treatment:

(a) regional centers capable of providing advanced trauma care to a region;

(b) area trauma hospitals capable of handling most trauma patients within their ordinary service areas;

(c) community trauma hospitals with limited emergency and surgical coverage; and

(d) trauma receiving facilities, such as hospitals with no surgical coverage and medical assistance facilities.

Be it enacted by the Legislature of the State of Montana:

Section 1. Emergency medical services advisory council. (1) There is an emergency medical services advisory council.

(2) The council consists of a minimum of 15 members appointed by the governor, as follows:

(a) the presiding officer of the trauma care committee appointed pursuant to [section 2];

(b) a member of the American college of emergency physicians, Montana chapter;

(c) a member of the Montana committee on trauma of the American college of surgeons;

(d) a member of the emergency nurses association;

(e) a representative of Montana flight nurses;

(f) a representative of Montana firefighting service organizations;

(g) a representative of Montana trauma coordinators;

(h) a representative of prehospital caregivers;

(i) a representative of the Montana hospital association;

(j) a member of the Montana medical association;

(k) a representative of the Montana nurses association;

(l) a representative of the Indian health service;

(m) a member of the Montana state board of medical examiners;

(n) a member of the Montana emergency medical services association; and

(o) a representative of consumers of emergency health care services.

(3) The governor may not appoint more than 10 additional members.

(4) Members are appointed for 4-year terms, except that one-half of the members initially appointed shall serve terms of 2 years. Members serve at the

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pleasure of the governor. If a vacancy occurs, the governor shall appoint a replacement to fill the unexpired term. A member may be reappointed.

(5) The members of the council shall elect a presiding officer who shall serve a 2-year term and may not be reelected.

(6) A member of the council may not receive compensation for performing the member's duties but must be reimbursed for expenses.

(7) The council is attached to the department of health and environmental sciences for administrative purposes only as provided in 2-15-121.

(8) The council has the duties provided in [section 5].

Section 2. Trauma care committee. (1) There is a trauma care committee.

(2) The committee consists of members appointed by the governor as follows:

(a) a member of the Montana committee on trauma of the American college of surgeons, who shall serve as presiding officer of the committee;

(b) two members from each regional trauma care advisory committee created pursuant to [section 8];

(c) a member of the Montana trauma coordinators;

(d) a representative of the Montana hospital association;

(e) a member of the Montana medical association;

(f) a member of the emergency nurses association;

(g) an individual who is or who is employed by a Montana private ambulance operator;

(h) a member of the Montana emergency medical services association;

(i) a nurse or physician representing the Indian health service; and

(j) a member of the American college of emergency physicians, Montana chapter.

(3) Members must be appointed for 4-year terms, except that seven of the members initially appointed shall serve terms of 2 years. Members serve at the pleasure of the governor. If a vacancy occurs, the governor shall appoint a replacement to fill the unexpired term. A member may be reappointed.

(4) A member of the committee may not receive compensation for performing the member's duties but must be reimbursed for expenses.

(5) The committee is attached to the department of health and environmental sciences for administrative purposes only as provided in 2-15-121.

(6) The committee has the duties provided in [section 6].

Section 3. Definitions. As used in [sections 3 through 10], unless the context clearly requires otherwise, the following definitions apply:

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(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Emergency medical service" means an emergency medical service as defined by 50-6-302.

(3) "Emergency medical services advisory council" means the emergency medical services advisory council created in [section 1].

(4) "Health care facility" or "facility" means a hospital or medical assistance facility as defined in 50-5-101.

(5) "Hospital trauma register" means patient-specific trauma data that is maintained by a health care facility, in a format prescribed by department rule, and that has the primary purpose of facilitating peer review and quality improvement at the health care facility.

(6) "Quality improvement" means the process of defining trauma care system performance standards, collecting data against which the standards may be applied, using the data to determine compliance with the standards, and using the data and compliance information in a nonpunitive manner, including peer review, that will continuously improve performance and facilitate compliance with the standards.

(7) "State trauma register" means trauma data relating to a specific patient or health care facility that is maintained by the department in an electronic format and that has the primary purpose of facilitating peer review and quality improvement for a health care facility or a trauma care system.

(8) "Trauma" means a severe, abrupt injury to the human body that is caused by mechanical, environmental, thermal, or other physical force.

(9) "Trauma care committee" means the trauma care committee created in [section 2].

(10) "Trauma care system" means a state or regional system for the prevention of trauma and the provision of optimal medical care to trauma victims that includes both provision of appropriate health care services and provision of emergency medical care, equipment, and personnel for effective and coordinated prehospital, hospital, interhospital, and rehabilitative care for trauma patients.

(11) "Trauma facility" means a health care facility designated by the department pursuant to [section 7] as providing a specialized program in trauma care with appropriately trained personnel, equipment, and other facility resources that are specifically organized to provide optimal care to a trauma patient at the facility.

(12) "Trauma region" means a geographic area, designated by department rule pursuant to [section 4], within which trauma services are coordinated and evaluated through a regional trauma care system.

Section 4. Department duties — rules. (1) The department shall plan, coordinate, implement, and administer a statewide trauma care system that involves all health care facilities and emergency medical services within the

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state. The department shall also develop and adopt a statewide trauma care system plan and a state trauma register.

(2) The department shall adopt rules to:

(a) establish and coordinate the statewide trauma care system, including rules that establish:

(i) various levels of trauma facilities and the standards each facility is required to meet concerning personnel, equipment, resources, data collection, and organizational capabilities;

(ii) procedures for, standards for, and the duration of designation and revocation of designation of a trauma facility, including application procedures, site survey procedures, complaint investigation, and emergency suspension of designation;

(iii) operational procedures and criteria for the regional trauma advisory committees;

(iv) prehospital emergency medical services triage and treatment protocols for trauma patients;

(v) triage and treatment protocols for the transfer of injured persons between health care facilities;

(vi) requirements for collection and release of trauma register data;

(vii) quality improvement standards for emergency medical services and trauma care facilities; and

(viii) the duties, responsibilities, and functions of the emergency medical services advisory council created by [section 1], the trauma care committee created by [section 2], and the regional trauma care advisory committees created pursuant to [section 8];

(b) designate trauma regions throughout Montana, taking into consideration geographic distance from available trauma care, transportation modalities available, population location and density, health care facility resources, historical patterns of patient referral, and other considerations relevant to optimum provision of emergency medical care;

(c) establish the procedure to be followed by a health care facility to appeal to the department a decision by the department pursuant to [section 7] affecting the facility's designation as a trauma facility;

(d) specify the information that must be submitted to the department, including information from health care facilities, for statistical evaluation of the state and regional trauma care systems, planning prevention programs, assessing trauma-related educational priorities, and determining how trauma facilities and emergency medical services may comply with protocols and standards adopted by the department; and

(e) establish the electronic format and other standards that a health care facility trauma data system is required to meet in order to qualify as a hospital trauma register.

(3) The department shall submit a report to each session of the legislature concerning the effectiveness of the trauma care system established under [sections 3 through 10].

(4) [Sections 3 through 10] do not restrict any other provisions of law allowing or requiring a health care facility or health care provider to provide health care services.

Section 5. Duties of emergency medical services advisory council. The emergency medical services advisory council created by [section 1] shall consider the recommendations of the trauma care committee created by [section 2] and shall provide advice, guidance, and recommendations to the department concerning:

(1) emergency medical service issues;

(2) the state emergency medical services plan provided for in Title 50, chapter 6, part 1; and

(3) budget amounts and priorities for state emergency medical service programs.

Section 6. Duties of trauma care committee. The trauma care committee provided for in [section 2] shall:

(1) provide recommendations and guidance to the department concerning:

(a) trauma care, including suggestions for changes to the statewide trauma care system;

(b) the implementation of a hospital data collection system; and

(c) the design and implementation of a statewide and regional quality improvement system for trauma care that considers the standards recommended by the American college of surgeons and the joint commission on accreditation of healthcare organizations;

(2) assist the department in conducting statewide quality improvement and peer review functions by regularly analyzing the effect of the statewide trauma care system on patient care, morbidity, and mortality;

(3) provide recommendations to and oversight and coordination of the activities of the regional trauma care advisory committees; and

(4) provide recommendations to the emergency medical services advisory committee concerning the statewide trauma care system and the integration of trauma care with the emergency medical services delivery system.

Section 7. Department designation of trauma facility — revocation of designation — appeal. (1) In order to be designated as a trauma facility, a health care facility shall submit to the department an application, on a form specified by the department, that provides the information required by department rule.

(2) Upon receipt of a completed application for designation as a trauma facility, the department shall review the application for compliance with

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standards adopted by the department for designation of trauma care facilities. If the facility meets the standards adopted by the department, the department shall designate the facility as a trauma care facility, specifying the level of trauma care determined by the department to be appropriate for the facility.

(3) The department may revoke a designation as a trauma care facility if the facility no longer meets the requirements for designation or otherwise violates a department standard required to maintain designation.

(4) The department shall notify the applicant in writing of the department's decision to approve, deny, or revoke a health care facility's designation as a trauma facility.

(5) A health care facility that submitted an application pursuant to subsection (1) may appeal a department decision refusing to designate the facility, a decision designating the facility for a different level of trauma care than requested by the facility, or a decision to revoke a designation as a trauma facility. In order to appeal the decision, the health care facility shall submit a written request for a hearing to the department within 30 days after the facility receives notice of the department's decision. The hearing on the appeal must be conducted pursuant to 2-4-604.

(6) Unless the appellant agrees to an extension of time, the department shall, within 30 days of its decision in an appeal pursuant to subsection (5), serve the appellant with written findings and conclusions that form the basis for the department's decision.

Section 8. Regional trauma care advisory committees. (1) Each trauma facility designated by the department pursuant to [section 7] shall appoint one representative to a regional trauma care advisory committee for the region in which the facility is located.

(2) Members of a regional trauma care advisory committee serve 4-year terms, except that one-half of the members initially appointed shall, as determined by lot, serve 2-year terms. If a vacancy occurs, the appointing authority shall appoint a replacement to fill the unexpired term. Members may be reappointed and may be removed for cause by the appointing authority.

(3) Members of a regional trauma care advisory committee shall elect a presiding officer who shall serve a term of 2 years.

(4) Members of a regional trauma care advisory committee do not receive compensation from the state and may not be reimbursed by the state for their expenses.

(5) Regional trauma care advisory committees have the duties provided in [section 9].

Section 9. Duties of regional trauma care advisory committees. A regional trauma care advisory committee shall:

(1) establish standards, policies, procedures, and protocols for the regional trauma care system;

(2) conduct regional trauma care quality improvement, including receipt of reports prepared by the department containing trauma care data and making

recommendations to trauma care facilities within the region based upon those reports;

(3) advise the trauma care committee concerning the statewide trauma care system;

(4) establish trauma education and injury prevention programs;

(5) provide advice concerning trauma care to health care facilities and other providers of health care;

(6) perform other duties required by department rule; and

(7) conduct other activities needed to ensure optimal delivery of trauma care services within the region.

Section 10. Confidentiality. (1) Data in a health care facility's hospital trauma register and reports developed from that data pertaining to quality of trauma care may be given by the facility only to:

(a) the facility's peer review committee;

(b) the regional trauma care advisory committee of the region in which the facility is located;

(c) the trauma care committee; or

(d) the department.

(2) Data in the state trauma register and hospital trauma registers is not subject to discovery in a civil action and may not be introduced into evidence in a judicial or administrative proceeding.

(3) Data and reports concerning peer review, quality improvement, or the quality of the trauma care provided by a health care facility or a health care provider that are produced by a regional trauma care advisory committee or the trauma care committee or provided by a health care facility to a regional trauma care advisory committee or the trauma care committee, as well as the proceedings of those committees concerning peer review and quality improvement, are not subject to discovery in a civil action and may not be introduced into evidence in a judicial or administrative proceeding.

(4) A statistical report on trauma and trauma care developed by the department that does not identify specific health care facilities, health care providers, or patients is not confidential and is considered public information.

(5) A statistical report developed by a health care facility from information in its hospital trauma register that does not pertain to peer review or quality improvement is not confidential and is considered public information.

(6) Information in a department record or report that is used to evaluate and improve the quality of emergency medical service and trauma care by a health care facility or emergency medical service is not subject to discovery and may not be introduced in evidence in a judicial or administrative proceeding.

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(7) Information in a department record or report that is used to determine whether a health care facility will be designated or lose its designation as a trauma care facility is not confidential and is considered public information.

(8) A standard or protocol adopted by the department pursuant to [sections 3 through 10] may not be used to demonstrate negligence or lack of negligence by a health care provider or health care facility to whom the standard or protocol applies.

Section 11. Section 50-6-103, MCA, is amended to read:

"**50-6-103. Powers of department.** (1) The department of health and environmental sciences is authorized to confer and cooperate with any and all other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any and all funds which *that* are now available or which *that* may be donated, granted, or appropriated to the department.

(3) The department may, after consultation with the emergency medical services advisory council, the trauma care committee, the Montana committee on trauma of the American college of surgeons, the Montana hospital association, and the Montana medical association, adopt rules necessary to implement [sections 3 through 10]."

Section 12. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [sections 1 and 2].

(2) [Sections 3 through 10] are intended to be codified as an integral part of Title 50, chapter 6, and the provisions of Title 50, chapter 6, apply to [sections 3 through 10].

Section 13. Effective dates. (1) [Sections 4(2), 12, and this section] are effective on passage and approval.

(2) [Sections 1 through 3, 4(1), (3), and (4), 5 through 11] are effective October 1, 1995.

Approved May 1, 1995

CHAPTER NO. 580

[SB 161]

AN ACT REPLACING THE TAX ON MOTORCYCLES WITH A FEE IN LIEU OF TAX; AMENDING SECTIONS 20-9-141, 20-9-331, 20-9-333, 20-9-360, 20-9-501, 20-10-144, 20-10-146, 61-3-503, 61-3-504, 61-3-509, AND 61-3-535, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Fee in lieu of tax for motorcycles — schedule of fees. (1) (a) There is a fee in lieu of property tax imposed on motorcycles. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) need not be paid by a dealer for motorcycles that constitute inventory of the dealership.

(2) The owner of a motorcycle shall pay a fee based on the age of the motorcycle and the size of the engine, as follows:

(a) The fee schedule for a motorcycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:

(i) less than 2 years old, $30;

(ii) 2 years old and less than 5 years old, $25;

(iii) 5 years old and less than 11 years old, $15; and

(iv) 11 years old and older, $10.

(b) The fee schedule for a motorcycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:

(i) less than 2 years old, $70;

(ii) 2 years old and less than 5 years old, $55;

(iii) 5 years old and less than 11 years old, $40; and

(iv) 11 years old and older, $30.

(c) The fee schedule for a motorcycle with an engine that measures 1,001 cubic centimeters and larger is as follows:

(i) less than 2 years old, $110;

(ii) 2 years old and less than 5 years old, $90;

(iii) 5 years old and less than 11 years old, $65; and

(iv) 11 years old and older, $40.

(d) The age of a motorcycle is determined by subtracting the manufacturer's designated model year from the current calendar year.

Section 2. Section 20-9-141, MCA, is amended to read:

"20-9-141. **Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

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(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) *the* general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323;

(B) revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, *[section 1],* 61-3-537, and 67-3-204;

(C) net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601;

(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(E) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid; and

(iii) (A) pursuant to subsection (4), anticipated revenue from local government severance taxes as provided in 15-36-112; and

(B) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for

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the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from local government severance taxes, as provided in 15-36-112, and from revenue from coal gross proceeds under 15-23-703."

Section 3. Section 20-9-331, MCA, is amended to read:

"20-9-331. **Basic county tax and other revenues** *revenue* **for county equalization of the elementary district BASE funding program.** (1) The county commissioners of each county shall levy an annual basic tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, *[section 1]*, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

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(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, *[section 1]*, 61-3-537, and 67-3-204."

Section 4. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic special levy and other revenues *revenue* for county equalization of high school district BASE funding program. (1) The county commissioners of each county shall levy an annual basic special tax for high schools of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, *[section 1]*, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the

equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, *[section 1]*, 61-3-537, and 67-3-204."

Section 5. Section 20-9-360, MCA, is amended to read:

"20-9-360. **State equalization aid levy.** (1) There is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, *[section 1]*, 61-3-537, and 67-3-204. Except as provided in subsection (2), proceeds of the levy must be remitted to the state treasurer and must be deposited to the credit of the state special revenue fund for state equalization aid to the public schools of Montana.

(2) For the benefit of each municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, the state treasurer shall distribute each fiscal year from the state equalization aid levy to the municipality the amount, if any, equal to the product of the incremental taxable value of the urban renewal area times the reduced school levy for the area, each calculated for the fiscal year. The reduced school levy for a fiscal year is the difference between the aggregate amount of all property tax levies for school purposes in the urban renewal area, expressed in mills, in the fiscal year ended June 30, 1989, and the aggregate amount of all property tax levies for school purposes in the area or the district, expressed in mills, in the fiscal year, including the state equalization aid levy. The state treasurer shall distribute the amounts to municipalities in two equal installments on December 31 and June 30 of the fiscal year."

Section 6. Section 20-9-501, MCA, is amended to read:

"20-9-501. **Retirement fund.** (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered hy unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement

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system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, *[section 1]*, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on any other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget; and

(v) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

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(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint bigh school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000."

Section 7. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

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(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

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(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, *[section 1]*, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988;

(b) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(j) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by tbe district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 8. Section 20-10-146, MCA, is amended to read:

"20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

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(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, *[section 1]*, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(v) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vi) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in

accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 9. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment. (1) Except as provided in 61-3-520 and subsection (2) of this section, the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing the application with the county treasurer submit the application to the department of revenue. The department of revenue shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. A motor vehicle is not subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 must be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or another nationally published used vehicle or appraisal guide approved by the department of revenue or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the department of revenue, and ~~thereafter~~ depreciated 10% ~~per~~ *a* year until a value of $500 is reached, not including additions or deductions for options and mileage but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines; and a lien for taxes and fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than $500, the department shall value the vehicle at $500.

(d) ~~Motorcycles and quadricycles~~ *Quadricycles* must be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide or another nationally published used vehicle or appraisal guide approved by the department of revenue, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry

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list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage is 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides or other approved guides referred to in this subsection *(1)*. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value must remain at that minimum as long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value must remain at that amount as long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to *motorcycles,* motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1)."

Section 10. Section 61-3-504, MCA, is amended to read:

"61-3-504. Computation of tax. (1) The amount of taxes on a motor vehicle, other than an automobile, truck having a rated capacity of 1 ton or less, motorcycle, quadricycle, motor home, travel trailer, camper, or mobile home, is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration.

(2) The amount of tax on an automobile or truck having a rated capacity of 1 ton or less, except for vehicles owned by disabled veterans qualifying for special license plates under 61-3-332(10)(c)(i)(A), and on a ~~motorcycle or~~ quadricycle is 2% of the value determined under 61-3-503.

(3) The amount of tax on fleet vehicles subject to the provisions of 61-3-318 is 1% of the value determined under 61-3-503.

(4) For all taxable motor vehicles, the amount of tax is entered on the application form in a space provided ~~therefor~~ *for that purpose*."

Section 11. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of taxes. (1) Except as provided in subsection (2), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on *motorcycles,* motor homes, travel trailers, and campers collected under 61-3-504, 61-3-521, *[section 1],* and 61-3-537 to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter *after that date*, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district,

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and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax collected on an automobile or truck having a rated capacity of 1 ton or less. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time *that* the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the general fund to be used for purposes of state funding of the district court expenses as provided in 3-5-901."

Section 12. Section 61-3-535, MCA, is amended to read:

"**61-3-535. Vehicle reregistration by mail — renewal cards and reregistration notice by mail.** (1) Except as provided in subsection (2), an owner of the following types of motor vehicles may reregister by mail:

(a) light vehicles, motorcycles~~,~~ quadricycles, and other vehicles subject to tax under 61-3-504(2); and

(b) *motorcycles,* travel trailers, campers, and motor homes subject to a fee in lieu of tax under 61-3-521 *and [section 1].*

(2) The option to reregister by mail need only be made available for vehicles, motor homes, and travel trailers registered at the close of the expiring registration period in the name of the applicant for reregistration and only if the value, age, length, or other criteria used to determine the tax or fee is available to the department.

(3) The department shall develop a procedure to facilitate the reregistration by mail of the vehicles listed in subsection (1). The mail reregistration procedure developed by the department must include a procedure to facilitate automated handling of mail reregistration or recertification.

(4) The procedure implemented hy the department to permit reregistration or camper decal application by mail must provide for a written reminder notice by mail to a vehicle owner of the requirement to reregister the owner's vehicle with the county treasurer or to apply for the annual camper decal.

(5) The department shall adopt rules to implement the mail reregistration and decal application procedure."

Section 13. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [section 1].

Section 14. Effective date. [This act] is effective January 1, 1996.

Approved May 1, 1995

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CHAPTER NO. 581

[SB 338]

AN ACT EXEMPTING FROM THE STATE SEVERANCE TAX FOR 24 MONTHS OIL OR NATURAL GAS PRODUCED FROM A WELL DRILLED AFTER MARCH 31, 1995; AMENDING SECTIONS 15-36-101 AND 15-36-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND CONTINGENT APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-101, MCA, is amended to read:

"15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption. (1) Every *Each* person ~~engaging in or carrying on the business of~~ produeing *who produces* petroleum, other mineral or crude oil, or natural gas within this state or ~~engaging in or carrying on the business of owning, controlling, managing, leasing, or operating~~ *who owns, controls, manages, leases, or operates* within this state any well or wells from which any ~~merchantable or~~ marketable petroleum, other mineral or crude oil, or natural gas is ~~extracted or~~ produced shall, except as provided in 15-36-121, ~~each year when engaged in or carrying on the business in this state~~ pay to the department of revenue a state severance tax for deposit in the *state* general fund, ~~of the state of~~ Montana plus a local government severance tax in lieu of a tax on net proceeds for replacement of property taxes formerly levied on net proceeds. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b) through (1)(f), a 5% state severance tax on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value, as defined in subsection (8)(a)(ii), of all the petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the gross taxable value, as defined in subsection (8)(a)(ii), of all natural gas produced by the person, other than new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) except as provided in subsection (4)(a), a 3% state severance tax on the gross taxable value of the incremental production of petroleum and other mineral or crude oil produced from a secondary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a secondary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002. For purposes of this section, a secondary recovery project must meet each of the following requirements:

(i) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(iii) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of petroleum or mineral or crude oil that may potentially be recovered. For purposes of this section, secondary recovery methods include but are not limited to:

(A) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of petroleum or mineral or crude oil from the producing formation to a producing well bore; or

(B) any other method approved by the board as a secondary recovery method.

(d) a 2.5% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet each of the following requirements:

(i) The project must be approved as a tertiary recovery project by the board of oil and gas conservation. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(iii) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

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(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the board as a tertiary recovery method.

(e) except as provided in subsection (4)(b), a 2% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 3.3% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a tertiary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002. The tertiary recovery project must meet the requirements of subsections (1)(d)(i) through (1)(d)(iii).

(f) a 5% local government severance tax on the gross taxable value, as defined in subsection (8)(a)(ii), of all petroleum and other mineral or crude oil produced by the person other than new production produced by a stripper well, as defined in subsection (9).

(2) For purposes of this section, the following definitions apply:

(a) "Board" means the board of oil and gas conservation.

(b) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(c) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(d) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the change of injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered.

(e) "Incremental production" means:

(i) the volume of oil produced by either a well in primary recovery recompleted as a horizontally completed well or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(A) the commencement of the recompletion of a well as a horizontally completed well;

(B) expansion of the existing enhanced recovery project; or

(C) commencing a new enhanced recovery project; or

(ii) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of petroleum or mineral or crude oil from the enhanced recovery project.

(f) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

(g) "Operator" or "producer" means the person responsible for the actual physical operation of an enhanced recovery project.

(h) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(i) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded secondary recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department of revenue by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under subsection (1)(c) or (1)(e).

(j) "Secondary recovery project" means an enhanced recovery project that is not a tertiary recovery project.

(k) "Tertiary recovery project" means an enhanced recovery project using a tertiary recovery method described in subsection (1)(d)(iii).

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

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(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121~~(2)~~*(3)* and under subsections (1)(a) through (1)(f) of this section.

(4) (a) Incremental production from a secondary recovery project is subject to the tax rate imposed in subsection (1)(c) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a secondary recovery project is taxed as provided in subsection (1)(a) for production occurring in that quarter.

(b) Incremental production from a tertiary recovery project is subject to the tax rate imposed in subsection (1)(e) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a tertiary recovery project is taxed as provided in subsection (1)(d) for production occurring in that quarter.

(5) For the purposes of subsections (4)(a) and (4)(b), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(6) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within this state within the meaning of this section.

(7) Every person required to pay the state or local government severance tax under this section shall pay the tax in full for the person's own account and for the account of each of the other owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including an owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise

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provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(8) For purposes of this section, the following definitions apply:

(a) (i) "Gross taxable value", for the purpose of computing the state severance tax, means the gross value of the product as determined in 15-36-103.

(ii) "Gross taxable value", for the purpose of computing the local government severance tax, means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit.

(9) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels a day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365."

Section 2. Section 15-36-121, MCA, is amended to read:

"15-36-121. Exemption from state severance tax — imposition of local government severance tax. (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All production of natural gas, petroleum, or other mineral or crude oil from a well that was drilled after March 31, 1995, or from a well that has not produced natural gas, petroleum, or other mineral or crude oil during the 5 years immediately preceding the first month of qualified production is exempt from all of the state severance tax imposed by 15-36-101 during the 24 months immediately following the date of notification to the department of revenue that an oil well is flowing or being pumped or that a gas well has been connected to a gathering or distribution system.

~~(2)~~*(3)* All the natural gas produced from any *a* well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year ~~shall be~~ *is* taxed as provided in this section. ~~Production must be~~ *Average daily production is* determined by dividing the amount of production from a lease or unitized area for the year ~~prior to~~ *immediately preceding* the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production ~~per~~ *for each* well is exempt from all of the state severance tax imposed by 15-36-101. The first 30,000 cubic feet of average daily production per *for each* well is subject to a local government severance tax of 10% on the gross taxable value, as defined in 15-36-101(6)(a)(ii). Everything over *Natural gas production in excess of* 30,000 cubic feet ~~of gas produced~~ is taxed at 1.59% on the gross taxable value for the state severance tax plus a local

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government severance tax of 10% on the gross taxable value, as defined in 15-36-101~~(6)(a)(ii)~~*(8)(a)(ii)*.

~~(3)~~*(4)* Notwithstanding the provisions of subsection *subsections* (2) *and (3)*, all reporting requirements under the state severance tax remain in effect."

Section 3. Coordination instruction. If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is amended as provided in subsections (1) and (2) of this section and the distribution of revenue must be modified as provided in subsection (3) of this section. If necessary, the code commissioner shall correct all erroneous internal references within Senate Bill No. 412 caused by this section.

(1) The definition section, [section 3], of Senate Bill No. 412 is amended by adding the following definition, in alphabetical order, and renumbering subsequent subsections:

"(19) "Qualifying production" means the first 24 months of production of oil or natural gas from any post-1985 well drilled after March 31, 1995, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production. Qualifying production does not include oil production from a horizontally recompleted well."

(2) The section imposing tax rates on natural gas and oil production, [section 4] of Senate Bill No. 412, is amended to read:

"**Section 4. Production tax rates imposed on oil and natural gas.** (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in [section 18].

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) pre-1985 wells	18.75%	15%
(b) post-1985 wells		
(i) first 12 months of qualifying production	~~3.35%~~ *0.7%*	15%
(ii) after *next* 12 months *of qualifying production*	~~15.35%~~ *12.7%*	15%
(iii) after 24 months	*15.35%*	*15%*
(c) stripper natural gas pre-1985 and post-1985 wells	11.2%	15%

(3) The reduced tax rate *rates* under subsection *subsections* (2)(b)(i) *and (2)(b)(ii)* ~~on natural gas production~~ for the first ~~12~~ *24* months of natural gas production from a post-1985 well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a

natural gas distribution system, provided that notification has been given to the department.

(4) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production		
(i) pre-1985 wells	14.1%	16.5%
(ii) post-1985 wells		
(A) first 12 months of qualifying production	~~5.7%~~ *0.7%*	16.5%
(B) after *next* 12 months *of qualifying production*	~~12.7%~~ *7.7%*	16.5%
(C) after 24 months	12.7%	*16.5%*
(b) stripper oil production pre-1985 and post-1985 wells	11%	16.5%
(c) horizontally completed well production		
(i) first 18 months of qualifying production	~~5.7%~~ *0.7%*	5.7%
(ii) *next 6 months of qualifying production*	*7.7%*	*12.7%*
(iii) after ~~18~~ *24* months	12.7%	12.7%
(d) incremental production		
(i) new or expanded secondary recovery production		
(A) pre-1985 well	8.7%	16.2%
(B) post-1985 well	8.7%	10.7%
(ii) new or expanded tertiary production		
(A) pre-1985 well	6%	15.2%
(B) post-1985 well	6%	9.7%
(e) horizontally recompleted well		
(i) first 18 months	5.7%	5.7%
(ii) after 18 months	12.7%	12.7%

(5) (a) The reduced tax rate *rates* under subsection *subsections* (4)(a)(ii)(A) *and (4)(a)(ii)(B)* ~~on oil~~ production for the first ~~12~~ *24* months of oil production

from a post-1985 well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b)*(i)* The reduced tax ~~rate~~ *rates* under ~~subsection~~ *subsections* (4)(c)(i) *and (4)(c)(ii)* on oil production from a horizontally completed well ~~and the reduced tax rate under subsection (4)(e)(i) on oil production from a horizontally recompleted well~~ for the first ~~18~~ *24* months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally completed well ~~or as a horizontally recompleted well~~ to the department by the board.

(ii) The reduced tax rate under subsection (4)(c)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (4)(d) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection (5)(d), incremental production is taxed at the rate imposed on primary recovery production under subsection (4)(a)(i) for production occurring in that quarter.

(d) For the purposes of subsection (5)(c), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter."

(3) The department of revenue shall, by rule, change the distribution formulas under [section 18] of Senate Bill No. 412 for distribution of taxes on oil and natural gas production collected under [section 4] of Senate Bill No. 412. In recalculating distribution rates for the revenue raised by Senate Bill No. 412, the department of revenue shall determine the revised distribution rates according to a formula that presumes that the reduction in the tax rates on natural gas production for working interest owners from post-1985 wells and in the tax rates on oil production for working interest owners from post-1985 wells, as provided in subsection (2) of this section that amends [section 4] of Senate Bill No. 412, as follows:

(a) for the first 12 months of qualifying production under [section 4(2)(b) and (4)(a)(ii)], the reduction in tax rates must be borne by the state general fund and not by other state funds;

(b) for the next 12 months of qualifying production under [section 4(2)(b) and (4)(a)(ii)], the reduction in the tax rates must be borne by the state general fund and not by other state funds or by local governments;

(c) for the first 18 months of qualifying production under [section 4(4)(c)], the reduction in the tax rates must be borne by the state general fund and not by other state funds; and

(d) for the next 6 months of qualifying production under [section 4(4)(c)], the reduction in the tax rates must be borne by the state general fund and not by other state funds or by local governments.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Contingent applicability. (1) If [this act] is passed and approved before April 1, 1995, then [this act] applies to oil and gas produced from a well that is drilled after March 31, 1995.

(2) If [this act] is passed and approved after March 31, 1995, then [this act] applies retroactively, within the meaning of 1-2-109, to oil and gas produced from a well drilled after March 31, 1995.

Approved May 1, 1995

CHAPTER NO. 582

[SB 362]

AN ACT EXEMPTING CERTAIN ACTIVITIES FROM GROUND WATER DISCHARGE PERMIT REQUIREMENTS; AND AMENDING SECTIONS 75-5-401 AND 75-5-605, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits — *ground water exclusions.* (1) ~~The~~ *Except as provided in subsection (5), the* board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state *surface* waters *and ground waters*, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits.

(2) The rules ~~shall~~ *must* allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ~~insures~~ *ensures* that such *the* permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules ~~shall~~ *must* provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the

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establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4)."

Section 2. Section 75-5-605, MCA, is amended to read:

"**75-5-605. Prohibited activity.** (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) It *Except for the permit exclusions identified in 75-5-401(5), it* is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters."

Approved May 1, 1995

CHAPTER NO. 583

[SB 366]

AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-104, 75-20-202, 75-20-203, 75-20-212, 75-20-217, 75-20-220, 75-20-221, 75-20-301, AND 75-20-303, MCA; REPEALING SECTION 75-20-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY PROVISION, AND A TERMINATION PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-104, MCA, is amended to read:

"**75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

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(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and ~~public need~~ *and public need* issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by ~~(b) or (c) of~~ subsection (10)*(b) or (10)(c)*, including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating ~~50~~ *150* megawatts of electricity or more or any addition thereto, (except pollution control facilities approved by the department of health ~~and environmental sciences~~ *and* added to an existing plant) ~~having an estimated cost in excess of $10 million~~;

(ii) producing ~~25~~ *25* million cubic feet or more of gas derived from coal per day ~~or any addition thereto having an estimated cost in excess of $10 million~~ *or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant*;

(iii) producing ~~25,000~~ *25,000* barrels of liquid hydrocarbon products per day or more ~~or any addition thereto having an estimated cost in excess of $10 million~~ *or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant*;

(iv) enriching uranium minerals ~~or any addition thereto having an estimated cost in excess of $10 million;~~ or *any addition thereto; or*

~~(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;~~

(v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or any addition thereto;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more ~~or any addition thereto having an estimated cost in excess of $750,000;~~

~~(e) any underground in situ gasification of coal~~ *or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant;*

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

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(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) utilizes *uses* coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

~~(3)~~*(3)* A person proposing to construct an exempt facility shall pay to the department reasonable costs, if any, incurred by the department in processing the exemption.

~~(4) This chapter does not apply to a facility defined in 75-20-104(10)(c) that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75, chapter 1, pursuant to Executive Order 4-81 and prior to July 1, 1985.~~"

Section 3. Section 75-20-203, MCA, is amended to read:

"75-20-203. Certificate transferable. A certificate may be transferred~~, subject to the approval of the board~~, to a person who agrees to comply with the terms, conditions, and modifications contained therein *in the certificate*."

Section 4. Section 75-20-212, MCA, is amended to read:

"75-20-212. Cure for failure of service. Inadvertent failure of service on or notice to any of the municipalities, government agencies, or persons identified in ~~75-20-211(3) and (5)~~ *75-20-211* may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding."

Section 5. Section 75-20-217, MCA, is amended to read:

"75-20-217. Voiding an application. An application may be voided by the department *following notice and an opportunity for hearing* for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by this chapter and the rules adopted ~~thereunder~~ *under this chapter*; or

(3) failure to deposit the filing fee as provided in 75-20-215."

Section 6. Section 75-20-220, MCA, is amended to read:

"**75-20-220. Hearing examiner — restrictions — duties.** (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, an employee of the department, or a member or employee of the department of health or board of health. A hearing examiner, if any, shall *must* be appointed by the board within 20 days after the department's report has been filed with the board. If a hearing is held before the board of health or the department of health, the board and the board of health or the department of health shall mutually agree on the appointment of a hearing examiner to preside at both hearings.

(2) A prehearing conference shall *must* be held following notice within 60 *45* days after the department's report has been filed with the board.

(3) The prehearing conference shall *must* be organized and supervised by the hearing examiner.

(4) The prehearing conference shall *must* be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony which they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on shall *must* be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery, which shall *must* be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall

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must proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which *that* are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 *45* days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 *60* days to the board and the board of health or department of health proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 *8* calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) ~~of this section~~ to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed."

Section 7. Section 75-20-221, MCA, is amended to read:

"75-20-221. Parties to certification proceeding — waiver — statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board of health under this chapter may include as active parties:

(a) the applicant;

(b) each ~~political entity,~~ unit of local government, and government agency, including the department of health, entitled to receive service of a copy of the application under 75-20-211~~(3)~~;

~~(c) any person entitled to receive service of a copy of the application under 75-20-211(5);~~

~~(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located;~~

(c) Any person entitled to receive service of a copy of the application under 75-20-211(5);

(d) Any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located;

~~(e)~~*(e)* any other interested person who establishes an interest in the proceeding.

(2) The department ~~shall be~~ *is* an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

~~(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in (b), (c), (d), or (e) of subsection (1).~~

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in subsections (1)(b) through (1)(e).

(4) Any party waives the right to be a party if the party does not participate in the hearing before the board or the board of health.

(5) Each unit of local government entitled to receive service of a copy of the application under ~~75-20-211(3)~~ shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. ~~If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent shall be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.~~"

Section 8. Section 75-20-301, MCA, is amended to read:

"**75-20-301. Decision of board — findings necessary for certification.** (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate ~~either as proposed by the applicant or as modified by the board~~ unless it ~~shall find and determine~~ *finds and determines*:

(a) ~~the basis of the need for the facility;~~ *the basis of the need for the facility;*

(b)*(b)* the nature of the probable environmental impact;

~~(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;~~

~~(d) each of the criteria listed in 75-20-503;~~

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

~~(e)~~*(e)* in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct ~~shall be~~ *is* located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

~~(f)~~*(f)* that the location of the facility as proposed conforms to applicable state and local *and local* laws and regulations ~~issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions~~, *except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions*;

~~(g) that the facility will serve the public interest, convenience, and necessity;~~

(g) that the facility will serve the public interest, convenience, and necessity;

~~(h)~~*(h)* that the department of health or board of health have *has* issued a decision, opinion, order, certification, or permit as required by 75-20-216(3)~~; and~~

~~(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.~~

~~(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:~~

~~(a) the items listed in subsections (2)(a) and (2)(b) of this section;~~

~~(b) the benefits to the applicant and the state resulting from the proposed facility;~~

~~(c) the effects of the economic activity resulting from the proposed facility;~~

~~(d) the effects of the proposed facility on the public health, welfare, and safety;~~

~~(e) any other factors that it considers relevant.~~

~~(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities;~~ *and*

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g), the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant apply only to utility facilities described in 75-20-104(10)(a)(i), (10)(b), (10)(c), and (10)(d)."

Section 9. Section 75-20-303, MCA, is amended to read:

"**75-20-303. Opinion issued with decision — contents.** (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which *that* would be otherwise applicable is unreasonably restrictive pursuant to ~~75-20-301(2)(f)~~, it shall state in its opinion the reasons therefor *that it is unreasonably restrictive.*

(3) Any certificate issued by the board shall *must* include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall *must* include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility; *and*

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

~~(iii) problems and objections raised by other federal and state agencies and interested groups; and~~

~~(iv) alternatives to the proposed facility;~~

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The board shall issue as part of the certificate the following time limits:

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(i) For a facility as defined in ~~(b) or (c) of~~ 75-20-104(10)*(b) or (10)(c)* that is more than 30 miles in length, construction must be completed within 10 years.

(ii) For a facility as defined in ~~(b) of~~ 75-20-104(10)*(b)* that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in ~~(a) of~~ 75-20-104(10)*(a)*, construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended or renewed ~~in accordance with subsection (4)(c) or 75-20-225 through 75-20-227~~, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

~~(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced.~~"

Section 10. Reports. The department of natural resources and conservation shall prepare and present a report to the 55th legislature with recommendations for improving and modernizing the Montana Major Facility Siting Act. The department shall convene a state dialogue to develop the report and recommendations. The participants in the dialogue shall represent a broad spectrum of interests affected by the siting, construction, and operation of major facilities, including utilities, energy development groups, interested industries, ratepayers, regulators, landowners, and citizen groups. The dialogue is to be designed to seek the involvement of a broad range of affected interest groups in the discussions of reforming the Montana Major Facility Siting Act, with the express intent of eliciting a consensus. The consensus developing process must use a facilitator who is not an employee of the department.

Section 11. Termination. The amendment to 75-20-104(10)(a)(i) contained in [section 1] that increases the megawatts of electricity produced from "50" to "150" terminates on June 30, 1997.

Section 12. Applicability. (1) A person who, between [the effective date of this act] and June 30, 1997, has submitted a correct and complete application for all applicable air and water quality permits from the department of health and environmental sciences or has commenced to construct or commenced or applied to upgrade a power plant that has been designed for or will be capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20.

(2) A person who, between [the effective date of this act] and June 30, 1997, has filed an application for all applicable air and water quality permits from the department of health and environmental sciences for a power plant capable of

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generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20, if the application is correct and complete as of October 1, 1997.

Section 13. Repealer. Section 75-20-502, MCA, is repealed.

Section 14. Effective date. [This act] is effective on passage and approval.

Approved May 1, 1995

CHAPTER NO. 584

[SB 382]

AN ACT GENERALLY REVISING THE METHOD OF SELECTING CLEANUP REQUIRED FOR REMEDIAL ACTIONS; CREATING A VOLUNTARY CLEANUP AND REDEVELOPMENT PROCESS; ESTABLISHING THE MIXED FUNDING PILOT PROGRAM; REQUIRING THE DEPARTMENT TO SET UP A COLLABORATIVE PROCESS THAT ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY AND RELATED FUNDING NECESSARY TO CLEAN UP STATE SUPERFUND SITES; AMENDING SECTIONS 15-37-117, 75-10-701, 75-10-721, AND 75-10-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-701, MCA, is amended to read:

"**75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Director" means the director of the department of health and environmental sciences.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

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(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of

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temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

~~(11)~~*(12)* "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

~~(12)~~*(13)* "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

~~(13)~~*(14)* "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

~~(14)~~*(15)* "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection ~~(14)(a)~~ *(15)(a)* to provide services relating to a remedial action.

~~(15)~~*(16)* "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

Section 2. Section 75-10-721, MCA, is amended to read:

"75-10-721. Degree of cleanup required — permit exemption — financial assurance. (1) A remedial action performed under this part *or a*

voluntary cleanup under [sections 4 through 12] must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures ~~present and future~~ protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

~~(a) shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;~~

~~(b) shall consider and may require cleanup consistent with substantive state or federal environmental requirements, criteria, or limitations that are well suited to the site conditions; and~~

~~(c) shall select remedial actions that, at a minimum, protect public health, safety, and welfare and the environment and that:~~

~~(i) use permanent solutions;~~

~~(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and~~

~~(iii) are cost effective, taking into account the total short and long term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.~~

(a) except as provided in subsection (4), shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) may consider substantive state or federal environmental requirements, criteria, or limitations that are relevant to the site conditions; and

(c) shall select remedial actions, considering present and reasonably anticipated future uses, that:

(i) demonstrate acceptable mitigation of exposure to risks to the public health, safety, and welfare and the environment;

(ii) are effective and reliable in the short term and the long term;

(iii) are technically practicable and implementable;

(iv) use treatment technologies or resource recovery technologies if practicable, giving due consideration to institutional and engineering controls; and

(v) are cost-effective.

(3) In selecting remedial actions, the department shall consider the acceptability of the actions to the affected community, as indicated by community members and the local government.

(4) The department may select a remedial action that does not meet an applicable state environmental requirement, criteria, or limitation under any one of the following circumstances:

(a) The remedial action is an interim measure and will become part of a total remedial action that will attain the applicable requirement, criteria, or limitation.

(b) Compliance with the applicable requirement, criteria, or limitation will result in greater risk to human health and the environment than other remedial action alternatives.

(c) Compliance with the applicable requirement, criteria, or limitation is technically impracticable from an engineering perspective.

(d) The remedial action will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement, criteria, or limitation through use of another method or approach.

(e) Compliance with the requirement would not be cost-effective.

(5) For purposes of this section, cost-effectiveness must be determined through an analysis of incremental costs and incremental risk reduction and other benefits of alternatives considered, taking into account the total anticipated short-term and long-term costs of remedial action alternatives considered, including the total anticipated cost of operation and maintenance activities.

~~(3)~~*(6)* The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under subsection ~~(1)~~ *this section* and this part.

~~(4)~~*(7)* The department may require financial assurance from a liable person in an amount that the department determines will ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."

Section 3. Section 75-10-722, MCA, is amended to read:

"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department shall *may* require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) An action to recover remedial action costs may be brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding on any subsequent action or actions to recover further remedial action costs. The court may disallow costs or damages only if the person liable

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under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part.

(5) An initial action for recovery of remedial action costs must be commenced within 6 years after initiation of physical onsite construction of the remedial action.

(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704."

Section 4. Short title. [Sections 4 through 12] may be cited as the "Voluntary Cleanup and Redevelopment Act".

Section 5. Purpose — legislative declaration. (1) (a) The purposes of [sections 4 through 12] are to provide for the protection of the public health, welfare, and safety and of the environment and to foster the cleanup, transfer, reuse, or redevelopment of facilities where releases or threatened releases of hazardous or deleterious substances exist.

(b) The legislature further declares that this program is intended to permit and encourage voluntary cleanup of facilities where releases or threatened releases of hazardous or deleterious substances exist by providing interested persons with a method of determining what the cleanup responsibilities will be for reuse or redevelopment of existing facilities.

(2) The legislature further intends that this voluntary program:

(a) encourage and facilitate prompt cleanup activities;

(b) eliminate impediments to the sale or redevelopment of facilities where releases or threatened releases of hazardous or deleterious substances exist; and

(c) minimize administrative processes and costs.

Section 6. Eligibility. (1) A facility where there has been a release or threatened release of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures under this part, except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:

(a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C. 9601, et seq.;

(b) a facility for which an order has been issued or consent decree has been entered into pursuant to this part;

(c) a facility that is the subject of an agency order or an action filed in district court by any state agency that addresses the release or threatened release of a hazardous or deleterious substance; or

(d) a facility where the release or threatened release of a hazardous or deleterious substance is regulated by the Montana Hazardous Waste and Underground Storage Tank Act and regulations under that act; or

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(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent.

(2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree to accept and may approve an application for a voluntary cleanup plan for a facility.

(3) The department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the complexities should be addressed under an administrative order or consent decree pursuant to this part. This determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at the facility.

(4) If an applicant that submits an application for a voluntary cleanup plan disagrees with the department's decision to reject the filing of the application under subsection (1) or (3), the applicant may, within 30 days of receipt of the department's written decision pursuant to [section 10], submit a written request for a hearing before the board of health and environmental sciences. In reviewing a department decision to reject an application under subsection (1) or (3), the board shall apply the standards of review specified in 2-4-704. The hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed to hy the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2).

Section 7. Voluntary cleanup plan and reimbursement of remedial action costs. (1) Any person may submit an application for the approval of a voluntary cleanup plan to the department under the provisions of this section.

(2) A voluntary cleanup plan must include:

(a) an environmental assessment of the facility that includes the information required in [section 8];

(b) a remediation proposal that includes the information required in [section 8] and that meets the requirements of 75-10-721; and

(c) the written consent of current owners of the facility or property to both the implementation of the voluntary cleanup plan and access to the facility by the applicant and its agents and the department.

(3) The applicant shall reimburse the department for any remedial action costs that the state incurs in the review and oversight of a voluntary cleanup plan.

(4) The department may approve a voluntary cleanup plan that provides for phases of remediation or that addresses only a portion of the facility. To the extent that the original environmental assessment required under [section 8] addresses subsequent phases of remediation, the applicant may rely on that assessment when submitting voluntary cleanup plans for subsequent phases of remediation.

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Section 8. Voluntary cleanup plans — requirements. (1) The department may only accept voluntary cleanup plans under [sections 4 through 12] that are prepared by a qualified environmental professional. A qualified environmental professional is a person with education, training, and experience in preparing environmental studies and assessments.

(2) An environmental assessment described in this section must include the following information:

(a) the legal description of the facility and a map identifying the location and size of the facility and relevant features, such as property boundaries, surface topography, surface and subsurface structures, and utility lines;

(b) the physical characteristics of tbe facility and areas contiguous to the facility, including the location of any surface water bodies and ground water aquifers;

(c) the location of any wells located on the site or on areas within a one-half mile radius of the site and a description of the use of those wells;

(d) the current and reasonably anticipated future use of onsite ground and surface water;

(e) the operational history of the facility, including ownership, and the current use of the facility, including any readily available aerial photographs from within the state of Montana;

(f) the current and reasonably anticipated future uses of the facility and immediately adjacent properties;

(g) information on the methods and results of investigations concerning the nature and extent of any releases or threatened releases of hazardous or deleterious substances that have occurred at the facility and a map showing general areas and concentrations of bazardous or deleterious substances;

(h) any sampling results or other data that characterizes the soil, air, ground water, or surface water on the site;

(i) a description of the human and environmental exposure to releases or threatened releases of hazardous or deleterious substances at the facility based upon tbe current use of the facility and adjacent properties and any reasonably anticipated future uses of the facility; and

(j) readily available information on the environmental regulatory and compliance history of the facility, including all environmental permits.

(3) A remediation proposal must include the following information:

(a) a detailed description of the components of the remediation proposal, including, to the extent applicable:

(i) the proposed cleanup levels for the facility;

(ii) the manner in which the remediation plan satisfies the cleanup requirements of 75-10-721;

(iii) identification of sampling or treatability studies; and

(iv) a demonstration that exposures to risk affecting the public health, safety, and welfare and the environment at the facility will be substantially mitigated by the plan;

(b) a brief comparison of the remediation proposal to reasonable alternatives based on the remedy selection criteria specified in 75-10-721;

(c) a timetable for implementing the proposal and for any necessary monitoring of the facility after the proposed measures are completed;

(d) a statement that applicable health and safety regulations will be met during implementation of the remediation proposal;

(e) a description of how short-term disturbances during implementation of the remediation proposal will be minimized; and

(f) identification of any permits necessary to conduct the proposed remedies.

Section 9. Public participation. (1) Upon determination by the department that an application for a voluntary cleanup plan is complete pursuant to [section 10(1)], the department shall publish a notice and brief analysis of the proposed plan in a daily newspaper of general circulation in the area affected and make the plan available to the public.

(2) The notice must provide 30 days for submission of written comments to the department regarding the plan. Upon written request by 10 or more persons, by a group composed of 10 or more members, or by a local governing body of a city, town, or county within the comment period, the department shall conduct a public meeting at or near the facility regarding the proposed voluntary cleanup plan. The meeting must be held within 45 days of the department's completeness determination under [section 10(1)].

(3) The department shall consider and respond to relevant written or verbal comments submitted during the comment period or at the public meeting.

(4) The department's decision on the final plan and the reasons for any significant modification of the final plan must be published in accordance with subsection (1).

(5) Compliance with this section is considered to satisfy the public participation requirements of Title 75, chapter 1.

Section 10. Approval of voluntary cleanup plan — time limits — content of notice — expiration of approval. (1) The department shall review for completeness, including adequacy and accuracy, an application for a voluntary cleanup plan and shall provide a written completeness notice to the applicant within 30 days after receipt of the application. The completeness notice must note all deficiencies identified in the information submitted.

(2) For a voluntary cleanup plan that is considered complete by the department pursuant to subsection (1), the department shall provide formal written notification that the voluntary cleanup plan has been approved or disapproved no more than 60 days after the department's determination that an application is complete, unless the applicant and the department agree to an extension of the review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and documents

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or information readily available to the department. The department shall communicate with the applicant during the review period to ensure that the applicant has the opportunity to address the public comments.

(3) (a) If the department receives five applications for review of a voluntary cleanup plan in a calendar month, including applications deferred from prior months, the department may notify any additional applicants in that month that their plans must be reviewed in the order received. The 30-day period for department completeness review of deferred applications pursuant to subsection (1) must begin on the first day of the subsequent month that each plan is eligible for review.

(b) The department shall discontinue accepting voluntary cleanup applications when 15 applications are pending and are being reviewed by the department. The department shall establish a waiting list for applications and shall consider the applications in order of submittal.

(c) If the department has received multiple cleanup applications for a voluntary cleanup at the same facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint application.

(4) Consistent with the provisions of 75-10-707, the department may access the facility during review of the application and implementation of the voluntary cleanup plan to confirm information provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

(5) The department shall approve a voluntary cleanup plan if the department concludes that the plan meets the requirements specified in [section 8] and will attain a degree of cleanup and control of hazardous or deleterious substances that complies with the requirements of 75-10-721. Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would take longer than 24 months after department approval to complete.

(6) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial.

(7) The approval of a voluntary cleanup plan by the department applies only to conditions at the facility that are known to the department at the time of department approval. If a voluntary remediation proposal is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the approved remediation proposal, is not completed within 24 months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.

(8) If reasonably unforeseeable conditions are discovered during implementation of a voluntary cleanup plan that substantially affect the risk to public health, safety, or welfare or the environment or substantially change the scope of the approved plan, the applicant shall promptly notify the department. The department may require the applicant to submit an amendment to the

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approved plan to address the unforeseen conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to [section 6(3)].

(9) Written notification by the department that a voluntary cleanup plan is not approved must state the basis for disapproval of the voluntary cleanup plan.

(10) (a) Failure of the applicant or the applicant's agents to materially comply with the voluntary cleanup plan approved by the department pursuant to this section renders the approval void.

(b) Submission of materially misleading information by the applicant or the applicant's agents in the application or during implementation of the voluntary cleanup plan renders the department approval void.

(11) Within 60 days after completion of the approved remediation proposal described in the voluntary cleanup plan approved hy the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented, including all documentation necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.

(12) Except as provided in [section 12(2)(b)], the department may not require financial assurance under this part for voluntary cleanup plans approved under this section.

(13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by the department pursuant to this section.

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct.

Section 11. Voluntary action to preclude remedial action by department. If a party has elected to undertake an approved voluntary cleanup and is diligently proceeding to implement the plan, the department may not, except as provided in 75-10-712, take remedial action under 75-10-711 with regard to those releases or threatened releases of hazardous or deleterious substances that are addressed by the approved voluntary cleanup plan.

Section 12. Closure. (1) After completion of the voluntary cleanup plan, an applicant may petition the department for closure of the facility under [sections 4 through 12].

(2) Within 60 days of receipt of a petition for closure, weather permitting, the department shall conduct a review to determine that the releases or threatened releases addressed in the voluntary cleanup plan do not pose a significant threat to public health, welfare, or safety or to the environment as determined in accordance with 75-10-721 and that the applicant has:

(a) implemented all appropriate remedial actions;

(b) if necessary, provided for long-term funding for facility maintenance or monitoring; and

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(c) reimbursed the department for all remedial action costs of the voluntary cleanup.

(3) In the event that the petition for closure is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. Written notification that the petition is approved by the department must include the following language:

"Based upon the information provided by [insert name(s) of applicant(s)] concerning property located at [insert address], it is the opinion of the Montana Department of Health and Environmental Sciences that upon completion of the voluntary cleanup plan, no further action is required to ensure that this facility, when used for [insert purposes identified], is protective of existing and proposed uses and does not pose a significant risk to public health, safety, or welfare or the environment at the facility with regard to releases or threatened releases addressed in the voluntary cleanup plan. The department reserves the right to conduct or require further remedial action at this facility if a new release occurs or if the department receives new or different information than presented in the approved voluntary cleanup plan."

(4) After completion of a portion of a facility addressed in the voluntary cleanup plan, the department shall issue a letter of completion notice to the applicant if the department determines that the applicant has satisfied the requirements of subsection (2).

Section 13. Study process. The department of health and environmental sciences, with legislative oversight from the environmental quality council, shall institute a collaborative process involving all affected and interested parties that specifically analyzes the elimination of joint and several liability with respect to cleanup of state CECRA sites and any related funding necessary to clean up state CECRA sites as a result of eliminating joint and several liability. The department of health and environmental sciences shall submit a report and legislative proposals that collaboratively resulted from that process to the 55th legislature.

Section 14. Short title. [Sections 14 through 20] may be cited as the "Mixed Funding Pilot Program".

Section 15. Purpose — legislative declaration. (1) The purposes of [sections 14 through 20] are to establish a pilot remediation program to operate in conjunction with the voluntary cleanup program provided for in [sections 4 through 12] and to provide information during the 2-year study process in [section 13].

(2) The legislature further intends that the pilot program provide necessary data related to:

(a) actual costs incurred in the remediation of facilities;

(b) the costs associated with the elimination of joint and several liability;

(c) the potential use of resource indemnity trust fund money in remediating facilities;

(d) the feasibility of voluntary cleanup plans; and

(e) the coordination between an applicant and the department in the use of voluntary cleanup programs.

Section 16. Criteria. (1) The pilot program must consist of remediation of three sites from the department of state lands' abandoned hard-rock mine priority list. The three sites must be selected from the top ten priority sites on that list as of April 1, 1995.

(2) Any site remediated under this pilot program must meet the following criteria:

(a) The owner of the property has, prior to May 22, 1989, purchased or entered into a lease purchase agreement or an option to purchase property where the facility is located.

(b) The applicant has submitted a voluntary cleanup plan in accordance with the provisions of [sections 7 and 8].

(c) The department has accepted and approved the application for a voluntary cleanup plan in accordance with the provisions of [sections 6 through 10].

(3) The department and the applicant shall negotiate an apportionment of the applicant's liability pursuant to [section 17]. The department, as a trier of fact, shall make the final determination of the applicant's apportioned liability. If the applicant disagrees with the department's determination of the applicant's proportionate share of liability, the applicant may appeal the department's decision in accordance with the requirements of [section 6(4)].

(4) If more than three applicants submit voluntary cleanup plans for the highest priority sites on the department of state lands' abandoned hard-rock mine priority list and the department approves more than three plans, the department shall select three plans to incorporate into the pilot program on a priority basis as determined by the date of submittal of a complete application.

Section 17. Mixed funding — determination of liability. (1) An applicant who satisfies the requirements of [section 16(2)] shall meet with the department within 30 days of approval of the voluntary cleanup plan to negotiate an apportionment of liability for the site. The burden is on the applicant to show how the applicant's liability should be apportioned. In apportioning the liability of the applicant under this section, the department shall balance all of the following factors:

(a) the extent to which the applicant caused the release of the hazardous or deleterious substance;

(b) the extent to which an applicant's contribution to the release of a hazardous or deleterious substance can be diminished;

(c) the amount of the hazardous or deleterious substance involved;

(d) the degree of toxicity of the hazardous or deleterious substance involved;

(e) the degree of involvement of and care exercised by the applicant in manufacturing, treating, transporting, or disposing of the hazardous or deleterious substance;

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(f) the degree of cooperation by the applicant with state or local officials to prevent any harm to the public health, safety, or welfare or to the environment; and

(g) the applicant's knowledge of the hazardous nature of the substance.

(2) Once the department and the applicant have negotiated an apportionment of the applicant's liability, the applicant has a right of reimbursement subject to the requirements and limitations of [section 18].

Section 18. Claims for and limitations on reimbursement. (1) After completion of the voluntary cleanup plan approved by the department, the applicant may apply to and must, in accordance with this section, receive reimbursement from the abandoned mines state special revenue account. Reimbursement must be subject to the following requirements and limitations:

(a) The applicant shall complete remediation prior to making a claim for reimbursement.

(b) The reimbursement may not exceed 90% of eligible costs up to a maximum of $300,000 per facility.

(c) The claim for reimbursement may not include legal fees or department costs incurred in the oversight of the voluntary cleanup plan.

(2) For purposes of this section, "eligible costs" means costs in excess of an applicant's proportionate share of total costs incurred in the remediation of the site during the 1996-97 biennium.

(3) If costs are reimbursed out of the abandoned mines state special revenue account, nothing in [sections 14 through 20] prohibits the department from pursuing an action against other potentially liable parties to recover those costs.

(4) If the abandoned mines state special revenue account does not contain sufficient money to pay received claims for reimbursement, the abandoned mines state special revenue account and the department are not liable for making any reimbursement at that time. All claims are subject to appropriations to the abandoned mines state special revenue account.

Section 19. Abandoned mines state special revenue account created. (1) There is an abandoned mines state special revenue account within the state special revenue account fund established in 17-2-102.

(2) There must be paid into the abandoned mines state special revenue account money allocated from the metalliferous mines license tax pursuant to 15-37-117.

(3) Deposits to the abandoned mines state special revenue account must be placed in short-term investments. The interest on short-term investments must be deposited in the abandoned mines state special revenue account.

(4) The purpose of the abandoned mines state special revenue account is to provide the funding to the department of health and environmental sciences for the cleanup and reclamation of sites eligible for the pilot program in [sections 14 through 20].

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Section 20. Incorporation into study process — report to legislature. The department of health and environmental sciences and applicants participating in the pilot program shall submit reports to the 55th legislature detailing the success of and difficulties with the operation of the pilot program.

Section 21. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) ~~to the state resource indemnity trust fund, 15.5%~~ *to the abandoned mines state special revenue account provided for in [section 19], 8.5%* of total collections each year;

(d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502."

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Section 22. Coordination instruction. If House Bill No. 569 and [this act] are both passed and approved, the amendment to 15-37-117(1)(c) in House Bill No. 569, relating to the percentage allocation to the resource indemnity trust fund, is void.

Section 23. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 24. Codification instructions. [Sections 4 through 12] are intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 4 through 12].

Section 25. Applicability. (1) [This act] does not apply to civil actions commenced or begun prior to [the effective date of this act] or to claims based on those actions.

(2) [Sections 4 through 12] apply after January 1, 2001, to voluntary cleanup plans approved by the department of health and environmental sciences between [the effective date of this act] and January 1, 2001.

Section 26. Effective date. [This act] is effective on passage and approval.

Section 27. Termination. (1) [Sections 4 through 12] terminate January 1, 2001.

(2) [Sections 14 through 21] terminate June 30, 1997.

Approved May 1, 1995

CHAPTER NO. 585

[SB 397]

AN ACT PROVIDING THAT CERTAIN PROPERTY LEASED FROM A GOVERNMENTAL ENTITY BY INSTITUTIONS OF PURELY PUBLIC CHARITY IS EXEMPT FROM PROPERTY TAXATION; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned *or property that is leased from a federal, state, or local governmental entity* by institutions of purely public charity and *if the property is* directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

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(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) beginning January 1, 1994, timber as defined in 15-44-102; and

(v) all trailers and semitrailers with a licensed gross weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

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(2) (a) The term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Approved May 1, 1995

CHAPTER NO. 586

[HB 416]

AN ACT APPROPRIATING $1.5 MILLION FOR THE SCHOOL FISCAL YEAR ENDING JUNE 30, 1996, AND $2 MILLION FOR THE SCHOOL FISCAL YEAR ENDING JUNE 30, 1997, TO PAY STATE ADVANCES AND REIMBURSEMENTS FOR SCHOOL FACILITIES; LIMITING THE ELIGIBILITY FOR A STATE REIMBURSEMENT FOR SCHOOL

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FACILITIES TO A DISTRICT HAVING OUTSTANDING BONDED INDEBTEDNESS ON BONDS SOLD AFTER JULY 1, 1991; PROVIDING A STATE ADVANCE FOR SCHOOL FACILITIES IN THE FIRST SCHOOL FISCAL YEAR IN WHICH A DEBT SERVICE PAYMENT IS DUE; AMENDING SECTIONS 20-9-346, 20-9-367, 20-9-369, 20-9-370, 20-9-371, 20-9-406, 20-9-422, AND 20-9-439, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-346, MCA, is amended to read:

"20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state and county equalization aid by:

(1) establishing the annual entitlement of each district and county to state and county equalization aid, based on the data reported in the retirement and, general fund, *and debt service fund* budgets for each district that have been duly adopted for the current school fiscal year and verified by the superintendent of public instruction;

(2) for the purposes of state *advances and* reimbursements for school facilities, limiting the distribution from the state equalization aid account to no more than ~~$1 million~~ *the amount appropriated* for the school fiscal year ~~ending June 30, 1994, and to no more than $2 million for the biennium ending June 30, 1995,~~ to the districts that are eligible under the provisions of 20-9-366 through 20-9-371 by:

(a) determining ~~by May 1 of each school fiscal year the number of mills levied~~ *the debt service payment obligation* in each district for debt service on bonds that were issued *sold* as provided in 20-9-370~~(2)(b)(i) or (2)(b)(ii) and~~*(3)* that qualify for ~~guaranteed tax base aid~~ *a state advance or reimbursement for school facilities* under the provisions of 20-9-366 through 20-9-369 and 20-9-370;

(b) based on the limitation of state equalization aid ~~available~~ *appropriated* for debt service purposes ~~in this subsection (2)~~, determining the ~~percentage of state equalization aid~~ *state advance for school facilities and the proportionate share of state reimbursement for school facilities* that each eligible district must receive for the school fiscal year; *and*

(c) distributing that amount *by May 31 of each school fiscal year* to each eligible district for reducing the property tax for the debt service fund for the ensuing school fiscal year~~; and~~

~~(d) at the end of the school fiscal year ending June 30, 1994, determining whether there is an unused portion of the amount of state equalization aid appropriated in this subsection (2) to be carried into the next school fiscal year for the purposes of this subsection (2);~~.

(3) distributing by electronic transfer the BASE aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county or county where the district is located, in accordance with the distribution ordered by the board of public education;

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(4) keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for BASE aid of the districts of the state;

(5) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(6) reporting to the office of budget and program planning as provided in 17-7-111:

(a) the figures and data available concerning distributions of state and county equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization."

Section 2. Section 20-9-367, MCA, is amended to read:

"**20-9-367. Eligibility to receive guaranteed tax base aid *or state advance or reimbursement for school facilities.*** (1) If the district guaranteed tax base ratio of any elementary or high school district is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the general fund budget.

(2) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive ~~guaranteed tax base aid based on the number of mills levied~~ *a state advance or reimbursement for school facilities* in support of the debt service fund."

Section 3. Section 20-9-369, MCA, is amended to read:

"**20-9-369. Duties of superintendent of public instruction and department of revenue.** (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide and district guaranteed tax base ratios and, by May 1 of each year, with the final statewide and district

guaranteed tax base ratios, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide, county, and district mill values per ANB and, by May 1 of each year, with the final statewide, county, and district mill values per ANB, for use in calculating the guaranteed tax base aid *and state advance and reimbursement for school facilities* available to counties and districts for the ensuing school fiscal year;

(c) requiring each county and district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

(d) keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for the aid of the counties and districts that qualify;

(e) distributing the guaranteed tax base aid entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305.

(4) ~~For the purposes of implementing 20-9-366 through 20-9-368 and this section for the school fiscal year beginning July 1, 1993, the superintendent of public instruction shall estimate the direct state aid for a district for the school fiscal year beginning July 1, 1993, in order to calculate the district and statewide guaranteed tax base ratios for that school fiscal year. For succeeding school fiscal years,~~ the *The* superintendent of public instruction shall calculate the district and statewide guaranteed tax base ratios by applying the prior year's direct state aid payment."

Section 4. Section 20-9-370, MCA, is amended to read:

"20-9-370. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "School facility entitlement" means:

(a) $220 per ANB for an elementary school district;

(b) $330 per ANB for a high school district; or

(c) $270 per ANB for an approved and accredited junior high school or middle school.

(2) "State advance for school facilities" is the amount of state equalization aid distributed to an eligible district to pay the debt service obligation for a bond in the first school fiscal year in which a debt service payment is due for the bond.

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~~(2)~~*(3)* "State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) ~~is eligible for guaranteed tax base aid under the provisions of 20-9-366 through 20-9-369~~ *has a district mill value per elementary ANB that is less than the corresponding statewide mill value per elementary ANB or a district mill value per high school ANB that is less than the corresponding statewide mill value per high school ANB*; and

(b) ~~(i) for the school fiscal years beginning July 1, 1993, and July 1, 1994, has outstanding bonded indebtedness~~ *has a debt service obligation in the ensuing school year* on bonds *for which the original issue was sold* ~~sold in the debt service fund of the district~~ after July 1, 1991~~;~~.

~~(ii) for the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, has outstanding bonded indebtedness on bonds sold in [and payable from] the debt service fund of the district in any year.~~

~~(3)~~*(4)* "Total school facility entitlement" means the school facility entitlement times the total ANB for the district."

Section 5. Section 20-9-371, MCA, is amended to read:

"20-9-371. Calculation and uses of school facility entitlement amount. (1) The state reimbursement for school facilities for a district is the percentage determined in 20-9-346(2)(b) times (1-(district mill value per ANB/statewide mill value per ANB)) times the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligations on bonds that qualify under the provisions of 20-9-370~~(2)~~(b)~~(i) or (2)(b)(ii)~~*(3)*.

(2) The state advance for school facilities for a district is determined as follows:

(a) Calculate the percentage of the district's debt service payment that will be advanced by the state using the district ANB, the district mill value and the statewide mill value for the current year, and the percentage used to determine the proportionate share of state reimbursement for school facilities in the prior year.

(b) Multiply the percentage determined in subsection (2)(a) by the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligation for bonds to which the state advance applies.

(3) Within the available appropriation, the superintendent of public instruction shall first distribute to eligible districts the state advance for school facilities. From the remaining appropriation, the superintendent shall distribute to eligible districts the state reimbursement for school facilities.

~~(2) For the school fiscal years beginning July 1, 1993, and July 1, 1994, the~~

(4) The trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement *in the ensuing school fiscal year* for all outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991. *The trustees may apply the state advance for school*

facilities to reduce the levy requirement in the current school fiscal year for debt service payments on bonds to which the state advance for school facilities applies.

~~(3) For the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, the trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement of all bonded indebtedness in the district debt service fund.~~"

Section 6. Section 20-9-406, MCA, is amended to read:

"**20-9-406. Limitations on amount of bond issue.** (1) (a) Except as provided in subsection (1)(c), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation as ascertained by the ~~last-completed~~ *last-completed* assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(c), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation as ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness. The total indebtedness of the high school district with an attached elementary district must be limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes.

(c) *(i)* The maximum amount for which an elementary district or a high school district ~~that qualifies for guaranteed tax base aid under the provisions of 20-9-367~~ *with a district mill value per elementary ANB or per high school ANB that is less than the corresponding statewide mill value per elementary ANB or per high school ANB* may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(c), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB have been included in the ANB of the sending district pursuant to the mutual agreement.

(2) The maximum amounts determined in subsection (1), however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of

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tax protests lost by the district. All bonds issued in excess of the amount are void, except as provided in this section.

(3) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(4) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly."

Section 7. Section 20-9-422, MCA, is amended to read:

"20-9-422. Additional requirements for trustees' resolution calling bond election. *(1)* In addition to the requirements for calling an election that are prescribed in 20-20-201 and 20-20-203, the trustees' resolution calling a school district bond election shall *must*:

~~(1)~~*(a)* fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;

~~(2)~~*(b)* fix the maximum number of years in which the proposed bonds would be paid; and

~~(3)~~*(c)* in the case of initiation by a petition, state the essential facts about the petition and its presentation.*; and*

(d) state the amount of the state advance for school facilities estimated, pursuant to subsection (2), to be received by the district in the first school fiscal year in which a debt service payment would be due on the proposed bonds.

(2) Prior to the adoption of the resolution calling for a school bond election, the trustees of a district may request from the superintendent of public instruction a statement of the estimated amount of state advance for school facilities that the district will receive for debt service payments on the proposed bonds in the first school fiscal year in which a debt service payment is due. The district shall provide the superintendent with an estimate of the debt service payment due in the first school fiscal year. The superintendent shall estimate the state advance for the bond issue pursuant to 20-9-371(2)."

Section 8. Section 20-9-439, MCA, is amended to read:

"20-9-439. Computation of net levy requirement — procedure when levy inadequate. (1) The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

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(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state reimbursement *advance* for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371; and

(iv) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from such sources *such* as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for ~~such~~ *payment* purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county."

~~[**Section 9. Appropriation.** There is appropriated to the office of public instruction from the state equalization aid account $1.5 million for the school fiscal year ending June 30, 1996, and $2 million for the school fiscal year ending June 30, 1997, to pay for state advances and reimbursements for school facilities.]~~

~~[**Section 10. Coordination.** If Senate Bill No. 83 is passed and approved, then the appropriation from the school equalization account in [section 9] of this act is appropriated from the general fund.]~~

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Section 11. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

Note: The bracketed language in sections 9 and 10 was stricken by Governor's line item veto.

CHAPTER NO. 587

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1995; AMENDING SECTION 1, CHAPTER 30, SPECIAL LAWS OF NOVEMBER 1993, AND SECTION 18, CHAPTER 624, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 3] are intended to provide only necessary and ordinary expenditures for the fiscal year ending June 30, 1995. The unspent balance of any appropriation must revert to the fund from which it was appropriated, unless the appropriation is continued by [section 3].

Section 2. Totals not appropriations. The totals shown in [section 3] are for informational purposes only and are not appropriations.

Section 3. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program	FY	Amount	Fund
SECRETARY OF STATE			
Business & Govt. Services	1995	$88,000	Proprietary
COMMISSIONER OF POLITICAL PRACTICES			
Initiative No. 118	1995	16,750	General Fund
Legal Expenses	1995	18,000	General Fund
DEPARTMENT OF STATE LANDS			
Forest-Fire Suppression	1995	10,497,849	General Fund
DEPARTMENT OF JUSTICE			
Highway Patrol	1995	436,000	State Special
Legal Services	1995	400,000	General Fund

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DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Child Support Enforcement	1995	66,000	General Fund
	1995	128,117	Federal Funds

The appropriation for child support enforcement may not be used for any purpose other than child support enforcement activities. The funds may not be used for another purpose or transferred to another program or another agency. Any unexpended balance from the child support enforcement appropriation is reappropriated for fiscal year 1996.

~~[Child Care Benefits 1995 450,000 General Fund~~

~~1995 1,094,799 Federal Funds~~

~~The appropriation for child care benefits may not be used for any purpose other than child care benefits. The funds may not be used for another purpose or transferred to another program or another agency. Any unexpended balance from the child care benefits appropriation is reappropriated for fiscal year 1996.]~~

OFFICE OF PUBLIC INSTRUCTION

Transportation Aid	1995	1,620,000	General Fund

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

Swan River Boot Camp	1995	93,930	General Fund
MSH Reception Overflow	1995	300,000	General Fund

COMMISSIONER OF HIGHER EDUCATION

Distribution Program	1995	849,978	General Fund
Vo-Tech Millage	1995	126,433	State Special

FORESTRY AND CONSERVATION EXPERIMENT STATION

Research	1995	48,977	General Fund

STATEWIDE TOTALS

Fund	FY	Amount
General Fund	1995	$13,945,484
State Special Revenue	1995	562,433
Federal Special Revenue	1995	0
Proprietary and Other	1995	88,000
Total	1995	$14,595,917

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[~~Section 4. Section 1, Chapter 30, Special Laws of November 1993, the appropriations for AFDC and Emergency AFDC benefits, on page 210, booklet of Special Laws of November 1993, is amended to read:~~

~~"b. AFDC and Emergency AFDC Benefits"~~

~~Strike: "14,188,582" "36,383,977"~~

~~Insert: "13,672,582" "35,161,061"~~]

Section 5. Section 1, Chapter 30, Special Laws of November 1993, the narrative to appropriations to the university of Montana, on page 258, booklet of Special Laws of November 1993, is amended to read:

"Item 1 contains ~~$68,255~~ *$44,000* in fiscal 1994 and ~~$260,865~~ *$67,700* in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program."

Section 6. Section 1, Chapter 30, Special Laws of November 1993, the narrative to appropriations to eastern Montana college, on page 259, booklet of Special Laws of November 1993, is amended to read:

"Item 1 contains $3,628 in fiscal 1994 ~~and $17,989 in fiscal 1995~~ that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program."

Section 7. Coordination. The appropriation for the Swan River Boot Camp in [section 3] includes funding for 5 FTE correctional officers. If House Bill No. 2 does not continue funding for the FTE, the appropriation to the Swan River boot camp in [section 3] is reduced by $63,832.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 28, 1995

Note: The bracketed language in sections 3 and 4 was stricken by Governor's line item veto.

CHAPTER NO. 588

[HB 448]

AN ACT CLARIFYING THE LEGAL RESPONSIBILITY OF RAILROADS TO KEEP RIGHT-OF-WAYS FREE OF FIRE HAZARDS; AND AMENDING SECTION 69-14-721, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-721, MCA, is amended to read:

"69-14-721. Control of fire hazard along right-of-way. ~~It shall be the duty of all~~ *A* railroad ~~corporations~~ *corporation* or railroad ~~companies~~ *company* operating ~~any~~ *a* railroad within this state ~~to~~ *shall* keep ~~their~~ *its* railroad track and either side ~~thereof~~ *of the track* for a *reasonable* distance ~~of 100 feet~~ *within its right-of-way* ~~on each side of the track or roadbed, so far as it passes through~~

~~any portion of this state~~, free from dead grass, weeds, or any ~~dangerous or~~ *dangerous or* combustible material. ~~Any~~ *A* railroad ~~company or~~ corporation *or company* failing to keep its railroad track and each side ~~thereof~~ *of the track* free *of combustible material* as specified ~~above shall be~~ *in this section is* liable for any damages ~~which may occur from~~ *on account of* fire emanating from ~~operating such railroad~~ *trains, track maintenance, or other railroad operations.* ~~A neglect to comply with the provisions of this section in keeping free any railroad track and either side for a distance equal to the space of ground covered by the grant of the right-of-way for the railroad corporation or company shall be prima facie evidence of negligence on the part of any such railroad corporation or company.~~ No *A* railroad corporation or company ~~shall~~ *may not* be required to keep free *of combustible material*, as specified above *in this section*, any land *that is* not a part of its right-of-way."

Approved May 3, 1995

CHAPTER NO. 589

[HB 449]

AN ACT ALLOWING THE STATE AUDITOR TO COLLECT DELINQUENT PERSONAL PROPERTY TAXES USUALLY COLLECTED BY THE COUNTY TREASURER WHEN REQUESTED TO DO SO; REQUIRING THE BOARD OF COUNTY COMMISSIONERS TO NOTIFY A DELINQUENT TAXPAYER OF ITS INTENTION TO REQUEST THE STATE AUDITOR TO COLLECT DELINQUENT TAXES; AMENDING SECTIONS 15-16-119, 17-4-101, 17-4-102, 17-4-103, 17-4-105, AND 17-4-106, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-4-101, MCA, is amended to read:

"17-4-101. Definitions ***Definition.*** In this part, the ~~following definitions apply~~:

~~(1) The word "department" means the department of revenue.~~

~~(2) The~~ term "~~state~~ agency" includes*:*

(1) all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government*; and*

(2) with respect to delinquent taxes that the state auditor is requested to collect, state and local entities whose personal property taxes are collected by the county treasurer."

Section 2. Section 17-4-102, MCA, is amended to read:

"17-4-102. Accounts of persons indebted to state. (1) ~~In his discretion it is the duty of the~~ *The* state auditor ~~to~~ *may*:

(a) examine and settle the accounts of persons indebted to ~~the state~~ *agencies* and certify the amount to the treasurer and, upon presentation and filing of the

treasurer's receipt ~~therefor~~ *for that amount*, to give ~~such~~ *the* person a discharge and charge the treasurer ~~therewith~~ *with that amount*;

(b) require ~~any~~ *a* person presenting an account for settlement to be sworn before ~~him~~ *the state auditor* and to answer, orally or in writing, as to any facts relating to ~~it~~ *the account*.

(2) The certificate ~~mentioned~~ *referred to* in subsection (1)(a) must show by whom the payment is to be made, the amount ~~thereof~~ *of the payment*, and the fund into which it is to be paid and. *Certificates* must be numbered in order, beginning with number 1 at the commencement of each fiscal year."

Section 3. Section 17-4-103, MCA, is amended to read:

"**17-4-103. Collection of claims by state auditor.** (1) *(a)* ~~In his discretion, it is the duty of the~~ *The* state auditor to *may* examine the collection of money due ~~the state~~ *an agency* and institute suits:

(i) in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue; and

(ii) against persons who possess public money or property and fail to pay over or deliver the money or property; and

(iii) against debtors of the ~~state~~ *agencies*.

(b) The courts of the county where the seat of government may be located bave jurisdiction, without regard to the residence of the defendants, over the collection suits authorized by this section.

(2) Whenever a person has money or other personal property that belongs to the state by escheat or otherwise or has been entrusted with the collection, management, or disbursement of money, bonds, or interest accruing from the money or bonds, belonging to or held in trust by the state, and fails to render an account of the money or personal property to and make settlement with the state auditor within the time prescribed by law or, when no particular time is specified, fails to render an account and make settlement or ~~who~~ fails to pay into the state treasury the money belonging to the state, upon being required to do so by the state auditor, within 20 days after the requisition, the state auditor shall state an account with that person, charging 25% damages and interest at the rate of 10% a year from the time of the failure. A copy of the account in a suit is prima facie evidence of the things stated in the account, but when the state auditor cannot for want of information state an account, he *the state auditor* may in an action ~~brought by him~~ aver that fact and allege generally the amount of money or other property due or belonging to the state.

(3) *(a)* The state auditor may assist in the collection of a delinquent account owing to ~~any state~~ *an* agency and may separately charge the ~~state~~ agency that transferred the debt for the cost of assistance. The state auditor may designate the percentage of collected proceeds to be retained for the cost of assistance. *The cost of assistance for collecting personal property taxes that would otherwise be collected by the county treasurer must be allocated in the same manner in which the taxes are distributed.*

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(b) A delinquent personal property tax usually collected by the county treasurer may be collected by the state auditor only on request of the board of county commissioners. The request must be accompanied by proof of the amount of tax due and proof of the delinquency. The board shall also provide proof that, at least 30 days before making the request, the county has notified the delinquent taxpayer by mail of the board's intention to request assistance from the state auditor.

(4) The state auditor may provide a collection service for the general purpose of centralizing the collection of all debts ~~owing~~ *owed* to ~~the state~~ *agencies*."

Section 4. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt -- offsets. (1) Once a debt of ~~a state~~ *an* agency has been transferred to the state auditor, the state auditor has the authority to collect it. The state auditor may contract with commercial collection ~~agencies~~ *agents* for recovery of debts owed the ~~state~~ *to agencies*.

(2) The state auditor shall, *when appropriate,* offset any amount due ~~a state~~ *an* agency from a person or entity against any amount, including refunds ~~or~~ *of* taxes, owing the person or entity by ~~any state~~ *an* agency. ~~, provided the~~ *The* state auditor may not exercise this right of offset until the debtor has first been notified by the state auditor and been given an opportunity for a hearing. An offset may not be made against any amount paid out as child support collected by the department of social and rehabilitation services. The state auditor shall deduct from the claim and draw warrants for the amounts offset in favor of the respective ~~state~~ agencies to which *the debt is* due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due ~~state~~ *the* agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner as *determined appropriate by* the state auditor~~, in the state auditor's discretion,~~ determines.

(3) (a) The department *Department of revenue* retains the power to offset ~~tax~~ refunds due individuals against taxes owed ~~the state, provided the department~~ *the state. The department* may not exercise this right of offset until the taxpayer has been notified by the department and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and any *a* decision made as a result of that proceeding has become final.

(4) (a) A debt owed to the department of social and rehabilitation services or being collected by the department of social and rehabilitation services on behalf of any person or agency may be offset by the state auditor if the debt is

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being enforced or collected by the department of social and rehabilitation services under Title IV-D of the Social Security Act.

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the state auditor for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. *The request must be in writing and be mailed to the state auditor.* The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and any *a* decision made as a result of that proceeding has become final. The hearing must be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of social and rehabilitation services shall adopt rules ~~necessary to determine~~ *governing* the hearing procedures.

(5) If~~, in the discretion~~ of the state auditor~~,~~ the *determines that a* person or entity ~~refuses or neglects~~ *has refused or neglected* to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity~~,~~ if. *If the claim is* approved by the department of administration, it ~~shall have~~ *has* the same force and effect as though filed by the person or entity. The amount due any person or entity from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset as provided in this section."

Section 5. Section 17-4-106, MCA, is amended to read:

"17-4-106. Agency owed debt to receive all money collected — exception. (1) All money collected by the state auditor on debts transferred to him *the state auditor* by the various state agencies, except funds collected under 17-4-103(3), must be deposited to the account or fund of the agency to which the debt was originally owing *owed. A county shall apply a delinquent personal property tax collection by the state auditor to the payment of the taxpayer's most delinquent personal property taxes or portion thereof.*

(2) Funds collected under 17-4-103(3) must be deposited in an account in the internal service fund for the cost of assistance of debt collection by the state auditor. Funds deposited in excess of the amount appropriated for operation of the debt collection program must be carried forward into the next fiscal year for operation of the debt collection program. Any excess carried forward into the next fiscal year will *must* be used to reduce the designated percentage of the collected proceeds charged to the various ~~state~~ agencies. At the end of each biennium, any fund balance in excess of $10,000 must he transferred ~~back~~ to the general fund."

Section 6. Section 15-16-119, MCA, is amended to read:

"15-16-119. Taxation of personal property — duty of department — *collection by state auditor.* (1) If the taxes on personal property are not a lien upon real property in the same county in an amount sufficient to secure the payment of the taxes, the department shall assess the property and compute the tax for the assessment. The department shall notify the county treasurer of

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the assessment and the amount of taxes due. To compute the taxes due on the personal property, the department shall use the appropriate mills levied during the previous year.

(2) The county treasurer shall notify the person against whom the tax is assessed and any other person having a properly perfected security interest of record of the amount and due date of the tax. The tax is due and payable 30 days from the date the treasurer mails the notice. Taxes not paid within 30 days become delinquent, and the penalty and interest provisions of 15-16-101 must be applied.

(3) The county treasurer shall, after the tax becomes delinquent, *either proceed under subsection (7) or* levy upon and take into possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer. The county treasurer may proceed to sell the property in the same manner as property is sold on execution by the sheriff.

(4) The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for sale purposes and may receive payment of the taxes, penalty, and interest. The sheriff may receive the same fees as for making a seizure and sale as provided in 15-17-911.

(5) The county treasurer and the treasurer's sureties are liable on the treasurer's official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell the personal property for the taxes levied upon the property, including penalty and interest.

(6) Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax, including penalty and interest.

(7) The county treasurer shall give the board of county commissioners a list of delinquent personal property taxpayers and the taxes due. The board may order the county treasurer to verify the list under oath and to send a copy of the list to the state auditor for collection under Title 17, chapter 4, part 1.

~~(7)~~*(8)* The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 7. Coordination instructions. (1) If [this act] and House Bill No. 563 are both passed and approved, then:

(a) the definition of department in [section 11] of House Bill No. 563 is effective and the striking of the definition in [section 1 of this act] is void;

(b) the references to "state auditor" in 17-4-103, 17-4-105, and 17-4-106 of [this act] are changed to "department"; and

(c) references to "state auditor" in 39-51-3207 of House Bill No. 563 are changed to "department of administration".

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(2) If [this act] and House Bill No. 36 are both passed and approved, then the references to "state auditor" in 53-1-411 are changed to "department of administration".

Section 8. Effective date. [This act] is effective July 1, 1995.

Approved May 5, 1995

CHAPTER NO. 590

[SB 223]

AN ACT RELATING TO MANAGED CARE MENTAL HEALTH SERVICES PROVIDED UNDER THE MONTANA MEDICAID PROGRAM; PROVIDING FOR THE AWARD, MANAGEMENT, PAYMENT, AND AVAILABILITY OF THOSE SERVICES; PROVIDING FOR EXCEPTIONS TO LAWS GOVERNING INSURANCE CONTRACTS AND HEALTH MAINTENANCE ORGANIZATIONS; PROVIDING FOR ELIGIBILITY DETERMINATIONS AND LIMITATIONS; REVISING THE PROCEDURES FOR VOLUNTARY ADMISSION TO THE MONTANA STATE HOSPITAL; AMENDING SECTIONS 33-1-102, 33-31-202, 33-31-301, 53-1-401, 53-1-402, 53-1-413, 53-2-603, 53-6-131, 53-6-132, 53-21-111, AND 53-21-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs. (1) A person may not transact a business of insurance in Montana or *a business* relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

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(6) This code does not apply to the functions performed by a managed care contractor providing mental health services under the Montana medicaid program as established in Title 53, chapter 6.

~~(6)~~*(7)* This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

~~(7)~~*(8)* This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

~~(8)~~*(9)* (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another hy way of a pooling, joint retention, deductihle, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 2. Section 33-31-202, MCA, is amended to read:

"33-31-202. Issuance of certificate of authority. (1) The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to 33-31-201 within 180 days after ~~he receives~~ *receipt of* the application. The commissioner shall grant a certificate of authority upon payment of the application fee prescribed in 33-31-212 if the commissioner is satisfied that each of the following conditions is met:

(a) The persons responsible for the conduct of the applicant's affairs are competent and trustworthy.

(b) The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments. *This requirement does not apply to the health care services provided by a health maintenance organization to a person receiving medicaid services under the Montana medicaid program as established in Title 53, chapter 6.*

(c) The health maintenance organization is financially responsible and can reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may ~~in his discretion~~ consider:

(i) the financial soundness of the arrangements for health care services and the schedule of charges used in connection therewith *with the services*;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, a health service corporation, a government, or any other organization for ensuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization;

(iv) any agreement with providers for the provision of health care services;

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(v) any deposit of cash or securities submitted in accordance with 33-31-216; and

(vi) any additional information as *that* the commissioner may reasonably require.

(d) The enrollees will *must* be afforded an opportunity to participate in matters of policy and operation pursuant to 33-31-222.

(e) Nothing in the proposed method of operation, as shown by the information submitted pursuant to 33-31-201 or by independent investigation, violates any provision of this chapter or rules adopted by the commissioner.

(2) The commissioner may ~~in his discretion~~ deny a certificate of authority only if ~~he complies with~~ the requirements of 33-31-404 *are complied with*."

Section 3. Section 33-31-301, MCA, is amended to read:

"**33-31-301. Evidence of coverage — schedule of charges for health care services.** (1) ~~Every~~ *Each* enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner.

(3) An evidence of coverage issued or delivered to a person resident in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

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(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider, if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area;.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or ~~his~~ *the enrollee's* dependents;

(f) a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for such treatment and referral services, the enrollee's designated provider must *shall* limit his treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health

maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(f) do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

(g) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is hereby amended to conform to the minimum requirements of those statutes."

(h) a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, his dependents, or family members continuing coverage on the enrollee, his dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, his dependents, or family members covered under the evidence of coverage ceases because of termination of employment or *termination* of his membership in the class or classes eligible for coverage under the policy or because his *the* employer discontinues his *the* business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(i) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner and issued to the enrollee.

(5) (a) A health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) A health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or his dependents from and after the moment of birth.

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(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birtb of an infant and payment of the required fee.

(6) A health maintenance organization may not use a schedule of charges for enrollee coverage for health care services or an amendment to a schedule of charges before it files a copy of the schedule of charges or the amendment to it with the commissioner. A health maintenance organization may evidence a subsequent amendment to a schedule of charges in a separate document issued to the enrollee. The charges in the schedule must be established in accordance with actuarial principles for various categories of enrollees, except that charges applicable to an enrollee must *may* not be individually determined based on the status of his *the enrollee's* health.

(7) The commissioner shall, within 60 days, approve a form if tbe requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, he *the commissioner* shall notify the filer. In the notice, the commissioner shall specify the reasons for his *the* disapproval. Tbe commissioner shall grant a hearing within 30 days after he receives *receipt of* a written request by the filer.

(8) The commissioner may ~~in his discretion~~ require a health maintenance organization to submit any relevant information ~~he considers~~ *considered* necessary in determining whether to approve or disapprove a filing made pursuant to this section."

Section 4. Section 53-1-401, MCA, is amended to read:

"53-1-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "All-inclusive rate" means a fixed charge that is computed on a daily basis or on the basis of another time period for inpatients, that is computed on a per visit basis for outpatients, and that is applicable uniformly to each patient without regard to the extent of the services required by the patient and without regard to a distinction between physician services and hospital services.

~~(1)~~*(2)* "Ancillary charge" means the expense of providing identifiable, direct, resident services, including but not limited to:

(a) physicians' services;

(b) x-ray and laboratory services;

(c) dental services;

(d) speech-language pathology and audiology services;

(e) occupational and physical therapy;

(f) medical supplies;

(g) prescribed drugs; and

(h) specialized medical equipment.

~~(2)~~*(3)* "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

~~(3)~~*(4)* "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

~~(4)~~*(5)* "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

~~(5)~~*(6)* "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

~~(6)~~*(7)* "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. No *The* absence of a resident from the institution due to a temporary or trial visit may *not* be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

~~(7)~~*(8)* "Per diem" means the gross daily budgeted cost of operating an institution or an individual unit of an institution (including certain contracted medical services, depreciation, and associated department costs but excluding the cost of educational programs, federal grants, ancillary charges, and costs not directly identified with patient care) divided by the full-time equivalent resident load.

~~(8)~~*(9)* "Resident" means any person who is receiving care from or who is a resident of an institution listed in 53-1-402.

~~(9)~~*(10)* "Third-party resource" means but is not limited to applicable medicare, medicaid, and personal health care benefits."

Section 5. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents subject to per diem and ancillary charges. (1) The department shall assess and collect per diem and ancillary charges for the care of residents in the following institutions:

(a) Montana state hospital;

(b) Montana developmental center;

(c) Montana veterans' home;

(d) eastern Montana veterans' home;

(e) Montana center for the aged;

(f) Eastmont human services center.

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(2) This section does not apply to the eastern Montana veterans' home if the department contracts with a private vendor to operate the facility as provided for in 10-2-416.

(3) This section does not apply to residents of the Montana state hospital or to the Montana center for the aged to the extent that either of these institutions assesses and collects charges through an all-inclusive rate rather than per diem and ancillary charges."

Section 6. Section 53-1-413, MCA, is amended to read:

"53-1-413. Deposit of payments. (1) Except as provided in 90-7-220 and subsection (2) of this section, the department shall deposit payments of per diem and ancillary charges in the state treasury to the credit of the general fund.

(2) Payments from the Montana veterans' home shall *must* be deposited in the federal special revenue fund for the benefit of the home, and payments from the Montana state hospital alcohol program shall *must* be deposited to an alcohol state special revenue account.

(3) Payments from a managed care contractor, provided for in 53-6-116, for services provided by the Montana state hospital and the Montana center for the aged must be deposited in the state special revenue fund, subject to appropriation by the legislature for the benefit of those institutions."

Section 7. Section 53-2-603, MCA, is amended to read:

"53-2-603. Award of public assistance determined after investigation. (1) Upon completion of an investigation, the county board shall determine whether the applicant is eligible for public assistance under the provisions of this title, the type and amount of public assistance he *the applicant* shall *must* receive, and the date upon which such *the* public assistance shall *must* begin. *This subsection does not apply to any form of public assistance managed by a managed care contractor, as provided in 53-6-116, when a determination of eligibility is made by the managed care contractor.*

(2) The department, if necessary to conform with the United States Social Security Act, may issue rules to the county welfare departments requiring the use of the declaration method, in such *a* form as *that* the department may prescribe, for the purpose of determining eligibility, regardless of any other investigative provisions under this title, and for all types of assistance. These rules may include any additional investigations the department may require."

Section 8. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.) or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).

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(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Puhlic Law 101-239, who:

(a) has income that does not exceed income standards as may he required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

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(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(6) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(7) A person described in subsection (6) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(8) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards for eligibility for mental health services may provide for eligibility for households with family income that does not exceed 200% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees to be charged recipients for services. The fees may vary according to family income."

Section 9. Section 53-6-132, MCA, is amended to read:

"**53-6-132. Application for assistance — *exception.*** *(1)* Application *Except as provided in subsection (2), application* for assistance under this part shall *must* be made to the office of the county department in the county in which the person is residing. The application shall *must* be presented in the manner *and* on the form prescribed by the department of social and rehabilitation services. All individuals wishing to apply shall have the opportunity to do so.

(2) Notwithstanding the provisions of subsection (1), the department may designate an entity other than the county department to determine eligibility for medicaid managed care services."

Section 10. Section 53-21-111, MCA, is amended to read:

"**53-21-111. Voluntary admission.** (1) Nothing in this part may be construed ~~in any way as limiting~~ *to limit* the right of any person to make voluntary application for admission at any time to any mental health facility or professional person. An application for admission to a mental health facility shall *must* be in writing on a form prescribed by the facility and approved by the department. It *An application* is not valid unless it is approved by a professional person and a copy is given to the person *being* voluntarily admitting

~~himself~~ *admitted*. A statement of the rights of the person voluntarily applying for admission, as set out in this part, including the right to release, ~~shall~~ *must* be furnished to the patient within 12 hours.

(2) Any applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder. The professional person ~~must~~ *shall* then obtain confirmation from ~~a community mental health center~~ *the department or the department's designee* that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment. The department shall adopt rules to establish a procedure whereby a professional person shall obtain the confirmation from ~~a community mental health center~~ *the department or the department's designee* as required in this section.

(3) An application for voluntary admission ~~shall~~ *must* give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past ~~his~~ *the applicant's* written request for release. A mental health facility may adopt rules providing for detention of the applicant for less than 5 days. The facility ~~must~~ *shall* notify all applicants of ~~such~~ *the* rules and post ~~such~~ *the* rules as provided in 53-21-168.

(4) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility."

Section 11. Section 53-21-206, MCA, is amended to read:

"**53-21-206. Availability of services.** *(1)* The services of the department and of the incorporated regional mental health centers are available without discrimination on the basis of race, color, creed, religion, or ability to pay and shall comply with Title VI of the Civil Rights Act of 1964.

(2) Services available to individuals unable to pay for the services may be limited by the department based upon availability of funding."

Approved May 10, 1995

CHAPTER NO. 591

[HB 358]

AN ACT CHANGING THE PROTEST REQUIREMENTS FOR ZONING ADOPTION; AND AMENDING SECTIONS 76-2-101 AND 76-2-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-2-101, MCA, is amended to read:

"**76-2-101. Planning and zoning commission and district.** (1) ~~Whenever~~ *Subject to the provisions of subsection (5), whenever* the public interest or convenience may require and upon petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and

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empowered to order and create a planning and zoning district and to appoint a commission consisting of five members.

(2) No such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" shall mean any area that consists of not less than 40 acres.

(4) An *Except as provided in subsection (5), an* action challenging the creation of a planning and zoning district must be commenced ~~by October 1, 1994, or~~ within 5 years after the date of the order by the board of county commissioners creating the district~~, if the district was created after October 1, 1989~~.

(5) If freeholders representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

Section 2. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall *must* be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice shall *must* state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) the time and place of the public hearing;

(d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make such *any* revisions or amendments as *that* it may ~~deem~~ *determines to be* proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice shall *must* state:

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(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first puhlication of this notice, the hoard of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the ~~last-completed~~ *last-completed* assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district ~~and/or~~ *or* estahlishing the zoning regulations for the district;. but *However,* if 40% of the freeholders within such *the* district whose names appear on the ~~last-completed~~ *last-completed* assessment roll *or if freeholders representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1,* shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall *may* not adopt the resolution and no *a* further zoning resolution shall *may not* be proposed for the district for a period of 1 year."

Approved May 12, 1995

CHAPTER NO. 592

[SB 132]

AN ACT GENERALLY REVISING THE LAWS CONCERNING ESTATES AND TRUSTS; REMOVING THE STATUTE OF LIMITATIONS OF 1 YEAR AFTER LETTERS TESTAMENTARY OR OF ADMINISTRATION ARE ISSUED; REVISING THE TREATMENT OF CERTAIN TRANSFERS FOR PROBATE PURPOSES; CLARIFYING THE AUGMENTED ESTATE; CLARIFYING THE DISTRIBUTION OF LAPSED DEVISES; CLARIFYING THE APPLICATION OF SURVIVAL STATUTES; EXCLUDING JOINT ACCOUNTS FROM TRANSACTIONS INVOLVING BENEFICIARIES FOR WHOM STATUTORY SUBSTITUTES ARE PROVIDED IN CASE OF THE DEATH OF THE BENEFICIARY; CLARIFYING THE PASSING OF PROPERTY IN CASES IN WHICH A FUTURE INTEREST IS CREATED BY POWER OF APPOINTMENT; CLARIFYING THE APPLICATION AND EFFECT OF A DISCLAIMER; CLARIFYING THE APPLICATION OF HONORARY TRUSTS; CLARIFYING DISTRIBUTION BY REPRESENTATION; CLARIFYING TRANSFERS MADE IN CONTEMPLATION OF DEATH; CLARIFYING THE APPLICATION OF THE TERMS OF A MULTIPLE-PERSON ACCOUNT; CLARIFYING PROVISIONS GOVERNING REVOCABLE TRUSTS; CLARIFYING A TRUSTEE'S LIABILITY UNDER A REVOCABLE TRUST; AND AMENDING SECTIONS 27-2-404, 72-1-103, 72-2-116, 72-2-221, 72-2-222, 72-2-223, 72-2-224, 72-2-225, 72-2-227, 72-2-331, 72-2-332, 72-2-613, 72-2-712, 72-2-716, 72-2-717, 72-2-719, 72-2-721, 72-2-811, 72-2-813, 72-2-814, 72-2-1017, 72-3-102, 72-3-122, 72-3-131,

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72-3-132, 72-3-317, 72-6-201, 72-6-213, 72-6-226, 72-16-301, 72-16-308, 72-33-701, AND 72-34-513, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-2-404, MCA, is amended to read:

"27-2-404. When a party dies before action commenced. ~~(1)~~ If a person entitled to bring an action dies before the expiration of the time limited for the commencement ~~thereof~~ *of the action* and the cause of action survives, an action may be commenced by his *the deceased's* representatives after the expiration of that time and within 1 year from his death.

~~(2) If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time and within 1 year after the issuing of letters testamentary or of administration. If a person against whom a cause of action exists dies without the state, the time which elapses between his death and the expiration of 1 year after the issuing within the state of letters testamentary or letters of administration is not a part of the time limited for the commencement of an action therefor against his executor or administrator.~~"

Section 2. Section 72-1-103, MCA, is amended to read:

"72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 5, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) ~~an insurance or annuity policy,~~ an account with POD designation; or a security registered in beneficiary form (TOD); *or*

~~(ii) a pension, profit-sharing, retirement, or similar benefit plan; or~~

~~(iii)~~*(ii)* any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary

designation; a donee~~, appointee, or taker in default of a power of appointment~~; and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) ~~an insurance or annuity policy,~~ an account with POD designation~~,~~ or a security registered in beneficiary form (TOD); *or*

~~(b) a pension, profit-sharing, retirement, or similar benefit plan; or~~

~~(c)~~*(b)* any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 hy intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) *(a)* "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate or inheritance taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee's hands. A

beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant as defined in subsection (10).

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership

registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

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(44) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(45) "Special administrator" means a personal representative as described by chapter 3, part 7.

(46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50) "Survive"~~, except for purposes of Title 72, chapter 6, part 3,~~ means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

(53) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26 of this title; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" means an individual described in 72-5-101.

(56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 3. Section 72-2-116, MCA, is amended to read:

"72-2-116. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate ~~is divided into decedent's descendants and the estate or part of the estate~~ is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) (a) If, under 72-2-113(3) or (4), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

Section 4. Section 72-2-221, MCA, is amended to read:

"72-2-221. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

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If the decedent and the spouse were married to each other:	The elective-share percentage is:
Less than 1 year	supplemental amount only
1 year but less than 2 years	3% of the augmented estate
2 years but less than 3 years	6% of the augmented estate
3 years but less than 4 years	9% of the augmented estate
4 years but less than 5 years	12% of the augmented estate
5 years but less than 6 years	15% of the augmented estate
6 years but less than 7 years	18% of the augmented estate
7 years but less than 8 years	21% of the augmented estate
8 years but less than 9 years	24% of the augmented estate
9 years but less than 10 years	27% of the augmented estate
10 years but less than 11 years	30% of the augmented estate
11 years but less than 12 years	34% of the augmented estate
12 years but less than 13 years	38% of the augmented estate
13 years but less than 14 years	42% of the augmented estate
14 years but less than 15 years	46% of the augmented estate
15 years or more	50% of the augmented estate

(2) If the sum of the amounts described in 72-2-222~~(2)(c)~~*(2)(d)*, and ~~(2)(d)~~ and 72-2-227(1)(a), and ~~(1)(c)~~ and that part of the elective-share amount payable from the decedent's probate *estate* and reclaimable ~~estates~~ *nonprobate transfers to others* under 72-2-227(2) and (3) is less than $50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to $50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's reclaimable ~~estate~~ *nonprobate transfers to others* in the order of priority set forth in 72-2-227(2) and (3).

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

~~(3)~~*(4)* The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death."

Section 5. Section 72-2-222, MCA, is amended to read:

"72-2-222. Augmented estate. (1) (a) As used in this section, the following definitions apply:

~~(i) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim.~~

(i) "Decedent's nonprobate transfers to others" means the decedent's nonprobate transfers to persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, that are included in the augmented estate under subsection (2)(b).

(ii) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the fractional interest is unilaterally severable or not,

means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(iii) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

~~(ii)~~*(iv)* "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(v) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

~~(iii)~~*(vi)* "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, ~~by an~~ *whether or not the decedent then had the capacity to* exercise of the power, *held a power* ~~could have created an~~ *to create a present or future* interest~~, present or future~~, in the decedent, ~~or~~ the decedent's creditors, *the decedent's estate, or the creditors of the decedent's estate and includes a power to revoke or invade the principal of a trust or other property arrangement.*

~~(iv)~~*(vii)* "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(viii) "Property" includes values subject to a beneficiary designation.

~~(v)~~*(ix)* "Right to income" includes a right to payments under an *a commercial or private* annuity, *an annuity trust, a unitrust,* or *a* similar contractual arrangement.

(x) "Transfer", as it relates to a transfer by or of the decedent, includes:

(A) an exercise or release of a presently exercisable general power of appointment held by the decedent;

(B) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

(C) an exercise, release, or lapse of a general power of appointment that the decedent created in the decedent and of a power described in subsection (2)(b)(ii)(B) that the decedent conferred on a nonadverse party.

~~(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.~~

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(b)*(i)* As used in ~~subsections~~ *subsection* (2)(b)(iii)*(A)*, ~~and (2)(b)(iv), "transfer" includes an exercise or release of a power of appointment but does not include a lapse of a power of appointment~~ *"termination":*

(A) with respect to a right or interest in property, means that the right or interest terminated by the terms of the governing instrument or that the decedent transferred or relinquished the right or interest; and

(B) with respect to a power over property, means that the power terminated by exercise, release, lapse, or default or otherwise.

(ii) With respect to a power described in subsection (2)(b)(i)(A), "termination" means that the power terminated by exercise or release, but not by lapse or by default or otherwise.

(2) The augmented estate consists of the sum of:

(a) the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances and ~~exemptions~~, *exempt property,* and enforceable claims;

(b) the value of the decedent's ~~reclaimable estate~~ *nonprobate transfers to others*, which is *are* composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) property~~, to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent's surviving spouse, was subject~~ to *of any of the following types that passed outside probate at the decedent's death:*

(A) property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment ~~held by the decedent alone, if the decedent held that power immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, released that power or exercised that power in favor of any person other than the decedent or the decedent's estate, spouse, or surviving spouse~~; *the amount included is the value of the property subject to the power, to the extent that the property was passed at the decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse;*

~~(ii)~~*(B) the decedent's fractional interest in* property~~, to the extent of the decedent's unilaterally severable interest therein~~, held by the decedent ~~and any other person, except the decedent's surviving spouse~~, *in joint tenancy* with *the* right of survivorship~~, if the decedent held that interest immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, transferred that interest to any person~~ *the amount included is the value of the decedent's fractional interest, to the extent that the fractional interest was passed by right of survivorship at the decedent's death to a surviving joint tenant* other than the decedent's surviving spouse; *or*

(C) the decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship; the amount included is the value of the decedent's ownership interest, to the extent that the

decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse;

~~(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance policy and had the power to change the beneficiary of the insurance policy or if the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, transferred that policy to any person other than the decedent's surviving spouse; and~~

~~(iv)~~*(ii)* property transferred *in any of the following forms* by the decedent ~~to any person other than a bona fide purchaser at any time~~ during ~~the decedent's~~ marriage ~~to the surviving spouse, to or for the benefit of any person other than the surviving spouse, if the transfer is of any of the following types:~~

(A) any *irrevocable* transfer ~~to the extent that~~ *in which* the decedent retained ~~at the time of or during the 2-year period preceding death~~ *the right to* the possession or enjoyment of, or ~~right to~~ *the* income from, the property *if and to the extent that the decedent's right terminated at or continued beyond the decedent's death; the amount included is the value of the fraction of the property to which the decedent's right related, to the extent that the fraction of the property was passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse; or*

(B) any transfer ~~to the extent that at the time of or during the 2-year period preceding the decedent's death,~~ *in which the decedent created a power over* the income or principal ~~was subject to a power~~ *of the transferred property*, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, for the benefit of the decedent, *the decedent's creditors,* ~~or~~ the decedent's estate, *or the creditors of the decedent's estate; the amount included is the value of the property subject to the power, to the extent that the power was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent that the property subject to the power passed at the decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse; and*

(iii) property that passed during marriage and during the 2-year period preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(A) any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subsection (2)(b)(i)(A), (2)(b)(i)(B), (2)(b)(i)(C), or (2)(b)(ii) if the right, interest, or power had not terminated until the decedent's death; the amount included is the value of the property that would have been included under these subsections, except that that property is valued at the time that the right, interest, or power terminated, and is included only to the extent that the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse; or

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~~(C)~~*(B)* any transfer of property, to the extent ~~the decedent's contribution to it, as a percentage of the whole, was made during the 2-year period preceding the decedent's death, by which the property is held at the time of or during the 2-year period preceding the decedent's death by the decedent and another, other than the decedent's surviving spouse, with right of survivorship; or~~

~~(D) any transfer~~ *not otherwise included in the augmented estate,* made to *or for the benefit of* a ~~donee during the 2-year period preceding the decedent's death~~ *person other than the decedent's surviving spouse; the amount included is the value of the transferred property* to the extent that the aggregate transfers to any one donee in either of the 2 years ~~exceed~~ *exceeded* $10,000;

(c) the value of *the decedent's nonprobate transfers to the decedent's surviving spouse, which are composed of all* property *that passed outside probate at the decedent's death from the decedent* to which the surviving spouse succeeds by reason of the decedent's death, ~~other than by homestead allowance, exempt property, family allowance, testate succession, or intestate succession, including the proceeds of insurance,~~ including: ~~accidental death benefits, on the life of the decedent and including benefits payable under a retirement plan in which the decedent was a participant, exclusive of~~

(i) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

(ii) the decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner;

(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent that they were payable at the decedent's death; and

(iv) all other property that would have been included in the augmented estate under subsection (2)(b)(i) or (2)(b)(ii) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, but excluding property passing to the surviving spouse under the federal social security system; and

(d) *except to the extent included in the augmented estate under subsection (2)(a) or (2)(c),* the value of:

(i) property *that was* owned by the *decedent's* surviving spouse at the decedent's death, ~~reduced by enforceable claims against that property or that spouse, plus the value of amounts~~ *including:*

(A) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(B) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(C) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and

(ii) property that would have been includable *included* in the surviving spouse's reclaimable estate *nonprobate transfers to others, other than the spouse's fractional and ownership interests included in subsections (2)(d)(i)(A) and (2)(d)(i)(B),* had the spouse predeceased *been* the decedent. However, amounts *Property included under this subsection (2)(d)(ii) is valued at the decedent's death, taking into account the fact that the decedent predeceased the spouse, except that, for purposes of subsections (2)(d)(i)(A) and (2)(d)(i)(B), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.* that would have been includable in the surviving spouse's reclaimable estate under subsection (2)(b)(iii) are not valued as if the surviving spouse were deceased. *The value of property included under this subsection (2)(d)(ii) is reduced in each category by enforceable claims against the included property and is reduced by enforceable claims against the surviving spouse.*

(3) Any transfer or exercise or release of a power of appointment *The value of any property* is excluded from the decedent's reclaimable estate *nonprobate transfers to others*:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for the *a* transfer, exercise, or release *of the property*; or

(b) if irrevocably made *the property was transferred* with the written consent or joinder of, *or if the transfer was consented to in writing by,* the surviving spouse; *or*

(c) if the property is life insurance, accident insurance, pension, profit-sharing, retirement, and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate.

(4) Property is valued as of the decedent's death, but an irrevocable transfer of property during the 2-year period preceding the decedent's death that is included in the decedent's reclaimable estate under subsections (2)(b)(i), (2)(b)(ii), and (2)(b)(iv) is valued as of the time of the transfer. If the terms of more than one *The value of property includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.*

(5) In case of overlapping application to the same property of the provisions of subsection (2)(b) apply, the property is included in the augmented estate under the provision that yields *yielding* the highest value, *but under any one, but only one, of the overlapping provisions if they all yield the same value.* For purposes of this subsection, an "irrevocable transfer of property" includes an irrevocable exercise or release of a power of appointment.

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~~(5)--(a) Although under this section a payment, item of property, or other benefit is included in the decedent's reclaimable estate, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.~~

~~(b) The written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated beneficiary. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.~~

~~(c) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.~~

~~(6)--(a) A person who purchases property from a recipient for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this part to return the payment, item of property, or benefit nor liable under this part for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit included in the decedent's reclaimable estate is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in 72-2-227.~~

~~(b) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment,~~

~~item of property, or benefit, or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in 72-2-227, to the person who would have been entitled to it were that section or part of that section not preempted.~~"

Section 6. Section 72-2-223, MCA, is amended to read:

"**72-2-223. Right of election personal to surviving spouse — *incapacitated surviving spouse.*** (1) The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.

(2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's reclaimable ~~estate~~ *nonprobate transfers to others* under 72-2-227(2) and (3) and shall appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee shall administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse qualifies on the basis of need.

(b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order:

(i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

(ii) to that predeceased spouse's heirs under 72-2-721."

Section 7. Section 72-2-224, MCA, is amended to read:

"**72-2-224. Waiver of right to elect and of other rights.** (1) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance or any of them

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may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse. *The written contract, agreement, or waiver is enforceable without consideration.*

(2) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(a) the surviving spouse did not execute the waiver voluntarily; or

(b) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the decedent.

(3) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(4) Unless it provides to the contrary, a waiver of "all rights", or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to that spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement."

Section 8. Personal liability of recipients. (1) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the person or to pay the value of the amount for which the person is liable.

(2) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of property, or benefit or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in 72-2-227, to the person who would have been entitled to it were that section or part of that section not preempted.

Section 9. Protection of payors and other third parties. (1) Although under 72-2-222 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not

liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument or for having taken any other action in reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable only for actions taken 2 or more business days after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed. The written notice must indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed. Any form of service of notice other than that described in subsection (2) is not sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(2) The written notice must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The availability of an action under this section does not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment, transfer, or deposit. The court shall hold the funds or item of property and, upon its determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated beneficiary. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to or items of property transferred to or deposited with the court.

(3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

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Section 10. Section 72-2-225, MCA, is amended to read:

"72-2-225. Proceeding for elective share — time limit. (1) Except as provided in subsection (2), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (2), the decedent's ~~reclaimable estate~~, *nonprobate transfers to others* described in 72-2-222(2)(b), is not included within the augmented estate for the purpose of computing the elective share if the petition is filed more than 9 months after the decedent's death.

(2) Within 9 months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within 9 months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's ~~reclaimable estate~~, *nonprobate transfers to others* the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's ~~reclaimable estate~~, *nonprobate transfers to others* described in 72-2-222(2)(b), is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(3) The surviving spouse may withdraw a demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under 72-2-227. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under 72-2-227 if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions."

Section 11. Section 72-2-227, MCA, is amended to read:

"72-2-227. ~~Charging spouse with owned assets and gifts received — liability of others for balance of~~ *Sources from which* elective share *payable.* (1) In the proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any

contributions due from the decedent's probate estate and recipients of the decedent's ~~reclaimable estate~~ *nonprobate transfers to others*:

(a) amounts included in the augmented estate *under 72-2-222(2)(a)* that pass or have passed to the surviving spouse by testate or intestate succession;

(b) amounts included in the augmented estate under 72-2-222(2)(c);

(c) amounts included in the augmented estate that would have passed to the spouse but were disclaimed; and

(d) amounts included in the augmented estate under 72-2-222(2)(d) up to the applicable percentage thereof. For purposes of this subsection (d), the "applicable percentage" is twice the elective-share percentage set forth in the schedule in 72-2-221(1) appropriate to the length of time the spouse and the decedent were married to each other.

(2) If, after the application of subsection (1), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and ~~that portion of~~ *in* the decedent's ~~reclaimable estate~~ *nonprobate transfers to others*, other than amounts ~~irrevocably transferred within 2 years before the decedent's death~~ *included under 72-2-222(2)(b)(iii)(A) or 72-2-222(2)(b)(iii)(B)*, are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's ~~reclaimable estate~~ *nonprobate transfers to others* are applied so that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and *of* that portion of the decedent's ~~reclaimable estate~~ *nonprobate transfers to others* in proportion to the value of their interests therein.

(3) If, after the application of subsections (1) and (2), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's ~~reclaimable estate~~ *nonprobate transfers to others* is applied so that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of that *remaining* portion of the decedent's ~~reclaimable estate~~ *nonprobate transfers to others* in proportion to the value of their interests therein.

~~(4) Only original recipients of the reclaimable estate described in 72-2-222(2)(b) and the donees of the recipients of the reclaimable estate to the extent the donees have the property or its proceeds are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to contribution may choose to give up the proportional part of the reclaimable estate or to pay the value of the amount for which the person is liable.~~"

Section 12. Section 72-2-331, MCA, is amended to read:

"72-2-331. Entitlement of spouse — premarital will. (1) If a testator's surviving spouse married the testator after the execution of the will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that is neither

devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor devised *to the descendant of such a child* or passes under 72-2-613 or 72-2-614 to *such a child or to* a descendant of such a child, unless:

(a) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(b) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(c) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(2) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under 72-2-613 or 72-2-614 to a descendant of such a child, abate as provided in 72-3-901."

Section 13. Section 72-2-332, MCA, is amended to read:

"**72-2-332. Omitted children.** (1) Except as provided in subsection (2), if a testator fails to provide in the testator's will for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(a) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had one or more children living when the testator executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subsection (1)(b)(i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether

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equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subsection (1)(b), devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsections (1)(a)~~,~~ *and* (1)(b)~~, and (3)~~ do not apply if:

(a) it appears from the will that the omission was intentional; or

(b) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) ~~Except as provided in subsection (2), if~~ *If* at the time of execution of the will the testator fails to provide in the testator's will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

(4) In satisfying a share provided by subsection (1)(a), devises made by the will abate as provided in 72-3-901."

Section 14. Section 72-2-613, MCA, is amended to read:

"72-2-613. Antilapse — deceased devisee — class gifts. (1) As used in this section, the following definitions apply:

(a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of the will may take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

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(iii) an appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment hut not a child of the testator or donor.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under 72-2-712.

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised hy the testator's will, the following apply:

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and tbe deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(h) Except as provided in subsection (2)(d), if tbe devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described hy language of similar import, a substitute gift is created in the *surviving descendants of any* deceased devisee ~~or devisee's surviving descendants~~. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have heen entitled had the deceased devisees survived tbe testator. Each deceased devisee's surviving descendants who are suhstituted for the deceased devisee take by representation the share to which the deceased devisee would have heen entitled had the deceased devisee survived the testator. For purposes of this subsection (b), "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the individual survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a suhstitute gift is created by suhsection (2)(a) or (2)(h), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes tbe substitution of the descendants of an appointee for tbe appointee, a surviving descendant of a deceased appointee of a power of appointment may be suhstituted for the appointee under this section, whether or not the descendant is an ohject of the power.

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(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise."

Section 15. Section 72-2-712, MCA, is amended to read:

"72-2-712. Requirement of survival by one hundred twenty hours. (1) For the purposes of chapters 1 through 5, ~~except for purposes of Title 72, chapter 6, part 3, and~~ except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in subsection (4) ~~and except for a security registered in beneficiary form (TOD) under Title 72, chapter 6, part 3~~, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours,

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one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) ~~This section does~~ *Survival by 120 hours is* not apply *required* if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period; *However, survival of the event or the specified period must be established by clear and convincing evidence.*

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); *however, survival must be established by clear and convincing evidence;* or

(d) the application of ~~this section~~ *a 120-hour requirement of survival* to multiple governing instruments would result in an unintended failure or duplication of a disposition. *However, survival must be established by clear and convincing evidence.*

(5) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

(b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with

the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(6) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Section 16. Section 72-2-716, MCA, is amended to read:

"72-2-716. Life insurance — retirement plan — account with POD designation — transfer-on-death registration — deceased beneficiary. (1) As used in this section, the following definitions apply:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and that under the terms of the governing instrument may take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation *under which the beneficiary must survive the decedent* and includes:

(i) a class member if the beneficiary designation is in the form of a class gift; and

(ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, *but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.*

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

(e) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child of the decedent.

(f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-712.

(2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the *surviving descendants of any* deceased beneficiary ~~or beneficiary's surviving~~ descendants. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For purposes of this subsection (b), "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

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(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) is to a descendant of a beneficiary of the primary beneficiary designation;

(B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) is a beneficiary designation for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) (a) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(b) The written notice of the claim must be mailed to the payor's main office or home by certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(5) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a

legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Section 17. Section 72-2-717, MCA, is amended to read:

"72-2-717. Survivorship with respect to future interests under terms of trust — substitute takers. (1) As used in this section, the following definitions apply:

(a) "Alternative future interest" means an expressly created future interest that may take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

(d) "Distribution date" with respect to a future interest means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

(e) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

(f) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

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(g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under 72-2-712.

(2) A future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the *surviving descendants of any* deceased beneficiary ~~or beneficiary's surviving descendants~~. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For purposes of this subsection (2), "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

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(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(iii) "Younger-generation future interest" means a future interest that:

(A) is to a descendant of a beneficiary of the primary future interest;

(B) is an alternative future interest with respect to the primary future interest;

(C) is a future interest for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(4) If *Except as provided in subsection (5), if,* after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) if no taker is produced by the application of subsection (4)(a), the property passes to the transferor's heirs under 72-2-721.

(5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(b) if no taker is produced by the application of subsection (5)(a), the property passes as provided in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power."

Section 18. Section 72-2-719, MCA, is amended to read:

"72-2-719. Representation — per capita at each generation — per stirpes. (1) As used in this section, the following definitions apply:

(a) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is considered to have predeceased the distribution date under 72-2-712.

(b) "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day but may occur at a time during the course of a day.

(c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under 72-2-712.

(2) (a) If a governing instrument calls for property to be distributed "per capita at each generation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(3) (a) If ~~an applicable statute or~~ a governing instrument calls for property to be distributed ~~"by representation" or~~ "per stirpes", the property is divided into as many equal shares as there are:

(i) surviving children of the designated ancestor; and

(ii) deceased children who left surviving descendants.

(b) Each surviving child, *if any,* is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) (a) If an applicable statute or a governing instrument calls for property to be distributed "by representation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision

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repeating at each succeeding generation until the property is fully allocated among surviving descendants.

~~(4)~~*(5)* For the purposes of subsections (2) ~~and (3)~~ *through (4)*, an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share."

Section 19. Section 72-2-721, MCA, is amended to read:

"72-2-721. ~~Future interests~~ *Interests* in "heirs" and like. If an applicable statute or a governing instrument calls for a *present or* future distribution to or creates a *present or* future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the property passes to those persons, including the state ~~under 72-2-115~~, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if the designated individual died at that time. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual."

Section 20. Section 72-2-811, MCA, is amended to read:

"72-2-811. Disclaimer of property interests. (1) (a) A person or the representative of a person to whom an interest in or with respect to property or an interest in the property devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.

(b) The right to disclaim exists notwithstanding:

(i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(ii) any restriction or limitation on the right to disclaim contained in the governing instrument.

(c) For purposes of this subsection (1), the "representative of a person" includes a personal representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained person, or a person whose identity or address is unknown; and an agent acting on behalf of the person within the authority of a power of attorney. The representative of a person may rely on a general family benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

(2) The following rules govern the time when a disclaimer must be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than 9 months after the event determining that the taker of

the property or interest is finally ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant may disclaim as a separate interest any property or interest in property devolving to the joint tenant by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest in the property that is the subject of a joint tenancy devolving to the joint tenant if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit under it.

(d) If real property or an interest in the property is disclaimed, a copy of the disclaimer may be recorded in the office of the clerk and recorder of the county in which the property or interest disclaimed is located.

(3) The disclaimer must:

(a) describe the property or interest disclaimed;

(b) declare the disclaimer and extent of the disclaimer; and

(c) be signed by the disclaimant.

(4) The following are the effects of a disclaimer:

(a) If property or an interest in property devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would take ~~the disclaimant's~~ share *in the disclaimed interest* by representation *or otherwise* were the disclaimant to predecease the decedent, *then* the disclaimed interest passes by representation, *or passes as directed by the governing instrument,* to

the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of the death of the decedent.

(b) If property or an interest in property devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the effective date of the instrument or contract, hut if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would ~~take the disclaimant's~~ share *in the disclaimed interest* by representation *or otherwise* were the disclaimant to predecease the effective date of the instrument, *then* the disclaimed interest passes by representation, *or passes as directed by the governing instrument,* to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and on all persons claiming through or under either of them.

(5) The right to disclaim property or an interest in the property is barred by:

(a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest or a contract therefor;

(b) a written waiver of the right to disclaim;

(c) an acceptance of the property or interest or benefit under it; or

(d) a sale of the property or interest under judicial sale made before the disclaimer is made.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in property under any other statute.

(7) An interest in property that exists on October 1, 1993, as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after October 1, 1993."

Section 21. Section 72-2-813, MCA, is amended to read:

"**72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations.** (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

(2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) Provisions of a governing instrument ~~that are not revoked by~~ this ~~section~~ are given effect as if the killer disclaimed all ~~revoked~~ provisions *revoked by this section* or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

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(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(8) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. *A payor or other third party does not have a duty or obligation to make any determination as to whether the decedent was a victim of a homicide or to seek any evidence with respect to a homicide even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's participation in a homicide.* A payor or other third party is *only* liable for ~~a payment made or other action~~ *actions* taken *2 or more business days* after *the actual receipt by* the payor or other third party ~~received~~ *of* written notice ~~of a claimed forfeiture or revocation under this section~~. *The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of the service is that described in subsection (8)(b).*

(b) *The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section.* Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. *Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party.* Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. *In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property.* The court shall hold the funds or item of property and, upon its determination under this

section, shall order disbursement in accordance with the determination. *A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court.* Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(9) (a) A ~~person~~ *bona fide purchaser* who purchases property ~~for value and without notice~~ or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, *other than the federal Employee Retirement Income Security Act of 1974, as amended,* with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(10) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."

Section 22. Section 72-2-814, MCA, is amended to read:

"72-2-814. Revocation of probate and nonprobate transfers by divorce — no revocation by other changes of circumstances. (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

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(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument ~~that are not revoked by this section~~ are given effect as if the former spouse and relatives of the former spouse disclaimed ~~the revoked~~ *all* provisions *revoked by this section* or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-813 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. *A payor or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship.* A payor or other third party is *only* liable for ~~a payment made or other action~~ *actions* taken *2 or more business days* after *the actual receipt by* the payor or other third party ~~received~~ *of* written notice ~~of a claimed forfeiture or revocation under this section~~. *The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).*

(b) *The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred.* Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. *In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property.* The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. *A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court.* Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A person *bona fide purchaser* who purchases property from a former spouse, relative of a former spouse, or any other person ~~for value and without~~

~~notice~~ or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of tbe payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, *other than the federal Employee Retirement Income Security Act of 1974, as amended,* with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Section 23. Section 72-2-1017, MCA, is amended to read:

"72-2-1017. Honorary trusts — trusts for pets. (1) A *Subject to subsection (3), a* trust ~~for a noncharitable corporation or unincorporated society or for a lawful noncharitable purpose~~ may be performed by the trustee for 21 years but no longer, ~~whether or not there is a beneficiary who can seek the trust's enforcement or termination~~ and whether or not the terms of the trust contemplate a longer duration *if:*

(a) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee; and

(b) there is no definite or definitely ascertainable beneficiary designated.

(2) Subject to the provisions of *subsection (3) and* this subsection, a trust for the care of a designated domestic or pet animal ~~and the animal's offspring~~ is valid. ~~Except as expressly provided otherwise in the trust instrument, the following provisions apply:~~

~~(a) No portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of a covered animal.~~

~~(b)~~ The trust terminates ~~at the earlier of 21 years after the trust was created~~ or when no living animal is covered by the trust. *A governing instrument must be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.*

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit of a covered animal.

~~(e)~~*(b)* Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) as directed in the trust instrument;

(ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(iii) if no taker is produced by the application of subsection ~~(2)(e)(i)~~ *(3)(b)(i)* or ~~(2)(e)(ii)~~ *(3)(b)(ii)*, to the transferor's heirs under 72-2-721.

~~(d)~~*(c)* For the purposes of 72-2-717, the residuary clause is treated as creating a future interest under the terms of a trust.

~~(e)~~*(d)* The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.

~~(f)~~*(e)* Except as ordered by the court or required by tbe trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

~~(g) A governing instrument must be liberally construed to bring the transfer within the applicability of this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.~~

~~(h)~~*(f)* A court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection ~~(2)(e)~~ *(3)(b)*.

~~(i)~~*(g)* If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that tbe intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make sucb other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section."

Section 24. Section 72-3-102, MCA, is amended to read:

"72-3-102. Necessity of probate of will. Except as provided in 72-3-1101, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk or an adjudication of probate by the court~~, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if:~~

~~(1) no court proceeding concerning the succession or administration of the estate has occurred; and~~

~~(2) either:~~

~~(a) the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will; or~~

~~(b) the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.~~"

Section 25. Section 72-3-122, MCA, is amended to read:

"**72-3-122. Time limit on probate, testacy, and appointment proceedings — exceptions.** (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; and

(d) ~~if no proceeding concerning the succession or administration of the estate has occurred within 3 years after the decedent's death, a formal testacy proceeding may be commenced at any time thereafter for the sole purpose of establishing a devise of property which the devisee or his successors and assigns possessed in accordance with the will or property which was not possessed or claimed by anyone by virtue of the decedent's title during the 3-year period, and the order of the court must be limited to that property~~ *an informal appointment or a formal testacy or appointment proceeding may be commenced after the time period if no proceedings concerning the succession or estate administration have occurred within the 3- year period after the decedent's death, but the personal representative has no right to possess estate assets provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and*

(e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct

or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(3) In cases under *subsection* (1)(a) or (1)(b) ~~above~~, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death."

Section 26. Section 72-3-317, MCA, is amended to read:

"72-3-317. Effect of formal testacy order — modification or vacation — fact of death — remedies of alleged decedent. Subject to appeal and subject to vacation as provided ~~herein~~ and in 72-3-318 *and this section*, a formal testacy order under 72-3-313 through 72-3-316, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will:

(a) were unaware of its existence at the time of the earlier proceeding; or

(b) were unaware of the earlier proceeding and were given no notice ~~thereof~~ *of the proceeding*, except by publication;

(2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons:

(a) were unaware of their relationship to the decedent;;

(b) were unaware of his *the decedent's* death;; or

(c) were given no notice of any proceeding concerning his *the decedent's* estate, except by publication;

(3) a petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(a) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement;

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(b) whether or not a personal representative has heen appointed for the estate of the decedent, the time prescribed by 72-3-122 when it is no longer possible to initiate an original proceeding to prohate a will of the decedent;

(c) 12 months after the entry of the order sought to be vacated;

(4) the order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs;

(5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at ~~his~~ *the* last known address and the court finds that a search under 72-3-306 was made. If the alleged decedent is not dead, even if notice was sent and search was made, he *the alleged decedent* may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances."

Section 27. Section 72-3-131, MCA, is amended to read:

"**72-3-131. Compromise of controversies.** (1) A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any ~~probate will~~ *governing instrument*, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto *to the proceeding*, including those unborn, unascertained, or who could not be located.

(2) An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

Section 28. Section 72-3-132, MCA, is amended to read:

"**72-3-132. Procedure for securing court approval of compromise.** The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise ~~shall~~ *must* be set forth in an agreement in writing which ~~shall~~ *must* be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative, *if any*, or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

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(3) After notice to all interested persons or their representatives, including the personal representative of ~~the~~ *any* estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise.

(4) Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement."

Section 29. Section 72-6-201, MCA, is amended to read:

"**72-6-201. Definitions.** In this part, the following definitions apply:

(1) "Account" means a contract of deposit between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) "POD designation" means the designation of:

(a) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

(b) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of

the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) "Receive", as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established or, if the terms of the account require notice at a particular place, in the place required.

(10) "Request" means a request for payment that complies with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; however, for purposes of this part, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) "Terms of the account" includes the deposit agreement and other terms and conditions *of the contract of deposit*, including *the type of account, the parties to the account, and* the form, of the contract ~~of deposit~~."

Section 30. Section 72-6-213, MCA, is amended to read:

"72-6-213. Alteration of rights. (1) Rights at death under 72-6-212 are determined by the ~~type~~ *terms* of *the* account at the death of a party. The ~~type~~ *terms* of *an* account may be altered by written notice given by a party to the financial institution to change the ~~type~~ *terms* of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(2) A right of survivorship arising from the express terms of the account, from 72-6-212, or from a POD designation may not be altered by will."

Section 31. Section 72-6-226, MCA, is amended to read:

"72-6-226. Discharge. (1) Payment made pursuant to this part in accordance with the ~~type~~ *terms* of *an* account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(2) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted and after the financial institution has had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party shall concur in a request for payment if the financial institution is to be protected under this section. Unless a financial

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institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(3) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(4) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts."

Section 32. Section 72-16-301, MCA, is amended to read:

"**72-16-301. Taxable transfers generally — contemplation of death.** (1) A *Except as provided in this section, a* tax ~~shall be~~ and is hereby imposed upon any transfer of property, real, personal, or mixed, or any interest therein *in the property* or income therefrom *from the property* in trust or otherwise to any person, association, or corporation in the following cases~~, except as provided in this section~~:

(a) when the transfer is by will or by intestate laws of this state from any person dying possessed of the property while a resident of the state;

(b) when a transfer is by will or intestate law of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death; or

(c) when the transfer is of property made by a resident or by a nonresident when ~~such~~ *the* nonresident's property is within the state or within its jurisdiction by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor or intended to take effect in possession or enjoyment at or after ~~such~~ death.

(2) ~~No~~ *A* transfer made before the 3-year period ending on the date of the decedent's death ~~shall be~~ *is not* considered to have been made in contemplation of death.

(3) ~~Every~~ *Each* transfer during the 3-year period ending on the date of the decedent's death must be considered to have been made in contemplation of death, except:

(a) no *a* transfer shown to be a bona fide sale for an adequate and full consideration in money or money's worth may *not* be considered to be a gift made in contemplation of death;

(b) ~~if the~~ *a* transfer ~~was a gift to a donee made during the calendar year and if the decedent was not required by~~ *to the extent that the transfer was excluded from the definition of taxable gifts by reason of* section ~~6019~~ *2503(b)* of the ~~internal revenue code to file any gift tax return for the year with respect to the donee, the transfer~~ *Internal Revenue Code* may not be considered to be a gift made in contemplation of death.

(4) Subsection (3)(b) does not apply to any transfer with respect to a life insurance policy."

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Section 33. Section 72-16-308, MCA, is amended to read:

"72-16-308. Tax to be on clear market value — deductions allowed in determining value — valuation of certain farm and business property. (1) The tax ~~so~~ imposed ~~shall~~ *must* be upon the clear market value of ~~such~~ *the* property passing by ~~any such~~ transfer to each person, institution, association, corporation, or body politic at the rates ~~hereinafter~~ prescribed *in this section* and only upon the excess of the exemption ~~hereinafter~~ granted to ~~such~~ *the* person, institution, association, corporation, or body politic.

(2) In determining the clear market value of the property ~~so~~ passing by any ~~such~~ *the* transfer, the following deductions and no other ~~shall be~~ *are* allowed:

(a) debts of the decedent owing at the date of death, provided that any debt secured by decedent's joint interest in property and for which the decedent was jointly and severally liable is deductible only to the extent of one-half or other proper fraction representing decedent's share of the property;

(b) expenses of funeral and last illness;

(c) all Montana state, county, municipal, and federal taxes, including all penalties and interest ~~thereon~~, owing by decedent at the date of death;

(d) the ordinary expenses of administration, including:

(i) the commissions and fees of executors and administrators and their attorneys actually allowed and paid;

(ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax; and

(e) federal estate taxes due or paid*; and*

(f) the annual gift exclusion provided in section 2503(b) of the Internal Revenue Code.

(3) In determining clear market value, the valuation of certain farm and other real property may be made under 72-16-331 through 72-16-342."

Section 34. Section 72-33-701, MCA, is amended to read:

"72-33-701. Limits on rights of beneficiary of revocable trust. Except to the extent that the trust instrument otherwise provides or ~~where~~ *when* the joint action of the trustor and all beneficiaries is required, during the time that ~~a trust is revocable and~~ the person holding the power to revoke the trust is competent:

(1) ~~The~~ *the* person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under chapters 33 through 36*;*

(2) ~~The~~ *the* duties of the trustee are owed to the person holding the power to revoke."

Section 35. Section 72-34-513, MCA, is amended to read:

"72-34-513. Nonliability for following instructions under revocable trust. (1) Notwithstanding 72-34-512, a trustee of a revocable trust is not liable

to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke *made when the person is competent*, including a person to whom the power to direct the trustee is delegated.

(2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property."

Section 36. Nonliability for refusing to follow directions under revocable trust. A trustee of a revocable trust is not liable for refusing to follow directions from a person holding the power to revoke, including a person to whom the power to direct the trustee is delegated, if in accordance with the trust instrument, the person holding the power is determined to be incompetent, as that or any similar term or phrase is defined in the trust instrument, or, in the absence of a provision in the trust instrument, if the trustee reasonably believes that the person holding the power is incompetent.

Section 37. Codification instruction. (1) [Sections 8 and 9] are intended to be codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2, apply to [sections 8 and 9].

(2) [Section 36] is intended to be codified as an integral part of Title 72, chapter 34, part 5, and the provisions of Title 72, chapter 34, part 5, apply to [section 36].

Approved May 12, 1995

CHAPTER NO. 593

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1997; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as "The General Appropriations Act of 1995".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 1997 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Legislative audit costs. Amounts appropriated to pay audit costs may be transferred between fiscal years. Agencies shall reserve enough cash in each fund and shall, to the maximum extent allowable under federal regulations, charge audit costs to federal funds.

Section 5. Technical allocation costs. (1) For agencies with internal cost allocation plans that are funded with proprietary revenue, the budget

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director shall adjust agency appropriations by amounts that are necessary to increase the budgets for indirect costs that are attributable to pay increases in an agency's indirect cost pool appropriated in the state pay plan bill. Funding for this appropriation consists of general fund money and other funds in an amount proportionate to the funding allocated for budgeting indirect cost assessments in [this act].

(2) For the agency line item appropriations for legislative audit, there is appropriated an increase equal to the amount appropriated from the legislative auditor's special revenue fund for state pay plan funding. The budget director shall allocate this appropriation on the same basis that current line items for legislative audit in agency budgets are allocated in [this act].

Section 6. Appropriation control. An appropriation item designated as "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 1999 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide budgeting and accounting system for any item designated as "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide budgeting and accounting system for any appropriation that appears as a separate line item in [this act].

Section 7. Program definition. As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide budgeting and accounting system, and is identified as a major subdivision of an agency ordinally numbered with an arabic numeral.

Section 8. Personal services funding — 1999 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 1999 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity for each fiscal year must be shown for each control variable in the budget request for the 1999 biennium submitted by October 30 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

~~[**Section 9. Personal services — workers' compensation costs.** Appropriations for personal services in [this act] for each executive branch agency (including those headed by an elected official) in each year of the biennium are reduced by the difference between amounts appropriated, by fund type, for workers' compensation costs and actual costs based upon rates established by the state mutual compensation fund, as determined by the budget director. The budget director shall submit all documentation of calculations used to determine the difference in workers' compensation costs in each year to the legislative fiscal analyst within 10 days of final calculation. The calculation may not include a reduction that is based on an experience modification factor.]~~

Section 10. Performance-based budgeting pilot projects. (1) The executive branch is encouraged to expand the current performance-based budgeting pilot project for the 1999 biennium. The legislature recommends that the following state programs and functions be considered for participation:

Agency	Program
Governor's Office	Citizen's Advocate
Secretary of State	Business and Government Services
Revenue	Corporate Tax
Transportation	Motor Pool
Social and Rehabilitation Services	Child Support Enforcement
Labor and Industry	Job Service
Labor and Industry	Human Rights Commission
Commerce	Building Codes
Fish, Wildlife, and Parks	Enforcement
State Lands	Forestry
Justice	Driver License Services
Corrections and Human Services	Chemical Dependency
Historical Society	Historic Preservation
Commissioner of Higher Education	Student Assistance

(2) Participating agencies sball include proposed performance measures, developed in accordance with office of budget and program planning guidance, with budget documents submitted under 17-7-112.

Section 11. Instructions for coordination of reorganization appropriations. When preparing the appropriations report for the 1997 biennium, the legislative fiscal analyst shall reflect the passage of Senate Bill No. 4, Senate Bill No. 234, Senate Bill No. 345, Senate Bill No. 361, House Bill No. 280, and House Bill No. 563, if these measures have been passed and approved.

Section 12. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 13. Corresponding reductions in appropriations. In accordance with Joint Rule 40-180(2), the reductions in appropriations from the introduced version of [tbis act] correspond to the reductions in revenue in House Bills No. 202, 560, and 90.

Section 14. Effective date. [This act] is effective July 1, 1995.

Section 15. Appropriations. The following money is appropriated for the respective fiscal years:

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	Fiscal 1996					Fiscal 1997				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
A. GENERAL GOVERNMENT AND TRANSPORTATION											
LEGISLATIVE AUDITOR (1101)											
1. Audit and Examination Program (01)											
1,409,015	1,243,232				2,652,247	1,422,465	1,243,125				2,665,590
Total											
1,409,015	1,243,232				2,652,247	1,422,465	1,243,125				2,665,590

If Senate Bill No. 398 is not passed and approved, general fund money in item 1 will be decreased by $7,376 in fiscal year 1996 and $5,963 in fiscal year 1997.

The legislative audit committee is authorized to accept and expend private and nonstate funds to contract for an independent study of the conversion of the Montana medicaid program provided for in Title 53, chapter 6, to private insurance policies or coverage by health service corporations or health maintenance organizations.

LEGISLATIVE FISCAL ANALYST (1102)											
1. Analysis and Review (01)											
784,915					784,915	810,219					810,219
a. Legislative Requests (Restricted/Biennial)											
10,000					10,000						
b. Postsecondary Education Interim Committee (Restricted/Biennial)											
14,800					14,800						
Total											
809,715					809,715	810,219					810,219

Of the amount for expenses associated with the review required pursuant to 17-1-505 appropriated to the office of the legislative fiscal analyst in section 1, Chapter 30, Special Laws of November 1993, amending section 15, Chapter 623, Laws of 1993, any unexpended funds up to $6,000 are reappropriated to the analysis and review program (program 01) within the office of the legislative fiscal analyst. The funds reappropriated to the analysis and review program are appropriated for the 1997 biennium for expenses associated with the review required in 17-1-505.

LEGISLATIVE COUNCIL (1104)											
1. Interim Studies and Conferences (05)											
a. Interim Studies (Biennial)											
90,947					90,947	90,947					90,947
b. Interim Study for Veterans' Issues (Biennial)											
10,000					10,000						
2. Legislative Council Operations (10)											

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	Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2,193,380	955,140				3,148,520	2,687,147	462,305				3,149,452
Total											
2,284,327	965,140				3,249,467	2,778,094	462,305				3,240,399

Individual activities in the interim studies program are budgeted as follows:

Joint Interim Committees	$44,000
Statewide Issues	10,000
Districting and Apportionment Commission	3,000
Revenue Oversight Committee	22,000
Select Committee on Indian Affairs	13,451
Administrative Code	12,640
NCCUSL	36,803
NCSL	40,000

The legislative council may allocate money appropriated in item 1a among the individual activities listed above in order to complete work assigned by the legislature.

ENVIRONMENTAL QUALITY COUNCIL (1111)

1. Environmental Quality Program (01)											
274,789					274,789	272,493					272,493
2. Water Policy Committee (02)											
a. Water Policy Committee (Biennial)											
	13,966				13,966		14,117				14,117
Total											
274,789	13,966				288,755	272,493	14,117				286,610

CONSUMER COUNSEL (1112)

1. Administration Program (01)											
	908,198				908,198		925,665				925,665
a. Consultant Contingency (Restricted)											
	100,000				100,000		100,000				100,000

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total		1,008,198				1,008,198		1,025,665				1,025,665
JUDICIARY (2110)												
1. Supreme Court Operations (01)	1,826,155		110 000			1,936,155	1,813,869		110,000			1,923,869
a. Legislative Audit (Restricted/Biennial)	22,727					22,727						
b. Child Support — Missoula Pilot (Restricted/Biennial/OTO)		12,500	12,500			25,000						
c. Foster Care Local Review Board Pilot (Restricted)	139,850					139,850	127,535					127,535
d. Court Automation (Restricted)		978,400				978,400		978,400				978,400
2. Boards and Commissions (02)	212,126					212,126	212,364					212,364
3. Law Library (03)	555,872					555,872	556,241					556,241
4. District Court Oporations (04)	2,971,595					2,971,595	2,969,337					2,969,337
5. Water Courts Supervision (05)		519,820				519,820		518,569				518,569
a. SB 387 — Water Adjudication Advisory Committee (Restricted/OTO)		5,000				5,000		5,000				5,000
6. Clerk of Court (06)	160,445					160,445	131,715					131,715
Total	5,888,770	1,515,720	122,500			7,526,990	5,811,061	1,501,969	110,000			7,423,030

The administrator of the supreme court shall prepare a report for the 55th legislature on the activities and accomplishments of the local citizen review board pilot program in item 1c.

Item 1d is contingent or passage and approval of House Bill No. 176.

The appropriation in item 5a is contingent on passage and approval of both Senate Bill No. 387 and House Bill No. 176.

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	Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

If Senate Bill No. 249 is not passed and approved, the appropriation in item 6 is increased by $29,376 in fiscal year 1996 and $58,951 in fiscal year 1997.

MT CHIROPRACTIC LEGAL PANEL (2115)

1. Legal Panel Operations (01)											
	14,000				14,000		14,000				14,000
Total											
	14,000				14,000		14,000				14,000

Because of elimination of the statutory appropriation by Senate Bill No. 83, item 1 has been increased by $14,000 in state special revenue in fiscal year 1996 and by $14,000 in state special revenue in fiscal year 1997. If Senate Bill No. 83 is not passed and approved in a form that eliminates the statutory appropriation, then the state special revenue amounts in item 1 are eliminated.

GOVERNOR'S OFFICE (3101)

1. Executive Office Program (01)											
	1,041,271	187,914			1,229,185	1,024,549	188,244				1,212,793
a. Legislative Audit (Restricted/Biennial)											
	26,579				26,579						
b. Montana Office of Community Service (Biennial)											
		94,949	2,000,000		2,094,949		94,634	2,000,000			2,094,634
2. Mansion Maintenance Program (02)											
	57,232				57,232	57,000					57,000
3. Air Transportation Program (03)											
	115,268	15,000			130,268	125,627	15,000				140,627
4. Office of Budget and Program Planning (04)											
	863,042	25,000			888,042	869,045	12,500				881,545
a. Legislative Audit (Restricted/Biennial)											
	14,638				14,638						
b. WEFA Contract (Restricted)											
	17,000				17,000	17,000					17,000
5. Lieutenant Governor (12)											
	179,835		107,611		287,446	180,181		109,333			289,514
6. Citizens' Advocate Office (16)											
	61,112		15,000		76,112	56,259		14,693			70,952
7. Mental Disabilities Board of Visitors (20)											
	147,737		61,611		209,348	152,263		61,972			214,235

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	Fiscal 1996					Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
2,523,714	322,863	2,184,222			5,030,799	2,481,924	310,378	2,185,998			4,978,300

State special revenue appropriated in item 1b includes unexpended 1995 biennial appropriations to the Montana office of community service from the employment security trust account and includes donations, contributions, and grants. In preparing the 1999 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst may not include general fund money in the proposed present law funding for the Montana office of community service.

OFFICE OF THE SECRETARY OF STATE (3201)

1. Business and Government Services (01)											
37,119			1,935,137		1,972,256	37,490			1,900,691		1,938,181
a. Legislative Audit (Restricted/Biennial)											
			22,727		22,727						
Total											
37,119			1,957,864		1,994,983	37,490			1,900,691		1,938,181

COMMISSIONER OF POLITICAL PRACTICES (3202)

1. Administration (01)											
249,920					249,920	235,656					235,656
a. Legislative Audit (Restricted/Biennial)											
3,852					3,852						
b. SB 136 — Ethics Administration											
100,000					100,000	100,000					100,000
c. SB 136 — Ethics Commission											
8,200					8,200	8,200					8,200
Total											
361,972					361,972	343,856					343,856

Items 1b and 1c are contingent on passage and approval of Senate Bill No. 136.

OFFICE OF THE STATE AUDITOR (3401)

1. Central Management (01)											
293,434	24,060				317,494	293,807	24,220				318,027
a. Legislative Audit (Restricted/Biennial)											
3,282					3,282						

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2. Insurance Program (03)	1,446,953	388,118				1,835,071	1,425,571	389,865				1,815,436
a. Legislative Audit (Restricted/Biennial)	14,003					14,003						
3. Securities (04)	352,134	72,175				424,309	352,642	72,158				424,800
a. Legislative Audit (Restricted/Biennial)	4,103					4,103						
4. Fiscal Control and Management Program (10)	143,459	598,219		200,254		941,932	149,487	637,135		198,754		985,376
a. Legislative Audit (Restricted/Biennial)		25,483		2,051		27,534						
Total	2,257,368	1,108,055		202,305		3,567,728	2,221,507	1,123,378		198,754		3,543,639

The amendments made to state special revenue and proprietary funds in item 1 are contingent on passage and approval of House Bill No. 563.

If House Bill No. 533 is not passed and approved, general fund money in item 2 must be decreased by $36,693 each fiscal year.

If House Bill No. 466 is not passed and approved, general fund money in item 2 must be decreased by $170,814 in fiscal year 1996 and $168,841 in fiscal year 1997.

If Senate Bill No. 384 is not passed and approved, general fund money in item 2 is decreased by $3,550 in fiscal year 1996.

If House Bill No. 563 is passed and approved:

(1) items 4 and 4a are void; and

(2) the provisions of [section 18(2)] apply.

The state auditor shall charge companies directly for examinations and shall abate expenditures.

The state auditor may request a budget amendment for costs incurred due to medicaid HMO complaints.

DEPARTMENT OF TRANSPORTATION (5401)

1. General Operations Program (01)		9,511,439	367,692			9,879,131		9,473,115	365,657			9,838,772
a. Legislative Audit (Restricted/Biennial)		87,058				87,058						

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		Fiscal 1996					Fiscal 1997					
		General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	b. Rewire Complex (OTO)		189,675				189,675						
	c. Contract Fuels Tax Audit (OTO)		184,825				184,825		184,825				184,825
	d. Financial Management (OTO)		66,000				66,000		66,000				66,000
	e. Fuels/GVW Tax System (OTO)		261,000				261,000		204,000				204,000
2.	Construction Program (02) (Biennial)		71,240,593	185,348,433			256,589,026		78,099,578	194,314,685			272,414,263
	a. Metric Conversion (Restricted/OTO)		627,110	3,819,237			4,446,347		45,951	69,264			115,215
	b. City Park Rest Areas (Restricted/OTO)		400,000				400,000		500,000				500,000
	c. Miscellaneous New Equipment (OTO)		260,295				260,295		119,880				119,880
	d. GPS Survey Equipment (OTO)		120,000				120,000		120,000				120,000
	[e. Claggett Hill Project (Restricted/OTO)		~~350,000~~				~~350,000~~]						
3.	Maintenance Program (03) (Biennial)		56,757,045				56,757,045		57,464,460				57,464,460
	a. Hazardous Waste Cleanup (Restricted/OTO)		1,000,000				1,000,000		1,000,000				1,000,000
	b. Radio Equipment (OTO)		124,781				124,781		124,781				124,781
	c. Weed Control (Restricted)		802,647				802,647		802,647				802,647
4.	State Motor Pool (07)				1,934,592		1,934,592				1,821,720		1,821,720
5.	Equipment Program (08)				14,977,144		14,977,144				15,445,104		15,445,104
6.	Motor Carrier Services (22)		4,175,237				4,175,237		4,106,730				4,106,730

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	Fiscal 1996					Fiscal 1997				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. SB 378 — Deregulation of Interstate Trucking		21,674				21,674		21,747				21,747
7. Aeronautics Program (40)		728,221	99,000	70,245		897,466		715,233	98,932	70,158		884,323
8. Transportation Planning (50)		852,910	3,667,027			4,519,937		849,744	3,651,221			4,500,965
a. Highway Information System (Restricted/OTO)		130,000	520,000			650,000						
b. McCarty Farms (Biennial/Restricted/OTO)		400,000				400,000						
Total		148,290,510	193,821,389	16,981,981		359,093,880		153,898,691	198,499,759	17,336,982		369,735,432

If the total net revenue from the fuel tax exceeds the revenue estimate established in House Joint Resolution No. 9, the department shall increase the urban and secondary appropriations included in item 2 by the amount the revenue estimate is exceeded, up to $15 million for the biennium. The increase must be divided on a 40% urban/60% secondary basis.

[Item 2e is for survey, preliminary design, and staking work, to be performed by or at the direction of Fergus County, on the Claggett hill (old stage road) project. The legislature intends that this work be completed no later than October 31, 1995.]

The department may adjust appropriations in the construction and transportation planning programs between state special and federal special revenue fund types, provided that the total state special revenue authority for these programs is not increased by more than 10% of the appropriations established by the legislature. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning, and all fund transfers of over $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

The department is authorized to obtain contributed capital from the highway special revenue account for the motor pool proprietary account for the purpose of managing the motor pool account fund balance in accordance with the federal government's interpretation of OMB Circular A-87. The department shall make such accounting entries in amounts minimally sufficient to avoid federal assessments.

DEPARTMENT OF REVENUE (5801)

1. Director's Office (01)	940,257			79,656	1,019,913	962,482			81,538	1,044,020
a. Legislative Audit (Restricted/Biennial)	90,106	3,543	939	36,384	130,972					
2. Operations Division (02)	2,108,598	101,773		253,482	2,463,853	2,118,428	101,571		253,378	2,473,377
a. Mail Room/Cashiering Automation (OTO)	204,630				204,630					

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3	Liquor Division (05)											
	258,759			261,849		520,608	259,115			262,932		522,047
4.	Income Tax (06)											
	4,255,450	608,173				4,863,623	4,219,211	605,021				4,824,232
	a. HB 560 — Medical Care Savings Accounts						30,667					30,667
	b. HB 293 — EDI/EFT Ongoing Costs											
	28,403	23,239				51,642	28,447	23,274				51,721
	c. HB 293 — EDI/EFT Programming (OTO)											
	30,897	25,279				56,176	21,480	17,574				39,054
5.	Corporation Tax (07)											
	1,371,094	29,608	231,444			1,632,146	1,378,590	29,713	232,202			1,640,505
6.	Property Valuation Division (08)											
	13,074,089					13,074,089	13,329,932					13,329,932
Total												
	22,362,283	791,615	232,383	631,371		24,017,652	22,348,352	777,153	232,202	597,848		23,955,555

Liquor division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor merchandising operation are appropriated to the department in amounts not to exceed $57,164,000 in fiscal year 1996 and $58,267,000 in fiscal year 1997. During the 1997 biennium, the division shall attempt to return at least 10% [19%] of net sales to the general fund. Net sales are gross sales less discounts[, commissions,] and all taxes collected. The division shall limit biennial operational expenses of the liquor merchandising system to not more than 15% [8.25%] of the net sales. For purposes of this expense limitation, operational expenses include all merchandising expenses, including depreciation, plus department overhead allocable to the merchandising system, but do not include product costs and freight charges. If House Bill No. 574 is not passed and approved, the bracketed language in this paragrapb is void and the former text is restored.

During the 1997 biennium, the department is encouraged to research and to implement, if possible, new electronic technologies, such as increased use of electronic filing for all tax returns, computer imaging, integration of statewide appraisal systems with statewide geographic information systems, connection to the information superhighway, and any other emerging systems, for the purpose of developing more effective and efficient ways of processing tax data.

The department is appropriated revenue deposited to the property valuation improvement fund in the 1997 biennium in amounts not to exceed $250,000 in fiscal year 1996 and $250,000 in fiscal year 1997.

The department is authorized to borrow up to $50,000 from the general fund in the 1997 biennium for the property valuation improvement fund. The department shall repay the loan by the end of the 1997 biennium with interest equal to rates earned by the short-term investment pool.

Items 4b and 4c are contingent on passage and approval of House Bill No. 293.

DEPARTMENT OF ADMINISTRATION (6101)

1. Accounting and Management Support (03)

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	1,187,283	15,000	17,343	169,315		1,388,941	1,182,552	25,000	16,784	170,159		1,394,495
a.	Legislative Audit (Restricted/Biennial)											
	37,144					37,144						
2.	Architecture and Engineering (04)											
		686,047				686,047		690,039				690,039
a.	Legislative Audit (Restricted/Biennial)											
		1,365				1,365						
b.	1997 Biennium Long-Range Building Program											
		130,384				130,384		131,443				131,443
3.	Procurement and Printing (06)											
	407,076			10,107,942		10,515,018	410,802			10,443,072		10,853,874
a.	Legislative Audit (Restricted/Biennial)											
				21,344		21,344						
4.	Information Services Division (07)											
				18,120,155		18,120,155				17,786,555		17,786,555
a.	Legislative Audit (Restricted/Biennial)											
				66,890		66,890						
b.	Contract Programming (Biennial)											
				200,000		200,000						
c.	Capitol Complex Rewire (OTO)											
				224,000		224,000				224,000		224,000
d.	Public Safety Radio (Restricted/Biennial/OTO)											
			200,000			200,000						
5.	General Services Division (08)											
	249,927			3,484,351	58,801	3,793,079	256,146			3,646,127	58,801	3,961,074
a.	Legislative Audit (Restricted/Biennial)											
				7,186		7,186						
b.	Fire Protection (Restricted)											
				60,000		60,000				60,000		60,000
c.	Capitol Complex Major Maintenance (Biennial)											
				693,000		693,000						
d.	Emergency Repair Contingency (Restricted/Biennial)											
				100,000		100,000						
6.	Central Mail (13)											

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				3,085,854		3,085,854				3,164,588		3,164,588
a.	Legislative Audit (Restricted/Biennial)											
				5,140		5,140						
7.	State Personnel Division (23)											
	876,516			1,268,730		2,145,246	878,358			1,237,164		2,115,522
a.	Legislative Audit (Restricted/Biennial)											
				61,882		61,882						
b.	P/P/P Modifications (Restricted/Biennial/OTO)											
				150,000		150,000						
c.	FSA Self-Administration (Restricted)											
										43,541		43,541
d.	Personal Services Contingency (Restricted/Biennial/OTO)											
	500,000				1,000,000	1,500,000						
e.	SB 136 — Employee Ethics Rulemaking and Brochure (OTO)											
	4,015					4,015						
8	Risk Management and Tort Defense (24)											
				3,074,764		3,074,764				3,221,015		3,221,015
a.	Legislative Audit (Restricted/Biennial)											
				5,874		5,874						
9.	State Tax Appeal Board (37)											
	396,795					396,795	398,937					398,937
Total												
	3,658,756	832,796	217,343	40,906,427	1,058,801	46,674,123	3,126,795	846,482	16,784	39,996,221	58,801	44,045,083

The governor-elect program is appropriated necessary expenses, up to $50,000 from the general fund in fiscal year 1997, to implement the provisions of 2-15-221.

Funds remaining in the capitol land grant account of the capital projects fund, after all other appropriations are met, are appropriated to the long-range building debt service fund for the payment of principal and interest on bond issues for public buildings at the capitol, not to exceed the annual debt service required on these bonds.

Item 2b is contingent on passage and approval of House Bill No. 5 and at least two or more of the following bills: House Bill No. 15, 584, 585, 594, 595, or 603.

The general fund money appropriated for the general services program is intended for transfer into the general services proprietary account. The present law base in subsequent bienniums must include general fund money at 6.5% of program operating expenses.

The general services division is authorized to build a new parking lot west of the Scott Hart building.

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	Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Funding to support self-administration of flexible spending accounts is contingent on the department's determination that self-administration is more cost-effective than contracting with the current provider.

The information services division shall actively pursue federal funding for the SummitNet project. If federal funds become available in the 1997 biennium, the department is authorized to seek a budget amendment to allow expenditure of those funds and shall reduce its proprietary fund appropriation accordingly.

The department shall provide semiannual reports to the office of budget and program planning and the office of the legislative fiscal analyst on progress towards achievement of the central mail program performance targets, as outlined in the legislative appropriations report for the 1997 biennium, with explanations for any significant variances.

The department of administration shall develop and submit cost recovery plans for payroll services, information services division services, mail messenger services, publications and graphics services, insurance premiums, general services rent, and the state funds cost allocation plan to the office of budget and program planning and the legislative fiscal analyst by June 1, 1996, for development of the 1999 biennium present law base. The office of budget and program planning shall, in consultation with the legislative fiscal analyst, develop guidelines for the form and content of agency cost recovery plans by May 1, 1996. The (agency) shall develop its cost recovery plan and provide supporting documentation as specified in these guidelines. Agency cost recovery plans must include projected revenue and expenses by line of service and the projected fiscal yearend working capital balances for each applicable accounting entity, unless exempted in office of budget and program planning guidelines.

Item 7d contains biennial appropriations that the department and the office of budget and program planning may allocate to agencies (except the Montana university system), subject to the process described below, for personal services if the agencies did not experience normal turnover in an amount necessary to provide full funding for personal services. In allocating the personal services contingency funds, priority must be given to small agencies. Amounts may be adjusted among fund types, excluding the general fund, which may not be adjusted. An agency requesting an allocation of these funds shall document in its request to the budget director that projected personal services expenditures will exceed program appropriations for personal services and the reasons for the deficit and shall certify that no other budget authority in the agency is available. The office of budget and program planning shall provide an annual report to the legislative finance committee documenting all allocations of these personal services contingency funds.

Item 7e is contingent on passage and approval of Senate Bill No. 136.

The amendments to text in lines 8, 9, 13, 14, and 15 on page A-13 (reference copy) are contingent on passage and approval of House Bill No. 576.

APPELLATE DEFENDER COMMISSION (6102)

1. Appellate Defender (03)											
100.000					100.000	100.000					100.000
Total											
100.000					100.000	100.000					100.000

The appropriation in item 1 is contingent on:

(1) the appellate defender program not being funded by a statutory appropriation, as provided in Senate Bill No. 83; and

(2) passage and approval of Senate Bill No. 83.

PUBLIC EMPLOYEES' RETIREMENT BOARD (6104)

1. Public Employees' Retirement Program (35)

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Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				1,294,945	1,294,945					1,168,613	1,168,613
a. Legislative Audit (Restricted/Biennial)				46,225	46,225						
Total				1,341,170	1,341,170					1,168,613	1,168,613
TEACHERS' RETIREMENT BOARD (6105)											
1. Teachers' Retirement System (01)				681,451	681,451					697,118	697,118
a. Legislative Audit (Restricted/Biennial)				34,669	34,669						
b. HB 316 — TRS Service Purchase (OTO)				3,600	3,600						
Total				719,720	719,720					697,118	697,118
TOTAL SECTION A											
41,967,828	156,106,095	196,577,837	60,679,948	3,119,691	458,451,399	41,754,256	161,217,263	201,044,743	60,030,496	1,924,532	465,971,290

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
B. HUMAN SERVICES												
DEPARTMENT OF LABOR AND INDUSTRY (6602)												
1. Job Service Division (01)	362,805	5,080,022	20,239,287	46,058		25,728,172	362,805	4,865,961	20,486,576	46,058		25,761,400
a. Legislative Audit (Restricted/Biennial)		18,132	37,119			55,251						
b. Mail Costs (Restricted)			128,313			128,313			128,313			128,313
c. KIOSK (Restricted/OTO)			33,600			33,600			33,600			33,600
d. Certified Apprenticeship — Instruction and Related Training Programs (Restricted/OTO)		100,000				100,000		100,000				100,000
2. Unemployment Insurance (02)		443,083	5,231,570	163,964		5,838,617		459,604	5,213,700	168,315		5,841,619
a. Legislative Audit (Restricted/Biennial)		1,079	19,883	338		21,300						
b. Mail Costs (Restricted)			244,017			244,017			277,745			277,745
c. BeAR (Restricted/OTO)			63,164			63,164			63,164			63,164
d. R&A National Conference (Restricted/OTO)			40,000			40,000						
3. Commissioner's Office/Centralized Services (03)				1,471,033		1,471,033				1,466,194		1,466,194
a. Mail Costs (Restricted)				7,991		7,991				7,991		7,991
4. Employment Relations (04)	283,999	3,963,317	167,044	368,086		4,782,446	271,999	3,953,327	171,838	385,810		4,782,974
a. Legislative Audit (Restricted/Biennial)		13,923	690	1,699		16,312						
b. Management Information System (Restricted/OTO)		24,463	694	3,323		28,480						
c. Workers' Compensation Data Base Development (Restricted/OTO)												

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		105,452				105,452						
d.	SB 354 — Contractor Registration	267,780				267,780		337,401				337,401
5.	Legal Services Division (06)	604,814	353,416	106,108		1,064,338		600,956	349,772	105,431		1,056,159
a.	Legislative Audit (Restricted/Biennial)	2,086	1,208	366		3,660						
b.	Mail Costs (Restricted)		4,765			4,765			4,765			4,765
c.	SB 354 — Contractor Registration	68,945				68,945		138,419				138,419
6.	Human Rights Commission (08)	545,761	22,000	205,673		773,434	546,741	22,000	205,814			774,555
a.	Legislative Audit (Restricted/Biennial)	1,834		706		2,620						
7.	Workers' Compensation Court (09)	356,438				356,438		356,064				356,064
a.	Legislative Audit (Restricted/Biennial)	1,014				1,014						
Total		1,194,399	11,072,548	26,771,229	2,168,966	41,207,142	1,181,545	10,833,732	26,935,287	2,179,799		41,130,363

Funds appropriated for item 1c must be used for telephone equipment charges and long distance charges associated with operating KIOSK and computerized information centers. The legislature intends the department to coordinate with other state agencies, counties, cities, and towns to the greatest extent possible to fully utilize the capacity and capabilities of the KIOSK and computerized information centers that will be installed throughout the state. The department shall report on the usage and effectiveness of the KIOSK and computerized information centers to the 55th legislature. Because these funds are approved on a one-time-only basis, the department shall request and justify similar funding in a new proposal for the 1999 biennium if it intends to continue operating the KIOSK and computerized information centers past the 1997 biennium.

Funds appropriated in item 1d may be used only for certified apprenticeship instruction and for related training programs.

If House Bill No. 68 is not passed and approved, state special revenue in item 4 is increased by $223,749 in fiscal year 1996 and by $224,644 in fiscal year 1997.

Funds in items 4d and 5c are contingent on passage and approval of Senate Bill No. 354. Senate Bill No. 354 provides for fees to fund the administrative and enforcement activities required of the department. If revenue from the fees is initially insufficient to fund items 4d and 5c, then the department is authorized to use a short-term loan from the employment security trust account. The short-term loan must be repaid by September 30, 1996.

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The commissioner of labor and industry and the budget director of the office of budget and program planning shall transfer from the employment security trust account to the unemployment trust fund account the amount of funds determined to be in excess of the amount needed to fund the department programs for the 1997 biennium. This transfer must be made no later than October 1, 1996.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (6901)

1.	Family Assistance (01)											
	3,661,702	137,500	23,333,569			27,132,771	4,340,309	70,000	24,093,494			28,503,803
	a. JOBS Benefits											
	100,000	235,119	604,593			939,712	100,000	235,119	604,593			939,712
	b. AFDC Benefits											
	14,214,373	1,389,581	35,981,460			51,585,414	14,018,403	2,535,905	36,893,510			53,447,818
2.	Eligibility Determination Program (03)											
		2,736,364	2,833,040			5,569,404		2,766,831	2,863,977			5,630,808
3.	Director's Office (04)											
	219,993	68,964	337,985			626,942	220,969	69,269	339,483			629,721
4.	Child Support Enforcement (05)											
	782,273	2,396,525	6,242,092			9,420,890	1,013,035	2,408,457	6,717,324			10,138,816
5.	State-Assumed County Administration (06)											
	3,349,458		3,430,542			6,780,000	3,405,485		3,486,910			6,892,395
	a. County Pilot Project (Restricted/OTO)											
	70,000					70,000	70,000					70,000
6.	Medical Assistance (07)											
	83,702,550	9,228,629	253,018,859			345,950,038	91,394,394	7,428,629	265,118,544			363,941,567
	a. Contract/Develop RBRV's System (Biennial)											
	50,000		50,000			100,000						
	b. Pediatric Dental Consultant/Orthodontia Consultant											
	500		500			1,000	500		500			1,000
	c. Local Health Care Providers (Biennial)											
			1,300,000			1,300,000						
	d. Hospital Rate Increase											
	299,622		690,538			990,160	573,624		1,276,776			1,850,400
	e. Nursing Home Rate Increase											
	957,524		2,206,796			3,164,320	1,833,678		4,081,412			5,915,090
	f. Dental Rate Increase — Children's Services (Restricted)											
	257,304		593,006			850,310	287,952		640,926			928,878

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
7. TDD Program (08)		676,058				676,058		734,716				734,716
8. Operations and Technology Division (09)	4,566,038	1,517,572	7,822,164			13,905,774	4,194,720	1,487,311	7,399,011			13,081,042
a. Legislative Audit (Restricted/Biennial)	84,007	5,432	91,610			181,049						
b. Welfare Fraud Transfer	100,000		300,000			400,000	100,000		300,000			400,000
c. HB 511 — Health Care Authority	174,168		124,167			298,335	22,227		22,227			44,454
9. Vocational Rehabilitation Program (10)	2,379,870	192,087	8,927,243			11,499,200	2,457,621	192,087	9,076,037			11,725,745
10. Disability Determination Program (11)			3,227,187			3,227,187			3,319,142			3,319,142
11. Visual Services Program (13)	332,916		1,169,434			1,502,350	338,050		1,184,463			1,522,513
12. Developmental Disabilities Program (14)	18,583,975		25,142,813			43,726,788	18,972,013		25,430,452			44,402,465
a. Personal Care in Group Homes			2,315,900			2,315,900			2,299,475			2,299,475
b. Increased Federal Authority			1,000,000			1,000,000			1,000,000			1,000,000
c. Provider Rate Increase	750,858		431,908			1,182,766	1,527,488		873,960			2,401,448
13. Developmental Disabilities Advisory Council (15)			420,475			420,475			420,382			420,382
Total	134,637,131	18,583,831	381,595,881			534,816,843	144,870,468	17,928,324	397,442,598			560,241,390

If Senate Bill No. 345 is passed and approved, items 1 through 13 and accompanying text are void and the provisions of [section 17] apply.

The legislature intends that expenditures for all provider rate increases approved by the legislature be limited to the dollar amounts appropriated rather than the percentage increase on which the original estimates may have been based. The department will be in compliance with this provision if:

(1) it estimates total cost for each medicaid service category in June prior to the beginning of each fiscal year of the 1997 biennium; and

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	Fiscal 1996					Fiscal 1997				
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Spocial Revenue	Propri-etary	Other	Total

(2) the percentage increase or base adjustments approved by the department are limited to the dollar amount appropriated for each provider rate increase.

The AFDC payment level for the 1997 biennium must be established at no less than 40.5% of the federal poverty index.

The department shall require that JOBS participants who leave the program because of employment be tracked up to 1 year after their termination with the JOBS program as a condition of letting JOBS contracts. Exemptions from this requirement include JOBS participants who are no longer Montana residents or JOBS participants who cannot be reached despite good faith efforts. The department shall report to the 55th legislature regarding the employment and earning status of former JOBS participants served during the 1997 biennium.

Contingent on passage and approval of Senate Bill No. 209, the department shall notify the department of family services that children in a household are at risk when that household receives a sanction that includes reduction of the adult portion of the AFDC grant.

Funds in item 1a must be used for a teen parent program. The department may use general fund money in item 1a for a teen parent program for teen parents who are not AFDC eligible and for teen parents who are AFDC eligible but younger than 15 years of age.

The department is authorized to retain 7.5% of the federal community services block grant and pass through the remaining 92.5% to the human resource development councils (HRDCs). If during fiscal year 1996 or fiscal year 1997 the block grant falls below the federal fiscal year 1990 grant level, the department shall retain only 5% of the grant amount and pass through the remaining 95% to the HRDCs.

The state share of AFDC-related support collections and all AFDC and non-AFDC federal incentive payments and program-collected fees must be deposited in the state special revenue account from which the state share of the administrative and operational costs of the child support enforcement program must be paid. The department shall transfer to the general fund from the child support enforcement account any cash balance in excess of $350,000.

The department is appropriated funds for a pilot project in Deer Lodge County. The pilot project may include work, job training, subsistence payments, and preventive health programs for low-income people. The use of appropriated funds in item 5a is contingent on Deer Lodge County levying 12 mills for its poor fund for public assistance, protective services, and other benefits for low-income people.

The department shall implement 53-6-101(10) if medicaid expenditures exceed appropriations in [this act] in either year of the biennium.

The department shall perform a statistically valid survey of dentists to determine usual and customary charges for children's dental services during fiscal year 1996. The department sball compute the 1999 biennium cost of establishing medicaid reimbursement for children's dental services at 80% of usual and customary charges based on the survey results. The executive budget must publish by fiscal year the 1999 biennium cost to fund medicaid reimbursement for children's dental services at 80% of survey rates.

The legislature intends that $70,653,143 of the amount in fiscal year 1996 and $77,127,105 of the amount in fiscal year 1997 in item 6 are appropriated for hospital medicaid benefits.

Because of de-earmarking by Senate Bill No. 83, item 6 has been reduced by $6,611,179 in state special revenue in fiscal year 1996 and by $6,665,040 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 6 are reduced by $6,611,179 in fiscal year 1996 and by $6,665,040 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

Funds in item 6b must be used to contract for orthodontia consultation and pediatric dental consultation for medicaid dental claims, medicaid policy development, and representation of the department in fair hearings.

The department may use funds in items 6d and 6e to increase rates paid for medicaid services purchased from hospitals and nursing homes. If hospital or medicaid providers sue the department to obtain additional increases in medicaid rates, the department may use the funds to defend the state against the lawsuit. In the event the defense is unsuccessful, the department may reallocate funds from other appropriations to fund nursing home and bospital rate increases.

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Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Funds in item 6f may be used only for rate increases for children's dental services. Funds in item 6f may not be transferred to other uses in the department or to another department.

If Senate Bill No. 236 is passed and approved and if the department collects estate recoveries and other savings because of Senate Bill No. 236 in excess of $600,000 in fiscal year 1996 or $600,000 in fiscal year 1997, up to $1 million of general fund money and matching federal funds of those excess savings are appropriated each year for independent living and community-based medicaid services.

Item 8 includes efficiencies and savings of 25 FTE, $412,500 in general fund money, and $412,500 in federal special revenue in fiscal year 1997 based on passage and approval of Senate Bill No. 345, which reorganizes human services and public health agencies. The executive branch can allocate these reductions among programs in the department of public health and human services. If Senate Bill No. 345 is not passed and approved, the appropriation in item 8 is increased by 25 FTE, $412,500 in general fund money, and $412,500 in federal special revenue in fiscal year 1997.

If Senate Bill No. 345 is passed and approved, the department shall solicit proposals to establish a local structure to administer and coordinate human services programs. To the extent feasible and permitted by federal law, the proposal must include administration of all of the programs transferred to the department of public health and human services. The department shall accept one or more proposals as a demonstration project, with an anticipated beginning date of July 1, 1996. Funding for the demonstration project must be taken from appropriations authorized in [this act]. If Senate Bill No. 345 is passed and approved, the department shall create an advisory committee to assist in the preparation of a report to the 55th legislature on the feasibility of expanding the demonstration proposal to establish local administration and coordination of human services programs. The report must contain a preliminary evaluation of the demonstration project described above.

Funds for item 8b are to fund welfare fraud investigation. The department of justice may hire FTE rather than contract for services if the department certifies to the office of budget and program planning that FTE are more cost-effective than contracted services.

The funds for item 8c are contingent on passage and approval of House Bill No. 511.

If the department considers contracting for operation of the TEAMS or SEARCHS computer applications on a privately owned and operated mainframe or midrange computer or if the department plans to purchase a midrange computer for the operation of these systems, the department shall submit to the office of budget and program planning and to the legislative finance committee a comparison of the cost of operating the system on the state mainframe computer managed by the department of administration or on a midrange computer owned by the department. The department of administration shall estimate rate changes that would occur because of removal of TEAMS or SEARCHS from the state mainframe. If the office of budget and program planning determines that statewide cost savings are greater than the private contract cost savings or savings because of the purchase of a departmental midrange computer, the department shall operate TEAMS or SEARCHS on the state mainframe computer if continued operation of TEAMS or SEARCHS on the state mainframe does not conflict with federal regulations.

Provider rate increases funded in item 12c must be allocated between general operating inflationary increases and wage increases for the lowest wage, direct-care line workers of developmental disabilities providers. No less than $375,429 of general fund money and $215,954 of federal special revenue in fiscal year 1996 and $758,100 of general fund money and $433,751 of federal special revenue in fiscal year 1997 must be granted with no specific expense allocation, and the remainder of the rate increase must be allocated to salaries for the lowest-wage, direct-care line workers.

The department may pursue funding of any existing eligible state general-funded services under the federal ICF/MR program if the federal government fails to approve adequate medicaid waiver funding under the home- and community-based waiver program.

It is the intent of the legislature that in fiscal year 1996 and fiscal year 1997, any unexpended portion of the department's general fund appropriation, up to $500,000 for the biennium, may be awarded by the department for the purposes of providing primary and preventive health care benefits to children who are uninsured and not eligible for medicaid benefits. To qualify, the family income may be no greater than 185% of the federal poverty level. The department may contract with public or private entities for the administration and provision of these services. These funds may be allocated only to those programs that have established a statewide network of medical providers who have agreed to accept reimbursement at a lower rate than would normally be charged for their services.

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF FAMILY SERVICES (6911)												
1. Management Support Services Division (01)	1,741,630	15,000	375,892			2,132,522	2,647,562	15,000	1,071,719			3,734,281
a. Legislative Audit (Restricted/Biennial)	91,212		15,042			106,254						
b. CAPS Development (OTO)	627,680		1,883,041			2,510,721						
2. Regional Administration (02)	6,628,793	1,017,077	3,271,080			11,116,950	6,859,373	1,017,077	3,286,416			11,162,866
a. Protective Services Workers (Restricted)	213,386		122,761			336,147	332,988		191,568			524,556
b. SB 55 — County Administrative Costs	307,272		63,382			370,654	307,272		63,382			370,654
3. Juvenile Corrections (03)	11,070,726	355,816	301,739			11,728,281	11,175,475	357,818	303,520			11,836,813
a. Sex Offender Programs/Secure Care Female Offenders (Restricted)	400,000					400,000	400,000					400,000
b. Pine Hills School Maintenance (Biennial/Restricted)	58,000					58,000						
c. Pine Hills Ranch (Biennial/Restricted)	25,000					25,000						
d. Juvenile Corrections Provider Rate Increase	61,801		671			62,472	129,362		1,402			130,764
4. Program Management Division (05)	13,909,879	1,811,649	14,330,305			30,051,833	14,467,905	1,812,761	14,465,871			30,746,537
a. Crisis Nursery Project (OTO)			200,000			200,000			200,000			200,000
b. Family Preservation and Support (Biennial)			997,843			997,843						
c. Partnership Project		150,000	2,000,000			2,150,000		150,000	2,000,000			2,150,000
d. Foster Care Provider Rate Increase	119,753	12,167	49,435			181,355	250,667	24,516	103,235			378,418
e. At-Risk Child Care (Restricted)												

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	Fiscal 1996					Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
383,260		915,928			1,299,188	389,756		909,432			1,299,188
f. W.K. Kellogg Grant — Matching Funds (Biennial)											
		240,377			240,377						
Total											
35,838,392	3,361,709	24,767,496			63,967,597	36,960,360	3,377,172	22,596,545			62,934,077

The amendments made to the general fund in items 1, 1a, and 2 are contingent on passage and approval of Senate Bill No. 345. If Senate Bill No. 345 Is passed and approved, items 1 through 4 and accompanying text are void and the provisions of [section 17] apply.

The legislature intends that expenditures for all provider rate increases approved by the legislature be limited to the dollar amounts appropriated rather than the percentage increase on which the original estimates may have been based. The department will be in compliance with this provision if the percentage increase or base adjustments approved by the department are limited to the dollar amount appropriated for each provider rate increase.

The department shall prepare a unified budget for the interagency coordinating council on prevention of child abuse and neglect. The unified budget must identify services funded, expenditures by service in fiscal year 1996, and preliminary amounts budgeted for the 1999 biennium by service and fund type from the department of family services, office of public instruction, board of crime control, department of health and environmental sciences, department of labor and industry, and department of social and rehabilitation services. A preliminary budget must be presented to the joint oversight committee on children and families, the legislative finance committee, and the office of budget and program planning by September 1, 1996. The unified budget must be published in the governor's budget request to the 55th legislature.

The department may add FTE instead of contracting for services if it certifies to the office of budget and program planning that FTE are more cost-effective than contracting. FTE added through this language may not be included in the 1999 biennium base budget.

The department shall notify the parents, legal guardians, or caretakers of the children of male and female prisoners in the state of Montana of the state services available to children and families. Services provided by the departments of family services, social and rehabilitation services, health and environmental sciences, and corrections and human services must be listed and explained. Notification may be waived if the children of prisoners do not reside in Montana.

Funds in item 1b may not be included in the fiscal year 1996 hase budget.

Funds in item 2a may be used only for new social worker positions with duties related to child or elder abuse and neglect. The department shall establish an accounting center and a budget center to track expenditures for and the number of abuse and neglect workers separate from other department FTE. The department shall report abuse and neglect FTE and related expenditures separate from other budget functions in its budget request to the 55th legislature.

Funds in item 2b are contingent on passage and approval of Senate Bill No. 55.

The legislature has no evidence that the Montana youth alternatives program funded in item 3 is more effective in treating juvenile offenders than the Mountain View school program.

Funds in item 3a must be spent on secure care for female offenders and treatment programs for sexual offenders. The department may not transfer funds in item 3a to other uses or to other programs or departments. The department shall provide to the 55th legislature the following information about expenditures funded frem item 3a: the number of children served, the average cost per child, services provided, the treatment outcomes, and the current placement of children served.

Funds in item 3b may not be used for any purpose other than maintenance and repair of Pine Hills school. The department must obtain the approval of the engineering and architecture division of the department of administration before proceeding with repairs funded frem item 3b.

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Funds in item 3c may be used only for a vocational agricultural program at Pine Hills school.

The department shall present a report to the 55th legislature confirming the outcome of the partnership project. The report must include the number of families and children served and the types of services funded and must verify the impact on the growth in the foster care caseload, if any. The report must explicitly identify fiscal year 1996 expenditures by fund type, service, and county location, compared to the estimated expenditures by fund type and service for the 1999 biennium.

Because of de-earmarking by Senate Bill No. 83, item 4 has been reduced by $35,406 in state special revenue in fiscal year 1996 and by $34,409 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 4 are reduced by $35,406 in fiscal year 1996 and by $34,409 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

Funds in item 4a may not be included in the base budget for the 1999 biennium.

Item 4c is to develop family support services for children at risk of abuse or neglect and for children who have been referred for abuse or neglect and to develop community-based services for children placed in or who are at risk of being placed in juvenile corrections facilities. The development of additional services is contingent on recovery of federal funds through department refinancing initiatives and the collection of contributions from parents of children. Services must be developed within appropriation limitations in [this act], and the department may not expand partnership services so that foster care general fund requirements are greater than appropriations in [this act].

Funds in item 4e may be used only to fund child care benefit costs for families who are at risk of becoming eligible for AFDC. Funds in item 4e may not be used for any other purpose, transferred to any other use in the department, or transferred to another department.

DEPARTMENT OF PUBLIC HEALTH (5301)

1.	Director's Office (01)											
	0	0		0	0	0	0		0	0		
2.	Central Services (02)											
	0	0	0	0		0	0	0	0			
	a. Legislative Audit (Restricted/Biennial)											
			0	0								
3.	Air Quality (03)											
	358,352	2,004,939	1,074,749		3,438,040	361,544	2,230,339	862,732		3,454,615		
	a. Radon Contract (Restricted)											
	25,000				25,000		25,000			25,000		
	b. Radon Control (OTO)											
		87,457			87,457			112,457		112,457		
4.	Environmental Remediation (04)											
	1,826,567	2,369,023			4,195,590		1,829,081	2,090,750		3,919,831		
5.	Water Quality (05)											
	2,675,331	3,269,622			5,944,953		2,697,339	3,239,880		5,937,219		
6.	Health Services (06)											
	1,513,702	739,811	1,460,183		3,713,696	1,470,652	743,687	1,374,620		3,588,959		

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Certificate of Need (Biennial)	92,246					92,246						
b. Local Health Care Providers (Restricted/Biennial)	300,000	300,000				600,000						
c. Tumor Registry			138,342			138,342			120,249			120,249
7. Family/Maternal and Child Health Bureau (07)	620,822		24,974,896			25,595,718	620,241		26,035,092			26,655,333
a. MIAMI (Restricted)	414,000					414,000	414,000					414,000
b SB 292 — Right to Know Information	37,134					37,134	36,334					36,334
8. Preventive Health Bureau (08)	110,000		4,475,659			4,585,659	112,000		4,601,344			4,713,344
a. Communicable Disease Emergency Fund (Restricted/Biennial)	50,000					50,000						
9. Health Facilities Division (09)	682,456		1,873,484			2,555,940	687,795		1,885,380			2,573,175
10. Petroleum Tank Release Compensation Board (11)		1,346,851				1,346,851		1,354,393				1,354,393
11. Waste Management (12)	151,997	2,883,491	531,734			3,567,222	155,782	2,972,022	483,244			3,611,048
Total	4,330,709	11,801,990	40,255,149			56,387,848	3,858,348	11,851,861	40,805,748			56,515,957

The amendments made to the department name, the state special revenue funds, and the proprietary funds under items 1, 2, and 2a are contingent on passage and approval of Senate Bill No. 234.

If Senate Bill No. 234 is passed and approved:

(1) *items* 3, 4, 5, 10, and 11 are void and subsequent items are renumbered;

(2) lines 3 through 13 and lines 17 and 18 on page B-15 and line 25 on page B-15 through line 2 on page B-16 (reference copy) are void;

(3) item references in text are adjusted accordingly; and

(4) the provisions of [section 16] apply.

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		Fiscal 1996						Fiscal 1997			
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

The amendments made to general fund, state special revenue, federal revenue, and proprietary amounts in items 1, 2, and 2a are contingent on passage and approval of Senate Bill No. 345.

If Senate Bill No. 345 is passed and approved:

(1) items 6, 7, 8, and 9 are void and subsequent items are renumbered;

(2) lines 14 through 16 and lines 23 and 24 on page B-15 and line 3 on page B-16 through line 3 on page B-17 (reference copy) are void;

(3) item references in the text are adjusted accordingly; and

(4) the provisions of [section 17] apply.

If both Senate Bill No. 234 and Senate Bill No. 345 are passed and approved, items 1 through 11 and accompanying language are void.

Funds approved in item 3a may be used only to contract with the Montana bureau of mines and geology for radon in water testing and GIS mapping.

Included in the environmental remediation division funding is $446,016 in fiscal year 1996 and $454,576 in fiscal year 1997 of federal funds and $94,583 of state special revenue funds each fiscal year for leaking underground storage tank activities. Sufficient authority is available for $100,000 in consultant and professional services each fiscal year of the 1997 biennium. The department is appropriated up to $847,737 in fiscal year 1996 and $846,866 in fiscal year 1997 of additional federal revenue for leaking underground storage tank consultant and professional services if the revenue becomes available.

Included in the water quality division funding is $721,963 in fiscal year 1996 and $724,835 in fiscal year 1997 of federal nonpoint source pollution prevention funds (NPS funds). The department is appropriated up to $3 million of additional NPS funds during the 1997 biennium for the purpose of contracting with conservation districts if the funds become available.

Included in the water quality division funding is sufficient authority to contract $664,755 each fiscal year with nonprofit entities for water quality management activities. At least 60% of this annual amount must be contracted to conservation districts. No more than 10% of this annual amount may be spent on studies.

The funds in item 6a are contingent on passage and approval of Senate Bill No. 416.

General fund money in item 6b may be used only to contract for assistance to local health care providers in obtaining medicaid reimbursement and to assist communities in implementing local health care services.

Included in the air quality division funding is authority to add no more than 5.0 FTE in fiscal year 1996 and fiscal year 1997 to be funded with state special revenue funds. At least 3.0 FTE of the additional 5.0 FTE will perform permitting activities each year of the biennium.

The funds in item 6c are appropriated with the requirement that the development and operation of the tumor registry must be coordinated with all other medical data bases operated by the state so that the sharing of information is facilitated and the duplication of effort is reduced.

Item 7b is contingent on passage and approval of Senate Bill No. 292.

Contingent on passage and approval of a bill to statutorily eliminate the junk vehicle program, item 11 is reduced by $1,073,688 in state special revenue in fiscal year 1996 and by $1,088,584 in state special revenue in fiscal year 1997. Contingent on passage and approval of [this act], all fund balances remaining in the junk vehicle disposal state special revenue account as of July 1, 1995, minus any outstanding obligations, must be deposited in the general fund.

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Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

During the 1997 biennium, the department shall:

(1) by July 1, 1996, develop and implement a consolidated contract for all health care grants;

(2) by October 1, 1995, revise and update the maternal and child health (MCH) rules to reflect the current block grant legislation with the amendments to the Federal Omnibus Budget Reconciliation Act of 1989. The rules must address the local match requirement. The department shall also establish a core set of MCH services. The department shall ensure that MCH block grant funds are not used for noncore services unless each core service is ensured or unless the entity receiving the grant has demonstrated through a formal needs assessment process that the core service not being provided is not needed. The rules must address medicaid billing and reimbursement and must contain a provision that all MCH block grant money be spent on MCH services and that it not be used to supplant local funds.

(3) explore all opportunities for maximizing medicaid revenue, including requiring local health units to bill medicaid for reimbursable services and using available general fund and state special revenue appropriations to match medicaid funds for state-level activities. If necessary, the department of social and rehabilitation services shall assist the department and local health units in maximizing medicaid revenue. By October 1, 1995, department rules must require that MCH block grant funds be provided only if an effective method of maximizing medicaid revenue has been established by the receiving entity; however, this requirement does not apply if an entity has determined and demonstrated that billing medicaid is not cost-effective.

(4) use priority setting in the disbursement of MCH block grant funds. By October 1, 1995, rules and formulas for distribution of funds to local entities must be revised to give the opportunity to help those counties, regions, or communities with the least resources, largest proportions of underserved families, and most serious maternal and child health problems, as identified by objective health indicators and community needs assessments. The MIAMI project and other public health programs must be operated in a similar manner.

(5) by October 1, 1995, require local health agencies to assume more responsibility for outreach and education for services to clients of such related state programs as passport; family support programs; and early periodic screening, diagnosis, and treatment (EPSDT);

(6) by October 1, 1995, ensure that the majority of local health care agencies bill medicaid for the provision of immunizations and well child visits/EPSDT; and

(7) on July 1, 1995, and every 6 months thereafter, file status reports with the members of the human services subcommittee on appropriations and with the legislative fiscal analyst regarding the six requirements provided above. At a minimum, the reports must address:

(a) progress in implementing these requirements;

(b) the amount of additional medicaid money the department has been able to access and an explanation of how and where that money is being used; and

(c) an explanation of the progress that the department expects to achieve during the next 6-month and 12-month periods.

TOTAL SECTION B										
176,000,631	44,820,078	473,389,755	2,168,966		696,379,430	186,870,721	43,991,089	487,780,178	2,179,799	720,821,787

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	Fiscal 1996						Fiscal 1997				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
					C. NATURAL RESOURCES AND COMMERCE						
PUBLIC SERVICE REGULATION (4201)											
1. Public Service Regulation (01)											
	1,983,114	25,668			2,008,782		1,932,618	25,668			1,958,286
a. Legislative Audit (Restricted/Biennial)											
	15,409				15,409						
b. Consultants (Biennial)											
	100,000				100,000						
Total											
	2,098,523	25,668			2,124,191		1,932,618	25,668			1,958,286
DEPARTMENT OF FISH, WILDLIFE AND PARKS (5201)											
1. Administration and Finance Division (01)											
	3,317,383	374,299	1,855,326		5,547,008		3,319,642	436,923	1,686,346		5,442,911
a. Legislative Audit (Restricted/Biennial)											
	60,863				60,863						
b. Legislative Contract Authority (Restricted/OTO)											
		30,000			30,000			30,000			30,000
2. Field Services Division (02)											
	1,841,081	555,247	179,108		2,575,436		1,902,540	601,513	183,108		2,687,161
a. Weed Control (Restricted)											
	1,494				1,494		1,494				1,494
b. HB 195 — Hunting Access Enhancement											
	1,054,751				1,054,751		1,384,302				1,384,302
3. Fisheries Division (03)											
	2,741,078	2,889,735			5,630,813		2,728,807	2,848,162			5,576,969
a. Legislative Contract Authority (Restricted/OTO)											
	273,500	726,500			1,000,000		210,900	789,100			1,000,000
b. Water Leasing (Biennial)											
	75,000				75,000						
c. Evaluation of Fish Introductions (Biennial)											
	10,000	30,000			40,000						

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Clark Fork River Investigation (OTO)		13,674	41,020			54,694		13,705	41,113			54,818
e. Weed Control (Restricted)		15,019				15,019		15,019				15,019
f. HB 349 — Future Fisheries Improvement (Restricted)		100,000				100,000		100,000				100,000
4. Law Enforcement Division (04)	111,090	4,899,539	127,818			5,138,447	111,215	4,930,268	130,052			5,171,535
a. Game Farm EA/EIS (Biennial)		208,000				208,000						
b. Legislative Contract Authority (Restricted/OTO)		70,000				70,000		70,000				70,000
c. County Water Safety Contract (Restricted)		31,000	31,000			62,000		31,000	31,000			62,000
d. Additional Snowmobile Funds (OTO)		16,288				16,288		16,288				16,288
e. HB 195 — Hunting Access Enhancement		58,598				58,598		154,351				154,351
f. SB 321 — Additional Snowmobile Allocation		28,488				28,488		29,582				29,582
5. Wildlife Division (05)	2,876,904		2,963,307			5,840,211		2,903,241	2,953,932			5,857,173
a. Black-Footed Ferret (OTO)			50,000			50,000			50,000			50,000
b. Wildlife Programmatic EIS (OTO)		29,160	87,480			116,640						
c. Upland Game Bird (Biennial)		1,140,000				1,140,000						
d. Legislative Contract Authority (Restricted/OTO)		84,000	639,000			723,000		79,000	604,000			683,000
e. Weed Control (Restricted)		36,597				36,597		36,597				36,597
6. Parks Division (06)	271,166	3,691,321	143,600	267,240		4,373,327	272,229	3,730,112	143,600	263,236		4,409,177

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Land and Water Conservation Fund (Biennial)			300,000			300,000						
b. National Recreation Trails (Biennial)			200,000			200,000						
c. Legislative Contract Authority (Restricted/OTO)		19,000	6,000			25,000		19,000	6,000			25,000
d. Snowgroomer Equipment (Biennial)				190,000		190,000						
e. Additional Snowgroomer Equipment (OTO)		248,576		248,576		497,152						
f. SB 321 — Additional Snowmobile Allocation		158,672		93,474		252,146		177,579				177,579
g. Capitol Grounds General Fund (Restricted)	11,000					11,000	11,000					11,000
h. Weed Control (Restricted)	14,611	30,196				44,807	12,607	30,196				42,803
7. Conservation Education Division (08)	2,880	1,399,279	345,184			1,747,343	2,880	1,404,581	352,697			1,760,158
a. Legislative Contract Authority (Restricted/OTO)		7,500	12,500			20,000		7,500	12,500			20,000
b. Shooting Ranges (Biennial)		119,800				119,800						
c. Additional Snowmobile Funds (OTO)		12,000				12,000		12,000				12,000
d. SB 321 — Additional Snowmobile Allocation		11,277				11,277		13,134				13,134
8. Department Management (09)		2,467,804	533,133			3,000,937		2,461,785	529,319			2,991,104
a. Additional Predator Control Grant (Restricted)		60,000				60,000		60,000				60,000
b. Legislative Contract Authority (Restricted/OTO)			115,000			115,000			115,000			115,000
c. Attorney General Assistance (Restricted)		36,100				36,100		36,100				36,100

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Weed Control (Restricted)		1,021				1,021		1,021				1,021
Total	410,747	27,244,963	10,200,823	2,833,724		40,690,257	409,931	25,879,744	9,674,911	2,132,690		38,097,276

The appropriations for the legislative contract authority are subject to the following provisions:

(1) Legislative contract authority applies only to federal and private funds.

(2) The department may transfer appropriation authority between the state special revenue fund and the federal special revenue fund. Transfers may not change the total appropriated to the department for legislative contract authority.

(3) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from present law operations. In preparing the 1999 biennium budget for legislative consideration, the office of budget and program planning may not include the expenditures from this item in the present law base.

(4) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects, with the related amount of expenditures for each project.

Items 2b and 4e are contingent on passage and approval of House Bill No. 195.

Item 3f is contingent on passage and approval of House Bill No. 349.

Because of de-earmarking by Senate Bill No. 83, item 4 has been reduced by $86,760 in state special revenue in fiscal year 1996 and by $86,760 in state special revenue in fiscal year 1997 and general fund amounts have been increased by $111,090 in fiscal year 1996 and by $111,215 in fiscal year 1997. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 4 are reduced by $111,090 in fiscal year 1996 and by $111,215 in fiscal year 1997 and the state special revenue amounts are increased by $86,760 in fiscal year 1996 and by $86,760 in fiscal year 1997.

Items 4f, 6f, and 7d are contingent on passage and approval of Senate Bill No. 321.

If Senate Bill No. 85 is passed and approved in a form that includes an exemption for ground maintenance workers from prevailing wage rates, the appropriation in item 6g is eliminated.

Because of de-earmarking by Senate Bill No. 83, item 7 has been reduced by $2,880 in state special revenue in fiscal year 1996 and by $2,880 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 7 are reduced by $2,880 in fiscal year 1996 and by $2,880 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

Item 8a may be spent as a grant to the department of livestock for predator control only if the federal animal damage control discontinues its predator control program in Montana.

DEPARTMENT OF STATE LANDS (5501)

1. Central Management Program (01)	1,620,598	133,183	120,000	504,902	2,378,683	1,692,556	129,993	120,000	575,329	2,517,878
a. Legislative Audit (Restricted/Biennial)										

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	47,381					47,381						
2.	Reclamation Program (03)											
	410,825	1,030,626	5,704,938			7,146,389	405,643	1,018,613	5,725,482			7,149,738
	a. State Library Transfer											
		5,000	15,000			20,000		5,000	15,000			20,000
	b. Hard Rock (Biennial)											
		50,000				50,000						
	c. Bond Forfeitures (Biennial)											
		100,000				100,000						
	d. Environmental Analysis (Biennial)											
		550,000				550,000						
	e. Weed Control (Restricted)											
	220		174			394	220		174			394
3.	Land Administration Program (04)											
	948,848	553,614				1,502,462	939,677	553,838				1,493,515
	a. Weed Control (Restricted)											
	15,000					15,000	15,000					15,000
	b. Land Exchange With Crow Tribe											
			100,000			100,000			100,000			100,000
4.	Forestry Program (25)											
	6,466,441	3,683,574	876,873			11,026,888	6,319,502	3,434,708	753,288			10,507,498
	a. Federal Fire Reimbursement (Restricted)											
			100,000			100,000			100,000			100,000
	b. Community Forestry FTE (OTO)											
			87,375			87,375			87,652			87,652
	c. HB 201 — Additional Timber Sales											
		562,368				562,368		545,076				545,076
	d. Weed Control (Restricted)											
	862	2,760				3,622	862	2,760				3,622
Total												
	9,510,175	6,671,125	7,004,360	504,902		23,690,562	9,373,460	5,689,988	6,901,596	575,329		22,540,373

If Senate Bill No. 234 is passed and approved, items 1 through 4 and accompanying text are void and the provisions of [section 16] apply.

The department may transfer appropriation authority in item 2a between the state special revenue fund and the federal special revenue fund as long as the totals are not exceeded.

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	Fiscal 1996					Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Federal fire reimbursement funds are those funds received for expenses incurred from loaning department personnel to federal agencies to assist in fire suppression activities. Only those federal funds received as reimbursement of expenses credited against the department's state forestry operational budget are considered federal fire reimbursement funds. All other federal funds received must be deposited into the general fund. The department shall report federal fire reimbursement expenditures on state accounting records, and the records must be separate from current level operations.

Because of elimination of the recreational access statutory appropriation by Senate Bill No. 83, item 3 has been increased by 1 FTE and $60,614 in state special revenue in fiscal year 1996 and by $60,838 in state special revenue in fiscal year 1997. If Senate Bill No. 83 is not passed and approved in a form that eliminates the statutory appropriation, then the state special revenue amounts in item 3 are reduced by $60,614 in fiscal year 1996 and by $60,838 in fiscal year 1997.

Item 4 includes reductions of 9.08 FTE and $85,258 in general fund money and $215,134 in state special revenue money in fiscal year 1997 to implement the FTE and personal services savings due to the reorganization of the natural resource agencies, contingent on passage and approval of Senate Bill No. 234. The executive branch shall allocate these reductions among programs in the newly created departments of environmental quality and natural resources and conservation. If Senate Bill No. 234 is not passed and approved, $85,258 in general fund money and $215,134 in state special revenue money for 9.08 FTE are appropriated to item 4 in fiscal year 1997.

Item 4c is contingent on passage and approval of House Bill No. 201.

DEPARTMENT OF LIVESTOCK (5603)

1.	Centralized Services Program (01)										
	57,563	569,275	22,000		648,838	57,052	557,404	33,067		647,523
	a. Legislative Audit (Restricted/Biennial)										
	25,039				25,039					
2.	Diagnostic Laboratory Program (03)										
	136,866	924,102			1,060,968	138,515	934,791			1,073,306
3.	Disease Control Program (04)										
	483,546				483,546		555,763			555,763
	a. Disease Control Emergency (Restricted)										
	70,000				70,000					
	b. SB 389 — Game Farms										
	66,119				66,119		42,900			42,900
4.	Milk and Egg Program (05)										
	152,195		30,000		182,195		155,245	29,000		184,245
5.	Inspection and Control Program (06)										
	20,000	2,323,065			2,343,065	20,000	2,320,195			2,340,195
6.	Predator Control Program (08)										
	412,923				412,923		349,349			349,349
7.	Meat and Poultry Inspection Program (10)										
	261,968	6,000	267,968		535,936	263,453	6,000	269,453		538,906

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	Fiscal 1996						Fiscal 1997				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
476,397	5,032,264	319,968			5,828,629	479,020	4,921,647	331,520			5,732,187

Item 3b is contingent on passage and approval of Senate Bill No. 389.

Because of de-earmarking by Senate Bill No. 83, item 5 has been reduced by $20,000 in state special revenue in fiscal year 1996 and by $20,000 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 5 are reduced by $20,000 in fiscal year 1996 and by $20,000 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

1. Centralized Services (21)										
1,154,563	528,920	111,652			1,795,135	1,210,098	521,265	79,558		1,810,921
a. Legislative Audit (Restricted/Biennial)										
51,233					51,233					
b. Missouri River Lawsuit (Restricted/Biennial)										
15,000					15,000					
c. NMFS Lawsuit (Restricted/Biennial)										
25,000					25,000					
2. Oil and Gas Conservation (22)										
	832,909				832,909		835,657			835,657
a. Underground Injection Control (Restricted)										
	225,000				225,000		225,000			225,000
3. Conservation and Resource Development Division (23)										
113,023	1,257,273	72,400			1,442,696	113,023	1,262,559	72,400		1,447,982
4. Water Resources Division (24)										
2,934,229	2,645,539	52,748			5,632,316	2,927,136	2,138,561	52,748		5,118,445
a. Weed Control (Restricted)										
475					475	475				475
5. Reserved Water Rights Compact Commission (25)										
218,234	287,141				505,375	218,234	281,800			500 034
6. Energy Division (26)										
592,140	495,259	864,275			1,951,674	592,072	456,868	887,688		1,936,628
Total										
5,103,897	6,271,841	1,101,075			12,476,813	5,061,038	5,721,710	1,092,394		11,875,142

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	Fiscal 1996					Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

If Senate Bill No. 234 is passed and approved, items 1 through 6 and accompanying text are void and the provisions of [section 16] apply.

Included in the centralized services program funding is $38,500 of indirect funds from MFSA/MEPA fees. If MFSA/MEPA activities generate more than $38,500 of indirect funds over the biennium, the additional indirect funds must be deposited in the general fund.

The department is authorized to spend the lawsuit appropriations for either lawsuit.

Up to $50,000 each year of funds received under the provisions of 85-1-514(4) are appropriated to the department for the purpose of performing duties required under 85-1-514.

Up to $20,000 each year of fines collected under the provisions of Title 85, chapter 2, and deposited in the water right appropriation account in accordance with 85-2-318 are appropriated to the department to carry out the enforcement functions required under 85-2-114.

Up to $20,000 each year of funds received from the bonds required by 37-43-306 are appropriated to the department for the purpose of performing remedial action on water wells, providing compensation for damages caused by water well violations, or paying administration costs incurred by the board of water well contractors.

During the 1997 biennium, up to $550,000 of funds currently in or to be deposited in the Broadwater replacement and renewal account are appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility or to service the Broadwater hydropower bond debt if revenue deposited in the debt service account is insufficient for this purpose.

During the 1997 biennium, up to $20,000 of interest earned on the Broadwater users account is appropriated to the department for the purpose of repair, improvement or rehabilitation of the Broadwater-Missouri diversion project.

Up to $150,000 each year of funds received in accordance with 85-3-213 are appropriated to the department for the purpose of carrying out the review and administration of weather modification applications, permits, and licenses.

During the 1997 biennium, up to $1 million of funds received by the department from arbitration, litigation awards, or settlements, including funds from the escrow account currently established in an escrow agreement among Voith hydro, inc., the department, and norwest bank, Helena, pursuant to agreement 1189.1 Broadwater power project, are authorized to be spent to pay costs, including the bond debt associated with the Broadwater power project.

During the 1997 biennium, up to $50,000 of state special revenue funds received as lease payments for properties associated with state water projects is appropriated to the department for the purpose of administering the state water project leased properties program.

The department is appropriated up to $700,000 per year from the account established in 76-14-112 for rangeland loans during the 1997 biennium.

All funds deposited in the state special revenue account established in 76-15-530 are appropriated to the department for distribution as grants to conservation districts in an amount of up to $100,000 per year for the 1997 biennium.

All funds held in the state special revenue account in accordance with 76-16-106(2) are appropriated to the department for administration of grazing district activities in an amount of up to $15,000 per year for the 1997 biennium.

The department is appropriated up to $400,000 over the biennium from the state special revenue account established in 85-1-604 for the purchase of prior liens on property held as loan security as required by 85-1-618.

The board of oil and gas conservation is appropriated $110,000 of federal revenue funds each fiscal year of the 1997 biennium, contingent upon receiving federal funds from the environmental protection agency for the underground injection control program.

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The board of oil and gas regulation is appropriated from the oil and gas ERA account $56,336 in fiscal year 1996 and $56,541 in fiscal year 1997 in the event that primacy is achieved for the underground injection control program. If primacy is achieved, the board of oil and gas regulation is authorized to request funding for the personal services costs of an underground injection control program manager as a present law adjustment in the 1999 biennium.

DEPARTMENT OF AGRICULTURE (6201)

1.	Central Management Division (15)											
	136,449	263,208	81,450	25,717	9,120	515,944	149,603	263,208	81,554	25,717	9,120	529,202
	a. Legislative Audit (Restricted/Biennial)											
	30,432					30,432						
2.	Agricultural Sciences Division (30)											
	106,890	3,696,825	405,054	5,604		4,214,373	105,840	3,681,909	449,089	5,666		4,242,504
	a. EPA Grant Funds (OTO)											
			150,000			150,000			150,000			150,000
	b. HB 445 — Noxious Weed Seed Free Act											
		61,899				61,899		61,899				61,899
3.	Agricultural Development Division (50)											
	200,275	2,688,017		202,204	68,235	3,158,731	200,480	2,731,647		205,905	70,226	3,208,258
	a. Grain Laboratory (Restricted)											
		254,604				254,604		254,611				254,611
	b. Grain Sublaboratory (Restricted)											
		135,310				135,310		163,410				163,410
	c. Agriculture Marketing Promotion											
			40,000			40,000			40,000			40,000
Total												
	474,046	7,099,863	676,504	233,525	77,355	8,561,293	455,923	7,156,684	720,643	237,288	79,346	8,649,884

The department is authorized to make grants to state agencies from the growth through agriculture account, as approved by the Montana agriculture development council in accordance with Title 90, chapter 9. The state agency that receives a grant from the Montana agriculture development council is authorized additional appropriation authority equal to the grant amount.

Item 2b is contingent on passage and approval of House Bill No. 445.

Because of elimination of the alfalfa seed committee statutory appropriation by Senate Bill No. 83, item 3 has been increased by 0.33 FTE and $34,420 in state special revenue in fiscal year 1996 and by $34,419 in state special revenue in fiscal year 1997. If Senate Bill No. 83 is not passed and approved in a form that eliminates the statutory appropriation, then the state special revenue amounts in item 3 are reduced by $34,420 in fiscal year 1996 and by $34,419 in fiscal year 1997.

DEPARTMENT OF COMMERCE (6501)

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1.	Weights and Measures Bureau (02)											
		585,181				585,181		579,511				579,511
	a. Legislative Audit (Restricted/Biennial)											
		1,275				1,275						
2.	Banking and Financial Institutions (36)											
		1,181,527				1,181,527		1,168,474				1,168,474
	a. Legislative Audit (Restricted/Biennial)											
		2,531				2,531						
3.	Milk Control Bureau (37)											
		234,908				234,908		236,467				236,467
	a. Legislative Audit (Restricted/Biennial)											
		544				544						
4.	Professional and Occupational Licensing Bureau (39)											
	15,000	3,715,270		1,191,731		4,922,001	15,000	3,709,562		1,196,993		4,921,555
	a. Legislative Audit (Restricted/Biennial)											
				10,525		10,525						
	b. Legal Contingency (Restricted)											
		70,841				70,841		70,841				70,841
	c. SB 171 — Physical Therapy Law Revision											
		6,000				6,000		6,000				6,000
5.	Economic Development Division (51)											
	870,283	272,902	3,843,197			4,986,382	844,879	310,098	3,668,485			4,823,462
	a. Legislative Audit (Restricted/Biennial)											
	1,190	201	5,054			6,445						
	b. SB 311 — Business Licensing System Plan (Biennial/OTO)											
	50,000					50,000						
6.	Montana Promotion Division (52)											
		450,000				450,000		450,000				450,000
7.	Community Development Bureau (60)											
	287,624	577,972	30,714,401			31,579,997	287,148	573,451	28,935,646			29,796,245
	a. Legislative Audit (Restricted/Biennial)											
	435	1,167	15,780			17,382						
	b. Hard-Rock Mining Board Contingency (Restricted)											
		100,000				100,000		100,000				100,000

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Coal Board Grants (Restricted/Biennial)		1,000,000				1,000,000						
8. Local Government Services Audit/Systems (62)	348,990			277,439		626,429	349,675			285,896		635,571
a. Legislative Audit (Restricted/Biennial)	1,010			538		1,548						
9. Local Government Assistance — Administration (64)				129,299		129,299				129,542		129,542
a. Legislative Audit (Restricted/Biennial)				310		310						
10. Building Codes Bureau (65)		1,951,818				1,951,818		1,960,185				1,960,185
a. Legislative Audit (Restricted/Biennial)		3,497				3,497						
11. Indian Affairs Coordinator (70)	107,856					107,856	108,209					108,209
a. Legislative Audit (Restricted/Biennial)	400					400						
12. Health Facilities Authority (71)				166,736		166,736				154,412		154,412
a. Legislative Audit (Restricted/Biennial)				4,764		4,764						
13. Montana Science and Technology Alliance (73)		347,093				347,093		346,217				346,217
a. Legislative Audit (Restricted/Biennial)		808				808						
14. Board of Housing (74)				1,312,758		1,312,758				1,288,223		1,288,223
a. Legislative Audit (Restricted/Biennial)				65,873		65,873						
15. Board of Investments (75)				1,828,846		1,828,846				1,832,116		1,832,116
a. Legislative Audit (Restricted/Biennial)				92,075		92,075						

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
16. Montana State Lottery (77)				6,949,877		6,949,877				7,055,739		7,055,739
a. Legislative Audit (Restricted/Biennial)				138,676		138,676						
17. Board of Horseracing (78)	7,000	258,008				265,008	7,000	263,110				270,110
a. Legislative Audit (Restricted/Biennial)		552				552						
b. SB 242 — New Board Members		5,192				5,192		5,192				5,192
18. Director/Management Services (81)	104,738			822,655		927,393	105,188			819,790		924,978
a. Legislative Audit (Restricted/Biennial)	244					244						
b. Oracle Data Base Programming (OTO)	33,990	52,116	856	63,038		150,000						
c. Equipment Conversion to LANS (OTO)	17,215	149,505	5,478	120,611		292,809		14,400		28,800		43,200
d. Malmstrom Air Force Base (Restricted/OTO)	20,000					20,000						
Total	1,865,975	10,968,908	34,584,766	13,175,751		60,595,400	1,717,099	9,793,508	32,604,131	12,791,511		56,906,249

It is the legislature's intent that the department grant $75,000 of statutorily appropriated lodging facilities use tax revenue to the Montana historical society each year to fund tours of the original governor's mansion and the state capitol and to fund restoration of the original governor's mansion.

If House Bill No. 68 is not passed and approved, state special revenue in item 4 is decreased by $97,013 in fiscal year 1996 and by $96,717 in fiscal year 1997.

The appropriation in item 4b is to be used only for unexpected legal expenses in the weights and measures, building codes, and professional and occupational licensing programs.

The amendments made to text in lines 20 and 21 on page C-15 (reference copy) are contingent on passage and approval of House Bill No. 280. If House Bill No. 280 is passed and approved:

(1) items 3 and 3a are void and subsequent subsections are renumbered;

(2) item references in the text are adjusted accordingly; and

(3) the provisions of [section 18(3)] apply.

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	Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 5b is contingent on passage and approval of Senate Bill No. 311.

Item 7c is contingent on the Bull Mountain mine project becoming productive. It is the intent of the legislature that the coal board grant the funds for impacts associated with the Bull Mountain mine project contingent upon meeting coal board standards for grant approval.

If House Bill No. 68 is not passed and approved, state special revenue in item 10 is decreased by $151,685 in fiscal year 1996 and by $152,549 in fiscal year 1997.

Because Senate Bill No. 4 has been passed and approved:

(1) items 11 and 11a are void and subsequent subsections are renumbered;

(2) item references in the text are adjusted accordingly; and

(3) the provisions of [section 18(4)] apply.

Because of de-earmarking by Senate Bill No. 83, item 17 has been reduced by $7,000 in state special revenue in fiscal year 1996 and by $7,000 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 17 are reduced by $7,000 in fiscal year 1996 and by $7,000 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

Item 17b is contingent on passage and approval of Senate Bill No. 242.

Item 18d includes $20,000 of general fund in fiscal 1996 that must be used to provide funds for economic adjustments for Cascade County as a result of the plan to reduce the mission of Malmstrom air force base (AFB).

TOTAL SECTION C											
17,841,237	65,387,487	53,913,164	16,747,902	77,355	153,967,145	17,496,471	61,095,899	51,350,863	15,736,818	79,346	145,759,397

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	Fiscal 1996					Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
					D. INSTITUTIONS AND PUBLIC SAFETY						
CRIME CONTROL DIVISION (4107)											
1. Justice System Support Service (01)											
1,675,211		465,946			2,141,157	1,675,079		502,130			2,177,209
a. Crime Victims' Compensation Pass-Through Benefits (Biennial)											
505,000		135,000			640,000	505,000		150,000			655,000
b. Juvenile Justice Pass-Through Grants (Biennial)											
		457,636			457,636			421,594			421,594
c. Victims' Assistance Pass-Through Grants (Biennial)											
		470,500			470,500			470,500			470,500
d. Drug Education Pass-Through Grants (Biennial)											
		463,837			463,837			463,837			463,837
e. Drug Enforcement Pass-Through Grants (Biennial)											
		2,256,581			2,256,581			2,256,439			2,256,439
f. Violence Against Women Grant (Biennial)											
		500,000			500,000			500,000			500,000
g. Criminal History Record Improvement (Biennial)											
		500,000			500,000			500,000			500,000
h. Legislative Contract Authority (Restricted)											
		200,000			200,000			200,000			200,000
Total											
2,180,211		5,449,500			7,629,711	2,180,079		5,464,500			7,644,579

All remaining federal pass-through grant appropriation authority for the 1995 biennium is authorized to continue into fiscal year 1996 and fiscal year 1997.

The legislature intends that the appropriation for legislative contract authority provide adequate spending authority to enable faster and more cost-effective startup of services otherwise initiated by budget amendment. Prior to authorizing use of the appropriation, the office of budget and program planning shall require the necessary and usual contract justification. A legislative contract authority appropriation must be accounted for and reported separately from all other appropriations. In the event that the amount of the department's additional federal contracts exceeds its legislative contract authority, additional spending authority must be established in accordance with the provisions of the budget amendment law in Title 17, chapter 7, part 4.

Because of de-earmarking by Senate Bill No. 83, item 1 has been reduced by $54,407 in state special revenue in fiscal year 1996 and by $54,598 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 1 are reduced by $54,407 in fiscal year 1996 and by $54,598 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

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	Fiscal 1996						Fiscal 1997				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Because of elimination of the statutory appropriation by Senate Bill No. 83, item 1 has been increased by $945,593 in general fund in fiscal year 1996 and by $945,402 in general fund in fiscal year 1997. If Senate Bill No. 83 is not passed and approved in a form that eliminates the statutory appropriation, then the general fund amounts in item 1 are reduced by $945,593 in fiscal year 1996 and by $945,402 in fiscal year 1997.

Because of de-earmarking by Senate Bill No. 83, item 1 has been reduced by $190,513 in state special revenue in fiscal year 1996 and by $189,423 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 1 are reduced by $190,513 in fiscal year 1996 and by $189,423 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

Because of de-earmarking by Senate Bill No. 83, item 1a has been reduced by $505,000 in state special revenue in fiscal year 1996 and by $505,000 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 1a are reduced by $505,000 in fiscal year 1996 and by $505,000 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

HIGHWAY TRAFFIC SAFETY (4108)

1. Highway Traffic Safety Division (36)											
250,000	86,000	4,510,578			4,846,578	250,000	85,879	4,512,456			4,848,335
Total											
250,000	86,000	4,510,578			4,846,578	250,000	85,879	4,512,456			4,848,335

If Senate Bill No. 361 is passed and approved:

(1) item 1 is void; and

(2) the provisions of [section 18(1)] apply.

It is the intent of the legislature that the school bus safety services, formerly provided by the office of public instruction, be provided by the highway traffic safety division during the 1997 biennium.

DEPARTMENT OF JUSTICE (4110)

1. Legal Services Division (01)											
1,530,713	186,847	38,885			1,756,445	1,485,582	187,514	38,943			1,712,039
a. Major Litigation Costs (Restricted/Biennial)											
500,000					500,000						
b. Bankruptcy Collection Unit (OTO)											
111,876					111,876	111,733					111,733
2. Agency Legal Services (06)											
			729,195		729,195				766,342		766,342
3. Gambling Control Division (07)											
448,190	1,718,076				2,166,266	439,535	1,684,594				2,124,129

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
4. Motor Vehicle Division (12)	6,031,856	1,111,660				7,143,516	5,815,222	1,111,660				6,926,882
5. Highway Patrol Division (13)		13,287,519	1,634,113			14,921,632		13,549,076	1,602,118			15,151,194
a. Patrol Cars (Restricted)		171,340				171,340		172,510				172,510
b. Legislative Contract Authority (Restricted)			100,000			100,000			100,000			100,000
c. HB 345 — DUI Equipment (Restricted)	18,750					18,750	25,000					25,000
6 Law Enforcement Services Division (18)	1,814,240	378,345	819,454			3,012,039	2,158,691	365,050	453,868			2,977,609
a. Legislative Contract Authority (Restricted)			150,000			150,000			150,000			150,000
7. County Attorney Payroll (19)	1,443,865					1,443,865	1,480,363					1,480,363
8. Law Enforcement Academy Division (22)	670,060		93,770			763,830	674,586		57,490			732,076
9. Central Services Division (28)	177,176	217,444		8,053		402,673	178,012	218,469		8,092		404,573
a. Legislative Audit (Restricted/Biennial)	21,356	26,209		971		48,536						
10. Data Processing Division (29)	1,069,780	433,440				1,503,220	1,066,278	488,486	63,000			1,617,764
11. Extradition and Transportation of Prisoners (30)	141,834					141,834	156,017					156,017
12. Forensic Science Division (32)	1,074,073	256,122	39,979			1,370,174	1,082,737	256,041	40,278			1,379,056
a. Legislative Contract Authority (Restricted)			40,000			40,000			40,000			40,000
b. HB 551 — DNA Testing (Restricted/Biennial)	150,000					150,000	150,000					150,000
Total												

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	Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
15,203,769	17,787,002	2,916,201	738,219		36,645,191	14,823,756	18,033,400	2,545,697	774,434		36,177,287

The legislature intends that the appropriation for legislative contract authority provide adequate spending authority to enable faster and more cost-effective startup of services otherwise initiated by budget amendment. Prior to authorizing use of the appropriation, the office of budget and program planning shall require the necessary and usual contract justification. A legislative contract authority appropriation must be accounted for and reported separately from all other appropriations. In the event that the amount of the department's additional federal contracts exceeds its legislative contract authority, additional spending authority must be established in accordance with the provisions of the budget amendment law in Title 17, chapter 7, part 4.

The legislature recognizes that costs associated with litigation in which the legal services division is required to provide representation to the state of Montana may exceed the appropriation provided. In that event, the department will need to request a supplemental appropriation from the 1997 legislature to adequately represent the state.

If House Bill No. 311 is not passed and approved, general fund money in item 1 must be decreased by $26,500 in fiscal year 1996.

If the total amount of federal crime bill funds in item 5 is not received by the department, the federal special revenue appropriation in item 5 must be reduced to the amount received and the state special revenue appropriation must be increased by the same amount as the federal special revenue appropriation is decreased.

Item 5c is contingent on passage and approval of House Bill No. 345.

If House Bill No. 68 is not passed and approved, state special revenue in item 6 is increased by $24,949 in fiscal year 1996 and by $24,622 in fiscal year 1997.

The department is authorized to transfer the retirement contributions provided in sections 19-6-404 and 61-5-121(1)(a) in fiscal years 1996 and 1997 from the highway patrol retirement clearing account in the state special revenue fund to the Montana highway patrol officers' retirement pension trust fund. An appropriation must be established each year in the amount required to be transferred up to the amount of $650,000.

The department is authorized to request a budget amendment for the rural statewide intelligence network if federal grant funds become available during the 1997 biennium.

If the total amount of federal special revenue in item 8 is not received by the department, the federal special revenue appropriation in item 8 must be decreased and the general fund appropriation must be increased by the same amount as the federal special revenue appropriation is decreased.

Because of elimination of the statutory appropriation by Senate Bill No. 83, item 12 has been increased by $50,000 in general fund money in fiscal year 1996 and by $50,000 in general fund money in fiscal year 1997. If Senate Bill No. 83 is not passed and approved in a form that eliminates the statutory appropriation, then the general fund amounts in item 12 are reduced by $50,000 in fiscal year 1996 and by $50,000 in fiscal year 1997.

MONTANA ARTS COUNCIL (5114)

1. Promotion of the Arts (01)											
110,482	166,723	299,375			576,580	107,713	167,483	301,005			576,201
a. Legislative Audit (Restricted/Biennial)											
16,371					16,371						
b. Federal Grants (Biennial)											
		237,933			237,933			236,305			236,305
Total											

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	Fiscal 1996					Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
126,853	166,723	537,308			830,884	107,713	167,483	537,310			812,506
MONTANA STATE LIBRARY COMMISSION (5115)											
1. State Library Operations (01)											
1,448,617	168,301	1,576,545			3,193,463	1,225,966	163,085	416,545			1,805,596
a. Legislative Audit (Restricted/Biennial)											
17,720					17,720						
b. Donations and Bequests (Biennial)											
	25,000				25,000						
2. Natural Resource Information Services (07)											
a. NRIS Performance-Based Budget (Biennial)											
95,830	931,408	556,685			1,583,923						
Total											
1,562,167	1,124,709	2,133,230			4,820,106	1,225,966	163,085	416,545			1,805,596

Item 1 includes biennial appropriations of $251,138 in general fund money and $1,160,000 in federal funds for grants to local libraries.

Item 2a is a biennial, performance-based budget and must be used to achieve the following goals:

(1) to operate a natural resource information clearinghouse;

(2) to support interagency data coordination and standards; and

(3) to provide user support and tools.

NRIS is required to provide performance measure progress reports to the legislative fiscal analyst and the office of budget and program planning semiannually. Performance measures as shown in the 1997 biennium appropriations report are adopted as legislative intent.

Item 2a includes $466,685 for legislative contract authority, subject to the following provisions:

(1) Legislative contract authority applies only to state special funds received from the Montana university system, federal funds, and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from present law operations.

(3) A report must be submitted by the Montana state library commission to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

Item 2a includes $20,000 for transfers from the department of state lands. The Montana state library commission may transfer appropriation authority between the state special revenue fund and the federal special revenue fund to correspond with the appropriation authority transferred from the department of state lands as long as the totals are not exceeded.

MONTANA HISTORICAL SOCIETY (5117)

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Administration Program (01)	547,166	129,675	44,480			721,321	551,362	130,049	44,614			726,025
a. Legislative Audit (Restricted/Biennial)	18,829					18,829						
2. Library Program (02)	442,098	4,000		49,855		495,953	442,627	4,000		50,260		496,887
3. Museum Program (03)	213,839	18,374		17,045		249,258	213,173	18,374		17,027		248,574
4. Publication (04)	52,099		10,000	671,857		733,956	52,099			672,287		724,386
a. Legislative Audit (Restricted/Biennial)				827		827						
5. Historical Sites Preservation (06)	53,010		552,633			605,643	53,886		554,262			608,148
a. Legislative Audit (Restricted/Biennial)	876		4,507			5,383						
Total	1,327,917	152,049	611,620	739,584		2,831,170	1,313,147	152,423	598,876	739,574		2,804,020

Item 1 includes $67,714 each fiscal year and item 3 includes $7,286 each fiscal year of lodging facilities use tax revenue granted from the Montana promotion program under the department of commerce. This appropriation is to provide tours of the capitol and the original governor's mansion and rehabilitation of the original governor's mansion. It is the intent of the 54th legislature that similar amounts be appropriated to the Montana historical society for these purposes in subsequent bienniums.

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES (6401)

1. Central Operations (10)	2,126,863			52,290		2,179,153	2,142,409			52,578		2,194,987
a. Legislative Audit (Restricted/Biennial)	79,127	1,781		5,929		86,837						
2. Corrections (20)	37,178,553	1,055,844	245,518	5,841,424		44,321,339	38,187,410	1,055,816	267,630	6,659,584		46,170,440
a. HB 357 — Commission on Sentencing (Restricted)	97,869					97,869	99,368					99,368
b. Swan River Correctional Training Center Security Staff	225,666					225,666	249,334					249,334
3. Mental Health (30)												

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	39,038,919	147,752	1,792,415			40,979,086	39,565,930	147,759	1,796,062			41,509,751
a.	SB 223 — Managed Care Authority											
								20,773,720				20,773,720
4.	Chemical Dependency (40)											
		2,565,304	3,376,970			5,942,274		2,591,941	3,379,695			5,971,636
5.	Special Services (50)											
	15,979,191	2,370,550	1,311,506			19,661,247	15,313,669	2,271,493	1,326,617			18,911,779
6.	Juvenile Corrections (23)											
	11,070,726	355,816	301,739			11,728,281	11,175,475	357,818	303,520			11,836,813
a.	Sex Offender Programs/Secure Care Female Offenders (Restricted)											
	400,000					400,000	400,000					400,000
b.	Pine Hills School Maintenance (Restricted/Biennial)											
	58,000					58,000						
c.	Pine Hills Ranch (Restricted/Biennial)											
	25,000					25,000						
d.	Juvenile Corrections Provider Rate Increase											
	61,801		671			62,472	129,362		1,402			130,764
Total												
	106,341,715	6,497,047	7,028,619	5,899,643		125,767,224	107,262,957	27,198,547	7,074,926	6,712,162		148,248,592

Item 2 includes $486,581 in general fund money each fiscal year that may be used only if the department of administration, personnel division, authorizes the reclassification of correctional officers.

If House Bill No. 304 is not passed and approved, item 2 is decreased by $553,280 in general fund money in fiscal year 1997.

If House Bill No. 214 is not passed and approved, item 2 is decreased by $21,700 in general fund money in fiscal year 1996 and $1,000 in general fund money in fiscal year 1997.

Funds in item 2a are contingent on passage and approval of House Bill No. 357.

Funds in item 3a are contingent on passage and approval of Senate Bill No. 223.

If the Eastmont human services center does not remain in operation at current capacity, item 5 is decreased by $22,865 in general fund money in fiscal year 1996 and $22,944 in general fund money in fiscal year 1997 to fund 1.0 FTE in the Eastmont vocational program.

Item 6, the text related to item 6, and the amendments made to general fund, state special revenue, and federal special revenue amounts in items 1 and 1a are contingent on passage and approval of Senate Bill No. 345.

If Senate Bill No. 345 is passed and approved:

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) items 3, 4, and 5 are void;

(2) lines 9 through 12 and lines 15 through 21 on page D-8 (reference copy) are void;

(3) references in text are adjusted accordingly; and

(4) the provisions of [section 17] apply.

Any funds remaining in the Montana state prison budget on June 30, 1995, may be carried forward into the 1997 biennium to deal with population growth at the prison.

The department is directed to develop and purchase mental health services for children and adolescents that minimize the necessity of residential placements and that control the expenditures for residential care.

All services under the managing resources Montana (MRM) program must be purchased based on an RFP process that provides for effective services at the lowest possible costs. The department shall develop measures of program effectiveness and require contractors selected under the RFP process to provide the information necessary to determine the effectiveness of services. The department may not contract with any service provider that has been found, through a court of law, to have, through fraud or falsification of documents, attempted to receive public funds to which the provider was not entitled.

The legislature has no evidence that the Montana youth alternatives program funded in item 6 is more effective in treating juvenile offenders than the Mountain View school program.

Funds in item 6a must be spent on secure care for female offenders and treatment programs for sexual offenders. The department may not transfer funds in item 6a to other uses or to other programs or departments. The department shall provide to the 55th legislature the following information about expenditures funded from item 6a: the number of children served, the average cost per child, services provided, the treatment outcomes, and the current placement of children served.

Funds in item 6b may not be used for any purpose other than maintenance and repair of Pine Hills school. The department must obtain the approval of the architecture and engineering division of the department of administration before proceeding with repairs funded from item 6b.

Funds in item 6c may be used only for a vocational agricultural program at Pine Hills school.

DEPARTMENT OF MILITARY AFFAIRS (6701)

1.	Operations Support (01)											
	274,793		13,842			288,635	270,965		13,989			284,954
	a. Legislative Audit (Restricted/Biennial)											
	8,282					8,282						
2.	Army National Guard Program (12)											
	840,305		1,907,794			2,748,099	857,252		1,901,058			2,758,310
	a. R/M Backlog State Armories (OTO)											
	100,000		5,000			105,000	70,000	10,000				80,000
	b. R/M Backlog Service Contract (OTO)											
			26,625			26,625			26,625			26,625
	c. Legislative Contract Authority (Restricted)											

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
			300,000			300,000			300,000			300,000
3.	Air National Guard Program (13)											
	156,416		1,432,926			1,589,342	160,607		1,443,788			1,604,395
4.	Disaster Coordination Response (21)											
	236,629	10,000	1,301,073			1,547,702	239,605	10,000	1,305,047			1,554,652
	a. Legislative Audit (Restricted/Biennial)											
	4,141		12,423			16,564						
	b. Legislative Contract Authority (Restricted)											
			50,000			50,000			50,000			50,000
5.	Veterans' Affairs Program (31)											
	534,468	65,447				599,915	536,346	65,796				602,142
	a. Legislative Audit (Restricted/Biennial)											
	8,282					8,282						
Total												
	2,163,316	80,447	5,044,683			7,288,446	2,134,775	85,796	5,040,507			7,261,078

If federal funds become available, the department is authorized to seek a budget amendment for youth or guardcare programs in the 1997 biennium.

The appropriations for legislative contract authority are subject to the following provisions:

(1) Prior to authorizing use of the appropriations, the office of budget and program planning shall require the usual and necessary contract justification.

(2) The legislative contract authority appropriations must be accounted for and reported separately from all other appropriations.

(3) In the event that the amount of the department's additional federal contracts exceeds its legislative contract authority, additional spending authority must be requested through the budget amendment process.

(4) In preparing the 1999 biennium budget, the office of budget and program planning may not include legislative contract authority expenditures in the present law base.

The appropriation provided for the air national guard program is contingent upon funds being used to attempt to achieve program performance targets as outlined in the legislative appropriations report for the 1997 biennium. The department shall provide semiannual reports to the office of budget and program planning and the office of the legislative fiscal analyst on progress toward achievement of these performance targets with explanations for any significant variances.

TOTAL SECTION D										
129,155,948	25,893,977	28,231,939	7,377,446		190,659,310	129,298,393	45,886,613	26,190,817	8,226,170		209,601,993

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
						E. EDUCATION						
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)												
1. Administration (06) (Biennial)	3,092,760	422,021	4,390,776	1,051,670		8,957,227	2,466,743	457,909	4,011,988	1,056,864		7,993,504
a. Legislative Audit (Restricted/Biennial)	67,797					67,797						
b. Transfer (Biennial)	891,342					891,342						
c. MAEFAIRS (Biennial/OTO)	160,000					160,000						
d. Vocational Education — Termination Payout (Restricted)	112,420					112,420	112,999					112,999
e. Secondary Vocational Education (Restricted)	170,000		170,000			340,000	170,000		170,000			340,000
2. Distribution to Public Schools (09)												
a. Special Education (Restricted)	32,722,797					32,722,797	32,722,797					32,722,797
b. Special Education Contingency (Restricted/Biennial)	2,031,163					2,031,163						
c. Transportation (Restricted)	10,502,900					10,502,900	10,602,900					10,602,900
d. School Foods (Restricted)	660,189					660,189	661,731					661,731
e. Gifted and Talented (Restricted/Biennial)	300,000					300,000						
f. Secondary Vocational Education (Restricted/Biennial)	1,300,000					1,300,000						
g. Adult Basic Education (Restricted/Biennial)	500,000					500,000						
h. Instate Residential Services (Restricted/Biennial)	1,949,791					1,949,791						
i. SIMMS Grant (Restricted)	500,000					500,000	500,000					500,000

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
j.	Individuals With Disabilities Education Act — B (Biennial)											
			2,431,400			2,431,400						
k.	Adult Basic Education (Biennial)											
			1,365,000			1,365,000						
l.	Job Training Partnership Act (Biennial)											
			1,017,200			1,017,200						
m.	Vocational Education (Biennial)											
			6,022,525			6,022,525						
n.	Chapter 1 (Biennial)											
			2,295,000			2,295,000						
o.	Foreigu Language (Biennial)											
			108,000			108,000						
p.	Geals "2000" (Biennial)											
			0			0						
q.	Arts and English Curriculum (Biennial)											
			360,000			360,000						
r.	School District Federal Aid (Biennial)											
			108,143,035			108,143,035						
s.	K-12 BASE Aid (Restricted/Biennial)											
	412,683,000					412,683,000	414,435,000					414,435,000
t.	McKinney Homeless (Biennial)											
			264,000			264,000						
u.	School Districts Audits											
	147,992					147,992	153,912					153,912
Total												
	467,792,151	422,021	126,566,936	1,051,670		595,832,778	461,826,082	457,909	4,181,988	1,056,864		467,522,843

All revenue received in the state traffic education account under the provisions of 20-7-504 and 61-5-121 is appropriated as provided in Title 20, chapter 7, part 5. This appropriation may not exceed $1 million per year.

The legislative audit committee, in accordance with its constitutional authority to supervise legislative postaudits, shall ensure the independence of the audit of the office of the superintendent of public instruction conducted pursuant to Title 5, chapter 13, during the 1997 biennium. It is the intent of the legislature that the biennial financial compliance audit for the 2 fiscal years ending June 30, 1996, be contracted. To the extent that the legislative audit committee contracts with a private firm to conduct a portion of the audit or the entire audit, including the federal single audit, the total costs of all audit work during the biennium must be paid first from the line item appropriation to the office of the superintendent of public instruction for audit costs.

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	Fiscal 1996					Fiscal 1997				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The office of public instruction may distribute the amounts required from the appropriation for "in-stste treatment" to public schools for the purpose of providing education costs in day-treatment services.

Because of de-earmarking by Senate Bill No. 83, item 1 has been reduced by $200,000 in state special revenue in fiscal year 1996 and by $200,000 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 1 are reduced by $200,000 in fiscal year 1996 and by $200,000 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

If House Bill No. 561 is not passed and approved, the state special revenue in item 1 is reduced by $30,000 in fiscal year 1996 and $65,000 in fiscal year 1997.

The office of public instruction may use up to 1% of the appropriation provided in item 2a to provide the matching funds necessary for medicaid reimbursements paid for medicaid-eligible services provided by public school districts.

The office of public instruction may transfer any unused balance in the appropriation in item 2b to the special education appropriation in item 2a.

Because of de-earmarking by Senate Bill No. 83, item 2c has been reduced by $3,908,166 in state special revenue in fiscal year 1996 and by $3,908,166 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 2c are reduced by $3,908,166 in fiscal year 1996 and by $3,908,166 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

Because of de-earmarking by Senate Bill No. 83, item 2i has been reduced by $500,000 in state special revenue in fiscal year 1996 and by $500,000 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 2i are reduced by $500,000 in fiscal year 1996 and by $500,000 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

Item 2s has been increased by $1,752,000 in general fund money in fiscal year 1997. If House Bill No. 479 is not passed and approved, general fund money in item 2s is reduced by $1,752,000 in fiscal year 1997.

Because of de-earmarking and elimination of the statutory appropriation by Senate Bill No. 83, item 2s has been increased by $290,180,000 in general fund money in fiscal year 1996 and by $290,180,000 in general fund money in fiscal year 1997. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue and eliminates the statutory appropriation, then the general fund amount in item 2s is reduced by $290,180,000 in general fund money in fiscal year 1996 and by $290,180,000 in general fund money in fiscal year 1997.

Because of de-earmarking and elimination of the statutory appropriation by Senate Bill No. 83, item 2u has been increased by $147,992 in general fund money in fiscal year 1996 and by $153,912 in general fund money in fiscal year 1997. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue and eliminates the statutory appropriation, then the general fund amounts in item 2u are reduced by $149,992 in fiscal year 1996 and by $153,912 in fiscal year 1997.

The superintendent of public instruction shall adopt policies that:

(1) prohibit any hidden or private conferences, message data bases, or file areas unless they are used exclusively for confidential personnel or student privacy matters;

(2) require that any Montana resident be granted access privileges upon request, as well as read-only access to all file areas and message data bases, except as provided in subsection (1). These access privileges do not prohibit denying write-access to any area of the bulletin boards.

(3) prohibit the use of the systems for political or lobbying purposes. These prohibitions do not apply to internet conferences that may be carried on the BBS network. Violation of this provision is to result in a denial of all access privileges for a period of at least 1 year.

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Funds appropriated to the office of public instruction for the 1997 biennium may not be expended for purposes of the goals "2000" program.												
BOARD OF PUBLIC EDUCATION (5101)												
1. Administration (01)	115,455	10,036				125,491	115,841	9,946				125,787
a. Legislative Audit (Restricted/Biennial)	1,541					1,541						
2. Advisory Council (03)		161,990				161,990		162,227				162,227
a. Legislative Audit (Restricted/Biennial)		1,541				1,541						
Total	116,996	173,567				290,563	115,841	172,173				288,014

Because of elimination of the statutory appropriation by Senate Bill No. 83, item 1 has been increased by $80,000 in state special revenue in fiscal year 1996 and by $80,000 in state special revenue in fiscal year 1997. If Senate Bill No. 83 is not passed and approved in a form that eliminates the statutory appropriation, then the state special revenue amounts in item 1 are reduced by $80,000 in fiscal year 1996 and by $80,000 in fiscal year 1997.

SCHOOL FOR THE DEAF AND BLIND (5113)

1. Administration Program (01)	208,752				208,752	205,065					205,065
a. Legislative Audit (Restricted/Biennial)	27,735				27,735						
2. General Services Program (02)	296,733				296,733	291,889					291,889
3. Student Services (03)	841,476		31,151		872,627	821,411		31,151			852,562
4. Education (04)	1,529,364	282,688	38,739		1,850,791	1,515,683	282,529	38,739			1,836,951
Total	2,904,060	282,688	69,890		3,256,638	2,834,048	282,529	69,890			3,186,467

Revenue received from the rental use of the MSDB facilities and deposited into the state special revenue account is appropriated for use by the MSDB. This appropriation may not exceed $10,000 per year.

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	Fiscal 1996					Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
VOCATIONAL EDUCATION COUNCIL (5116)												
1. Administration Program (01)			163,169			163,169			167,644			167,644
a. Legislative Audit (Restricted/Biennial)			4,237			4,237						
Total			167,406			167,406			167,644			167,644
MONTANA UNIVERSITY SYSTEM (5100)												
1. Board of Regents (Biennial)	88,150,598	97,388,169	10,062,678	18,730,859		214,332,304	91,474,578	101,827,539	10,349,311	19,500,640		223,152,068
a. Legislative Audit (Restricted/Biennial)	499,946		18,475			518,421	3,000					3,000
Total	88,650,544	97,388,169	10,081,153	18,730,859		214,850,725	91,477,578	101,827,539	10,349,311	19,500,640		223,155,068
2. Community Colleges	4,400,607					4,400,607	4,400,607					4,400,607
a. Legislative Audit (Restricted/Biennial)	31,360					31,360						
3. Community Colleges (Biennial)	776,854					776,854						
Total	5,208,821					5,208,821	4,400,607					4,400,607

Included in state special revenue appropriations in item 1 is $990,000 in fiscal year 1996 from revenue generated under the provisions of 20-16-202, which requires each county in which a college of technology is located to levy an annual tax of 1.5 mills on all taxable property within the county. Revenue received by the university system under the provisions of 20-16-202 that exceeds $990,000 in fiscal year 1996 is appropriated to the board of regents and requires a reversion of a like amount to the general fund. If revenue received under the provisions of 20-16-202 is less than $990,000 in fiscal year 1996, the commissioner of higher education may request a supplemental appropriation under the procedures contained in 17-7-301 for distribution to the university system. The supplemental request for the biennium may total no more than the difference between actual revenue and the appropriation.

Included in state special revenue appropriations in item 1 is $14,089,000 in fiscal year 1996 and $13,840,000 in fiscal year 1997 from revenue generated under the provisions of 20-25-423. Revenue received hy the university system under the provisions of 20-25-423 that exceeds $14,089,000 in fiscal year 1996 and $13,840,000 in fiscal year 1997 is appropriated to the board of regents and requires a reversion of a like amount to the general fund. If revenue received under the provisions of 20-25-423 is less than $14,089,000 in fiscal year 1996 and

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	Fiscal 1996					Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

$13,840,000 in fiscal year 1997, the commissioner of higher education may request a supplemental appropriation under the procedures contsined in 17-7-301 for distribution to the university system. The supplemental request for the biennium may total no more than the difference between actual revenue and the appropriation.

Item 1 includes $114,000 in each year of the hiennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvement through the state building energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, $73,500; Montana state university-northern, $36,900; and Montana state university-Billings, $3,600.

Total audit costs are estimated to be $733,121 for the university system for the biennium. Each unit shall pay a percentage of these costs from funds other than those appropriated in item 1.

If Senate Bill No. 412 is not passed and approved, in item 1 general fund money is increased by $592,000 and state special revenue is decreased by a like amount in fiscal year 1996.

It is the intent of the legislature that the Montana university system student FTE at the six units and colleges of technology be comprised of at least 78% qualified resident students. Not more than 22% of student FTE may be qualified nonresident students.

The Montana university system is urged to make every possible effort to review all graduate level programs in the Montana university system and to eliminate unnecessary duplication in those programs, when possible, by September 1, 1996. The board of regents shall report to the 1997 legislature on the accomplishment of this request.

Any indirect cost reimbursements received by the office of the commissioner of higher education in excess of $22,204 in each year of the biennium as a result of an increase in the federal talent search grant requires a reversion of a like amount to the general fund.

University system units are defined in 17-7-102(16). For all university system units, except the office of the commissioner of higher education, all funds (other than plant funds appropriated in [long-range planning bill] relating to long-range building, and current unrestricted operating funds) are appropriated contingent on approval of the comprehensive program budget by the board of regents by October 1 of each year. For all university system units except the community colleges, the agricultural experiment station, the forest and conservation experiment station, the cooperative extension service, the bureau of mines and geology, and the fire services training school, all funds, other than funds appropriated in House Bill No. 5 for long-range building programs, are appropriated as a lump sum for the biennium, contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The board of regents shall allocate the appropriations to the individual units according to board policy. The budget must contain detsiled revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Requests for transfer and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst prior to approval hy the board of regents. All movement of funds between the current unrestricted subfund and the designated subfund accounts must be clearly identified in the state budgeting and accounting system.

All university system units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the national center for higher education management systems program classifications structure, along with the college and university business administration (CUBA) system, as a minimum standard for achieving consistency.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide electronically to the office of budget and program planning and to the legislative fiscal analyst: (1) on January 1 and at fiscal yearend, the actual personal services data, which must tie to the actual expenditures as recorded on SBAS; and (2) by November 1 and at fiscal yearend, the budgeted personal services data, which must tie to the operating plan for expenditure of funds appropriated in [this act] and in the pay plan as approved by the regents. The personal services data described in subsections (1) and (2) must include but is not limited to the following for each position number: program number, responsibility center, budgeted and actual salary and benefits, fund type, and FTE position title and position type.

The general fund appropriation for the community colleges is the state share of the total unrestricted budgets for the community colleges in fiscal year 1996 and fiscal year 1997. The total unrestricted budgets for the community colleges must be approved by the board of regents.

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	Fiscal 1996						Fiscal 1997				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Total audit costs are estimated to be $64,000 for the community colleges for the biennium. The general fund appropriation for each community college provided 49% of the total audit cost. The remaining 51% of these costs must be paid from funds other than those appropriated in item 2. Audit costs for the biennium may not exceed $20,000 each for Dawson and Miles community colleges and $24,000 for Flathead Valley community college.

Item 3 is contingent on the failure of Senate Bill No. 396 to be passed and approved.

AGRICULTURAL EXPERIMENT STATION (5109)

1. Organized Research (02)										
7,174,697		1,922,589	392,472		9,489,758	7,199,105		1,922,589	392,472		9,514,166
a. Legislative Audit (Restricted/Biennial)										
2,216					2,216	2,216					2,216
2. United States Range Station (15)										
			498,134		498,134				501,412		501,412
Total										
7,176,913		1,922,589	890,606		9,990,108	7,201,321		1,922,589	893,884		10,017,794

COOPERATIVE EXTENSION SERVICE (5110)

1. Public Service (03)										
2,813,773		2,294,568			5,108,341	2,813,212		2,294,568			5,107,780
a. Legislative Audit (Restricted/Biennial)										
1,381					1,381	1,381					1,381
Total										
2,815,154		2,294,568			5,109,722	2,814,593		2,294,568			5,109,161

FORESTRY AND CONSERVATION EXPERIMENT STATION (5111)

1. Research (02)										
722,923					722,923	723,321					723,321
Total										
722,923					722,923	723,321					723,321

BUREAU OF MINES (5112)

1. Bureau of Mines (11)										
1,323,913	666,000		44,000		2,033,913	1,324,447	666,000		44,000		2,034,447

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	Fiscal 1996					Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total	1,323,913	666,000		44,000		2,033,913	1,324,447	666,000		44,000		2,034,447
FIRE SERVICES TRAINING SCHOOL (5119)												
1. Public Service (03)	250,421					250,421	250,579					250,579
a. Legislative Audit (Restricted/Biennial)	3,082					3,082						
Total	253,503					253,503	250,579					250,579
The fire services training school must be provided office, classroom, and storage space in the Great Falls vocational-technical center at no charge.												
TOTAL SECTION E	576,964,978	98,932,445	141,102,542	20,717,135		837,717,100	572,968,417	103,406,150	18,985,990	21,495,388		716,855,945
TOTAL SECTION 15	941,930,622	391,140,082	893,215,237	107,691,397	3,197,046	2,337,174,384	948,388,258	415,597,014	785,352,591	107,668,671	2,003,878	2,259,010,412

Section 16. Appropriations related to reorganization — natural resources. Contingent on passage and approval of Senate Bill No. 234, the following money is appropriated for the respective years:

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)												
1. Centralized Services (21)	656,250	506,920	19,937			1,183,107	692,558	504,765	14,703			1,212,026
a. Legislative Audit (Restricted/Biennial)	51,233					51,233						
b. Missouri River Lawsuit (Restricted/Biennial)	15,000					15,000						
c. NMFS Lawsuit (Restricted/Biennial)	25,000					25,000						
2. Oil and Gas Conservation (22)		832,909				832,909		835,657				835,657
a. Underground Injection Control (Restricted)		225,000				225,000		225,000				225,000

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. Conservation and Resource Development Division (23)	113,023	1,257,273	72,400			1,442,696	113,023	1,262,559	72,400			1,447,982
4. Water Resources Division (24)	2,934,229	2,645,339	52,748			5,632,316	2,927,136	2,138,561	52,748			5,118,445
a. Weed Control (Restricted)	475					475	475					475
5. Reserved Water Rights Compact Commission (25)	218,234	287,141				505,375	218,234	281,600				500,034
6. Central Management Program (01)	1,487,808	133,183	120,000	504,902		2,245,893	1,565,909	129,993	120,000	575,329		2,391,231
a. Legislative Audit (Restricted/Biennial)	47,381					47,381						
7. Land Administration Program (04)	948,848	553,614				1,502,462	939,677	553,838				1,493,515
a. Weed Control (Restricted)	15,000					15,000	15,000					15,000
b. Land Exchange With Crow Tribe			100,000			100,000			100,000			100,000
8. Forestry Program (35)	6,466,441	3,683,574	876,873			11,026,888	6,319,502	3,434,708	753,288			10,507,498
a. Federal Fire Reimbursement (Restricted)			100,000			100,000			100,000			100,000
b. Community Forestry FTE (OTO)			87,375			87,375			87,652			87,652
c. HB 201 — Additional Timber Sales		562,368				562,368		545,076				545,076
d. Weed Control (Restricted)	862	2,760				3,622	862	2,760				3,622

The department is authorized to spend the lawsuit appropriations for either lawsuit.

Up to $50,000 each year of funds received under the provisions of 85-1-514(4) are appropriated to the department for the purpose of performing duties required under 85-1-514.

Up to $20,000 each year of fines collected under the provisions of Title 85, chapter 2, and deposited in the water right appropriation account in accordance with 85-2-318 are appropriated to the department to carry out the enforcement functions required under 85-2-114.

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Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Up to $20,000 each year of funds received from the bonds required by 37-43-306 are appropriated to the department for the purpose of performing remedial action on water wells, providing compensation for damages caused by water well violations, or paying administration costs incurred by the board of water well contractors.

During the 1997 biennium, up to $550,000 of funds currently in or to be deposited in the Broadwater replacement and renewal account are appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility or to service the Broadwater hydropower bond debt if revenue deposited in the debt service account is insufficient for this purpose.

During the 1997 biennium, up to $20,000 of interest earned on the Broadwater users account is appropriated to the department for the purpose of repair, improvement or rehabilitation of the Broadwater-Missouri diversion project.

Up to $150,000 each year of funds received in accordance with 85-3-213 are appropriated to the department for the purpose of carrying out the review and administration of weather modification applications, permits, and licenses.

During the 1997 biennium, up to $1 million of funds received by the department from arbitration, litigation awards, or settlements, including funds from the escrow account currently established in an escrow agreement among Voith hydro, inc., the department, and norwest bank, Helena, pursuant to agreement 1189 1 Broadwater power project, are authorized to be spent to pay costs, including the bond debt associated with the Broadwater power project.

During the 1997 biennium, up to $50,000 of state special revenue funds received as lease payments for properties associated with state water projects is appropriated to the department for the purpose of administering the state water project leased properties program.

The department is appropriated up to $700,000 per year from the account established in 76-14-112 for rangeland loans during the 1997 biennium.

All funds deposited in the state special revenue account established in 76-15-530 are appropriated to the department for distribution as grants to conservation districts in an amount of up to $100,000 per year for the 1997 biennium.

All funds held in the state special revenue account in accordance with 76-16-106(2) are appropriated to the department for administration of grazing district activities in an amount of up to $15,000 per year for the 1997 biennium.

The department is appropriated up to $400,000 over the biennium from the state special revenue account established in 85-1-604 for the purchase of prior liens on property held as loan security as required by 85-1-618.

The board of oil and gas conservation is appropriated $110,000 of federal revenue funds each fiscal year of the 1997 biennium, contingent upon receiving federal funds from the environmental protection agency for the underground injection control program.

The board of oil and gas regulation is appropriated from the oil and gas ERA account $56,336 in fiscal year 1996 and $56,541 in fiscal year 1997 in the event that primacy is achieved for the underground injection control program. If primacy is achieved, the board of oil and gas regulation is authorized to request funding for the personal services costs of an underground injection control program manager as a present law adjustment in the 1999 biennium.

Federal fire reimbursement funds are those funds received for expenses incurred from loaning department personnel to federal agencies to assist in fire suppression activities. Only those federal funds received as reimbursement of expenses credited against the department's state forestry operational budget are considered federal fire reimbursement funds. All other federal funds received must be deposited into the general fund. The department shall report federal fire reimbursement expenditures on state accounting records, and the records must be separate from current level operations.

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Because of elimination of the recreational access statutory appropriation by Senate Bill No. 83, item 7 has been increased by 1 FTE and $60,614 in state special revenue in fiscal year 1996 and by $60,838 in state special revenue in fiscal year 1997. If Senate Bill No. 83 is not passed and approved in a form that eliminates the statutory appropriation, then the state special revenue amounts in item 7 are reduced by $60,614 in fiscal year 1996 and by $60,838 in fiscal year 1997

Item 8 includes reductions of 9.08 FTE and $85,258 in general fund money and $215,134 in state special revenue money in fiscal year 1997 to implement the FTE and personal services savings due to the reorganization of the natural resource agencies, contingent on passage and approval of Senate Bill No. 234. The executive branch shall allocate these reductions among programs in the newly created departments of environmental quality and natural resources and conservation If Senate Bill No. 234 is not passed and approved, $85,258 in general fund money and $215,134 in state special revenue money for 9.08 FTE are appropriated to item 8 in fiscal year 1997.

Item 8c is contingent on passage and approval of House Bill No. 201.

DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)

1.	Director's Office (01)											
		100,000		176,834		276,834		100,000		177,710		277,710
2.	Central Services (02)											
		1,751,788		986,098		2,737,886		1,781,012		982,783		2,763,795
	a. Legislative Audit (Restricted/Biennial)											
				51,177		51,177						
3.	Air Quality (03)											
		358,352	2,004,939	1,074,749		3,438,040	361,544	2,230,339	862,732			3,454,615
	a. Radon Contract (Restricted)											
		25,000				25,000		25,000				25,000
	b. Radon Control (OTO)											
			87,457			87,457			112,457			112,457
4.	Environmental Remediation (04)											
		1,826,567	2,369,023			4,195,590		1,829,081	2,090,750			3,919,831
5.	Water Quality (05)											
		2,675,331	3,269,622			5,944,953		2,697,339	3,239,880			5,937,219
6.	Petroleum Tank Release Compensation Board (11)											
		1,346,851				1,346,851		1,354,393				1,354,393
7.	Waste Management (12)											
		151,997	2,883,491	531,734		3,567,222	155,782	2,972,022	483,244			3,611,048
8.	Centralized Services (21)											
		498,313	22,000	91,715		612,028	517,540	16,500	64,855			598,895
9.	Energy Division (26)											
		592,140	495,259	864,275		1,951,674	592,072	456,868	887,688			1,936,628

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	General Fund	State Special Revenue	Fiscal 1996 Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Fiscal 1997 Federal Special Revenue	Propri-etary	Other	Total
10.	Central Management Program (31)											
	132,790					132,790	126,647					126,647
11.	Reclamation Program (33)											
	410,825	1,040,626	5,704,938			7,156,389	405,643	1,018,613	5,725,482			7,149,738
	a. State Library Transfer					20,000						20,000
		5,000	15,000					5,000	15,000			
	b Hard Rock (Biennial)											
		50,000				50,000						
	c. Bond Forfeitures (Biennial)											
		100,000				100,000						
	d. Environmental Analysis (Biennial)											
		550,000				550,000						
	e. Weed Control (Restricted)											
	220		174			394	220		174			394

Funds approved in item 3a may be used only to contract with the Montana bureau of mines and geology for radon in water testing and GIS mapping

Included in the environmental remediation division funding is $446,016 in fiscal year 1996 and $454,576 in fiscal year 1997 of federal funds and $54,583 of state special revenue funds each fiscal year for leaking underground storage tank activities. Sufficient authority is available for $100,000 in consultant and professional services each fiscal year of the 1997 biennium. The department is appropriated up to $847,737 in fiscal year 1996 and $846,866 in fiscal year 1997 of additional federal revenue for leaking underground storage tank consultant and professional services if the revenue becomes available.

Included in the water quality division funding is $721,963 in fiscal year 1996 and $724,835 in fiscal year 1997 of federal nonpoint source pollution prevention funds (NPS funds). The department is appropriated up to $3 million of additional NPS funds during the 1997 biennium for the purpose of contracting with conservation districts if the funds become available.

Included in the water quality division funding is sufficient authority to contract $664,755 each fiscal year with nonprofit entities for water quality management activities. At least 60% of this annual amount must be contracted to conservation districts. No more than 10% of this annual amount may be spent on studies.

Included in the water quality division funding is sufficient authority to add no more than 5.0 FTE in fiscal year 1996 and fiscal year 1997 to be funded with state special revenue funds. At least 3.0 FTE of the additional 5.0 FTE will perform permitting activities each year of the biennium.

Included in the air quality division funding is authority to eliminate the junk vehicle program, item 7 is reduced by $1,073,688 in state special revenue in fiscal year 1996 and by $1,088,584 in state special revenue in fiscal year 1997. Contingent on passage and approval of a bill to statutorily eliminate the junk vehicle program, item 7 is reduced by $1,073,688 in state special revenue in fiscal year 1996 and by $1,088,584 in state special revenue in fiscal year 1997. Contingent on passage and approval of (this act), all fund balances remaining in the junk vehicle disposal state special revenue account as of July 1, 1995, minus any outstanding obligations, must be deposited in the general fund.

Contingent on passage and approval of a bill to statutorily eliminate the junk vehicle program, item 7 is reduced by $1,073,688 in state special revenue in fiscal year 1996 and by $1,088,584 in state special revenue in fiscal year 1997. Contingent on passage and approval of (this act), all fund balances remaining in the junk vehicle disposal state special revenue account as of July 1, 1995, minus any outstanding obligations, must be deposited in the general fund.

Included in the centralized services program funding is $38,500 of indirect funds from MFSA/MEPA fees. If MFSA/MEPA activities generate more than $38,500 of indirect funds over the biennium, the additional indirect funds must be deposited in the general fund.

Included in the centralized services program funding is $38,500 of indirect funds from MFSA/MEPA fees. If MFSA/MEPA activities generate more than $38,500 of indirect funds over the biennium, the additional indirect funds must be deposited in the general fund as long as the totals are not exceeded.

The department may transfer appropriation authority in item 11a between the state special revenue fund and the federal special revenue fund as long as the totals are not exceeded.

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	Fiscal 1996					Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Section 17. Appropriations related to reorganization — human services. Contingent on passage and approval of Senate Bill No 345, the following money is appropriated for the respective years:

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)

1. Family Assistance (01)											
3,661,702	137,500	23,333,569			27,132,771	4,340,309	70,000	24,093,494			28,503,803
a. JOBS Benefits											
100,000	235,119	604,593			939,712	100,000	235,119	604,593			939,712
b. AFDC Benefits											
14,214,373	1,389,581	35,981,460			51,585,414	14,018,403	2,535,905	36,893,510			53,447,818
2. Eligibility Determination Program (03)											
	2,736,364	2,833,040			5,569,404		2,766,831	2,863,977			5,630,808
3. Director's Office (04)											
219,993	68,964	337,985			626,942	220,969	69,269	339,483			629,721
4. Child Support Enforcement (05)											
782,273	2,396,525	6,242,092			9,420,890	1,013,035	2,408,457	6,717,324			10,138,816
5. State-Assumed County Administration (06)											
3,349,458		3,430,542			6,780,000	3,405,485		3,486,910			6,892,395
a. County Pilot Project (Restricted/OTO)											
70,000					70,000	70,000					70,000
6. Medical Assistance (07)											
83,702,550	9,228,629	253,018,859			345,950,038	91,394,394	7,428,629	265,118,544			363,941,567
a. Contract/Develop RBRV's System (Biennial)											
50,000		50,000			100,000						
b. Pediatric Dental Consultant/Orthodontia Consultant											
500		500			1,000	500		500			1,000
c. Local Health Care Providers (Biennial)											
		1,300,000			1,300,000						
d. Hospital Rate Increase											
299,622		690,538			990,160	573,624		1,276,776			1,850,400
e. Nursing Home Rate Increase											
957,524		2,206,796			3,164,320	1,833,678		4,081,412			5,915,090
f. Dental Rate Increase — Children's Services (Restricted)											
257,304		593,006			850,310	287,952		640,926			928,878
7. TDD Program (08)											

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		676,058				676,058		734,716				734,716
8.	Operations and Technology Division (09)											
	4,566,038	1,517,572	7,822,164			13,905,774	4,194,720	1,487,311	7,399,011			13,081,042
	a. Legislative Audit (Restricted/Biennial)											
	84,007	5,432	91,610			181,049						
	b. Welfare Fraud Transfer											
	100,000		300,000			400,000	100,000		300,000			400,000
	c. HB 511 — Health Care Authority											
	174,168		124,167			298,335	22,227		22,227			44,454
9.	Vocational Rehabilitation Program (10)											
	2,379,870	192,087	8,927,243			11,499,200	2,457,621	192,087	9,076,037			11,725,745
10.	Disability Determination Program (11)											
			3,227,187			3,227,187			3,319,142			3,319,142
11.	Visual Services Program (13)											
	332,916		1,169,434			1,502,350	338,050		1,184,463			1,522,513
12.	Developmental Disabilities Program (14)											
	18,583,975		25,142,813			43,726,788	18,972,013		25,430,452			44,402,465
	a. Personal Care in Group Homes											
			2,315,900			2,315,900			2,299,475			2,299,475
	b. Increased Federal Authority											
			1,000,000			1,000,000			1,000,000			1,000,000
	c. Provider Rate Increase											
	750,858		431,908			1,182,766	1,527,488		873,960			2,401,448
13.	Developmental Disabilities Advisory Council (15)											
			420,475			420,475			420,382			420,382
14.	Management Support Services Division (21)											
	1,741,630	15,000	375,892			2,132,522	2,647,562	15,000	1,071,719			3,734,281
	a. Legislative Audit (Restricted/Biennial)											
	91,212		15,042			106,254						
	b. CAPS Development (OTO)											
	627,680		1,883,041			2,510,721						
15.	Regional Administration (22)											
	6,828,793	1,017,077	3,271,080			11,116,950	6,859,373	1,017,077	3,286,416			11,162,866
	a. Protective Services Workers (Restricted)											

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	213,386		122,761			336,147	332,988		191,568			524,556
b. SB 55 — County Administrative Costs												
	307,272		63,382			370,654	307,272		63,382			370,654
16. Program Management Division (25)												
	13,909,879	1,811,649	14,330,305			30,051,833	14,467,905	1,812,761	14,465,871			30,746,537
a. Crisis Nursery Project (OTO)												
			200,000			200,000			200,000			200,000
b. Family Preservation and Support (Biennial)												
			997,843			997,843						
c. Partnership Project												
		150,000	2,000,000			2,150,000		150,000	2,000,000			2,150,000
d. Foster Care Provider Rate Increase												
	119,753	12,167	49,435			181,355	250,667	24,516	103,235			378,418
e. At-Risk Child Care (Restricted)												
	383,260		915,928			1,299,188	389,756		909,432			1,299,188
f. W.K. Kellogg Grant — Matching Funds (Biennial)												
			240,377			240,377						
17. Central Office (31)												
	1,024,572	115,956				1,140,528	1,021,057	116,751				1,137,808
a. Legislative Audit (Restricted/Biennial)												
	71,924	12,695	1,567			86,186						
18. Mental Health (33)												
	38,997,947	147,752	1,792,415			40,938,114	39,524,499	147,759	1,796,062			41,468,320
a. SB 223 — Managed Care Authority												
								20,773,720				20,773,720
19. Chemical Dependency (34)												
		2,565,304	3,376,970			5,942,274		2,591,941	3,379,695			5,971,636
20. Special Services (35)												
	15,979,191	2,370,550	1,311,506			19,661,247	15,313,669	2,271,493	1,326,617			18,911,779
21. Director's Office (41)												
	23,283			346,272		369,555	23,284			348,019		371,303
22. Central Services (42)												
				484,437		484,437				489,644		489,644
a. Legislative Audit (Restricted/Biennial)												

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	Fiscal 1996						Fiscal 1997					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				18,161		18,161						
23.	Health Services (46)											
	1,513,702	739,811	1,460,183			3,713,696	1,470,652	743,687	1,374,620			3,588,959
	a. Certificate of Need (Biennial)											
	92,246					92,246						
	b. Local Health Care Providers (Restricted/Biennial)											
	300,000	300,000				600,000						
	c. Tumor Registry											
			138,342			138,342			120,249			120,249
24.	Family/Maternal and Child Health Bureau (47)											
	620,822		24,974,896			25,595,718	620,241		26,035,092			26,655,333
	a. MIAMI (Restricted)											
	414,000					414,000	414,000					414,000
	b. SB 292 — Right to Know Information											
	37,134					37,134	36,334					36,334
25.	Preventive Health Buroau (48)											
	110,000		4,475,659			4,585,659	112,000		4,601,344			4,713,344
	a. Communicable Disease Emergency Fund (Restricted/Biennial)											
	50,000					50,000						
26.	Health Facilities Division (49)											
	682,456		1,873,484			2,555,940	687,795		1,885,380			2,573,175

The legislature intends that expenditures for all provider rate increases approved by the legislature be limited to the dollar amounts appropriated rather than the percentage increase on which the original estimates may have been based. The department will be in compliance with this provision if:

(1) it estimates total cost for each medicaid service category in June prior to the beginning of each fiscal year of the 1997 biennium; and

(2) the percentage increase or base adjustments approved by the department are limited to the dollar amount appropriated for each provider rate increase.

The AFDC payment level for the 1997 biennium must be established at no less than 40.5% of the federal poverty index.

The department shall require that JOBS participants who leave the program because of employment be tracked up to 1 year after their termination with the JOBS program as a condition of letting JOBS contracts. Exemptions from this requirement include JOBS participants who are no longer Montana residents or JOBS participants who cannot be reached despite good faith efforts. The department shall report to the 55th legislature regarding the employment and earning status of former JOBS participants served during the 1997 biennium.

Contingent on passage and approval of Senate Bill No. 209, the family assistance program shall notify the regional administration that children in a household are at risk when that household receives a sanction that includes reduction of the adult portion of the AFDC grant.

Funds in item 1a must be used for a teen parent program. The department may use general fund money in item 1a for a teen parent program for teen parents who are not AFDC eligible and for teen parents who are AFDC eligible but younger than 15 years of age.

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	Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

The department is authorized to retain 7.5% of the federal community services block grant and pass through the remaining 92.5% to the human resource development councils (HRDCs). If during fiscal year 1996 or fiscal year 1997 the block grant falls below the federal fiscal year 1990 grant level, the department shall retain only 5% of the grant amount and pass through the remaining 95% to the HRDCs.

The state share of AFDC-related support collections and all AFDC and non-AFDC federal incentive payments and program-collected fees must be deposited in the state special revenue account from which the state share of the administrative and operational costs of the child support enforcement program must be paid. The department shall transfer to the general fund from the child support enforcement account any cash balance in excess of $350,000.

The department is appropriated funds for a pilot project in Deer Lodge County. The pilot project may include work, job training, subsistence payments, and preventive health programs for low-income people. The use of appropriated funds in item 5a is contingent on Deer Lodge County levying 12 mills for its poor fund for public assistance, protective services, and other benefits for low-income people.

The department shall implement 53-6-101(10) if medicaid expenditures exceed appropriations in [this act] in either year of the biennium.

The department shall perform a statistically valid survey of dentists to determine usual and customary charges for children's dental services during fiscal year 1996. The department shall compute the 1999 biennium cost of establishing medicaid reimbursement for children's dental services at 80% of usual and customary charges based on the survey results. The executive budget must publish by fiscal year the 1999 biennium cost to fund medicaid reimbursement for children's dental services at 80% of survey rates.

The legislature intends that $70,653,143 of the amount in fiscal year 1996 and $77,127,105 of the amount in fiscal year 1997 in item 6 are appropriated for hospital medicaid benefits.

Because of de-earmarking by Senate Bill No. 83, item 6 has been reduced by $6,611,179 in state special revenue in fiscal year 1996 and by $6,665,040 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 6 are reduced by $6,611,179 in fiscal year 1996 and by $6,665,040 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

Funds in item 6b must be used to contract for orthodontia consultation and pediatric dental consultation for medicaid dental claims, medicaid policy development, and representation of the department in fair hearings.

The department may use funds in items 6d and 6e to increase rates paid for medicaid services purchased from hospitals and nursing homes. If hospital or medicaid providers sue the department to obtain additional increases in medicaid rates, the department may use the funds to defend the state against the lawsuit. In the event the defense is unsuccessful, the department may reallocate funds from other appropriations to fund nursing home and hospital rate increases.

Funds in item 6f may be used only for rate increases for children's dental services. Funds in item 6f may not be transferred to other uses in the department or to another department.

If Senate Bill No. 236 is passed and approved and if the department collects estate recoveries and other savings because of Senate Bill No. 236 in excess of $600,000 in fiscal year 1996 or $600,000 in fiscal year 1997, up to $1 million of general fund money and matching federal funds of those excess savings are appropriated each year for independent living and community-based medicaid services.

Item 8 includes efficiencies and savings of 25 FTE, $412,500 in general fund money, and $412,500 in federal special revenue in fiscal year 1997 based on passage and approval of Senate Bill No. 345, which reorganizes human services and public health agencies. The executive branch can allocate these reductions among programs in the department of public health and human services. If Senate Bill No. 345 is not passed and appreved, the appropriation in item 8 is increased by 25 FTE, $412,500 in general fund money, and $412,500 in federal special revenue in fiscal year 1997.

If Senate Bill No. 345 is passed and approved, the department shall solicit proposals to establish a local structure to administer and coordinate human services programs. To the extent feasible and permitted by federal law, the proposal must include administration of all of the programs transferred to the department of public health and human services. The department

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	Fiscal 1996					Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

shall accept one or more proposals as a demonstration project, with an anticipated beginning date of July 1, 1996. Funding for the demonstration project must be taken from appropriations authorized in [this act]. If Senate Bill No. 345 is passed and approved, the department shall create an advisory committee to assist in the preparation of a report to the 55th legislature on the feasibility of expanding the demonstration proposal to establish local administration and coordination of human services programs. The report must contain a preliminary evaluation of the demonstration project described above.

Funds for item 8b are to fund welfare fraud investigation. The department of justice may hire FTE rather than contract for services if the department certifies to the office of budget and program planning that FTE are more cost-effective than contracted services.

The funds for item 8c are contingent on the passage and approval of House Bill No. 511.

If the department considers contracting for operation of the TEAMS or SEARCHS computer applications on a privately owned and operated mainframe or midrange computer or if the department plans to purchase a midrange computer for the operation of these systems, the department shall submit to the office of budget and program planning and to the legislative finance committee a comparison of the cost of operating the system on the state mainframe computer managed by the department of administration or on a midrange computer owned by the department. The department of administration shall estimate rate changes that would occur because of removal of TEAMS or SEARCHS from the state mainframe. If the office of budget and program planning determines that statewide cost savings are greater than the private contract cost savings or savings because of the purchase of a departmental midrange computer, the department shall operate TEAMS or SEARCHS on the state mainframe computer if continued operation of TEAMS or SEARCHS on the state mainframe does not conflict with federal regulations.

Provider rate increases funded in item 12c must be allocated between general operating inflationary increases and wage increases for the lowest wage, direct-care line workers of developmental disabilities providers. No less than $375,429 of general fund money and $215,954 of federal special revenue in fiscal year 1996 and $758,100 of general fund money and $433,751 of federal special revenue in fiscal year 1997 must be granted with no specific expense allocation, and the remainder of the rate increase must be allocated to salaries for the lowest-wage, direct-care line workers.

The department may pursue funding of any existing eligible state general-funded services under the federal ICF/MR program if the federal government fails to approve adequate medicaid waiver funding under the home- and community-based waiver program.

It is the intent of the legislature that in fiscal year 1996 and fiscal year 1997, any unexpended portion of the department's general fund appropriation, up to $500,000 for the biennium, may be awarded by the department for the purposes of providing primary and preventive health care benefits to children who are uninsured and not eligible for medicaid benefits. To qualify, the family income may be no greater than 185% of the federal poverty level. The department may contract with public or private entities for the administration and provision of these services. These funds may be allocated only to those programs that have established a statewide network of medical providers who have agreed to accept reimbursement at a lower rate than would normally be charged for their services.

The department shall prepare a unified budget for the interagency coordinating council on prevention of child abuse and neglect. The unified budget must identify services funded, expenditures by service in fiscal year 1996, and preliminary amounts budgeted for the 1999 biennium by service and fund type from the department, office of public instruction, board of crime control, and department of laber and industry. A preliminary budget must be presented to the joint oversight committee on children and families, the legislative finance committee, and the office of budget and program planning by September 1, 1996. The unified budget must be published in the governor's budget request to the 55th legislature.

The department may add FTE instead of contracting for services if it certifies to the office of budget and program planning that FTE are more cost-effective than contracting. FTE added through this language may not be included in the 1999 biennium base budget.

The department shall notify the parents, legal guardians, or caretakers of the children of male and female prisoners in the state of Montana of the state services available to children and families. Services provided by the department and department of corrections and human services must be listed and explained. Notification may be waived if the children of prisoners do not reside in Montana.

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	Fiscal 1996					Fiscal 1997				
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Funds in item 14b may not be included in the fiscal year 1996 base budget.

Funds in item 15a may be used only for new social worker positions with duties related to child or elder abuse and neglect. The department shall establish an accounting center and a budget center to track expenditures for and the number of abuse and neglect workers separate from other department FTE. The department shall report abuse and neglect FTE and related expenditures separate from other budget functions in its budget request to the 55th legislature.

Funds in item 15b are contingent on passage and approval of Senate Bill No. 55.

The department shall present a report to the 55th legislature confirming the outcome of the partnership project. The report must include the number of families and children served and the types of services funded and must verify the impact on the growth in the foster care caseload, if any. The report must explicitly identify fiscal year 1996 expenditures by fund type, service, and county location, compared to the estimated expenditures by fund type and service for the 1999 biennium.

Because of de-earmarking by Senate Bill No. 83, item 16 has been reduced by $35,406 in state special revenue in fiscal year 1996 and by $34,409 in state special revenue in fiscal year 1997 and general fund amounts have been increased by the same amounts. If Senate Bill No. 83 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 16 are reduced by $35,406 in fiscal year 1996 and by $34,409 in fiscal year 1997 and the state special revenue amounts are increased by the same amounts.

Funds in item 16a may not be included in the base budget for the 1999 biennium.

Item 16c is to develop family support services for children at risk of abuse or neglect and for children who have been referred for abuse or neglect and to develop community-based services for children placed in or who are at risk of being placed in juvenile corrections facilities. The development of additional services is contingent on recovery of federal funds through department refinancing initiatives and the collection of contributions from parents of children. Services must be developed within appropriation limitations in [this act], and the department may not expand partnership services so that foster care general fund requirementa are greater than appropriations in [this act].

Funds in item 16e may be used only to fund child care benefit costs for families who are at risk of becoming eligible for AFDC. Funds in item 16e may not be used for any other purpose, transferred to any other use in the department, or transferred to another department.

Funds in item 18a are contingent on passage and approval of Senate Bill No. 223.

If the Eastmont human services center does not remain in operation at current capacity, item 20 is decreased by $22,865 in general fund money in fiscal year 1996 and $22,944 in general fund money in fiscal year 1997 to fund 1.0 FTE in the Eastmont vocational program.

The department is directed to develop and purchase mental health services for children and adolescents that minimize the necessity of residential placements and that control the expenditures for residential care.

All services under the managing resources Montana (MRM) program must be purchased based on an RFP process that provides for effective services at the lowest possible cost. The department shall develop measures of program effectiveness and require contractors selected under the RFP process to provide the information necessary to determine the effectiveness of services. The department may not contract with any service provider that has been found, through a court of law, to have, through fraud or falsification of documents, attempted to receive public funds to which the provider was not entitled.

Funds in item 23a are contingent on passage and approval of Senate Bill No. 416.

General fund money in item 23b may be used only te contract for assistance to local health care providers in obtaining medicaid reimbursement and to assist communities in implementing local health care services.

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	Fiscal 1996					Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Funds in item 23c are appropriated with the requirement that the development and operation of the tumor registry must be coordinated with all other medical data bases operated by the state so that the sharing of information is facilitated and the duplication of effort is reduced.

Item 24b is contingent on passage and approval of Senate Bill No. 292.

During the 1997 biennium, the department shall:

(1) by July 1, 1996, develop and implement a consolidated contract for all health care grants;

(2) by October 1, 1995, revise and update the maternal and child health (MCH) rules to reflect the current block grant legislation with the amendments to the Federal Omnibus Budget Reconciliation Act of 1989. The rules must address the local match requirement. The department shall also establish a core set of MCH services. The department shall ensure that MCH block grant funds are not used for noncore services unless each core service is ensured or unless the entity receiving the grant has demonstrated through a formal needs assessment process that the core service not being provided is not needed. The rules must address medicaid billing and reimbursement and must contain a provision that all MCH block grant money be spent on MCH services and that it not be used to supplant local funds.

(3) explore all opportunities for maximizing medicaid revenue, including requiring local health units to bill medicaid for reimbursable services and using available general fund and state special revenue appropriations to match medicaid funds for state-level activities. If necessary, the department shall assist local health units in maximizing medicaid revenue. By October 1, 1995, department rules must require that MCH block grant funds be provided only if an effective methed of maximizing medicaid revenue has been established by the receiving entity; however, this requirement does not apply if an entity has determined and demonstrated that billing medicaid is not cost-effective.

(4) use priority setting in the disbursement of MCH block grant funds. By October 1, 1995, rules and formulas for distribution of funds to local entities must be revised to give the opportunity to help those counties, regions, or communities with the least resources, largest proportions of underserved families, and most serious maternal and child health problems, as identified by objective health indicators and community needs assessments. The MIAMI project and other public health programs must be oporated in a similar manner.

(5) by October 1, 1995, require local health agencies to assume more responsibility for outreach and education for services to clients of such related state programs as passport; family support programs; and early periodic screening, diagnosis, and treatment (EPSDT);

(6) by October 1, 1995, ensure that the majority of local health care agencies bill medicaid for the provision of immunizations and well child visits/EPSDT; and

(7) on July 1, 1995, and every 6 months thereafter, file status reports with the members of the human services subcommittee on appropriations and with the legislative fiscal analyst regarding the six requirements provided above. At a minimum, the reports must address:

(a) progress in implementing these requirements;

(b) the amount of additional medicaid money the department has been able to access and an explanation of how and where that money is being used; and

(c) an explanation of the progress that the department expects to achieve during the next 6-month and 12-month periods.

Section 18. Appropriations related to miscellaneous reorganizations. Contingent on passage and approval of:

(1) Senate Bill No. 361, the following money is appropriated for the respective fiscal years:

DEPARTMENT OF TRANSPORTATION

9. Highway Traffic Safety (36)

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	Fiscal 1996						Fiscal 1997					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
250,000	86,000	4,510,578			4,846,578	250,000	85,879	4,512,456			4,848,335

It is the intent of the legislature that the school bus safety services, formerly provided by the office of public instruction, be provided by the highway traffic safety division during the 1997 biennium.

(2) House Bill No. 563, the following money is appropriated for the respective fiscal years:

DEPARTMENT OF ADMINISTRATION

10.	Warrant Writing and Bad Debt Management (10)										
		941,532			941,532				943,676		943,676
	a. Legislative Audit (Restricted/Biennial)										
		27,534			27,534						

If House Bill No. 563 is not passed and approved, proprietary revenue in item 10 must be decreased by $741,278 in fiscal year 1996 and $744,922 in fiscal year 1997, general fund money must be increased by $140,843 in fiscal year 1996 and $141,535 in fiscal year 1997, and state special revenue must be increased by $600,435 in fiscal year 1996 and $603,387 in fiscal year 1997.

If House Bill No. 563 is not passed and approved, proprietary revenue in item 10a must be reduced by $25,483 in fiscal year 1996 and state special revenue must be increased by the same amount.

(3) House Bill No. 280, the following money is appropriated for the respective fiscal years:

DEPARTMENT OF LIVESTOCK

8.	Milk Control Bureau (37)										
		234,908			234,908		236,467				236,467
	a. Legislative Audit (Restricted/Biennial)										
		544			544						

(4) Senate Bill No. 4, the following money is appropriated for the respective years:

GOVERNOR'S OFFICE

8.	Indian Affairs Coordinator (05)										
		107,856			107,856	108,209					108,209
	a. Legislative Audit (Restricted/Biennial)										
		400			400						

Section 19. Adjustments to proprietary appropriations — HB 576. If House Bill No. 576 is passed and approved, proprietary funds in the following departments and items in [section 15] are void:

SECRETARY OF STATE

Item 1

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General Fund	State Special Revenue	Fiscal 1996 Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Fiscal 1997 Federal Special Revenue	Propri-etary	Other	Total
Item 1a											
OFFICE OF THE STATE AUDITOR											
Item 4											
DEPARTMENT OF TRANSPORTATION											
Item 4											
Item 5											
Item 7											
DEPARTMENT OF REVENUE											
Item 3											
DEPARTMENT OF ADMINISTRATION											
Item 1					97,074 Fiscal 1996 and 97,617 Fiscal 1997						
Item 3											
Item 3a											
Item 4 through Item 4c											
Item 5 through Item 5d											
Item 6											
Item 6a											
Item 7											
Item 7a through 7c											
Item 8											
Item 8a											
DEPARTMENT OF LABOR AND INDUSTRY											
Item 2					159,964 Fiscal 1996 and 164,315 Fiscal 1997						

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General Fund	State Special Revenue	Fiscal 1996 Federal Special Revenue	Fiscal 1996 Proprietary	Fiscal 1996 Other	Fiscal 1996 Total	Fiscal 1997 General Fund	Fiscal 1997 State Special Revenue	Fiscal 1997 Federal Special Revenue	Fiscal 1997 Proprietary	Fiscal 1997 Other	Fiscal 1997 Total
Item 2a											
Item 3											
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES											
Item 1											
Item 2											
DEPARTMENT OF FISH, WILDLIFE, AND PARKS											
Item 1											
Item 2											
Item 6											
Item 6d											
Item 6e											
Item 6f											
DEPARTMENT OF STATE LANDS											
Item 1											
DEPARTMENT OF AGRICULTURE											
Item 2											
DEPARTMENT OF COMMERCE											
Item 4											
Item 4a											
Item 8											
Item 8a											
Item 9											
Item 9a											

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	Fiscal 1996					Fiscal 1997				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 12											
Item 12a											
Item 14											
Item 14a											
Item 15											
Item 15a											
Item 16											
Item 16a											
Item 18											
Item 18b											
Item 18c											
DEPARTMENT OF JUSTICE											
Item 2											
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES											
Item 2 5,434,128 Fiscal 1996 and 6,252,358 Fiscal 1997											
OFFICE OF PUBLIC INSTRUCTION											
Item 1											
MONTANA UNIVERSITY SYSTEM											
Item 1											

Note: The bracketed language in sections 9 and 15, section A, was stricken by Governor's line item veto.

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RESOLUTIONS

Passed by the

FIFTY-FOURTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 2, 1995, through April 13, 1995

COMPILED BY MONTANA LEGISLATIVE COUNCIL

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SENATE JOINT RESOLUTIONS

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING JOINT RULES TO GOVERN THEIR PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules he adopted:

JOINT RULES OF THE MONTANA

SENATE AND HOUSE OF REPRESENTATIVES

CHAPTER 10

Administration

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

10-50. Access of press. Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member helongs.

10-70. Telephone calls. (1) Long distance telephone calls made by a member while the Legislature is in session or the member is in travel status are considered official legislative business. These include, but are not limited to, calls made to constituencies, places of business, and family members.

(2) Session staff, including aides and interns, may use telephones for long distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones by their staff, including aides and interns, and may not authorize others to use state phones.

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(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-85. Harassment prohibited. Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender be employer, employee, legislator, lobbyist, or member of the public. A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate. If the offended party is an employee, the violation must be reported to the employee's supervisor or, if the offender is the supervisor, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a supervisor, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee, the employee is subject to discipline or discharge.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Council. (1) The staff of the Legislative Council shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

10-110. Compensation of legislative employees. The Legislature by joint resolution shall prescribe the compensation of the employees of each house.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Council shall hire all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

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(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which tbe Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House and to the sponsor of the bill or amendment. *The sponsor shall sign the clerical form to acknowledge notification of the clerical correction. The signed form must be filed in the office of the amendments coordinator.* ~~Any of these~~ *A party receiving notice* may register an objection to the correction by filing the objection in writing within 24 hours after receipt of the notice.

(4) If a committee is the sponsor of a bill or resolution, any committee member designated by the chair may be the principal sponsor for the purpose of this section. If a committee has proposed an amendment, the chair is the principal sponsor for the purpose of this section.

10-130. Bills. (1) A bill draft request must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) introduced in duplicate, with an additional title page; and

(d) for tbe original copy, covered with a cover page of a substantial material.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

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(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title, except in general appropriation bills and bills for the codification and general revision of the laws.

(5) Introduced bills must be reproduced on white paper and distributed to memhers.

10-140. Voting. (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence; or

(d) indefinitely postpone.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society.

10-160. Journal. Each house shall:

(1) supply the Legislative Council with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) distribute a daily journal to all members.

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10-170. Journals -- authentication — distribution *availability*. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives by the signature of the Speaker.

(2) The Legislative Council shall distribute *make* the completed journals *available to the public* (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 30

Committees

30-10. Committee chair. Except as provided in Joint Rule 30-50, the chair of the Senate committee is the chair of all joint committees.

30-20. Voting in joint committees. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee must agree before any action may be taken, unless otherwise specified hy individual house rules.

30-30. Conference committees. (1) If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

30-40. Conference committee — enrolling. A conference committee report shall give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of appropriation bills. (1) All bills providing for an appropriation of puhlic money may first be considered by a joint committee composed of the members of the Senate Committee on Finance and Claims and the House Committee on Appropriations, and then by each separately.

(2) Meetings of the joint committee must be held upon call of the chair of the House Committee on Appropriations, who is chair of the joint committee.

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(3) The committee chair of the Senate Committee on Finance and Claims or of the House Committee on Appropriations may be a voting member in the joint subcommittees if:

(a) either house has fewer members on the joint subcommittees;

(b) the chair represents the house with fewer members on the subcommittees; and

(c) the chair is present for the vote.

30-60. Estimation of revenue. ~~(1)~~ The Revenue Oversight Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature.

~~(2) Meetings of the Revenue Oversight Committee for purposes of estimating revenue must be held upon the call of the chair. The Revenue Oversight Committee shall issue periodic reports to each of the houses, indicating the committee's current revenue projections.~~

30-70. Oversight of joint legislative agencies and committees. The President of the Senate, the Speaker of the House, and the minority leaders of the Senate and the House comprise a legislative management committee which shall meet from time to time at the request of one of its members to review and oversee the activities of joint agencies and committees of the legislative branch established by law or resolution. The committee may consider, without limitation, matters concerning jurisdictional disputes between joint agencies and committees, agency salary schedules and employment policies, and any other matter bearing upon the efficient operation of the legislative branch. The committee may make such recommendations as it chooses to the appropriate authority or the Legislature.

CHAPTER 40

Legislation

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

40-20. Appropriation bills. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Committee on Appropriations.

40-30. Effective dates. (1) ~~Every~~ *Except as provided in subsections (2) through (4), a* statute~~, except one that provides for appropriation by the Legislature of public funds for a public purpose,~~ takes effect on October 1 following its passage and approval, unless a different time is prescribed therein.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval, unless a different time is prescribed therein.

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(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval, unless a different time is prescribed therein.

~~(3)~~*(4)* A joint resolution takes effect on its passage, unless a different time is prescribed therein (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduction — limits and procedures. (1) Prior to a regular session, a person entitled to serve in that session, hereafter referred to as a "member", is entitled to request bill drafting services from the Legislative Council, subject to the following limits:

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Council for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Council. At least ~~two~~ *five* of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) The staff of the Legislative Council shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. A bill requested pursuant to subsection (5) must receive a lower drafting priority than all bills requested by members, unless the requesting member assigns that request to the member's five-request priority. The staff of the Legislative Council shall assign a higher priority to any bill draft request when jointly directed by:

(a) the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House; or

(b) the House and the Senate.

~~(2)~~*(3)* Bills and resolutions must be reviewed by the staff of the Legislative Council prior to introduction for proper format, style, and legal form. The staff of the Legislative Council shall store bills on the automated bill drafting equipment and shall print and deliver them in duplicate to the requesting members. The original bill cover must be signed to indicate review by the Legislative Council. A bill may not be introduced unless it is so signed.

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~~(3)~~*(4)* During a session, a bill may be introduced by endorsing it with the name of a member and presenting it in duplicate to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name. In each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

~~(4)~~*(5)* Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the..... (Name of committee or agency)". *A bill draft request submitted at the request of an agency or committee prior to December 23 must be requested by an individual member by December 23 or the request is placed on hold. After December 23, an agency or committee bill must be requested by an individual member.*

~~(5)~~*(6)* Bills may he preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Council. Actual signatures of persons entitled to serve as members in the ensuing session may appear on the face of the preintroduced bill, or signatures may be obtained on a consent form from the Legislative Council and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the hill. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

~~(6)~~*(7)* All preintroduced bills must be made available to the public.

40-50. Schedules for drafting requests and bill introduction. The following schedules must be followed for submission of drafting requests and introduction of bills and resolutions.

	Request Deadline 5:00 P.M. Legislative Day	Introduction Deadline ~~5:00 P.M.~~ Legislative ~~Day~~
• General Bills and Resolutions	10	~~14~~
• Revenue Bills	17	~~21~~
• Committee Bills and Resolutions	36	40
• Committee Revenue Bills	62	~~66~~
• Committee Bills implementing provisions of a general appropriation act	75	~~78~~

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• Bills and Resolutions ~~delivered after the applicable introduction deadline~~ must be introduced within 2 legislative days after delivery.

• Appropriation Bills	No Deadline	No Deadline
• Interim study resolutions	~~No Deadline~~ *75*	~~No Deadline~~ *80*
• Resolutions to express confirmation of appointments	No Deadline	No Deadline
• Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline	No Deadline

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request ~~an interim study by~~, *but not require,* a legislative ~~subcommittee~~ *entity to conduct an interim study*;

(c) adopt, amend, or repeal the joint rules;

(d) set salaries and other terms of employment for legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution; or

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(2) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(3) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

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40-65. Appropriation required for bills requesting interim studies. *A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.*

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction, shall determine the need for the note, based on the Legislative Council staff recommendation.

(2) Unless the requesting member directs otherwise, the Legislative Council shall deliver three copies of any bill for which it has been determined a fiscal note may be necessary to the state Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request.

(3) The Budget Director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note. The Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall refer it to the committee considering the bill. All fiscal notes must be reproduced and placed on the members' desks.

(5) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

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(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(6) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(7) A fiscal note also may be requested on a bill and on an amendment by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor, through the presiding officer.

(8) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

40-110. Sponsor's fiscal note. (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Council shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage a bill must be read three times in the house in which it is under consideration. It may he read either by title or by summary of title.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the

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bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed. Committee of the Whole amendments must be included in the engrossed bill. The bill must be placed on the calendar for third reading on the succeeding legislative day.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it may be engrossed without reprinting. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee or Committee of the Whole in the second house, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading consideration. The amendments also must be reproduced and attached to the reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments must be distributed in the original house.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken. ~~The history of the bill also must be enrolled and placed with the bill in a white manuscript cover, upon which is written the number of the bill and the title. The Legislative Council staff shall file a copy of the history with the law library.~~

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

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(c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies witb chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Council.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. *(1)* When a bill being heard by the second house has received its third reading or has been rejected, the second house must transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

40-190. Transmittal of bills between houses. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, tbe Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

40-200. Transmittal deadlines. (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the bouse to which it was transmitted.

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(b) (i) A bill, except for an appropriation bill, a revenue bill, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills originating in the Senate must be transmitted to the House on or before the 71st legislative day.

(ii) House amendments to Senate revenue bills must be transmitted by the House to the Senate on or before the 82nd legislative day.

(iii) Revenue bills originating in the House must be transmitted to the Senate on or before the 71st legislative day.

(iv) Senate amendments to House revenue bills must be transmitted by the Senate to the House on or before the 82nd legislative day.

(v) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted no later than the 60th legislative day.

(b) Amendments to the resolutions must be transmitted to the house of origin no later than the 82nd legislative day.

(3) ~~Interim study resolutions, bills~~ *Bills* repealing or directing the amendment or adoption of administrative rules, and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

40-210. Governor's veto. (1) Each *Except as provided in 40-65 and 40-180, each* bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

(a) bills proposing amendments to The Constitution of the State of Montana;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referendum measures of the Legislature.

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(2) If the Governor does not sign or veto the bill within 5 days after its delivery if the Legislature is in session or within 25 days if the Legislature is adjourned, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment. (1) The Governor may return any bill to the Legislature with recommendations for amendment.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

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(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

Rules

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Council:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Council shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Council shall distribute copies as directed by the Senate and the House of Representatives.

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CHAPTER 70

Statement of Legislative Intent

70-10. Definition. (1) For the purpose of compliance with the Legislative History Act (Title 5, chapter 4, part 4, MCA), a statement of legislative intent regarding a bill must express the common understanding of those components of the Legislature voting on the bill.

(2) This statement differs from a purpose clause, which is used in general to describe the broad overall objectives of a bill. A statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

70-20. Limitation. A statement of intent may not accompany any bill that does not statutorily require one unless a committee (standing committee, Committee of the Whole or conference committee) agrees by a two-thirds vote to attach the statement.

70-30. Statement of intent to accompany bill — when — how. A statement of intent must accompany a bill as follows:

(1) A statement of intent is required for a bill delegating new rulemaking or licensing authority.

(2) A statement of intent must be included with the introduced bill for a bill requiring one. If a bill is found to require a statement of intent at any time in the legislative process, a statement of intent may be added under the procedure for amending a bill.

(3) A statement of intent must be included as a part of the bill between the title and the enacting clause under the heading "Statement of Intent".

70-40. Modification. Any committee considering a bill may recommend amendment of a previous statement of intent or recommend inclusion of a statement of intent. The statement of intent must be reflected in the history of the bill.

70-50. Conference committee on statement of intent only. (1) If the second house concurs in a bill without amendments but amends or supersedes a previous statement of intent, the bill may not be enrolled until both houses have agreed on a statement of intent. If the statement of intent is attached to a bill that does not statutorily require one, the conference committee can delete the statement in its entirety.

(2) A new statement of intent written by the second house must be processed in the same manner as a second house amendment.

(3) A regular conference committee may be appointed solely to resolve differences of intent if the second house's statement of intent is not so accepted.

Adopted January 19, 1995

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SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE ESTABLISHMENT AND OPERATION OF A NATIONAL FOREST SERVICE MUSEUM TO BE LOCATED AT MISSOULA, MONTANA.

WHEREAS, the vital role of our nation's forests was officially recognized in 1891 when the first federal forest reserves were set aside by Congress and the forerunner of the national forest system was established; and

WHEREAS, the people of Montana have long enjoyed both tangible and intangible benefits from the presence and management activities of the USDA Forest Service, which is distinct from most federal and other governmental agencies in the strength and diversity of its history and traditions; and

WHEREAS, as we celebrate nearly a century of USDA Forest Service operations, it is proposed that a National Forest Service Museum be established and operated in Missoula, Montana; and

WHEREAS, the primary purpose of this proposed national museum will be to present the work of the great pioneers of American forestry by collecting and exhibiting historical papers, photographs, artifacts, and other items that represent the entire rich national heritage of the USDA Forest Service in the context of a "living museum", with facilities for educational displays portraying the management and growth of forest resources across the United States; and

WHEREAS, it is anticipated that the museum will provide the national forum for exhibits and programs of many other forestry-related museums and Forest Service interpretive facilities throughout the United States; and

WHEREAS, the Forest Service Northern Region has designated the museum as an authorized federal repository for federal property, including archives, artifacts, and other historical items; and

WHEREAS, endorsement of and support for the museum, including providing information, architectural review, and comparable activities, have been pledged by the Chief of the Forest Service; and

WHEREAS, the museum will be established and operated by a private, nonprofit corporation that is already established under Montana law and governed by an independent board of directors and that will cooperate closely with the USDA Forest Service and other entities, such as the Smithsonian Institution, and provide a nonpolluting, substantial economic development opportunity within Montana; and

WHEREAS, Missoula is at the heart of the Forest Service Northern Region encompassing 15 national forests, 4 national grasslands, and 28 million acres of forest, including 5 million acres of classified wilderness, has been the center for forest industry for over a century, and is the site of the University of Montana School of Forestry and the center of forestry activities of the Montana Department of State Lands; and

WHEREAS, the Forest Service Northern Region hosts 13 million visitor days annually, including more than 1.6 million people who annually pass through

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Missoula en route between Glacier and Yellowstone National Parks, providing a substantial base for visitation to a museum established in Missoula; and

WHEREAS, a 36-acre site located on federal land northwest of the Missoula International Airport has been obtained through a special use permit from the Forest Service; and

WHEREAS, the U.S. Internal Revenue Service has granted the museum tax-exempt status under 26 U.S.C. 501(c)(3) as a private, nonprofit corporation, and large-scale fundraising has begun, with contributions solicited from local, state, and federal governmental sources, from private and corporate foundations, and from individual citizens throughout the United States; and

WHEREAS, amid current but not unprecedented controversy surrounding the forest management activities of the USDA Forest Service, there is broad public recognition of the need for continuing dialogue among all segments of the public and public agencies, including the USDA Forest Service; and

WHEREAS, because of the proposed museum's independent, privately operated status and historical focus, it offers an appealing opportunity for continuing dialogue and collaboration among many diverse interests; and

WHEREAS, the Montana Congressional Delegation and three successive Montana Governors have supported the establishment and operation of the proposed museum.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and House of Representatives of the State of Montana commend the concept of the establishment and operation of a private nonprofit National Forest Service Museum in Missoula, Montana.

BE IT FURTHER RESOLVED, that through this resolution, the Senate and House of Representatives of the State of Montana encourage strong and continuing cooperation between the proposed museum and existing Montana institutions, including the Montana Historical Society, the Museum of the Rockies, and any other state governmental agencies that could provide advice.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the Governor of the State of Montana, the Board of Directors of the private, nonprofit museum corporation, the Regional Forester of the Forest Service Northern Region, and the Directors of the Montana Historical Society and the Museum of the Rockies.

Adopted January 24, 1995

SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DEMANDING THAT CONGRESS RECOGNIZE STATES' RIGHTS UNDER THE 10TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

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WHEREAS, the 10th amendment to the Constitution of the United States reads: "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people"; and

WHEREAS, the scope of power defined by the 10th amendment means that the federal government was created by the people to be their agent; and

WHEREAS, today, in 1995, the states are demonstrably treated as agents of the federal government; and

WHEREAS, many federal mandates are directly in violation of the 10th amendment; and

WHEREAS, the United States Supreme Court has ruled in New York v. United States, 112 S. Ct. 2408 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the states; and

WHEREAS, a number of proposals from previous administrations and some now pending from the present administration and from Congress may further violate the Constitution of the United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the State of Montana claim sovereignty under the 10th amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States.

(2) That this resolution serve as notice and demand to the federal government, as our agent, to cease and desist, effective immediately, imposing mandates that are beyond the scope of its constitutionally delegated powers.

(3) That this resolution serve as notice and demand to the federal government to review existing mandates that usurp state sovereignty and to repeal those mandates.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to:

(1) the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of Montana's Congressional Delegation; and

(2) the presiding officer of the Nebraska Legislature and the Speaker of the House and the President of the Senate of each other state.

Adopted February 4, 1995

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL STUDY THE USES OF AND THE NEEDS

FOR HIGH-QUALITY AND TIMELY MINUTES OF COMMITTEES OF THE MONTANA LEGISLATURE; REQUESTING TIIAT THE LEGISLATIVE COUNCIL PROPOSE A CLEAR DEFINITION OF THE COMPONENTS TO BE INCLUDED IN COMMITTEE MINUTES; REQUESTING THAT THE LEGISLATIVE COUNCIL EXAMINE AND ASSESS THE EFFICIENCY AND COST-EFFECTIVENESS OF ALTERNATIVE MEANS OF PRODUCING COMMITTEE MINUTES, INCLUDING THE APPLICATION OF AVAILABLE TECHNOLOGY; AND REQUIRING A REPORT OF THE FINDINGS AND CONCLUSIONS OF THE STUDY TO THE 55TH LEGISLATURE.

WIIEREAS, committees of the Senate and of the House of Representatives are required by the Rules of the Montana Legislature to keep minutes of the meetings of their respective committees; and

WHEREAS, it is unclear what material is intended to be included as components of committee minutes; and

WHEREAS, the minutes of the committees are becoming increasingly important to the public, to public entities administering acts of the Legislature, and within the judicial system, thereby demanding ever higher guaranties of accuracy, completeness, useability, and timeliness; and

WHEREAS, the methods used by the Senate and the House of Representatives to produce minutes of committee meetings may have become tecbnologically obsolete; and

WHEREAS, the demand for high-quality and timely minutes of committees may be exceeding the capacity of the Senate and the House of Representatives to produce the minutes unless the traditional methods are augmented by available technology; and

WHEREAS, the Senate and the House of Representatives invest a considerable amount of staff and financial resources in producing committee minutes by traditional methods; and

WHEREAS, employing technology as a tool in preparing high-quality and timely committee minutes may be a cost-effective approach in meeting the requirements of the Rules of the Montana Legislature and the needs of all persons who use minutes of committees of the Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to conduct an interim study to examine:

(1) the needs of the Senate and the House of Representatives relative to the production and retention of high-quality and timely minutes of all committee meetings;

(2) the use of and need for high-quality and timely minutes of committee meetings within the legal community, by state agencies, and, if necessary, among other users of the minutes;

(3) the archival requirements of minutes of committee meetings;

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(4) methods used in other states in preparing high-quality and timely minutes of legislative committee meetings;

(5) alternative means and technologies that might be used in Montana to produce minutes of committees; and

(6) the archival qualities, efficiency, and cost-effectiveness of the various alternative means and technologies available for producing minutes of committees.

BE IT FURTHER RESOLVED, that based on its examination of the need for and the uses of committee minutes, the Legislative Council propose a clear definition of the components to be included in committee minutes.

BE IT FURTHER RESOLVED, that in conducting the study, the Legislative Council rely upon the experience and the expertise of the members of the respective Legislative Administration Committees of the Senate and the House of Representatives for advice.

BE IT FURTHER RESOLVED, that in conducting the study, the Legislative Council rely upon the experience and the expertise of the Legislative Council Librarian, the State Librarian, the State Law Librarian, the State Archivist, current and former Secretaries of the Senate and Chief Clerks of the House of Representatives, persons knowledgeable about available technology pertinent to the study, and others who may be affected by the form, content, use, timeliness, accuracy, and completeness of minutes of Legislative committees.

BE IT FURTHER RESOLVED, that the Legislative Council report its findings, conclusions, and options for legislative consideration to the 55th Legislature.

Adopted January 13, 1995

SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING NATIONAL PARK STATUS FOR VIRGINIA CITY.

WHEREAS, Virginia City is the best-preserved 1860s placer mining town in the American West; and

WHEREAS, as the Territorial capital from 1865 to 1875, the town played a major role in the politics and formation of present-day Montana; and

WHEREAS, Virginia City's gold rush, along with its subsequent growth as a town, is a prime example of the mining frontiers in the Far West that served to shape settlement patterns, transportation corridors, economic development, and federal policies, all of which were pivotal in the growth and settlement of the United States; and

WHEREAS, the town was the first administrative site of the nation's first national park, Yellowstone, and played a role in early preservation and tourism promotion; and

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WHEREAS, gold mined from Alder Gulch added to the industrial growth of the United States and gold mining continues to play an important role in the state, national, and world economies; and

WHEREAS, from American Indian hunting and gathering area to boom town to stable community, Virginia City exemplifies the challenges, conflicts, and struggles encountered in remote western mining towns; and

WHEREAS, Virginia City was designated a registered national historic landmark July 4, 1961, and today includes 154 structures in the town and a surrounding cultural landscape of historic significance; and

WHEREAS, Virginia City is listed by both the National Trust and the National Park Service as one of the nation's most threatened national historic landmarks; and

WHEREAS, three of the five action alternatives identified in the Department of the Interior's Draft Special Resource Study and Environmental Assessment propose the inclusion of Virginia City in the National Park System.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress authorize and appropriate funds for the purchase of Virginia City by the National Park Service for the purpose of designating the town and its landmarks as a unit of the National Park System.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation.

Adopted February 28, 1995

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE SECOND SUNDAY OF MAY OF 1995 BE DESIGNATED AS A DAY TO RECOGNIZE AND HONOR THE CONTRIBUTIONS OF AMERICAN INDIAN WOMEN.

WHEREAS, historical journals have recorded the efforts of Sacajawea, a young Shoshoni Indian, who with a newborn son and her husband Charbonneau, endured many hardships and dangers in acting as a guide and interpreter for Lewis and Clark on their expedition into uncharted territory; and

WHEREAS, Sacajawea, on the return journey from the West Coast, camped with Clark in the current Bozeman area during Clark's exploration of the Yellowstone River; and

WHEREAS, American Indian women continue to be healers, teachers, and positive role models for the younger generations of American Indian youth; and

WHEREAS, American Indian women throughout history have worked to preserve their unique tribal cultures, languages, and customs and their families; and

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WHEREAS, Montana has many examples of American Indian women who, like Sacajawea, have demonstrated strength and courage, and have emerged as leaders in their culture, guardians of their heritage, and productive members of society; and

WHEREAS, a life-sized statue of Sacajawea, created by Montana sculptor, Pat Mathiesen, will be erected in Bozeman to honor Sacajawea and all American Indian women; and

WHEREAS, the continuing legacy of Sacajawea as seen in the lives of Montana's American Indian women should be acknowledged and honored.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Governor be requested to designate the second Sunday in May of 1995 as a day to honor and recognize the contributions of Sacajawea and American Indian women in Montana.

(2) That copies of this resolution be sent by the Secretary of State to the Tribal Chairperson of each tribe or tribes located on the seven Montana reservations and to the Tribal Chairperson of the Little Shell Tribe.

Adopted April 10, 1995

SENATE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO DIVIDE THE NINTH JUDICIAL CIRCUIT OF THE UNITED STATES COURT OF APPEALS INTO TWO CIRCUITS; AND URGING THE PRESIDENT OF THE UNITED STATES TO PLACE A MONTANA JUDGE ON THE FEDERAL CIRCUIT COURT FOR MONTANA.

WHEREAS, under Article III, section 1, of the United States Constitution, the Congress of the United States has plenary power to ordain and establish the federal courts below the Supreme Court level; and

WHEREAS, in 1988, the 100th Congress created the Federal Courts Study Committee as an ad hoc committee within the Judicial Conference of the United States to examine the problems facing the federal courts and to develop a long-term plan for the Judiciary; and

WHEREAS, the Study Committee found that the federal appellate courts are faced with a crisis of volume that will continue into the future and that the structure of these courts will require some fundamental changes; and

WHEREAS, the Study Committee did not endorse any one solution but served only to draw attention to the serious problems of the courts of appeals; and

WHEREAS, the Study Committee recommended that fundamental structural alternatives deserve the careful attention of Congress and of the courts, bar associations, and scholars over the next 5 years; and

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WHEREAS, the problems of the circuit court system and the alternatives for revising the system represent a policy choice that requires Congress to weigh costs and benefits and to seek the solution that best serves the judicial needs of the nation; and

WHEREAS, there are 13 judicial circuits of the United States courts of appeals; and

WHEREAS, Montana is in the Ninth Circuit, which consists of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands; and

WHEREAS, in 1990, it was estimated that the Ninth Circuit: covers nine states and two territories, totaling approximately 14 million square miles; serves a population of almost 44 million people, 15 million more than the next largest circuit court and about 20 million more than all other courts of appeals; has 28 judges, 12 more than the next largest circuit court and 16 more than the average circuit court; and has a caseload of more than 6,000 appeals, 2,000 larger than the next largest court of appeals and nearly one-sixth of the total appeals in all the 12 regional courts of appeals; and

WHEREAS, projections are that at the current rate of growth, the Ninth Circuit's 1980 docket of cases will double before the year 2000; and

WHEREAS, statistics reveal that, because of the number of judges in the Ninth Circuit, there are numerous opportunities for conflicting holdings—one legal scholar has estimated that on a 28-judge court there are over 3,000 combinations of panels that may decide an issue, without counting senior judges, district judges, and judges sitting by designation; and

WHEREAS, legal scholars have suggested that because the United States Supreme Court reviews less than 1% of appellate decisions, the concept of regional stare decisis, or adherence to decided cases, results, in effect, in each court of appeals becoming a junior supreme court with final decision power over all issues of federal law in each circuit (unless and until reviewed by the Supreme Court); and

WHEREAS, the Ninth Circuit has been described as an experiment in judicial administration and a laboratory in which to test whether the values of a large circuit can be preserved; and

WHEREAS, some legal scholars have opposed its division on the grounds that to divide the Ninth Circuit would be to lose the benefit of an experiment in judicial administration that has not yet run its course; and

WHEREAS, the problems of the Ninth Circuit are immediate and growing and maintaining the court in its present state is a disservice to the citizens of Montana and other Ninth Circuit states and territories; and

WHEREAS, it is generally understood that an essential element of a federal appellate system must include guaranteeing regionalized and decentralized review when regional concerns are strongest; and

WHEREAS, because of the problems of the Ninth Circuit related to its dimensions of geography, population, judgeships, docket, and costs, it is

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desirable for the Northwest states to be placed in a separate circuit, consisting mainly of contiguous states with common interests; and

WHEREAS, the existing circuit boundary lines have been called arbitrary products of history; and

WHEREAS, Congress has at least twice divided circuits: in 1929, to separate the new Tenth Circuit from the Eighth Circuit, and in 1981, to separate the new Eleventh Circuit from the Fifth Circuit; and

WHEREAS, Congress, in 1989, considered and is expected, in 1995, to again consider a bill to divide the Ninth Judicial Circuit of the United States Court of Appeals into two circuits—a new Ninth Circuit, composed of Arizona, California, and Nevada, and a new Twelfth Circuit, composed of Alaska, Hawaii, Idaho, Montana, Oregon, Washington, Guam, and the Northern Mariana Islands; and

WHEREAS, it is the proper function of Congress to determine circuit boundaries and it is desirable that Montana be included in a regional circuit that will allow relief for its citizens from the problems occasioned by its inclusion in the present Ninth Circuit.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana urge Congress to turn its thoughtful attention to the passage of legislation that will split the existing Ninth Judicial Circuit of the United States Court of Appeals into two circuits and that will include Montana in a circuit composed in large part of other Northwest states with similar regional interests.

BE IT FURTHER RESOLVED, that the President of the United States be urged to place a Montana judge on the federal circuit court for Montana.

BE IT FURTHER RESOLVED, that Congress grant this relief and pass this legislation immediately, regardless of considerations of long-term changes to the appellate system in general.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Secretary of the United States Senate, the Clerk of the United States House of Representatives, the President of the United States, and the members of Montana's Congressional Delegation.

Adopted March 28, 1995

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON INDIAN AFFAIRS TO STUDY PUBLIC SCHOOLS' COMPLIANCE WITH ARTICLE X, SECTION 1, SUBSECTION (2), OF THE MONTANA CONSTITUTION, THE ROLE OF AMERICAN INDIAN STUDIES IN HIGHER EDUCATION, AND THE LEVEL OF KNOWLEDGE OF THE GENERAL PUBLIC REGARDING AMERICAN INDIAN ISSUES; AND REQUIRING A REPORT TO THE 55TH LEGISLATURE.

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WHEREAS, American Indians are the largest minority group in Montana; and

WHEREAS, American Indians compose 6% of the state's population, 10% of the K-8 public school population, and 7% of the public high school population; and

WHEREAS, American Indians accounted for 84% of the state's population growth between 1980 and 1990; and

WHEREAS, the American Indian population is expected to continue to increase in size; and

WHEREAS, Article X, section 1, of the Montana Constitution guarantees equality of educational opportunity to each person in the state; and

WHEREAS, Article X, section 1, further recognizes the distinct and unique cultural heritage of American Indians and expresses the state's commitment to preserving that cultural integrity; and

WHEREAS, sections 20-4-211 through 20-4-214, MCA, encourage school districts to provide the means by which school personnel can gain an understanding of and appreciation for American Indians; and

WHEREAS, American Indian history, culture, and contemporary issues are not required topics of study in Montana's public schools; and

WHEREAS, there is a disproportionate number of American Indian high school students who drop out of school or who have insufficient credits to graduate within 4 years from Montana's public schools; and

WHEREAS, Montana has seven tribal colleges located on its seven Indian reservations with curricula that include tribal studies.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Indian Affairs be requested to study:

(1) the degree to which Montana's public schools are in compliance with Article X, section 1, subsection (2), of the Montana Constitution;

(2) the role of American Indian studies in the overall curriculum of the Montana University System and other institutions of higher learning in the state, with special attention to the teacher education curriculum; and

(3) the level of knowledge of the general public about historical and contemporary American Indian issues.

BE IT FURTHER RESOLVED, that recommendations be made on how best to address the deficiencies if the study determines that:

(1) the public schools are not in compliance;

(2) American Indian studies are not an integral part of the university curriculum; or

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(3) general knowledge about American Indian issues is lacking.

BE IT FURTHER RESOLVED, that the study be conducted in consultation with the Montana Indian Education Association, the Montana Tribal Chairmen's Association, the Montana Advisory Council for Indian Education, the Office of Public Instruction, the Board of Public Education, the units of the Montana University System through the Commissioner of Higher Education, the Indian Impact Aid Schools Association, and the American Indian Higher Education Consortium.

BE IT FURTHER RESOLVED, that the Committee report its findings, conclusions, and recommendations to the 55th Legislature.

Adopted March 27, 1995

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO SET REASONABLE TIME LIMITS ON AND LIMIT SUCCESSIVE PETITIONS FOR FEDERAL WRITS OF HABEAS CORPUS.

WHEREAS, the number of prisoners under sentence of death rose from 139 in 1977, following the United States Supreme Court's reinstitution of the death sentence, to 2,575 on January 1, 1993; and

WHEREAS, the average time elapsed from the time a death sentence is imposed until execution has risen from 51 months to 114 months during the same time period; and

WHEREAS, successive petitions for review and repeated applications for writs of habeas corpus in death penalty cases deny justice by delaying justice; and

WHEREAS, successive petitions for review and repeated applications for writs of habeas corpus in death penalty cases burden the judicial system and impose unnecessary costs on taxpayers; and

WHEREAS, reasonable restrictions on and time limits on petitions for review and on applications for writs of habeas corpus in death penalty cases would provide justice for the families of victims.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress be urged to:

(1) set reasonable time limits on the filing of initial and successive petitions for writs of habeas corpus brought pursuant to 28 U.S.C. 2254; and

(2) limit the filing of successive habeas corpus petitions to those instances in which the petitioner is able to demonstrate a probability of actual innocence.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, to the Clerk of the

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United States Supreme Court, and to the Clerk of the United States Court of Appeals, Ninth Circuit.

Adopted March 13, 1995

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STATING THAT THE SINGLE PAYOR AND MULTIPLE PAYOR UNIVERSAL HEALTH CARE ACCESS PLANS PREPARED BY THE MONTANA HEALTH CARE AUTHORITY HAVE BEEN RECEIVED; URGING CONTINUED ACTIVITY TO ACCOMPLISH THE GOAL OF UNIVERSAL ACCESS; AND URGING IMPLEMENTATION OF MARKET-BASED SEQUENTIAL HEALTH CARE REFORM.

WHEREAS, Senate Bill No. 285 of the 53rd Legislature created the Montana Health Care Authority, required the Authority to submit a report containing recommendations for a single payor and a multiple payor universal health care access plan to the 1995 Legislature, and requires the 1995 Legislature to vote on both the single payor and multiple payor plans; and

WHEREAS, the Montana Health Care Authority has fulfilled its statutory duties by preparing a final report containing recommendations for single payor and multiple payor universal health care access plans, held public hearings on the plans and on the report, and transmitted the plans and report to the Governor and to the Legislature; and

WHEREAS, this resolution signifies that the Legislature has received the final report from the Montana Health Care Authority and does not reflect approval or disapproval of the contents of the report regarding the recommendations for a single payor and a multiple payor universal health care access plan; and

WHEREAS, the Employee Retirement Income Security Act of 1974 has not been amended to allow states to enact comprehensive health care reform laws covering public or private self-insured public health care plans; and

WHEREAS, the goal of affordable access to health care coverage and services to all Montanans is a laudable goal; and

WHEREAS, the Montana Health Care Authority has developed a list of alternatives to the single payor and multiple payor plans that provide several approaches to health care reform in Montana; and

WHEREAS, the members and staff of the Montana Health Care Authority have devoted significant time to studying the issue of health care, and the people of Montana appreciate their hard work and dedication.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the single payor and multiple payor health care access plans prepared by the Montana Health Care Authority pursuant to section 50-4-301,

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MCA, and contained in the documents entitled "Statewide Universal Health Care Access Plans", volumes I through V, dated October 1, 1994, be received and that this resolution fulfill the Legislature's obligation to vote on both plans.

(2) That the plans referenced in subsection (1), portions of those plans, or other features of health care reform prepared by the Montana Health Care Authority be considered in separate legislation to attain market-based sequential health care reform.

(3) That the Legislature reaffirm the goal of affordable access to health care coverage and services for all Montanans and that the State of Montana continue within the limits of legislative appropriations to work toward the achievement of this goal and toward achievement of the other health care reform goals expressed in Senate Bill No. 285, including increased access, cost containment, and health care infrastructure improvements.

BE IT FURTHER RESOLVED, that the Secretary of State deliver a copy of this resolution to the Executive Director and presiding officer of the Board of the Montana Health Care Authority.

Adopted March 24, 1995

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING FLEXIBILITY AND TIMELINESS BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, PARTICULARLY THE REGION 8 OFFICE, IN THE CONSIDERATION OF REGULATIONS AND PENDING OR FUTURE APPLICATIONS FOR PRIMACY FOR CERTAIN ENVIRONMENTAL PROGRAMS AFFECTING AIR QUALITY, UNDERGROUND STORAGE TANKS, WASTE OIL, AND THE MANAGEMENT OF HAZARDOUS AND OTHER WASTES PRODUCED IN MONTANA.

WHEREAS, it is the goal of this Legislature to promote improved working relationships between government and business interests with regard to environmental regulations; and

WHEREAS, there is a need to improve the performance of the state and federal governments in striking a more sensible balance in preserving Montana's environment, protecting public health and safety, and maintaining and serving local and state economies that must be capable of accommodating the needs of the citizens of this state; and

WHEREAS, the federal government has been adding new and common industrial wastes to the list of federally regulated wastes and has been tightening its regulations in dictating the ways in which regulated wastes must be treated and disposed; and

WHEREAS, because of increased regulation and economic growth the quantity of waste generated in Montana and regulated as hazardous under federal environmental law has increased at a substantial rate over the past several years; and

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WHEREAS, local and state budgets now available and projected for future funding of enforcement of state environmental regulations could be adequate to protect public health and safety, particularly with regard to treatment and disposal of hazardous wastes or handling of toxic substances during the manufacturing process, in particular if tbe federal government were to allow fees paid by the regulated industries under Chapter 341, Laws of 1993, to be used as state matching funds for federal program grants; and

WHEREAS, Montana does not have within its borders a permitted facility for the commercial treatment or disposal of regulated hazardous wastes and this lack of a permitted in-state treatment and disposal facility or facilities has caused a steadily increasing percentage of Montana's regulated wastes to be shipped long distances to out-of-state facilities; and

WHEREAS, the costs of environmental regulation to businesses operating within Montana, particularly with regard to businesses required to comply with government regulations related to toxic and hazardous substances, are relatively higher than they are for businesses outside of Montana because of this lack of permitted in-state facilities to treat and dispose of hazardous substances in a cost-effective manner; and

WHEREAS, these relative cost increases are placing Montana's existing businesses at a competitive disadvantage to comparable businesses located outside Montana and these additional costs further serve as an impediment to out-of-state businesses or entrepreneurs that might otherwise consider locating in Montana; and

WHEREAS, the U.S. Congress is likely to reduce the budget of the U.S. Environmental Protection Agency (EPA) and restrain EPA's ability either to issue new regulations or to monitor and enforce existing environmental regulations, which is of great concern to Montana because there are many Montana state primacy applications currently pending with the EPA Region 8 Office, including applications for state primacy to regulate air quality, the underground storage tank program, waste oil, and underground injection wells for oil and gas, boilers and industrial furnaces, toxicity characteristic rules, and other modifications to the state's program for regulating hazardous and nonhazardous wastes, some of which have been pending EPA approval for as long as 5 years.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Congressional Delegation be encouraged to play a more active and concerted role in working witb tbe President of the United States, the EPA, and other federal environmental regulators to expedite granting primacy to the state of Montana for environmental regulatory decisionmaking and enforcement.

(2) That the Legislature requests that President Clinton, EPA Administrator Browner, and EPA Region 8 Administrator Yellowtail move more expeditiously in responding positively to the various requests and applications under consideration within EPA for primacy and greater flexibility in meeting the environmental regulatory burdens placed on and assumed by the state.

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(3) That Governor Racicot be encouraged to accelerate activities in working with Montana state agencies and governors and agencies in neighboring states in a collective effort to encourage and promote greater flexibility by EPA and the federal government in dealing with the environmental regulatory needs of the state of Montana relating to the management of hazardous and other wastes produced in Montana.

(4) That copies of this resolution be sent to the Montana Congressional Delegation, the President of the United States, the Administrator of the EPA, the Administrator of the Region 8 Office of the EPA, and the Governor.

Adopted March 25, 1995

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ENACT MEANINGFUL REFORMS TO LIMIT DEATH PENALTY APPEALS.

WHEREAS, at yearend 1993, 34 states and the federal prison system held 2,716 prisoners under sentence of death; and

WHEREAS, in capital cases it has been estimated that the average length of time from commission of the crime to execution of the sentence was 8 years, 2 months; and

WHEREAS, justice delayed is justice denied; and

WHEREAS, the delay and small number of executions associated with capital cases indicate that the present system of collateral review operates to frustrate the capital punishment laws of the states; and

WHEREAS, capital litigation is often chaotic, with periodic inactivity and last-minute frenzied activity and rescheduling of execution dates; and

WHEREAS, this chaotic nature of capital litigation diminishes public confidence in the criminal justice system; and

WHEREAS, reform of the appellate review process in capital cases would reduce the cost of death penalty cases by reducing the number and length of appeals proceedings; and

WHEREAS, reforms to the appellate review process, such as allowing federal habeas corpus petitions to be filed for only a 6-month period following final decision by a state court and restricting the filing of second or successive federal habeas corpus petitions, would provide an orderly postconviction process with the opportunity for fair and effective review.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Senate and the House of Representatives of the United States be encouraged to enact meaningful reforms to limit successive appeals in death penalty cases.

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(2) That such reforms include allowing federal habeas corpus petitions to be filed for only a 6-month period following the date on which the conviction becomes final and imposing restrictions on the filing of second or successive federal habeas corpus petitions.

(3) That a copy of this resolution be sent to the presiding officers of the United States Senate and House of Representatives and to the members of the Montana Congressional Delegation.

Adopted March 25, 1995

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BUREAU OF RECLAMATION, THE UNITED STATES FISH AND WILDLIFE SERVICE, AND THE BUREAU OF LAND MANAGEMENT TO CURTAIL PLANS FOR THE LONESOME LAKE PROJECT NEAR BIG SANDY.

WHEREAS, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the Bureau of Land Management have issued an environmental assessment that proposes alternative management plans at Lonesome Lake, a 17,898-acre complex of dry basin, shortgrass pasture, and cropland near Big Sandy, Montana; and

WHEREAS, intermingled with the withdrawn lands are 960 acres of state land and 1,999 acres of private land; and

WHEREAS, there would be an overall net reduction of approximately $536,777 in local economic activity; and

WHEREAS, the gravel seams in the area are used to gravel county roads; and

WHEREAS, there are no known endangered plants, mammals, or birds that inhabit the area; and

WHEREAS, extensive areas of club moss/blue grama limit nesting cover for upland game birds; and

WHEREAS, one of the goals of the joint venture is to maintain a breeding population of 6.8 million ducks of all types, with 13.6 million ducks in the fall flight by the year 2000; and

WHEREAS, there is only a 30% chance of any water running into Lonesome Lake basin; and

WHEREAS, lack of riparian area limits the nesting cover for waterfowl; and

WHEREAS, Ducks Unlimited has completed a feasibility study on development of dikes and other surface water management techniques to increase Lonesome Lake's waterfowl production potential and concluded that it was not hydrologically feasible or economically justifiable to build dikes to increase the depth and duration of surface water at Lonesome Lake; and

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WHEREAS, public lands at Lonesome Lake are used for agricultural production through grazing and farming leases, and there is concern about the future administration of Lonesome Lake; and

WHEREAS, the environmental assessment offers three alternatives for Lonesome Lake: maintaining current management practices with no changes; enhancing the shortgrass prairie and associated wildlife species, along with providing opportunities for agriculture, cultural interpretation, and recreation; and managing the area with special emphasis on the wetland and native prairie resources for migratory birds.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the Bureau of Land Management give strong consideration to the alternative that gives primary jurisdiction to the Bureau of Land Management and that maintains current management practices.

BE IT FURTHER RESOLVED, that the Bureau of Land Management encourage lessees to spike up club moss stands and seed a tall grass for upland game bird habitat.

BE IT FURTHER RESOLVED, that farm ground be farmed with no change.

Adopted March 24, 1995

SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE FEASIBILITY OF ESTABLISHING A STATE-CHARTERED OR STATE-OWNED FINANCIAL INSTITUTION TO ACCEPT AND INVEST FOREIGN DEPOSITS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 55TH LEGISLATURE.

WHEREAS, Montana law provides for the establishment of state-chartered investment companies that are not subject to federal regulation; and

WHEREAS, Montana law also provides that state regulators keep the required financial reports of those companies confidential; and

WHEREAS, international currency flows are increasing in frequency and volume, and the capacity of Swiss and other foreign financial institutions to accept confidential deposits is not increasing; and

WHEREAS, political instability in Mexico and Canada, as well as other countries, increases the likelihood that citizens of foreign countries will seek a secure haven for their financial capital; and

WHEREAS, the State of Montana stands to gain substantial financial and economic benefits in the form of tax revenue, tax relief, and increased investment from the estahlishment of a state-chartered or state-owned financial institution designed specifically to accept foreign deposits.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) the legal and practical feasibility of setting up a state-chartered or state-owned financial institution;

(2) the incentives that such a company might offer potential foreign depositors; and

(3) the full range of financial, economic, social, and political benefits and costs to Montana citizens that would be associated with the establishment of the institution.

BE IT FURTHER RESOLVED, that the interim committee report the findings of the study, including any recommendations, to the 55th Legislature.

Adopted April 6, 1995

SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING DOUG SWINGLEY FOR WINNING THE 1995 IDITAROD TRAIL SLED DOG RACE.

WHEREAS, Doug Swingley has won the 1995 Iditarod Trail Sled Dog Race; and

WHEREAS, Doug Swingley, from Simms, Montana, is the first non-Alaskan to win the 1,161-mile Iditarod Race from Anchorage to Nome, Alaska; and

WHEREAS, Doug Swingley set a new record for completion of the Iditarod Race, completing the race in just 9 days, 2 hours, and 42 minutes, with the assistance of his lead sled dogs, Vic and Elmer; and

WHEREAS, Doug Swingley has raced in the Iditarod Race just four previous times; and

WHEREAS, Doug Swingley bas also won two other sled dog races — the 1991 Race to the Sky in Montana and the Jobn Beargrease Sled Dog Race in Minnesota in 1994.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana recognize the accomplishment of Doug Swingley and congratulate him in winning the 23rd Iditarod Trail Sled Dog Race.

BE IT FURTHER RESOLVED, that the accomplishment of Doug Swingley in winning the 1995 Iditarod Race be recognized as an achievement in which all Montanans may take pride.

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BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Doug Swingley.

Adopted April 5, 1995

SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE ORGANIZATION AND COMPOSITION OF THE PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS AND OF METHODS TO RESOLVE ISSUES CONCERNING LICENSED PROFESSIONS AND OCCUPATIONS; AND REQUIRING A REPORT OF THE FINDINGS AND RECOMMENDATIONS TO THE 55TH LEGISLATURE.

WHEREAS, legislation regarding professional and occupational licensing boards, scope of practice, and other related issues is continually brought before the Legislature for resolution; and

WHEREAS, House Bill No. 518 was a major step in reorganizing many administrative issues for the professional and occupational licensing boards, but there is a need to continue that progress and to further study the organization and composition of licensing boards; and

WHEREAS, the ability of professional and occupational licensing boards to resolve scope of practice and other issues may be hampered by the current organization; and

WHEREAS, a study of tbe composition of the professional and occupational licensing boards and of the methods that the Department of Commerce and the licensing boards could develop to assist professions and occupations in resolving scope of practice and other issues prior to bringing them before the Legislature could enable decisionmaking to be closer to those knowledgeable of and affected by the problem and thereby benefit the public and the people licensed by the boards.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned:

(1) to study the organization and composition of the professional and occupational licensing boards of the Department of Commerce; and

(2) to develop recommendations that would define the policy of the State of Montana regarding the professional and occupational licensing boards' authority to determine scope of practice issues and to resolve other issues concerning professions and occupations prior to legislative sessions.

BE IT FURTHER RESOLVED, that the interim committee may request staff assistance and information from the Department of Commerce Professional and Occupational Licensing Bureau.

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BE IT FURTHER RESOLVED, that the interim committee report its findings, conclusions, and recommendations to the 55th Legislature.

Adopted April 13, 1995

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE UNIVERSITY OF MONTANA LADY GRIZZLY BASKETBALL TEAM ON WINNING THE BIG SKY CONFERENCE CHAMPIONSHIP AND THE FIRST ROUND OF THE NCAA TOURNAMENT; AND CONGRATULATING THE MONTANA GRIZZLY BASKETBALL TEAM ON BEING CONFERENCE CO-CHAMPIONS.

WHEREAS, the Montana Lady Grizzly basketball team has dominated Big Sky Conference play for the past decade; and

WHEREAS, the Montana Lady Grizzly basketball team is ranked in the top 10 in the nation for crowd attendance; and

WHEREAS, the Montana Lady Grizzly basketball team and the Montana Grizzly basketball team consist primarily of Montana high school graduates and therefore provide role models for young Montanans and instill pride in all Montanans; and

WHEREAS, the Montana Lady Grizzly basketball team won the regular season Big Sky Conference championship and earned the right to host the Big Sky Conference tournament; and

WHEREAS, the Montana Lady Grizzly basketball team successfully defended its regular season title and won the Big Sky Conference tournament, thereby earning the right to participate in the NCAA national tournament; and

WHEREAS, the Montana Lady Grizzlies defeated San Diego State University in the first round of the NCAA national tournament; and

WHEREAS, the Montana Grizzly basketball team continued its fine tradition, ending the regular season as co-champions of the Big Sky Conference; and

WHEREAS, the Montana Grizzly basketball team earned a berth in the National Invitational Tournament.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the congratulations of all Montanans be extended to the Montana Lady Grizzly basketball team, the Montana Grizzly basketball team, Coach Robin Selvig, Coach Blaine Taylor, and the entire coaching staff for their outstanding seasons and for bringing recognition and honor to the University of Montana and to the State of Montana.

Adopted April 13, 1995

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SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY AND PLANNING PROCESS TO PREPARE MONTANA STATE GOVERNMENT MANAGEMENT SYSTEMS FOR THE 21ST CENTURY; AND REQUIRING A REPORT TO THE 55TH LEGISLATURE.

WHEREAS, the state has enacted, over a number of years, statutes governing state fiscal and personnel management and has amended the statutes to reflect varying theories of management and budgeting; and

WHEREAS, the statutes that have resulted and that currently exist are internally inconsistent and unclear in many instances; and

WHEREAS, modern information technology offers an opportunity to integrate closely related but, at the present time, mostly separate systems pertaining to fiscal and personnel management, including accounting, budgeting, personnel and payroll, purchasing, and property management and control; and

WHEREAS, these same information technology tools encourage using principles of business process reengineering to achieve real efficiencies by redefining what work is done in addition to how it is done; and

WHEREAS, effectively managing the transition to a fully integrated and reengineered set of management systems requires thorough planning at both the policy and implementation levels, with careful attention to the role of new and legacy systems; and

WHEREAS, major improvements in the core management support systems of state government offer the most promising opportunities to improve overall government operation that are available today and to truly prepare government for the 21st century.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) the laws governing state personnel, finance, and asset management, with the goal of proposing revisions that provide clear, internally consistent, and simplified language based upon clear and consistent goals, while ensuring that the state and its agencies are able to maintain strict accountability for both state and nonstate assets entrusted to the state; and

(2) opportunities for and advantages of installing an integrated system of asset management tools by employing an economical and effective transition from currently nonautomated or automated but not integrated legacy systems to a fully integrated, automated set of systems and an evaluation of what, if any, statutory changes and other legislative actions would be required to support such a transition.

BE IT FURTHER RESOLVED, that the interim committee form an active working group of state management and information system professionals, including personnel from the Department of Administration, the Office of

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Budget and Program Planning, the Office of Legislative Fiscal Analyst, and the Office of the Legislative Auditor, as well as separate user groups, to meet separately and with the committee to identify problems and opportunities and to advise the committee regarding potential solutions and planning details.

BE IT FURTHER RESOLVED:

(1) That the interim committee present a report and options for consideration to the 55th Legislature and to the Governor.

(2) That the interim committee include with its options recommendations for the general revision of the laws governing state fiscal and personnel management.

(3) That the interim committee provide an estimated schedule by which a transition to fully integrated, automated asset management systems could be effected, along with an assessment of legislative actions required to support the schedule.

Adopted April 13, 1995

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CELEBRATING THE 100TH YEAR OF WOMEN ELECTED TO STATE LEGISLATURES.

WHEREAS, the National Foundation for Women Legislators, Incorporated, ich serves as the educational arm of the National Order of Women ;islators, the oldest professional association for women legislators in the ntry, is coordinating state, regional, and national celebrations to memorate the 100th year of women serving in a state legislature; and

WHEREAS, 100 years ago and 25 years before women's suffrage in the United States, Clara Cressingham, Carrie C. Holly, and Frances S. Klock became the first women to serve as state legislators in Colorado in 1895; and

WHEREAS, since this historical event, many other women legislators have served their states with diligence and honor; and

WHEREAS, in 1917, Emma Ingalls and Maggie Smith Hathaway became the first women to serve in the Montana Legislature; and

WHEREAS, the Montana Legislature proudly recognizes the women formerly and currently serving from across the state for their outstanding contributions and accomplishments; and

WHEREAS, the celebration of this centennial will elevate public knowledge and awareness of women in Montana's history; and

WHEREAS, their knowledge, expertise, and wise leadership are valuable tools to carry Montana into the 21st century; and

WHEREAS, the members of the Montana Senate and the Montana House of Representatives, by this resolution, would like to congratulate and honor

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Senators Sue Bartlett, Vivian Brooke, Dorothy Eck, Sharon Estrada, Eve Franklin, Ethel Harding, Judy Jacobson, Linda Nelson, and Mignon Waterman and Representatives Chris Ahner, Peggy Arnott, Beverly Barnhart, Ellen Bergman, Vicki Cocchiarella, Aubyn Curtiss, Marjorie Fisher, Rose Forbes, Toni Hagener, Marion Hanson, Harriet Hayne, Joan Hurdle, Betty Lou Kasten, Deb Kottel, Bonnie Martinez, Gay Ann Masolo, Linda McCulloch, Jeanette McKee, Judy Murdock, Debbie Shea, Liz Smith, Susan Smith, Carolyn Squires, Emily Swanson, Lila Taylor, Carley Tuss, and Diana Wyatt; and

WHEREAS, the members of the Montana Senate and the Montana House of Representatives extend their sincerest appreciation to all of these women who have unselfishly served the Big Sky State.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana, in recognition of the 100th year of women in state legislatures, extend its congratulations and sincerest appreciation to all women legislators who have represented or who are currently representing the Big Sky State for their outstanding contributions and accomplishments.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each of the women currently serving the Montana Legislature and to the National Foundation for Women Legislators, Incorporated.

Adopted April 13, 1995

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF MONTANA CAMPAIGN FINANCE LAWS, INCLUDING INITIATIVE MEASURE NO. 118, REQUIREMENTS FOR CAMPAIGN FINANCE REPORTING, AND THE ADMINISTRATION AND ENFORCEMENT OF THE CAMPAIGN FINANCE LAWS.

WHEREAS, on November 8, 1994, Montana voters adopted Initiative Measure No. 118 to revise the laws affecting political campaign contributions; and

WHEREAS, Initiative Measure No. 118 also established requirements and restrictions with respect to surplus campaign funds; and

WHEREAS, the 54th Legislature has considered a variety of issues with respect to political campaigns and campaign finances, including voluntary campaign finance limits; and

WHEREAS, a number of questions about the administration and enforcement of political campaign contribution laws and regulations remain unresolved and continue to demand legislative attention.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That an appropriate interim committee be assigned to study the effects and implications of Montana's campaign finance laws, including Initiative Measure No. 118, and to focus on:

(1) the complex relationships among individual contributors, political action committees, candidate committees, political committees, leadership political committees, committees of political party organizations, and independent committees;

(2) the campaign finance reporting requirements;

(3) the practical requirements and limitations regarding the disposition of surplus campaign funds;

(4) the fiscal aspects of administering and enforcing Montana's campaign finance laws, including assessing the staffing and operational needs of the entities that are charged with administration and enforcement;

(5) the ability of the office of the Commissioner of Political Practices to adequately and effectively enforce and carry out Montana's campaign finance laws; and

(6) other matters related to campaign finance that the committee considers to be relevant and significant.

BE IT FURTHER RESOLVED, that the committee report its findings, conclusions, recommendations, and options for further consideration to the 55th Legislature.

Adopted April 13, 1995

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SENATE RESOLUTIONS

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN SENATE PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA

SENATE

CHAPTER 1

Administration

S10-10. Officers of the Senate. The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established hy law shall be until the succeeding Legislature is organized. Nothing in this rule shall be construed to mean the staff will be full-time employees during an interim.

S10-30. President pro tempore and other officers. (1) The Senate shall, at the beginning of each regular session, and at such other times as may he necessary, elect a Senator President pro tempore.

(2) The Senate shall choose its other officers and shall be the judge of the elections, returns, and qualifications of the Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate shall be the President of the Senate who shall be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during such time with all the powers of the President.

(4) The President shall have general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct. *The President may take action to protect the safety, dignity, and integrity of the Senate. Action may include the regulation of private individuals and lobbyists whose conduct threatens the administration, order, or decorum of the body. The authority of the President extends to all Senate activities.*

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(5) The President shall issue cards to the media to allow floor access, and reporters holding such passes shall be subject to placement on the floor by the President. The President may administer this rule through the office of the Secretary of the Senate.

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the President's political party shall have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for two or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act when the President is absent, the President may do so, or the members of the President's political party shall have the right to immediately nominate and elect an acting President of the same party.

(c) An acting President of the Senate shall have the powers of the President and supersede the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, shall have the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions.

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(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension and/or retention of such employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Council.

S10-90. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) A standing committee chair shall designate a secretary to take and transcribe minutes of committee meetings. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) (a) The President and floor leaders may each appoint a private secretary.

(b) The whips may each appoint a private secretary whose duties will include assisting other staff on an assigned basis when authorized by their respective whip.

S10-100. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

S10-110. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

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(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform such duties as required by other rules and the Senate.

S10-120. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

S10-130. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide such information as may be necessary for the preparation of the daily journal for printing by the Legislative Council. Upon approval by the President, the daily journal shall be reproduced and distributed.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Council to be prepared for publication and distribution in accordance with law.

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CHAPTER 2

Decorum

S20-10. Questions of order. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. No Senator may speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Questions of privilege. Questions of privilege in order of precedence are those:

(1) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(2) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

S20-30. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer, and once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

S20-40. Senators called to order. When a Senator has been called to order, the Senator shall sit down until the presiding officer determines whether the Senator is in order or not. If the Senator is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the Secretary of the Senate.

S20-50. Communications to Senate. A communication to the Senate shall be addressed to the President and shall bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

S20-60. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) accredited memhers of the news media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1).

S20-70. Distribution of materials on floor. No materials may be distributed on the Senators' desks in the chamber unless such material bears the signature of the bearer and a Senator and has been approved by the President.

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CHAPTER 3

Committees

S30-10. Committee appointments. (1) The Senate shall elect a Committee on Committees consisting of five members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from each party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the floor leaders.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees. The standing committees of the Senate are as follows:

(1) Agriculture, Livestock, and Irrigation

(2) Bills and Journal

(3) Business and Industry

(4) Education and Cultural Resources

(5) Finance and Claims

(6) Fish and Game

(7) Highways and Transportation

(8) Judiciary

(9) Labor and Employment Relations

(10) Legislative Administration

(11) Local Government

(12) Natural Resources

(13) Public Health, Welfare, and Safety

(14) Rules

(15) State Administration

(16) Taxation

S30-30. Members of Select Committee on Long-Range Planning. Members of the Select Committee on Long-Range Planning may participate and vote as members of the Committee on Finance and Claims on issues considered by them as members of tbe select committee.

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S30-40. Ex officio members. Each floor leader is an ex officio member of all committees in order to establish a quorum.

S30-50. Chair's duties. (1) The chair of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and authenticating committee reports and minutes by signing them.

(2) After adjournment of the session, the chair shall turn the original and two complete copies of the minutes over to the Secretary of the Senate who shall deliver them unbound to the Legislative Council librarian who will arrange to have them copied on microform. A microform copy will be provided to the Legislative Council and the State Law Library of Montana. The Legislative Fiscal Analyst will receive a microform copy of the minutes of the Committee on Finance and Claims. After microforming, the original minutes will be delivered to the Montana Historical Society.

S30-60. Committee reports to Senate. (1) Reports of standing committees shall be read on Order of Business No. 2, and no debate may be had on any report unless a minority report has been submitted.

(2) Committee reports may recommend approval, disapproval, or placement on consent calendar, with or without amendment. They may not be reported to the Senate without recommendation.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make such motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary.

(4) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken.

S30-70. Pairs. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for such voting shall be reflected in the committee minutes.

S30-80. Committee hearings. (1) No bill or resolution shall be considered or become a law unless referred to a committee and returned therefrom.

(2) A bill may be rereferred at any time before its passage.

S30-90. Notice of committee hearings — exceptions. (1) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the 3rd legislative day;

(b) less than 7 legislative days before the transmittal deadline applicable to the subject of the hearing; or

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(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session.

(2) When a committee hearing is scheduled with less tban 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(3) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

S30-100. Majority/minority reports. If the memhers of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the Senate.

S30-110. Consent calendar eligibility. (1) To be eligible for the consent calendar, legislation must receive a unanimous vote hy the members of the standing committee in attendance (do pass, do pass as amended).

(2) A motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report.

(3) Appropriations or revenue bills may not be recommended for the consent calendar.

S30-120. Reconsideration in committee. Except for tbe Committee of the Whole, a committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-130. Committee requested lcgislation. (1) At least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the introduction of legislation.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee.

(3) When a committee has proposed an amendment, the chair is the principal sponsor.

CHAPTER 4

Legislation

S40-10. Types of legislation. The only types of legislation that may he introduced in the Senate are those that have heen drafted and approved by the Legislative Council and signed by a Senator. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

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(d) set salaries and other terms of employment for legislative employees; and

(e) accomplish other legislative duties required by law; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments;

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction. (1) Upon receiving a bill or resolution in duplicate from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation.

(2) Bills and resolutions may be preintroduced, assigned to committee, and printed prior to the legislative session. The Legislative Council shall be responsible for assuring the preintroduction intent from each Senator and presenting such legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Council with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Except for consent calendar bills, every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) No bill or resolution shall have more than one reading on the same day except the last legislative day.

(3) No amendment may be offered on third reading.

S40-50. Rules for questions requiring other than a majority vote. (1) When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

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(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill shall again be placed on third reading in the Senate to determine if the required number of votes has been cast.

S40-60. Scheduling for second reading. (1) All bills and resolutions, except those recommended for the consent calendar, which have been reported by a committee, accepted by the Senate and reproduced shall be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

(3) Legislation shall be arranged on the agenda in numerical order unless bills are grouped as companion bills or are placed in order otherwise by the Senate or Committee of the Whole.

S40-70. Consent calendar procedure. (1) Legislation reported by committee for placement on the consent calendar shall be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Legislation shall be immediately posted (as soon as it is received as a third reading version) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the President of the Senate will announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate will be allowed.

(3) Any three Senators may submit written objections to the Secretary of the Senate, and the legislation must then be removed from the consent calendar and added to the regular second reading agenda.

(4) Consent calendar legislation must be added to the end of the third reading agenda and clearly identified as "consent calendar" and voted on individually.

(5) Consent calendar legislation passed on third reading will then be transmitted to the House of Representatives.

CHAPTER 5

Floor Action

S50-10. Attendance. Unless excused, Senators shall be present at every sitting of the Senate and shall vote on questions put before the Senate.

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

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(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills and consent calendar bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. No Senator may speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it shall be restated by the presiding officer. If requested by the presiding officer or a Senator, it shall be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedence of motions. (1) When a question is under debate only the following privileged and subsidiary motions shall be made:

(a) to adjourn;

(b) for a call of the Senate;

(c) to recess;

(d) question of privilege;

(e) to lay on the table;

(f) for the previous question;

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

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(2) The motions listed in subsection (1) of this section have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration.

(4) No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

S50-60. Nondebatable motions. The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the table;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

S50-80. Previous question. (1) Except as provided in subsection (2) of this rule, the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

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(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

S50-90. Reconsideration. (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question.

(2) A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a hill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there shall be no further action until the succeeding legislative day.

S50-100. Dividing a question. A Senator may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

S50-110. Conference committee reports. When a conference committee report is filed with the Secretary of the Senate, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

S50-120. Second reading. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in Committee of the Whole shall be read by a summary of its title. Proposed amendments shall be considered; then the bill shall be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation shall remain on second reading.

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S50-130. Committee of the Whole amendments. (1) All Committee of the Whole amendments shall be prepared, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, shall be printed in the journal, along with the name of the sponsor and the vote on each.

S50-140. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(h) rise and report progress and ask leave to sit again.

S50-150. Committee of the Whole — generally. (1) The committee may not appoint subcommittees.

(2) The committee may not punish its members for misconduct, but may report disorder to the Senate.

S50-160. Voting on second reading. On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S50-170. Third reading procedure. (1) All legislation passing second reading shall be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer

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asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

S50-180. Senate voting. (1) A roll call vote shall be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators shall be called alphabetically, unless an electronic voting system is used. A Senator may not vote or change a vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

S50-190. Pairs. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it shall bind the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-200. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of such Senators present shall direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator shall not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business shall be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

CHAPTER 6

Rules

S60-10. Senate rules. (1) A motion to amend or adopt a rule of the Senate shall be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate in all cases not covered by these rules.

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S60-30. Quorum. A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in such manner and under such penalties as the Senate may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

CHAPTER 7

Nominations from tbe Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when the Governor shall nominate a person to fill such office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor are:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee.

(2) The above procedure constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

S70-30. Committee process. (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request for a simple resolution to include the nominees specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been made.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

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(b) A Senator must request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report shall include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator, the committee chair shall submit a bill draft request for a simple resolution to include only the nominee so separated. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, no additional hearing need he held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) Thereafter, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum (five Senators);

(2) a motion to lift a call of the Senate (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds);

(4) a motion to override the Governor's veto (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature); and

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(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators).

Adopted January 6, 1995

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE 54TH LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED DECEMBER 29, 1994, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, designated below, that have been submitted to the Senate by the Governor:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Ms. Josephine Eisenzimer, Cascade, Montana, for a term ending January 1, 1999.

Mr. Leland Ford, Bigfork, Montana, for a term ending January 1, 1999.

Mr. Robert Hector, Billings, Montana, for a term ending January 1, 1999.

Mr. Arnold Lindherg, Cut Bank, Montana, for a term ending January 1, 1999.

(2) As a member of the Board of Architects, in accordance with section 2-15-1871, MCA:

Mr. John Peterson, Kalispell, Montana, for a term ending March 27, 1997.

(3) As members of the State Board of Banking, in accordance with section 2-15-1803, MCA:

Mr. Douglas Morton, Kalispell, Montana, for a term ending July 1, 1995.

Mr. Thomas Ryan, Hamilton, Montana, for a term ending July 1, 1997.

Mr. Jerry Wiedehush, Plentywood, Montana, for a term ending July 1, 1997.

(4) As members of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Ms. Karlene Berish, Billings, Montana, for a term ending January 1, 1997.

Mr. Marvin Harris, Great Falls, Montana, for a term ending January 1, 1998.

(5) As members of the Montana Coal Board, in accordance with section 2-15-1821, MCA:

Mr. Haley Beaudry, Butte, Montana, for a term ending January 1, 1999.

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Ms. Linda Price, Lewistown, Montana, for a term ending January 1, 1999.

Ms. Janice Riebhoff, Belgrade, Montana, for a term ending January 1, 1999.

(6) As members of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Ms. Kim Anderson, Great Falls, Montana, for a term ending March 29, 1999.

Ms. Mary Youngbauer, Forsyth, Montana, for a term ending March 29, 1999.

(7) As a member of the State Electrical Board, in accordance with section 2-15-1874, MCA:

Mr. Ron VanDiest, Helena, Montana, for a term ending July 1, 1999.

(8) As a member of the Board of Funeral Services, in accordance with section 2-15-1853, MCA:

Mr. David Fulkerson, Plentywood, Montana, for a term ending July 1, 1999.

(9) As members of the Hail Insurance Board, in accordance with section 2-15-3003, MCA:

Ms. Rebecca McCabe, Ekalaka, Montana, for a term ending April 18, 1996.

Mr. Vince Schmoeckel, Malta, Montana, for a term ending April 18, 1997.

(10) As a member of the Board of Health and Environmental Sciences, in accordance with section 2-15-2104, MCA:

Mr. Frank Munshower, Bozeman, Montana, for a term ending January 1, 1997.

(11) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1850, MCA:

Mr. James Lopez, Kalispell, Montana, for a term ending July 1, 1997.

Mr. Harry Richter, Sidney, Montana, for a term ending July 1, 1997.

(12) As members of the Historical Preservation Review Board, in accordance with section 2-15-1512, MCA:

Mr. Arnold Olsen, Helena, Montana, for a term ending October 1, 1997.

Ms. Gloria Weisgerber, Missoula, Montana, for a term ending October 1, 1997.

(13) As members of the Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Ms. Ana Brenden, Scobey, Montana, for a term ending July 1, 1995.

Ms. Marjorie King, Winnett, Montana, for a term ending July 1, 1999.

Mr. William MacKay, Roscoe, Montana, for a term ending July 1, 1999.

Ms. Susan McDaniel, Miles City, Montana, for a term ending July 1, 1999.

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Ms. Ruby Settle, Wibaux, Montana, for a term ending July 1, 1997.

(14) As members of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Ms. Isabelle Devlin, Terry, Montana, for a term ending January 20, 1997.

Mr. James Scott, Great Falls, Montana, for a term ending January 2, 1997.

(15) As a member of the Board of Housing, in accordance with section 2-15-1814, MCA:

Ms. Barbara Hamlin, Helena, Montana, for a term ending January 1, 1999.

(16) As members of the Human Rights Commission, in accordance with section 2-15-1706, MCA:

Ms. Kathy Ogren, Missoula, Montana, for a term ending January 1, 1999.

Mr. Rodney Svee, Hardin, Montana, for a term ending January 1, 1999.

(17) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Mr. Douglas Bardwell, Missoula, Montana, for a term ending January 1, 1999.

Ms. Maureen Fleming, Missoula, Montana, for a term ending January 1, 1999.

Mr. F. Lee Robinson, Malta, Montana, for a term ending January 1, 1999.

Mr. Calvin Wilson, Busby, Montana, for a term ending January 1, 1999.

(18) As members of the Board of Landscape Architects, in accordance with section 2-15-1872, MCA:

Mr. Robert Broughton, Hamilton, Montana, for a term ending July 1, 1998.

Mr. Lester Fields, Townsend, Montana, for a term ending July 1, 1998.

(19) As members of the State Library Commission, in accordance with section 22-1-101, MCA:

Ms. Eleanor Gray, Miles City, Montana, for a term ending May 22, 1997.

Ms. Peggy Guthrie, Choteau, Montana, for a term ending May 22, 1997.

(20) As members of the Board of Medical Examiners, in accordance with section 2-15-1841, MCA:

Mr. James Bonnett, Kalispell, Montana, for a term ending September 1, 1998.

Mr. Donald Grewell, Billings, Montana, for a term ending September 1, 1998.

Mr. David Heubner, Great Falls, Montana, for a term ending September 1, 1998.

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(21) As a member of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Ms. Jackie Parsons, Browning, Montana, for a term ending February 1, 1998.

(22) As members of the Board of Natural Resources and Conservation, in accordance with section 2-15-3302, MCA:

Mr. John Bailey, Livingston, Montana, for a term ending January 1, 1999.

Mr. Gerald Feda, Glasgow, Montana, for a term ending January 1, 1999.

Mr. Jack Galt, Martinsdale, Montana, for a term ending January 1, 1999.

(23) As a member of the Board of Nursing Home Administrators, in accordance with section 2-15-1845, MCA:

Ms. Arline Rabenberg, Wolf Point, Montana, for a term ending May 28, 1999.

(24) As members of the Board of Nursing, in accordance with section 2-15-1844, MCA:

Ms. Kathy Barkus, Kalispell, Montana, for a term ending July 1, 1997.

Ms. Rita Harding, Edgar, Montana, for a term ending July 1, 1998.

Ms. Blanche Proule, Anaconda, Montana, for a term ending July 1, 1998.

Ms. Suzzie Thomas, Stevensville, Montana, for a term ending July 1, 1998.

(25) As members of the Board of Occupational Therapy Practice, in accordance with section 2-15-1859, MCA:

Ms. Linda Botten, Bozeman, Montana, for a term ending December 31, 1996.

Ms. Alice O'Donnell, Anaconda, Montana, for a term ending December 31, 1997.

(26) As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Mr. Warren Ross, Chinook, Montana, for a term ending January 1, 1999.

Mr. Dean Swanson, Polson, Montana, for a term ending January 1, 1999.

Mr. Denzil Young, Baker, Montana, for a term ending January 1, 1999.

(27) As members of the Board of Passenger Tramway Safety, in accordance with section 2-15-1896, MCA:

Mr. Bill Flechsenhar, Cascade, Montana, for a term ending January 1, 1996.

Mr. Lyle Meeks, Great Falls, Montana, for a term ending January 1, 1998.

Mr. Mikel Moore, Kalispell, Montana, for a term ending January 1, 1998.

(28) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

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Ms. Jean Hagan, Hamilton, Montana, for a term ending January 1, 1999.

Mr. Willis McKeon, Malta, Montana, for a term ending January 1, 1999.

(29) As a member of the Board of Pharmacy, in accordance with section 2-15-1843, MCA:

Ms. Shirley Baumgartner, Glasgow, Montana, for a term ending July 1, 1999.

(30) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1858, MCA:

Ms. Christine Jensen, Clinton, Montana, for a term ending January 1, 1997.

Mr. Allen Weinert, Helena, Montana, for a term ending January 1, 1997.

(31) As members of the Board of Plumbers, in accordance with section 2-15-1875, MCA:

Mr. Richard Grover, Missoula, Montana, for a term ending May 4, 1998.

Mr. Duane Steinmetz, Billings, Montana, for a term ending May 4, 1998.

(32) As members of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1891, MCA:

Mr. Lee Edmisten, Sheridan, Montana, for a term ending August 1, 1997.

Mr. Greg Noose, Bozeman, Montana, for a term ending August 1, 1996.

Mr. Jeff Patterson, Missoula, Montana, for a term ending August 1, 1997.

Mr. David Ward, Billings, Montana, for a term ending August 1, 1997.

(33) As members of the Board of Professional Engineers and Land Surveyors, in accordance with section 2-15-1873, MCA:

Mr. Richard Ainsworth, Missoula, Montana, for a term ending July 1, 1998.

Mr. Paul Dana, Billings, Montana, for a term ending April 23, 1997.

Mr. Daniel Prill, Great Falls, Montana, for a term ending July 1, 1998.

(34) As a member of the Board of Psychologists, in accordance with section 2-15-1851, MCA:

Ms. Marian Martin, Billings, Montana, for a term ending September 1, 1998.

(35) As a member of the Board of Public Accountants, in accordance with section 2-15-1866, MCA:

Mr. Curtis Ammondson, Great Falls, Montana, for a term ending July 1, 1999.

(36) As members of the Board of Public Education, in accordance with section 2-15-1507, MCA:

Mr. Storrs Bishop, Ennis, Montana, for a term ending February 1, 1996.

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Ms. Joyce Silverthorn, Dixon, Montana, for a term ending February 1, 2001.

(37) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1848, MCA:

Mr. Steve Becker, Libby, Montana, for a term ending July 1, 1995.

Ms. Jane Christman, Dutton, Montana, for a term ending July 1, 1997.

(38) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1868, MCA:

Ms. Jeannie Flechsenhar, Cascade, Montana, for a term ending May 1, 1997.

Mr. Farrell Rose, Helena, Montana, for a term ending May 1, 1997.

(39) As a member of the Board of Realty Regulation, in accordance with section 2-15-1867, MCA:

Mr. Jack Moore, Great Falls, Montana, for a term ending May 9, 1998.

(40) As members of the Board of Regents of Higher Education, in accordance with section 2-15-1505, MCA:

Mr. Jim Brown, Libby, Montana, for a term ending June 1, 1995.

Ms. Colleen Conroy, Hardin, Montana, for a term ending February 1, 2001.

(41) As a member of the Board of Sanitarians, in accordance with section 2-15-1861, MCA:

Ms. Denise Moldroski, Superior, Montana, for a term ending July 1, 1997.

(42) As members of the Montana Board of Science and Technology Development, in accordance with section 2-15-1818, MCA:

Mr. Loren Smith, Great Falls, Montana, for a term ending January 1, 1997.

Mr. Mark Sullivan, Great Falls, Montana, for a term ending January 1, 1997.

(43) As members of the Board of Speech-Language Pathologists and Audiologists, in accordance with section 2-15-1849, MCA:

Mr. Jeffrey Griffin, Great Falls, Montana, for a term ending December 31, 1997.

Ms. Lynn Harris, Miles City, Montana, for a term ending December 31, 1996.

Ms. Rosemary Reynolds, Absarokee, Montana, for a term ending December 31, 1997.

Ms. Linda Solem, Kalispell, Montana, for a term ending December 31, 1996.

(44) As a member of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Mr. Johnny Buck, Glendive, Montana, for a term ending May 18, 1999.

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(45) As a member of the Board of Veterinary Medicine, in accordance with section 2-15-1852, MCA:

Mr. Don Smith, Livingston, Montana, for a term ending July 31, 1999.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 54th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 3, 1995

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA RECOGNIZING THE ANNE FRANK IN THE WORLD: 1929-1945 EXHIBITION IN BILLINGS, MARCH 6 THROUGH APRIL 8, 1995.

WHEREAS, Montana has been nationally recognized for taking a firm stand against discrimination, yet hate groups still exist in our state, recruiting our vulnerable young people into their ideology of fear, hate, and intolerance; and

WHEREAS, discrimination is cruel and irrational, is a matter of personal choice, and may be practiced by any citizen; and

WHEREAS, there is a danger of generalizing entire groups of people instead of treating eacb person as an individual deserving of respect; and

WHEREAS, the unique model of Anne Frank is symbolic of all people and faiths working togetber to embrace unity and diversity; and

WHEREAS, through the presentation of the ANNE FRANK IN THE WORLD: 1929-1945 Exhibition at the Parmly Billings Library, from March 6 through April 8, 1995, the people of Montana will have a wonderful opportunity to learn how to work toward and maintain a just and humanitarian world.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

(1) That we in Montana acknowledge with great respect the exemplary actions of Anne Frank and of many people who lived during tbose tragic times.

(2) That we extend our deep appreciation to the ANNE FRANK IN THE WORLD: 1929-1945 Committee for bringing the exhibition to Montana for our edification.

(3) That we, tbe citizens of Montana, remain committed in our thoughts, words, actions, and hearts to emphasizing more about what unites us as members of the human race and less about what divides us.

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(4) That a copy of this resolution be sent to the Governor, the Montana House of Representatives, the Mayor of Billings, and the Yellowstone County Commissioners.

Adopted February 21, 1995

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 9, 1995, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Ms. Betty Aye, Broadus, Montana, appointed for a term ending January 1, 1999.

Mr. David Young, Troy, Montana, appointed for a term ending January 1, 1999.

(2) As a member of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Ms. Carol Donaldson, Billings, Montana, appointed for a term ending January 1, 1999.

(3) As members of the Board of Pardons, in accordance with section 2-15-2302, MCA:

Mr. Patrick Fleming, Butte, Montana, appointed for a term ending January 1, 1999.

Ms. Mary Jo Fox, Billings, Montana, appointed for a term ending January 1, 1997.

(4) As members of the Board of Passenger Tramway Safety, in accordance with section 2-15-1896, MCA:

Mr. Scott Bowen, Big Sky, Montana, appointed for a term ending January 1, 1999.

Mr. Mervin Erickson, Missoula, Montana, appointed for a term ending January 1, 1999.

(5) As a member of the Board of Public Education, in accordance with section 2-15-1507, MCA:

Ms. Linda Vaughey, Havre, Montana, appointed for a term ending February 1, 2002.

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(6) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1854, MCA:

Ms. Leta Livoti, Helena, Montana, appointed for a term ending January 1, 1999.

Ms. Antoinette Rosell, Billings, Montana, appointed for a term ending January 1, 1999.

Mr. Richard Simonton, Glendive, Montana, appointed for a term ending January 1, 1999.

(7) As a member of the State Tax Appeal Board, in accordance with section 2-15-1015, MCA:

Ms. Patti Foster, Helena, Montana, appointed for a term ending March 1, 2001.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 54th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 3, 1995

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA APPEALING FOR TOLERANCE; AND REJECTING ALL EXPRESSIONS OF HATE, PREJUDICE, OR BIGOTRY.

WHEREAS, Montana is a big-hearted state whose generosity of spirit matches the vastness of its plains and the grandeur of its mountains; and

WHEREAS, Montana has long been known as the Big Sky State, a state open to new ideas, open to opportunity, and open to the pursuit of happiness for all its citizens; and

WHEREAS, Montana is a land proud of its ethnic diversity and its respect for the dignity of all of its citizens; and

WHEREAS, Montanans have had to overcome adversity in times of drought, depression, and war while remaining hopeful, determined, and steadfast; and

WHEREAS, Montana is witnessing an increasing number of acts of hate, prejudice, and bigotry, as evidenced by anti-Semitic literature, acts of vandalism, and harassment against Jews, homosexuals, and people of different races and of varying political or philosophical views; and

WHEREAS, crimes of hate bave occurred at our places of work, our churches, our homes, and, recently, at our Capitol; and

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WHEREAS, such crimes defy the spirit of what it means to be a Montanan and an American.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That crimes of hate, prejudice, and bigotry against anyone, regardless of political or philosophical opinion, race, religion, age, gender, culture, disability, or sexual orientation, have no place in our beloved state.

That hatred breeds only hatred and that acts of hate only result in further acts of hate.

That we cannot and will not condone any acts of intolerance.

BE IT FURTHER RESOLVED, that we respectfully encourage every citizen to be vigilant in rejecting all such expressions of hate, prejudice, or bigotry.

Adopted April 7, 1995

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE MICHAEL CRAIG PREZEAU AS DISTRICT JUDGE, 19TH JUDICIAL DISTRICT, LIBBY, MONTANA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

Michael Craig Prezeau, as District Judge, 19th Judicial District, Libby, Montana, to replace District Judge Robert Keller, resigned.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 54th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 1995

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND

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SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 1995, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Athletics, in accordance with section 2-15-1882, MCA:

Mr. John Kinna, Bozeman, Montana, appointed for a term ending April 25, 1998.

Mr. Gary Langley, Helena, Montana, appointed for a term ending April 25, 1997.

Mr. Andrew Vandolah, Conrad, Montana, appointed for a term ending April 25, 1996.

(2) As a member of the Board of Barbers, in accordance with section 2-15-1856, MCA:

Mr. David Isakson, Butte, Montana, appointed for a term ending July 1, 1997.

(3) As a member of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Mr. Clifford Christenot, Libby, Montana, appointed for a term ending March 29, 1997.

(4) As members of the Board of Health and Environmental Sciences, in accordance with section 2-15-2104, MCA:

Ms. Cindy Younkin, Bozeman, Montana, appointed for a term ending January 1, 1999.

Mr. Paul Hanson, Glendive, Montana, appointed for a term ending January 1, 1999.

Mr. Dennis Schreffler, Billings, Montana, appointed for a term ending January 1, 1999.

(5) As members of the Highway Commission, in accordance with section 2-15-2502, MCA:

Mr. Edward Smith, Dagmar, Montana, appointed for a term ending January 1, 1999.

Mr. Dan Larson, Libby, Montana, appointed for a term ending January 1, 1999.

(6) As members of the Board of Milk Control, in accordance with section 2-15-1802, MCA:

Mr. Mike Kleese, Stevensville, Montana, appointed for a term ending January 1, 1999.

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Mr. Robert (Clyde) Greer, Bozeman, Montana, appointed for a term ending January 1, 1999.

(7) As members of the Board of Optometry, in accordance with section 2-15-1846, MCA:

Mr. Larry Obie, Havre, Montana, appointed for a term ending April 3, 1999.

Ms. Charliene Staffanson, Deer Lodge, Montana, appointed for a term ending April 3, 1999.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 54th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 1995

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HOUSE JOINT RESOLUTIONS

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF COMMERCE TO INCLUDE A VARIABLE ON VETERAN STATUS IN FUTURE HOUSING STUDIES AND SURVEYS; AND REQUESTING THE BOARD OF HOUSING TO USE INFORMATION ON VETERAN STATUS TO DEVELOP SPECIAL HOUSING PROGRAMS FOR VETERANS IN MONTANA.

WHEREAS, the State of Montana Comprehensive Housing Affordability Strategy (CHAS) Five-Year Plan, though reporting a needs assessment for the state, did not include a variable that specifically identifies housing needs for veterans in Montana; and

WHEREAS, information on housing needs of veterans in Montana is not available; and

WHEREAS, existing statutory authority, section 90-6-104(20), MCA, authorizes the Board of Housing to develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means; and

WHEREAS, a special program for veterans in Montana has never been developed; and

WHEREAS, a special program, such as the program for manufactured housing, could be beneficial to the acquisition of affordable housing by veterans in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Commerce be directed to include veteran status as a variable in future housing studies and surveys in order to better assess and identify the housing needs of veterans in Montana.

BE IT FURTHER RESOLVED, that the Board of Housing analyze the information on veteran status and housing needs from past and future bousing studies and surveys for the development of special housing programs for veterans in Montana for which it has existing statutory authority.

BE IT FURTHER RESOLVED, that the Department of Commerce report to the 55th Legislature on the housing needs of veterans in Montana and that the Board of Housing report to the 55th Legislature on the development of special housing programs for veterans in Montana.

Adopted February 28, 1995

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HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS OF HIGHER EDUCATION AND THE BOARD OF PUBLIC EDUCATION TO RECOGNIZE AMERICAN SIGN LANGUAGE AS A SEPARATE AND COMPLETE LANGUAGE AND TO AUTHORIZE THE TEACHING OF AMERICAN SIGN LANGUAGE AS PART OF THE PUBLIC SCHOOL AND UNIVERSITY SYSTEM CURRICULUM.

WHEREAS, the Legislature recognizes the unique social, cultural, and linguistic heritage of the deaf community and its substantial contribution to tbe enrichment and diversity of our society; and

WHEREAS, over the last 20 years, a significant and growing body of scientific inquiry has demonstrated that American sign language is a separate and complete language with its own unique grammar, vocabulary, and syntax; and

WHEREAS, American sign language is the third most used foreign language in the United States; and

WHEREAS, there is a significant and growing interest by the general public in learning American sign language; and

WHEREAS, the study and learning of American sign language contributes to a greater understanding of the social and cultural aspects of deafness and to the breakdown of communication barriers that have existed between hearing people and deaf people.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Board of Public Education be strongly urged to recognize American sign language as a language that may be taught in all public elementary and high schools in educational programs for both hearing and deaf students.

(2) That the Board of Public Education be encouraged to adopt an accreditation standard authorizing a school district to offer courses in American sign language that may be used to fulfill the foreign language requirements for high school graduation.

(3) That the Board of Regents of Higher Education be strongly urged to recognize American sign language as a language and to adopt an administrative rule authorizing each unit of the university system to offer an elective course in American sign language for which a student may receive credit toward fulfillment of a foreign language requirement.

(4) That copies of this resolution be sent by the Secretary of State to the Commissioner of Higher Education, the Board of Regents of Higher Education, the Board of Public Education, and to the Office of Public Instruction.

Adopted February 1, 1995

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HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING IMMEDIATE CONSTRUCTION OF NURSING HOME FACILITIES AT THE VETERANS' CENTER AT FORT HARRISON, MONTANA, OR AN EXPANSION OF THE VETERANS ADMINISTRATION COMMUNITY NURSING HOME PROGRAM.

WHEREAS, the population of elderly citizens of the United States is growing steadily, and this growth is reflected in the increased number of aged veterans of military service; and

WHEREAS, the State of Montana sent more of its citizens per capita into military service during World War I, World War II, the Korean Conflict, and the Vietnam War than any other state; and

WHEREAS, the need for care for elderly citizens, including veterans, is an ever more urgent concern that is particularly manifested in the increasing need for nursing home beds among veterans because of their advancing age; and

WHEREAS, the 26 nursing home beds in the Veterans' Center at Miles City are the only federal veterans' nursing home beds available in Montana to answer the needs of the 101,544 veterans who live in Montana; and

WHEREAS, there are no other federal veterans' nursing home bed facilities within 500 miles of the Veterans' Center at Fort Harrison, Montana; and

WHEREAS, this deplorable lack of federal nursing home beds has been disregarded by federal officials for the past 35 years, and the situation is acute and costly; and

WHEREAS, responsible federal officials of the Department of Veterans Affairs have ignored the need for additional nursing home beds and have delayed the commencement of construction at the Veterans' Center at Fort Harrison, Montana, of nursing home facilities, which construction was first scheduled to begin in 1979 and has since been postponed approximately seven times, with the latest target date for construction now set for 1999, a date still dependent on ongoing analysis; and

WHEREAS, a recommendation should be made to Montana's Congressional Delegation and to the Department of Veterans Affairs concerning the location of any future federal nursing home facility; and

WHEREAS, the Department of Veterans Affairs also provides nursing home services through a community nursing home program in which veterans are entitled to nursing home services in local private nursing homes through contracts with the Veterans Administration; and

WHEREAS, the community nursing home program normally provides permanent nursing care for veterans with service-connected disabilities and 6 months of care for veterans with nonservice-connected disabilities; and

WHEREAS, because of budget constraints, the Department of Veterans Affairs now provides only 1 month of care for veterans with nonservice-connected disabilities.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana's Congressional Delegation be urged to press for immediate construction of adequate nursing home facilities adjacent to the Veterans' Center at Fort Harrison, Montana, in order that Montana's battle-scarred and disabled veterans will not be forced to sell their homes and exhaust their savings to pay out-of-pocket costs for care that they are entitled to receive from the government that they served.

BE IT FURTHER RESOLVED, that the Governor be urged to appoint a nonpartisan committee of five individuals to study the issue of the future location of any Department of Veterans Affairs nursing home facility and to make a recommendation to Montana's Congressional Delegation and to the Department of Veterans Affairs concerning the location of any future facility.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation be urged to press for full funding of contract nursing home services for Montana veterans entitled to contract nursing home services.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation urge the expansion of the community nursing home program to allow Montana veterans to be served in their local communities and as a cost-effective alternative to the immediate construction of additional federal veterans' nursing homes.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Secretary of the Department of Veterans Affairs, each member of Montana's Congressional Delegation, the presiding officers of the Committees on Veterans Affairs of the United States Senate and House of Representatives, and the Governor of the State of Montana.

Adopted March 17, 1995

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE GOVERNOR TO ASK EACH EXECUTIVE BRANCH AGENCY THAT HAS ADOPTED ADMINISTRATIVE RULES, WHETHER OR NOT THE MONTANA ADMINISTRATIVE PROCEDURE ACT APPLIES TO THE AGENCY, TO REVIEW THE AGENCY'S RULES AND DELETE UNNECESSARY PROVISIONS BY JANUARY 1, 1996, WITH A VIEW TO DECREASING THE NUMBER AND PAGES OF THE AGENCY'S RULES BY A MINIMUM OF 5 PERCENT, WITH A GOAL OF 10 PERCENT.

WHEREAS, section 2-4-314, MCA, requires each Executive Branch agency subject to the Montana Administrative Procedure Act to at least biennially review its administrative rules to determine whether existing rules should be modified or repealed; and

WHEREAS, one of the purposes of section 2-4-314, MCA, is the deletion of rules that are no longer necessary; and

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WHEREAS, on the whole, agencies are not complying with section 2-4-314, MCA; and

WHEREAS, the number of administrative rules is constantly increasing, thereby adding to the people's burden of complying with state law; and

WHEREAS, unnecessary rules place a needless burden upon the people's freedom and upon personal and economic activity.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature request the Governor to ask each Executive Branch agency that has adopted administrative rules, whether or not the Montana Administrative Procedure Act applies to the agency, to review the agency's rules and delete unnecessary provisions by January 1, 1996, with a view to decreasing the number and pages of the agency's rules by a minimum of 5%, with a goal of 10%.

Adopted January 18, 1995

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING THE CLASSIFICATION, PAY, AND OTHER CONDITIONS OF EMPLOYMENT OF LEGISLATIVE EMPLOYEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A TERMINATION DATE, AND A RETROACTIVE APPLICABILITY PROVISION.

WHEREAS, it is necessary to establish a pay plan for legislative employees that compensates those employees on a basis similar to other state employees; and

WHEREAS, it is necessary that legislative employees know of their conditions of employment and that those conditions be uniform for the Senate and the House of Representatives.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) (a) That the legislative employee positions listed in subsection (1)(b) be classified at the grades indicated and be entitled to be paid according to the pay matrix included in subsection (1)(c).

(b) That an employee with no qualifying legislative experience be paid at level 1 of the appropriate grade. A person who has served as a legislator or an employee of the Montana Senate or House of Representatives for at least one-half of a regular session is entitled to be advanced one step for each session served.

For the 54th Legislature:

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Grade 20

Chief Clerk of the House

Secretary of the Senate

Grade 17

Sergeant-at-Arms

Grade 14

Chaplain

Grade 13

Assistant Chief Clerk of the House

Assistant Secretary of the Senate

Aide to the Speaker of the House

Aide to the President of the Senate

Aide to the House Minority Leader

Aide to the Senate Minority Leader

Grade 11

Legislative Assistant

Word Processing Center Supervisor

Bills Clerk

Journal Clerk

Bills Coordinator

Amendments Coordinator

Assistant Sergeant-at-Arms

Secretary to the Following:

President, Speaker, Secretary of the Senate, Chief Clerk, and Majority and Minority Leaders and Whips in both the Senate and the House

Grade 10

Assistant Journal Clerk

Committee Secretary

Bills Distributor

Status Input Technician

Assistant Amendments Coordinator

Grade 9

Assistant Bills Distributor

Grade 8

Word Processor

Grade 7

Reading Clerk

Supply Clerk

Security Guard

Doorman

Grade 6

Proofreader

Grade 3

Committee Aide

Permanent Page

Minimum Wage

Page

For the 55th and subsequent Legislatures:

Grade 20

Chief Clerk of the House

Secretary of the Senate

Grade 17

Sergeant-at-Arms

Grade 14

Chaplain

Grade 13

Assistant Chief Clerk of the House

Assistant Secretary of the Senate

Grade 12

Aide to the Following:

President, Speaker, and the Majority and Minority Leaders in both the Senate and the House

Word Processing Center Supervisor

Grade 11

Legislative Assistant

Journal Clerk

Amendments Coordinator

Assistant Sergeant-at-Arms

Bills Coordinator

Secretary to the Following:

President, Speaker, Secretary of the Senate, Chief Clerk, and Majority and Minority Leaders and Whips in both the Senate and the House

Grade 10

Assistant Journal Clerk

Bills Clerk

Committee Secretary

Bills Distributor

Status Input Technician

Assistant Amendments Coordinator

Grade 9

Assistant Bills Distributor

Grade 8

Word Processor

Grade 7

Reading Clerk

Supply Clerk

Security Guard

Doorman

Grade 6

Proofreader

Grade 3

Committee Aide

Permanent Page

Minimum Wage

Page

(c) That the following legislative pay matrix, shown in dollars per hour, be adopted:

	Level				
Grade	1	2	3	4	5
1	6.280	6.377	6.476	6.577	6.680
2	6.529	6.631	6.736	6.842	6.950
3	6.800	6.908	7.018	7.130	7.244
4	7.097	7.210	7.326	7.444	7.564
5	7.423	7.543	7.666	7.791	7.918
6	7.798	7.917	8.038	8.170	8.305
7	8.232	8.341	8.459	8.591	8.734
8	8.713	8.818	8.945	9.065	9.197
9	9.236	9.350	9.486	9.602	9.733
10	9.811	9.944	10.079	10.205	10.345
11	10.441	10.572	10.717	10.865	11.015
12	11.126	11.280	11.437	11.598	11.760
13	11.880	12.047	12.216	12.389	12.564
14	12.807	12.990	13.164	13.378	13.564
15	13.790	14.015	14.212	14.428	14.648
16	14.931	15.160	15.392	15.609	15.849

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17	16.172	16.401	16.654	16.909	17.169
18	17.523	17.793	18.069	18.348	18.631
19	19.047	19.328	19.628	19.909	20.242
20	20.848	21.006	21.333	21.640	22.004

(2) (a) That each employee record the number of hours worked each day on a timesheet provided by the employer. A completed timesheet must be turned in each Friday that ends a pay period. Each chamber shall adopt a procedure for review, approval, and collection of the timesheets and for timely filing with the Legislative Council.

(b) That the Sergeants-at-Arms review and approve the timesheets for the following employees: Assistant Sergeants-at-Arms, Doormen, Security Guards, Bills Distributors, Assistant Bills Distributors, Supply Clerks, and Pages.

(c) That the Speaker and Minority Leader of the House review and approve the timesheets for their employees.

(d) That the Secretary of the Senate and the Chief Clerk of the House review all timesheets and approve those not otherwise provided for.

(3) That the positions classified at Grade 17 and above be exempt from overtime pay. During a regular legislative session, employees in those positions must be paid for 48 hours a week regardless of the number of hours worked. Whenever such employees are preparing for or closing a regular or special session or otherwise working at the direction of their respective presiding officers during an interim, they must be paid for each hour worked at the hourly compensation determined under subsection (1) and their timesheets must be reviewed and approved by their presiding officers.

(4) That the positions classified below Grade 17 be subject to overtime pay. Hours over 40 a week worked by an employee so classified must be compensated at the rate of 1 1/2 times the employee's regular hourly wage.

(5) That the legislative employees listed in subsection (1)(b) are not entitled to additional benefits, including sick leave, vacation leave, holiday pay, time off with pay, health insurance, or longevity allowances. Section 2-18-617(3), MCA, relating to assumption of liability for accrued vacation credits, does not apply to the Legislature and its employees.

(6) That a Chaplain be entitled to be paid for 2 hours for each legislative day served.

(7) That membership in the Public Employees' Retirement System be made available to legislative employees upon written request under the provisions of section 19-3-412, MCA.

(8) That the Legislative Administration Committees be encouraged to meet jointly during the interim between sessions to consider changes that may be required in the pay matrix in subsection (1)(c) and that the committees be authorized to publish a revised matrix for use when staff are hired for service in the 55th Legislature.

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(9) That this Joint Resolution apply to the employees hired to prepare for the 55th Legislature by the leadership elected at the November 1996 caucuses.

(10) (a) That this Joint Resolution be effective upon passage and be effective until January 6, 1997.

(b) That this resolution apply retroactively to all employees of the 54th Legislature.

Adopted January 20, 1995

HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 1996-97 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING THE JUNE 30, 1994, GENERAL FUND AND STATE EQUALIZATION AID ACCOUNT BALANCES THAT WERE ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 1995-96 AND 1996-97; AND ESTABLISHING AN ESTIMATE OF THE NONGENERAL FUND REVENUE FOR THE STATE EQUALIZATION AID ACCOUNT.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail for all operating funds the proposed expenditures and estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution prohibits the Legislature from appropriating funds in excess of the anticipated revenue of the state; and

WHEREAS, section 5-18-107(5), MCA, requires the Revenue Oversight Committee to estimate the amount of revenue projected to be available for legislative appropriation and to introduce legislation setting forth the Committee's current revenue estimate for the biennium; and

WHEREAS, section 5-12-302(6), MCA, requires the Office of Legislative Fiscal Analyst to assist the Revenue Oversight Committee in its revenue estimating duties; and

WHEREAS, the Montana Legislature revised the taxation of railroad car companies during the July 1992 Special Session; and

WHEREAS, several railroad car companies challenged the constitutionality of the new tax; and

WHEREAS, because the outcome of the challenge to the railroad car company tax is uncertain, the Revenue Oversight Committee did not include,

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as a precautionary position, any anticipated revenue from the tax in the revenue estimates; and

WHEREAS, because of the complexity of economic variables involved in revenue forecasting and the diversity of sources from which state revenue is obtained, it has become increasingly difficult to project revenue in order to prepare a balanced budget for the ensuing biennium; and

WHEREAS, the revenue estimates contained in this resolution provide the basis for a comprehensive analysis of the state's financial condition; and

WHEREAS, it is in the best interests of the state that revenue forecasts be discussed and arrived at in public hearings at which all the people may attend and participate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state general fund revenue for fiscal years 1995, 1996, and 1997 be estimated to be $642,221,000, $664,839,000, and $690,523,000, respectively, and that the state equalization aid revenue for fiscal years 1995, 1996, and 1997 be estimated to be $292,292,000, $295,741,000, and $302,361,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accept for budget purposes the unreserved fund balance of $32,592,000 for the general fund and $17,109,000 for the state equalization aid account, prepared according to generally accepted accounting principles as published in the audited state financial statements as of June 30, 1994.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use the revenue estimates (and the underlying assumptions) contained in this resolution as the official revenue estimates for fiscal years 1995-96 and 1996-97.

GENERAL FUND AND STATE EQUALIZATION AID ACCOUNT REVENUE

The projections for total general fund and state equalization aid account revenue during the 1996-97 biennium are based on an assumption of a continuation of Montana law as it existed on January 1, 1995.

The revenue estimates contained in the following tables are based on the assumptions stated previously in this resolution and those listed in the following tables.

ECONOMIC ASSUMPTIONS

Revenue Oversight Committee

Year	Assumption	CY/FY 1994	CY/FY 1995	CY/FY 1996	CY/FY 1997
Montana Population & Employment					
	Population July 1 (Millions)	0.846	0 852	0.858	0.864
	Population = 16 July 1 (Millions)	0.638	0.642	0.647	0.651
	Population 18-24 July 1 (Millions)	0.079	0 081	0 082	0.082
CY	Nonfarm Employment (Thousands)	333.400	340.400	347.600	354.300

Year	Assumption	CY/FY 1994	CY/FY 1995	CY/FY 1996	CY/FY 1997
Montana Income					
CY	Total Personal Income (Millions)	$15,560.485	$16,391.222	$17,175.693	$18,038 229
CY	Net Farm Income (Millions)	$537.886	$545.061	$579.065	$582.913
CY	Disposable Personal Income (Millions)	$13,638.308	$14,366.141	$15,053.426	$15,809.091
CY	Nonfarm Wage & Salary Income (Millions)	$7,391.453	$7,799.040	$8,244.573	$8,694.209
Montana Individual Income Tax					
CY	Nonfarm Wage & Salary Growth (Percent Change)	5.27%	4.93%	5.11%	4.88%
CY	Interest & Dividend Growth (Percent Change)	2.17%	8.45%	5.54%	3.68%
CY	Net Business Income (Percent Change)	6.90%	1.80%	2.00%	2.10%
CY	Capital Gains/Losses Income (Percent Change)	4.70%	4.70%	4.70%	4.70%
CY	Rent/Royalty/Partnership Income (Percent Change)	8.00%	8.00%	8.00%	8.00%
CY	All Other Income (Percent Change)	5.18%	5.55%	7.16%	6.50%
FY	Individual Income Tax Audits (Millions)	$20.241	$18 000	$18.000	$18.000
Montana Corporate Income Tax					
CY	US Corporate Profits Before Taxes (Billions)	$495.700	$520.000	$545.500	$572.200
CY	MT Corporate Taxable Income (Millions)	$1,002.137	$1,060 858	$1,125 013	$1,203.068
FY	Corporate Income Tax Audits (Millions)	$7.547	$7.500	$7.500	$7.500
Inflation & Interest Rates					
CY	Consumer Price Index (Percent Change)	2 63%	3.30%	3 52%	3.53%
CY	Short-Term Interest Rate (Percent)	4.41%	5.18%	5.44%	5.80%
CY	Long-Term Interest Rate (Percent)	7.75%	8.02%	7.96%	7.81%
FY	Short-Term Interest Rate (Percent)	3.68%	4.73%	5.29%	5.59%
FY	Long-Term Interest Rate (Percent)	7.38%	7.86%	8.00%	7.90%
FY	TCA Blended Interest Rate (Percent)	3.79%	4 95%	5.45%	5.72%
FY	TRANS Interest Spread (Percent)	0 61%	0.87%	1.04%	1.13%
FY	Treasury Cash Average Balance (Millions)	$310.571	$300.695	$286.075	$274.016
FY	TRANS Issue Size (Millions)	$88.900	$70.100	$70.100	$70.100
FY	Permanent Trust Gains/Losses (Millions)	$4.478	$2.239	$1.120	$0.560
FY	Common School Trust Gains/Losses (Millions)	$4 327	$2.163	$1.082	$0.541
FY	Resource Indemnity Trust Gains/Losses (Millions)	$1.122	$0.561	$0.281	$0.141
FY	Parks Trust Gains/Losses (Millions)	$0.000	$0.000	$0.000	$0.000
FY	Arts Trust Gains/Losses (Millions)	$0.081	$0 041	$0.021	$0.011
Natural Resource Tax					
CY	Total Oil Production (Million bbls)	16.825	15.780	15.016	14.313
CY	Severance Tax Oil Production (Million bbls.)	15.738	14.968	14 248	13 575
CY	Montana Oil Price (Per bbl.)	$13.380	$14.238	$14.891	$16 271
CY	Total Coal Production (Million tons)	37.920	38.657	37.964	34.955
CY	Montana Coal Price (CSP per ton)	$7.792	$7.830	$7.817	$7.658
FY	Coal Tax Credits (Millions)	$0.000	$0.000	$0.000	$0.000
CY	Total Natural Gas Production (MMCF)	51.557	52.114	52.643	53.145
CY	Montana Natural Gas Price ($ / MCF)	$1.591	$1.627	$1.680	$1.734
CY	Total Liquid Gas Production (Million gallons)	6.793	6 866	6.936	7.002
CY	Montana Liquid Gas Price ($ / Gallon)	$0 225	$0.230	$0.238	$0.246
CY	Copper Production (Million lbs)	108 213	114.135	99.185	100.289
CY	Silver Production (Million ozs)	2.143	2.206	2.266	2.291
CY	Gold Production (Million ozs.)	0.407	0.457	0.427	0.432
CY	Lead Production (Million lbs.)	8 770	8.770	8.951	9.051
CY	Zinc Production (Million lbs.)	20.716	20.716	21.069	21.303
CY	Molybdenum Production (Million lbs.)	8.100	9 600	10.300	10.415
CY	Palladium Production (Million ozs.)	0.205	0.213	0.218	0.220
CY	Platinum Production (Million ozs.)	0.063	0.066	0.063	0.064
CY	Nickel Production (Million lbs)	0 237	0.303	0.345	0.349
CY	Rhodium Production (Million ozs.)	0.002	0.002	0.002	0.002

Year	Assumption	CY/FY 1994	CY/FY 1995	CY/FY 1996	CY/FY 1997
CY	Copper Price ($ / lbs.)	$0.643	$0.643	$0 643	$0.643
CY	Silver Price ($ / ozs.)	$3 765	$3.765	$3.765	$3.765
CY	Gold Price ($ / ozs.)	$360.443	$360 443	$360.443	$360.443
CY	Lead Price ($ / lbs)	$0 190	$0.190	$0 190	$0.190
CY	Zinc Price ($ / lbs)	$0.430	$0 430	$0.430	$0.430
CY	Molybdenum Price ($ / lbs)	$2.045	$2.045	$2 045	$2.045
CY	Palladium Price ($ / ozs.)	$115 586	$115 586	$115.586	$115.586
CY	Platinum Price ($ / ozs)	$349.210	$349.210	$349.210	$349.210
CY	Nickel Price ($ / lbs)	$2.148	$2.148	$2.148	$2.148
CY	Rhodium Price ($ / ozs.)	$1,020 561	$1,020 561	$1,020 561	$1,020.561
CY	Total Metal Value (Millions)	$299.302	$326.616	$308.021	$311.447
FY	Total Federal Forest Receipts (Millions)	$55.420	$57.914	$48 510	$47.562
Property Value					
FY	Total Statewide Taxable Valuation (Millions)	$1,707.993	$1,763 019	$1,814.833	$1,869.654
FY	Net/Gross Proceeds Taxable Valuation (Millions)	$15.927	$13.623	$12.913	$13.738
FY	All Other Taxable Valuation (Millions)	$1,692 066	$1,749.397	$1,801.919	$1,855.917
FY	Statewide Vehicle Valuation (Millions)	$2,645 436	$2,776.294	$2,896.293	$3,005 822
Consumption Tax					
FY	Liquor Unit Sales (Millions)	$4.868	$4.771	$4 675	$4 582
FY	Wine Unit Sales (Millions)	0.000	0 000	0.000	0 000
FY	Liquor Cost Per Unit	$10 060	$10 359	$10.712	$11.090
FY	Wine Cost Per Unit	$10.917	$0 000	$0.000	$0.000
FY	Liquor Net Sales (Millions)	$38 672	$38 612	$39.139	$39.717
FY	Liquor Operations Budget (Millions)	$7.058	$7.058	$6 232	$6.356
FY	Beer Barrels (Millions)	0.755	0.766	0.773	0.773
FY	Wine Liters (Millions)	4.746	4.578	4.416	4.259
FY	Cigarette Packs (Millions)	70.757	69.800	68.936	68.407
FY	Tobacco Value (Millions)	$10.631	$11.443	$12.306	$13.225
FY	Gallons of Gasoline (Millions)	476.695	479.951	484.706	488 502
FY	Gallons of Diesel (Millions)	162.110	165.760	170.915	176.335
FY	Video Machine Net Income (Millions)	$199.524	$219.830	$239.887	$262 852
FY	Total Lottery Sales (Millions)	$37.483	$38.169	$38.867	$39.575
FY	Insurance Premiums Growth (Percent Change)	7.74%	4 00%	4.00%	4 00%
FY	Insurance Premiums Tax Credit (Millions)	$4 053	$3.007	$2.463	$2.463
FY	Police & Firefighter Retirement (Millions)	$8.752	$9.430	$10.420	$11.014
CY	Telephone Taxable Income (Millions)	$224.112	$226.802	$229.523	$232 966
CY	Kilowatt-Hours Produced (Millions)	21,730.433	21,995.656	22,451 941	22,535.002
Other					
FY	Medicaid Reimbursements (Millions)	$12 728	$13.120	$14.065	$14 507
FY	MDC Debt Service (Millions)	$0 000	$0.000	($0.477)	($1.089)

Current Law
General Fund Revenue Estimates
(In Millions)

Source of Revenue	Estimated FY 1995	Estimated FY 1996	Estimated FY 1997
Individual Income Tax	$338 062	$358.453	$374.788
Corporation License Tax	59.303	62.477	66 079
Coal Severance Tax	6 883	6.903	6.519
Oil Severance Tax	10.984	10 632	10.827

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Source of Revenue	Estimated FY 1995	Estimated FY 1996	Estimated FY 1997
Interest on Investments	14.884	15.591	15.668
Long-Range Bond Excess	48.612	50.910	52.909
Coal Trust Interest Income	35.536	35.532	35.881
Insurance Premiums Tax	24.087	25.108	26.040
Public Institutions Reimbursement	15.881	16.449	16.359
Liquor Profits	3.261	4.235	4.271
Liquor Excise Tax	6.275	6.360	6.452
Inheritance Tax	11.176	11.500	11.804
Metal Mines Tax	2.984	3.266	3.080
Electrical Energy Tax	4.076	4.146	4.196
Driver's License Tax	2.138	2.149	2.165
Telephone License Tax	4.023	4.072	4.127
Beer License Tax	1.380	1.391	1.391
Natural Gas Severance Tax	1.465	1.531	1.634
Railroad Car Tax	0.000	0.000	0.000
Wine Tax	0.733	0.707	0.681
Video Gaming Income Tax	10.991	11.994	13.143
Motor Vehicle Account	9.980	10.246	10.520
Vehicle Fees	3.887	4.055	4.208
Public Contractor's Tax	0.967	1.067	1.011
Other Revenue Sources	24.653	16.065	16.770
Grand Total	$642.221	$664.839	$690.523

Current Law

State Equalization Aid Account Revenue Estimates

(In Millions)

Source of Revenue	Estimated FY 1995	Estimated FY 1996	Estimated FY 1997
State Revenue			
Individual Income Tax	$0.000	$0.000	$0.000
Corporation License Tax	0.000	0.000	0.000
Coal Severance Tax	5.098	5.114	4.829
Coal Tax Trust Interest	6.271	6.270	6.332
Interest & Income	40.796	39.755	41.515
US Oil & Gas Royalties	23.165	23.787	23.209
Education Trust Interest	0.166	0.106	0.069
State Equalization Aid Account Interest	0.095	0.095	0.095
County Revenue	127.231	129.349	132.659
Statewide 40 Mills	79.792	82.078	84.469
Lottery	8.678	8.842	9.005
Miscellaneous	1.000	0.345	0.179
County Levy Surplus	0.000	0.000	0.000
Total State	$292.292	$295.741	$302.361
Statewide Taxable Valuation	$1,763 619	$1,814 833	$1,869.654
County Revenue			
Statewide 55 Mills	$97.088	$99.931	$102.953
Elementary Transportation	0.000	0.000	0.000
Cash Reappropriated	0.000	0.000	0.000
Forest Funds	2.725	2.283	2.238

Source of Revenue	Estimated FY 1995	Estimated FY 1996	Estimated FY 1997
Taylor Grazing	0.147	0.146	0.146
Miscellaneous	28 237	27.956	28.290
High School Tuition	(0 968)	(0.968)	(0.968)
Other Adjustments	0 000	0.000	0.000
Total County (Totals Included in State Revenue)	$127.229	$129.348	$132 659
Total General Fund/School Equalization Aid Account	$934 513	$960 580	$992.884

Adopted April 7, 1995

HOUSE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE ENVIRONMENTAL QUALITY COUNCIL CONDUCT AN INTERIM STUDY OF THE COMPLIANCE AND ENFORCEMENT PROGRAMS OF THE STATE'S NATURAL RESOURCE AND ENVIRONMENTAL AGENCIES.

WHEREAS, timely, appropriate, equitable, and efficient application of enforcement and compliance measures is essential to protect public health and the quality of Montana's natural resources; and

WHEREAS, the people and the regulated community of the state of Montana demand that the laws of this state be enforced in a consistent, fair, and effective manner; and

WHEREAS, limited state financial resources necessitate a revaluation and potentially a reprioritization of the goals and implementation strategies of Montana's natural resource and environmental laws; and

WHEREAS, the Environmental Quality Council has longstanding involvement and strong bipartisan expertise in the legislative oversight of state natural resource and environmental programs and their implementation and has been a forum for resolving contentious natural resource and environmental issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Environmental Quality Council be requested to give priority to the study of the compliance and enforcement programs of the state's natural resource and environmental agencies.

(2) That the study include but not be limited to a review and analysis of:

(a) the state's existing enforcement and compliance framework and how it is implemented;

(b) the constitutional and statutory goals of the various state natural resource and environmental agencies, whether these goals are consistent and appropriate, and whether these goals are being met;

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(c) tbe proper balance among sanctions, incentives, technical assistance, education, and other enforcement tools in an effective and efficient enforcement program; and

(d) other states' natural resource and environmental agencies' attempts to improve and measure compliance and enforcement.

(3) That the Environmental Quality Council consult with federal, state, and local officials, the regulated community, citizens, and other persons or groups with expertise or interest in the compliance and enforcement programs of the state's natural resource and environmental agencies.

(4) Tbat the Environmental Quality Council vigorously pursue alternative funding sources to conduct this study.

(5) That the Environmental Quality Council report its findings and recommendations to the 55th Legislature.

Adopted March 11, 1995

HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING THE MEMORY OF SENIOR PATROL OFFICER SHANE R. CHADWICK.

WHEREAS, Shane R. Chadwick, born on January 4, 1965, was a native of Chester, Montana, and was the only son of Virgil and Helen Chadwick of Cbester; and

WHEREAS, Shane R. Chadwick was an athlete, scholar, and graduate of Chester High School; he earned a bachelor's degree from the Montana State University and received basic and advanced training from the Montana Law Enforcement Academy; and

WHEREAS, Shane R. Chadwick was the husband of Terry Berg Chadwick, native of Lewistown, and the father of Justin Jackson Chadwick; and

WHEREAS, Shane R. Chadwick served the public in many capacities for the Department of Fish, Wildlife, and Parks and for the Chester School District before beginning a career in law enforcement; and

WHEREAS, on September 7, 1994, in the early morning hours, Senior Patrol Officer Shane R. Chadwick of the Great Falls Police Department was shot and killed in the line of duty; and

WHEREAS, Shane R. Chadwick lost his life in the line of duty as a public servant protecting and serving the people of Great Falls, Montana; and

WHEREAS, Shane R. Chadwick should be honored as a dedicated public servant, a role model, and an example of bravery, dedication, and commitment in serving the public; and

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WHEREAS, Montana law enforcement agencies and all Montanans share the loss of Shane R. Chadwick and extend to his family heartfelt condolences and respect.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Senior Patrol Officer Shane R. Chadwick, husband, father, and public servant who died in the line of duty be honored and memorialized.

BE IT FURTHER RESOLVED, that the memory of Shane R. Chadwick serve as an example to all Montanans of a life of dedicated service, bravery, and commitment.

Adopted March 9, 1995

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING CONTINUED DAILY AMTRAK PASSENGER SERVICE THROUGH MONTANA.

WHEREAS, Amtrak is energy-efficient and environmentally beneficial, consuming about half as much energy per passenger-mile as airlines and causing less air pollution; and

WHEREAS, Amtrak provides mobility to citizens of many smaller communities that are poorly served by air and bus services, as well as to senior citizens, persons with disabilities, students, and persons with medical conditions that prevent them from flying; and

WHEREAS, communities served hy Amtrak in Montana are not provided with any other mode of public transportation and residents of these communities are required to travel up to 200 miles to the nearest airport; and

WHEREAS, Amtrak travel rose 48% from 1982 to 1993 and ridership in Montana has risen to reflect this percentage; and

WHEREAS, Montana's tourist industry greatly benefits from daily passenger service through the state; and

WHEREAS, reductions or further cuts in Amtrak funding will only result in additional federal funding for already congested highways and airports and result in more federal costs, not less; and

WHEREAS, Amtrak workers and vendors pay more in taxes than the federal government invests in Amtrak.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 54th Montana Legislature urge the Montana Congressional Delegation to support continued daily Amtrak passenger service through Montana.

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BE IT FURTHER RESOLVED, that the 54th Montana Legislature urge the President and the United States Congress to include a strong Amtrak system in any plans for a national transportation system.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation.

Adopted March 24, 1995

HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA SUPREME COURT TO MODIFY ITS MONTANA STUDENT PRACTICE RULE TO PROHIBIT STUDENT PARTICIPATION IN FILING LAWSUITS FOR PRISONERS AGAINST PUBLIC AGENCIES.

WHEREAS, under Article VII, section 2, of the Montana Constitution, the Montana Supreme Court has general supervisory control over all other courts in the state and the authority to make rules governing practice and procedure in state courts and admission to the har and the conduct of its members; and

WHEREAS, by order dated April 30, 1975, the Supreme Court adopted the Montana Student Practice Rule, allowing certain law students to provide assistance to practicing lawyers; and

WHEREAS, it has come to the attention of the Legislature that law students, including those participating in taxpayer-supported programs, are assisting current and former prisoners to file lawsuits against counties, the state, and other public agencies; and

WHEREAS, those public agencies must then expend additional taxpayer money to defend the lawsuits filed on behalf of the prisoners, on whom the public agencies have previously expended taxpayer money to prosecute; and

WHEREAS, it is unfair to the taxpayers of Montana to bear all the costs of prosecution and defense in these cases.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Supreme Court be urged to modify its Montana Student Practice Rule to prohibit law students in state-supported programs from participating in filing lawsuits on behalf of current or former prisoners against counties, the state, or other public agencies.

Adopted March 13, 1995

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING SUPPORT FOR THE CONTINUED OPERATION OF MALMSTROM AIR FORCE BASE.

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WHEREAS, the State of Montana is proud that its citizens have patriotically rallied to defend freedom and democracy in every war since 1889 in numbers far greater, by percentage of population, than those of other states; and

WHEREAS, the Montana Legislature recognizes that the federal government is required, under the Constitution of the United States, to provide for the defense of our nation; and

WHEREAS, the State of Montana has proudly supported Malmstrom Air Force Base, originally known as Great Falls Army Air Base, for more than 52 years and throughout four major wars; and

WHEREAS, the State is now home to and proudly supports the 341st Missile Wing and the 43rd Air Refueling Group; and

WHEREAS, the citizens of the State of Montana have worked hard for many years to ensure that the service and support personnel of Malmstrom Air Force Base are warmly received and are encouraged to consider Montana as their home; and

WHEREAS, Malmstrom Air Force Base is geographically well-situated to provide security for the United States and offers uncrowded air space ideally suited for year-round flight operations; and

WHEREAS, Malmstrom Air Force Base is the last remaining active duty military installation in Montana and is of vital economic importance to the state; and

WHEREAS, Malmstrom Air Force Base generates a positive economic impact of more than $200 million and over 1,000 additional jobs for central Montana; and

WHEREAS, the area surrounding Malmstrom Air Force Base offers ample space for expansion should military necessity dictate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President and the Congress of the United States be informed that the Senate and the House of Representatives of the State of Montana support the continued operation of Malmstrom Air Force Base as an active installation that is vital to the defense of our nation.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to Montana's Congressional Delegation, which is urged to enter this resolution into the record of the Senate and of the House of Representatives of the United States of America.

Adopted February 17, 1995

HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF REVENUE, THE OFFICE OF BUDGET AND PROGRAM

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PLANNING, AND THE OFFICE OF LEGISLATIVE FISCAL ANALYST TO MONITOR CHANGES IN FEDERAL INCOME TAX LAW THAT MAY RESULT IN HIGHER STATE INCOME TAX LIABILITY; DIRECTING THE DEPARTMENT OF REVENUE AND THE OFFICE OF LEGISLATIVE FISCAL ANALYST TO REPORT TO THE REVENUE OVERSIGHT COMMITTEE AND THE 55TH LEGISLATURE REGARDING INCREASED TAX REVENUE RELATED TO FEDERAL TAX REFORM; DIRECTING THE OFFICE OF BUDGET AND PROGRAM PLANNING AND THE OFFICE OF LEGISLATIVE FISCAL ANALYST TO REPORT TO THE LEGISLATIVE FINANCE COMMITTEE AND THE 55TH LEGISLATURE REGARDING THE IMPACT OF FEDERAL TAX REFORM ON ENDING FUND BALANCES; AND DIRECTING THE OFFICE OF BUDGET AND PROGRAM PLANNING TO PRESENT OPTIONS TO THE 55TH LEGISLATURE REGARDING THE RETURN OF ANY INCREASE IN INCOME TAX REVENUE TO MONTANA TAXPAYERS RESULTING FROM FEDERAL TAX REFORM.

WHEREAS, the 54th Montana Legislature strongly supports the enactment of House Bill No. 171, the bill that would authorize the refund of income taxes collected in the current biennium in excess of state expenditure levels and ending fund balance requirements; and

WHEREAS, changes in federal income tax law enacted by the 104th United States Congress may adversely affect Montana taxpayers' state income tax liability and may result in additional, unanticipated revenue to the state; and

WHEREAS, tbe federal Tax Reform Act of 1986 resulted in a significant revenue "windfall" to the state of Montana; and

WHEREAS, the 54th Legislature firmly believes that any state tax revenue increase should be a matter determined by the Montana Legislature and not by the federal government; and

WHEREAS, the 54th Legislature also believes that any revenue windfall to the state as the result of federal income tax reform should be returned to the taxpayers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Revenue, the Office of Budget and Program Planning, and the office of legislative fiscal analyst be directed to closely monitor changes in federal income tax law that may result in higher state income tax liability for Montana residents.

BE IT FURTHER RESOLVED, that the Department of Revenue and the office of legislative fiscal analyst:

(1) report to the Revenue Oversight Committee, at the Committee's request, any changes in federal income tax law that may result in higher state income tax liabilities for Montana residents; and

(2) provide to the Revenue Oversight Committee at the time the Committee meets to adopt the revenue estimating resolution for the biennium beginning July 1, 1997, and to the 55th Legislature an estimate of:

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(a) the amount of increased income tax revenue, if any, for tax year 1995 attributable to changes in federal income tax law; and

(b) the amount of anticipated increased income tax revenue, if any, for tax year 1996 attributable to changes in federal income tax law.

BE IT FURTHER RESOLVED, that the Office of Budget and Program Planning:

(1) report, in conjunction with the office of legislative fiscal analyst, to the Legislative Finance Committee and to the 55th Legislature the impact of any changes to federal income tax law that may increase the anticipated combined ending fund balance of the state general fund and the school equalization aid account; and

(2) present options to the 55th Legislature:

(a) to exclude from the budget base for the biennium beginning July 1, 1997, increased income tax revenue from federal tax reform; and

(b) to return excess revenue collections that may result from federal income tax reform to Montana taxpayers. These options may include but are not limited to income tax refunds, reductions in income tax rates, or increased exemption amounts.

Adopted March 18, 1995

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING TODD FOSTER FOR UPHOLDING ATHLETIC IDEALS AND SERVING AS A ROLE MODEL FOR MONTANA'S YOUTH.

WHEREAS, in 1981, as a 13-year old, Todd "Kid" Foster won the Region XI Junior Olympic boxing championship; and

WHEREAS, in 1985, Todd Foster finished second in both the National Golden Gloves tournament and the National USA-Budweiser tournament; and

WHEREAS, in 1987, Todd Foster won both the National Golden Gloves championship and the National Olympic Festival championship; and

WHEREAS, in July 1988, Todd Foster earned a position on the United States Olympic Boxing Team; and

WHEREAS, in September 1988, at the Seoul Summer Olympics, Todd Foster thrilled amateur athletic fans around the world by defeating South Korean Chun Jin Chul twice within 3 hours; and

WHEREAS, in January 1989, Todd Foster turned professional, but never forgot Montana, often bringing major professional athletic events to locations throughout the state; and

WHEREAS, throughout Todd Foster's career Todd has served as a role model for the youth of Montana by epitomizing the best of athletics and using

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the accolades to inspire youth through participation in programs such as Drug Abuse Resistance Education (DARE).

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana congratulates Todd Foster on past successes in the boxing ring, thanks Todd Foster for the vicarious pride instilled in Montanans, and wishes Todd Foster and Joely Foster and their children Tyce and Austin the best in years to come.

Adopted March 9, 1995

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE NEEDS OF MONTANA VETERANS; AND REQUIRING A REPORT OF FINDINGS AND RECOMMENDATIONS OF THE STUDY TO THE 55TH LEGISLATURE.

WHEREAS, Montana has the third highest per capita number of veterans in the United States; and

WHEREAS, 26%, or 26,291, of Montana's veterans are 65 years of age or older; and

WHEREAS, Montana currently provides a total of 175 beds for veterans who require nursing home care, which are insufficient to provide for the nursing care needs of Montana's veterans; and

WHEREAS, federal guidelines suggest that Montana needs between 255 and 408 state nursing home beds, and the guidelines provide that these beds can be built and operated with federal funding assistance from the federal Department of Veterans Affairs; and

WHEREAS, the state veterans' nursing home at Columbia Falls serves veterans in northwestern Montana, and the state veterans' nursing home at Miles City serves veterans in eastern Montana, leaving southwestern and central Montana unserved, and the area of Deer Lodge and Silver Bow Counties would provide an ideal location in which to establish a state veterans' nursing home that is accessible to veterans in the southwestern and central regions of Montana; and

WHEREAS, health care reform has stalled at the federal level, and incremental insurance-based reforms will not address all of the needs of Montana's veterans; and

WHEREAS, there may still be a significant effect on the health care of veterans because of impending changes at the national level regarding federal health care policy for veterans; and

WHEREAS, the Joint Interim Subcommittee on Veterans' Needs created by the 1993 Legislature provided an important liaison between state government

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and veterans, and the continuation of a similar subcommittee would be of great service to Montana veterans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council designate an appropriate interim committee to continue to study the needs of Montana veterans and that the study include:

(1) the feasibility of providing long-term nursing home care and home health care as it relates to Montana veterans and the role of the federal Department of Veterans Affairs and any changes in state or federal policy because of health care reform;

(2) a review of the extent of access, geographically and otherwise, of veterans to health and nursing home care within Montana; and

(3) the continuum of veterans' services availahle throughout the state and determination of the role and potential for additional federally funded veterans' programs in Montana.

BE IT FURTHER RESOLVED, that the interim committee may request staff assistance and information from the Department of Military Affairs, the Veterans' Affairs Division, the Department of Corrections and Human Services, and other legislative or executive agencies that may have information relevant to veterans' affairs.

BE IT FURTHER RESOLVED, that the interim committee report its findings, conclusions, and recommendations to the 55th Legislature.

Adopted March 9, 1995

HOUSE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING COLLABORATION AMONG PUBLIC SCHOOLS, LOCAL HUMAN SERVICE AGENCIES, AND LOCAL PASSENGER SERVICE PROVIDERS IN THE PROVISION OF TRANSPORTATION SERVICES.

WHEREAS, the universal need for transportation services in Montana is an unavoidable consequence of the unique and rich lifestyle enjoyed by a population of approximately 856,000 persons distributed throughout 147,138 square miles of plains and mountains; and

WHEREAS, numerous local human service agencies, including public schools, senior citizens centers, organizations providing services to the developmentally disabled, and transit authorities, have historically maintained transportation systems in order to provide services to their constituents; and

WHEREAS, tax-supported resources are limited; and

WHEREAS, tax-supported service agencies are finding it increasingly difficult to maintain historic levels of services; and

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WHEREAS, given adequate planning and coordinating, transportation resources could be shared by human service agencies without compromising service.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That public schools, community-based, tax-supported human service agencies, and local passenger service providers be encouraged to collaborate in the provision of transportation services whenever possible, within the confines of law and recognized safety standards and practices.

BE IT FURTHER RESOLVED, that local, state, and federal entities that are responsible for the regulation and funding of local human service agencies be encouraged to review and to revise any laws, regulations, and policies not related to passenger safety that may hinder or prohibit collaboration among public and private transportation service providers.

Adopted March 25, 1995

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO DRAFT RULES TO ALLOW, UNDER THE AIR QUALITY STATUTES, A MINOR CHANGE IN A FACILITY WITHOUT A PRECONSTRUCTION PERMIT.

WHEREAS, the federal government has recognized the need to afford operational flexibility to operators of facilities regulated under the federal Clean Air Act and has provided that air quality operating permit programs, including those administered by states, must allow certain minor changes in permitted facilities without permit revisions; and

WHEREAS, the Board of Health and Environmental Sciences has adopted rules to implement this operational flexibility with regard to operating permits, but the object of the rules is thwarted by the requirement for preconstruction permits; and

WHEREAS, operators of facilities permitted under the federal Clean Air Act and the state air quality statutes should be allowed to make minor changes in permitted facilities without preconstruction permits under certain conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Health and Environmental Sciences prepare draft rules to be submitted to the Board of Health and Environmental Sciences to establish provisions consistent with applicable federal law and with the federally approved state air quality permit program in order that operators of facilities permitted under the state's air quality permit program may make physical changes within a permitted facility without applying for or obtaining a preconstruction permit, as long as the size of the change is below a de minimis

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level established by the Board through rulemaking and no new types of pollutants will be emitted as the result of the changes and the changes use currently approved methods or equipment for air pollution control.

Adopted March 18, 1995

HOUSE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DESIGNATING HARLOWTON AS THE FUTURE SITE OF A RAILROAD MUSEUM AND RESEARCH CENTER.

WHEREAS, it is urgent that a repository be created for photographs, records, oral histories, puhlications, and artifacts of Montana railroad history; and

WHEREAS, present and future generations of Montana parents and children should have access to this repository; and

WHEREAS, Harlowton's National Historic Site has the necessary building to house such a repository; and

WHEREAS, Harlowton's history as a railroad center is conducive to such a museum and center.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature designates Harlowton as the future site of a Railroad Museum and Research Center.

Adopted March 25, 1995

HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE CONTINUED DEVELOPMENT AND DEMONSTRATION OF INNOVATIVE TECHNOLOGIES FOR THE TREATMENT OF MINING, ENERGY, DEFENSE-RELATED, AND OTHER ENVIRONMENTAL WASTES AT THE WESTERN ENVIRONMENTAL TECHNOLOGY OFFICE AND BY OTHER ORGANIZATIONS IN BUTTE.

WHEREAS, Butte, Montana, has developed over the past several years an international reputation as the location for the development of new technologies for the cleanup and treatment of mining, energy, defense-related, and other environmental wastes; and

WHEREAS, several entities in Butte have contributed to this international reputation for excellence in waste remediation technology, including the Western Environmental Technology Office (WETO), Metanetix, Montana Tech of the University of Montana, and Mycotech, among others; and

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WHEREAS, these organizations provide increased economic benefits to Montana and environmental benefits to communities around the world that are adversely affected by the generation of waste and pollution; and

WHEREAS, these organizations promote technology transfer to the private and public sectors and encourage the participation of industry, government agencies, the scientific community, and the public in understanding and applying innovative remediation technologies to difficult and potentially harmful environmental problems; and

WHEREAS, these organizations in Butte have led the way in developing and implementing proven, cost-effective solutions to environmental waste cleanup problems that result in value-added products for commercialization by private industry; and

WHEREAS, these organizations have developed their programs through financial support from the United States Congress and federal agencies and through private investment; and

WHEREAS, these organizations are worthy of support from the federal government and the state of Montana because of their significant contribution to the economic well-being of the state and to the betterment of the local, national, and global environment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature recognizes and commends the creation, development, and continued operation of WETO, Metanetix, Montana Tech of the University of Montana, and Mycotech in Butte, all of which contribute to the reputation of Butte and the state of Montana as an international center for excellence in the development and practical application of waste remediation technologies.

(2) That the Legislature urges the United States Congress and appropriate federal agencies to continue full funding for the growth and development of WETO in Butte.

(3) That the Legislature urges the United States Congress and appropriate federal agencies to favorably respond to proposals to fund continued development and application of technologies pioneered at Metanetix, Montana Tech of the University of Montana, Mycotech, and other worthy organizations in Butte.

(4) That copies of this resolution be sent by the Secretary of State to the Montana Congressional Delegation, to the Administrator of the United States Environmental Protection Agency, and to the Secretaries of the United States Departments of Energy, Defense, and the Interior.

Adopted March 18, 1995

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HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT THE NORTHERN REGION FOREST SERVICE REGIONAL OFFICE REMAIN IN MISSOULA; OPPOSING RESTRUCTURING THAT WOULD MOVE THE OFFICE OUT OF MISSOULA; URGING PUBLIC PARTICIPATION IN FOREST SERVICE RESTRUCTURING DECISIONS AND SUPPORTING MEANINGFUL FEDERAL AGENCY RESTRUCTURING.

WHEREAS, the vital role of our nation's forests was officially recognized in 1891 when the first federal forest reserves were set aside by Congress and the forerunner of the national forest system was established; and

WHEREAS, the people of Montana have long enjoyed both tangible and intangible benefits from the presence and management activities of the United States Forest Service, which is distinct from most federal and other governmental agencies in the strength and diversity of land management and traditions; and

WHEREAS, the United States Forest Service has recently proposed a restructuring that would close its Missoula Regional Office and relocate the office's decisionmaking authority and personnel to Denver; and

WHEREAS, Missoula is at the heart of the Forest Service Northern Region, which encompasses 15 national forests, 4 national grasslands, and 28 million acres of forest, including 5 million acres of classified wilderness; has been the center for the forest industry for over a century; and is the site of the University of Montana School of Forestry and the center of forestry activities of the Montana Department of State Lands; and

WHEREAS, forestry research programs at the University of Montana and elsewhere in the Northern Rocky Mountains would likely suffer from the proposed restructuring; and

WHEREAS, the effects of the Forest Service proposal would include the loss of Montana-based decisionmaking authority over Montana national forests to a geographically remote, ecologically unrelated urban area as well as the loss of high-level, professional, skilled Forest Service employees, to the economic detriment of western Montana; and

WHEREAS, the Forest Service has produced no cost-benefit justification for its proposed restructuring or evidence of how restructuring would serve taxpayers and the public interest; and

WHEREAS, the proposed consolidation of Forest Service activity in the Denver urban area appears to violate the letter and spirit of the federal Forest and Rangeland Renewable Resources Planning Act of 1974, specifically 16 U.S.C. 1609, which requires that the Forest Service give priority to locating regional offices in rural areas and towns near the national forests in order to provide the optimum level of convenient, useful services to the public; and

WHEREAS, amid current controversy surrounding forest management activities, there is a broad public recognition of the need for continuing dialogue

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between all segments of the public and public agencies, including the Forest Service.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Northern Region Forest Service Regional Office be retained in Missoula, Montana, and that the office continue to oversee the management of the national forests and grasslands of the Northern Region.

BE IT FURTHER RESOLVED, that the Montana Legislature urge the Montana Congressional Delegation's continued strong opposition to any proposed Forest Service restructuring likely to close or reduce the decisionmaking authority and capability of the Missoula Regional Office.

BE IT FURTHER RESOLVED, that the United States Department of Agriculture and the United States Forest Service be encouraged to discontinue implementing the proposed restructuring plan and concentrate their efforts on more direct ways of reducing costs and staffing within the current Forest Service structure.

BE IT FURTHER RESOLVED, that public participation be encouraged in all Forest Service restructuring decisions to ensure that any restructuring protects Montana and national public and taxpayer interests by requiring:

(1) an accurate, comprehensive cost-benefits analysis to justify restructuring;

(2) adherence to all laws applicable to the management of national forest resources; and

(3) that Forest Service personnel reductions or relocations resulting from restructuring, if any, be done in a manner that leaves the maximum number of decisionmaking personnel in each Forest Service office in or near the national forests that those offices oversee.

BE IT FURTHER RESOLVED, that the Legislature support meaningful federal agency restructuring that will result in continued stewardship of the land, better service to the public, actual taxpayer savings, and less, rather than more, federal agency consolidation.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the United States Secretary of Agriculture, the Chief of the United States Forest Service, and the Regional Forester of the Northern Region.

Adopted March 25, 1995

HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO PROVIDE CONSTITUTIONAL STATUS TO THE ITEM VETO.

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WHEREAS, the United States Congress is considering legislation that would give the President of the United States "enhanced rescission" authority to designate individual parts of appropriation hills for cutbacks; and

WHEREAS, the legislative method being pursued does not provide constitutional status and protection for tbe presidential authority; and

WHEREAS, the United States Congress does not prohibit special legislation, does not require single-subject legislation, and allows riders on legislation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress be congratulated for considering enhanced rescission legislation and be encouraged to provide constitutional status to the item veto for the President of the United States.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation.

Adopted March 29, 1995

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HOUSE RESOLUTIONS

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING RULES TO GOVERN THE PROCEEDINGS OF THE HOUSE.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA

HOUSE OF REPRESENTATIVES

CHAPTER 1

Administration

H10-10. House officers. (1) House officers include a Speaker, a Speaker pro tempore, majority and minority floor leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, and decorum.

(2) The Speaker may order the galleries or lobbies cleared in case of disturbance or disorderly conduct. *The Speaker may take action to protect the safety, dignity, and integrity of the House. Action may include the regulation of private individuals and lobbyists whose conduct threatens the administration, order, or decorum of the body. The authority of the Speaker extends to all House activities.*

(3) The Speaker shall appoint and may remove the members of all standing and select committees not otherwise specified by law or rule.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130. *The agenda for second reading must contain the committee vote of the committee reporting the bill.*

(6) The Speaker is the chief administrative officer of the House, with authority for supervising all House employees. The Speaker may seek the advice and counsel of the Legislative Administration Committee regarding employees.

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H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

H10-40. Speaker pro tempore duties. The Speaker pro tempore shall act as the presiding officer in the absence of the Speaker and shall carry out other duties assigned by the Speaker.

H10-50. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions. It may delegate specific duties to a legislative agency.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the House, subject to the approval of the Speaker.

(4) The committee shall comprise the House membership of the Joint Legislative Administration Committee.

H10-60. Employees. (1) The Speaker shall appoint a Chief Clerk, Sergeant-at-Arms, and Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall recommend to the Legislative Administration Committee employment of necessary staff.

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority floor leaders may each appoint a private secretary.

H10-70. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is responsible to:

(1) have custody of all records and documents of the House;

(2) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and deliver them, unbound, to the Legislative Council librarian who will arrange to have them copied on microform. A microform copy will be provided to the Legislative Council and the State Law Library of Montana. The Legislative Fiscal Analyst will receive a microform copy of the minutes from the appropriation committee and subcommittees. After microforming, the original minutes will be delivered to the Montana Historical Society.

H10-80. Sergeant-at-Arms duties. The Sergeant-at-Arms, under the supervision of the Speaker, has the responsibility to:

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(1) maintain order under the direction of the presiding officer;

(2) execute commands and serve all processes of the House; and

(3) receive, distribute, and have custody of House supplies and equipment.

H10-90. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-100. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-110. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Council such information as may be required for the publication of the daily journal. Upon approval by the Speaker, the daily journal shall be reproduced and distributed.

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(4) Any representative may examine the daily journal and propose corrections. The speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Council shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-120. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in committee of the whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-130. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier.

CHAPTER 2

Decorum

H20-10. Questions of order and privilege. (1) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(2) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives.

H20-20. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-30. Admittance to the House floor. The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

H20-40. Dilatory motions or questions. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-50. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

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(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

H20-60. Lobbying by employees. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker or the Legislative Administration Committee may discipline or discharge any House employee violating this prohibition. The Speaker or the committee may withdraw the privileges of any House aide or intern violating this prohibition.

H20-70. Papers distributed on desks. A paper concerning proposed legislation may not be placed on representatives' desks unless it is signed and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution.

CHAPTER 3

Committees

H30-10. House standing committees. The following are the House standing committees: Agriculture, Livestock, and Irrigation; Appropriations; Business and ~~Economic Development~~ *Labor*; Education and Cultural Resources; *Ethics;* Fish and Game; Highways and Transportation; Human Services and Aging; Judiciary; ~~Labor and Employment Relations;~~ Legislative Administration; Local Government; Natural Resources; Rules; State Administration; *State/Federal Relations;* and Taxation.

H30-20. Chair's duties. The chair of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and certifying committee reports and minutes.

H30-30. Officers as members. The Speaker, majority leader, and minority leader are ex officio, nonvoting members of all House committees. They are not required to be considered in the quorum, but they may count toward establishing a quorum.

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H30-40. Committee action. (1) When legislation is referred to a committee, it may recommend approval or disapproval, with or without amendment.

(2) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar.

(3) The committee may not report a bill to the House without recommendation.

(4) If a bill is withdrawn from a committee and brought to the House floor without a committee recommendation, the bill must include amendments formally adopted by committee action as reflected in committee minutes for debate on second reading.

H30-50. Reconsideration in committee. A committee, including the Committee of the Whole, may at any time prior to submitting a report to the Chief Clerk reconsider its previous action on legislation.

H30-60. Legislation requested by a committee. At least two-thirds of all the representatives of a standing committee must have voted in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

H30-70. Rules committee makeup. The Speaker will determine the total number of members and the party division, but each party will appoint its own members.

CHAPTER 4

Legislation

H40-10. Introduction deadlines. (1) Except as provided in subsection (2), if a representative accepts drafted legislation from the Legislative Council after the deadline for introduction, the representative may not introduce that legislation after 48 hours from the time the bill was accepted from the Legislative Council.

(2) No bill or resolution may be introduced any later than 5 p.m. 5 legislative days prior to the appropriate transmittal deadline.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

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H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the copies.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction — receipt. (1) During a session, proposed House legislation may be introduced in the House by submitting it in duplicate, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. In each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. Senate legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

H40-50. First reading. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. Senate legislation received by the House may be referred to a committee prior to being read across the rostrum.

H40-60. One reading per day. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

H40-70. Referral. (1) The Speaker shall refer to a House committee all properly introduced House legislation and transmitted Senate legislation.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee.

H40-80. Rereferral. (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

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(2) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-100. Standing committee reports. (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may be placed on the consent calendar by agreement between the speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any three representatives submit written objections to the placement of legislation on the consent calendar by the action of a standing committee or if any one representative submits a written objection to the placement of legislation on the consent calendar by the speaker and minority leader, the

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legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading. (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise.

H40-150. Amendments in the Committee of the Whole. (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other

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factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Council, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative.

(3) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

H40-160. Motions in the Committee of the Whole. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) reconsider;

(f) pass consideration;

(g) call for cloture;

(h) rise, rise and report, or rise and report progress and beg leave to sit again; and

(i) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(e) through (1)(h) are nondebatable but may be amended.

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may conduct no business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) Except for the representative who makes a motion, no representative may speak more than once on the motion and for no more than 5 minutes. The representative who makes the motion may have 5 minutes to close.

(2) After at least two proponents and two opponents have spoken on a question and 45 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the Speaker and the minority floor leader, a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

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H40-180. Special provisions for debate on the general appropriations bill. (1) The Appropriations Committee chair, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chair shall fully present their portion of the bill. A subcommittee chair is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chair, the respective section of the bill is open for debate, questions, and amendments.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

(8) A motion for cloture is not in order during debate on the general appropriations bill.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation has been reported correctly engrossed, it may be placed on third reading on the following legislative day. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day.

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and resolutions passing second reading must be placed on third reading.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The second reading vote is limited to consideration of the Senate amendments.

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(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, sball place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation not later than the following legislative day. When enrolled legislation is delivered on the final legislative day, the Speaker shall sign it that day.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation.

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage,

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the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

CHAPTER 5

Floor Actions

H50-10. Attendance. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by his party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may conduct no business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

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(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

H50-70. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 15 minutes on the same question, except that a representative may have 5 minutes to close.

H50-80. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to postpone consideration to a day certain;

(j) to suspend the rules; and

(k) all incidental motions, such as motions relating to voting or of a general procedural nature.

H50-90. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-40.

H50-100. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-110. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee;

(i) to propose amendments; and

(j) to postpone indefinitely.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) No more than one substitute motion is in order at any one time.

H50-120. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-130. Dividing a question. A representative may move to divide a question if it includes two or more propositions so distinct that they can he separated and if at least one substantive question remains after one substantive question is removed.

H50-140. Previous question. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a

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motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

H50-150. Questions requiring other than a majority vote. The following questions require the vote specified:

(1) a call of the House with a quorum (one-third of the members present and voting);

(2) a motion to lift a call of the House (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds of the members voting);

(4) a motion to record a vote (one representative);

(5) a motion to spread a vote on the journal (two representatives);

(6) a motion to override the Governor's veto (two-thirds of each house);

(7) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(8) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(9) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature);

(10) a motion to approve a bill to authorize creation of state debt (two-thirds of each house);

(11) an appeal of the ruling of the presiding officer (three representatives);

(12) a motion to speak more than once on a debatable motion (unanimous vote);

(13) a motion to overturn an adverse committee report (three-fifths of the members voting);

(14) a motion to rerefer a bill from one committee to another pursuant to Rule 40-80(1) (three-fifths of the members present and voting);

(15) a motion to withdraw a bill from a committee (three-fifths of the members present and voting);

(16) a motion to add legislation to the second or third reading agenda (three-fifths of the members present and voting);

(17) any motion to remove legislation from its normal progress through the House as provided under these rules and reassign it unless otherwise specifically provided by these rules (three-fifths of the members present and voting);

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(18) a motion to change a vote (two-thirds of the members present and voting);

(19) a motion to call for cloture (two-thirds of the members present and voting); and

(20) a motion to approve leave with cause during a call of the house (two-thirds of the members present and voting).

H50-160. Reconsideration. (1) Any representative may, within 1 legislative day of a vote, move to reconsider tbe House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, mus' be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

H50-170. Renewing proccdural motions. The House may renew a procedural motion if furtber House business has intervened.

H50-180. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-190. Indefinite postponement. A majority of representatives may indefinitely postpone any matter properly before the House.

H50-200. Voting. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

H50-210. Changing a vote. (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. Two-thirds of the members present and voting shall consent to the change. The representative making the motion shall first specify the question and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(2) An error caused by a malfunction of the voting system may be corrected without a vote.

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H50-220. Absentee votes. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

H50-230. Recess. The House may stand at ease or, by majority vote, may recess under any order of business. The recess may be ended at the call of the chair or at a time specified.

H50-240. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-250. Adjournment sine die. A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

CHAPTER 6

Rules

H60-10. House rules. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H60-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H60-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H60-40. Supplementary rules. Mason's Manual of Legislative Procedure (1989) governs House proceedings in all cases not covered by House rules.

H60-50. Interprcting rules. The Speaker shall interpret all questions on House rules, subject to appeal by any fifteen representatives to the House Rules

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Committee. The decision of the House Rules Committee may be appealed to the House by any representative.

H60-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Adopted January 6, 1995

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA APPEALING FOR TOLERANCE; AND REJECTING ALL EXPRESSIONS OF HATE, PREJUDICE, OR BIGOTRY.

WHEREAS, Montana is a big-hearted state whose generosity of spirit matches the vastness of its plains and the grandeur of its mountains; and

WHEREAS, Montana has long been known as the Big Sky State, a state open to new ideas, open to opportunity, and open to the pursuit of happiness for all its citizens; and

WHEREAS, Montana is a land proud of its ethnic diversity and its respect for the dignity of all of its citizens; and

WHEREAS, Montanans have had to overcome adversity in times of drought, depression, and war while remaining hopeful, determined, and steadfast; and

WHEREAS, Montana is witnessing an increasing number of acts of hate, prejudice, and bigotry, as evidenced by anti-Semitic literature, acts of vandalism, and harassment against Jews, homosexuals, and people of color; and

WHEREAS, crimes of hate have occurred at our places of work, our churches, our homes, and, recently, at our Capitol; and

WHEREAS, such crimes defy the spirit of what it means to be a Montanan and an American.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That crimes of bate, prejudice, and bigotry against anyone have no place in our beloved state.

That hatred breeds only hatred and that acts of hate only result in further acts of hate.

That we cannot and will not condone any acts of intolerance.

BE IT FURTHER RESOLVED, that we respectfully encourage every citizen to be vigilant in rejecting all such expressions of hate, prejudice, or bigotry.

Adopted April 13, 1995

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BALLOT ISSUES

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BALLOT ISSUES

CONSTITUTIONAL AMENDMENT NO. 25

By Chapter 43, Laws of 1993, the Legislature submitted this proposal for a vote. It would amend the Montana Constitution to prohibit the legislature from spending public pension fund assets, reducing funding levels or borrowing against assets of the public retirement system. Funds could only be used to provide benefits or to pay costs of administering the funds. It would require that public retirement systems be funded on an actuarially sound basis and managed carefully in accordance with recognized standards of financial management. It does not change existing law concerning investment of public funds.

Chapter 43 was approved by the following vote at the General Election held November 8, 1994:

☐ FOR: 243,855

☐ AGAINST: 88,336

The title and text of Chapter 43 follows:

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION TO PROVIDE FOR INVESTMENT OF PUBLIC PENSION ASSETS; ENACTING A PROVISION REQUIRING THAT ALL EXISTING AND FUTURE ASSETS OF PUBLIC PENSION TRUST FUNDS MUST BE PROTECTED AND EXCLUSIVELY ADMINISTERED BY THE GOVERNING BOARDS IN AN ACTUARIALLY SOUND MANNER AND THAT ALL ASSETS ARE HELD IN TRUST FOR THE EXCLUSIVE PURPOSE OF EFFICIENTLY AND PROMPTLY PROVIDING BENEFITS AND SERVICES TO CURRENT AND FUTURE PUBLIC EMPLOYEE RETIREES AND THEIR BENEFICIARIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII, section 13, of The Constitution of the State of Montana is amended to read:

"**Section 13. Investment of public funds and public retirement system assets.** (1) The legislature shall provide for a unified investment program for public funds and public retirement system assets and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds as provided in subsection (3), no public funds shall be invested in private corporate capital stock. The investment

program shall he audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock."

Section 2. Article VIII of The Constitution of the State of Montana is amended by adding a new section 15 that reads:

Section 15. Public retirement system assets. (1) Public retirement systems shall be funded on an actuarially sound basis. Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses.

(2) The governing boards of public retirement systems shall administer the system, including actuarial determinations, as fiduciaries of system participants and their beneficiaries.

Section 3. **Effective date.** If approved by the electorate, the amendments in sections 1 and 2 are effective January 1, 1995.

Section 4. **Submission to electorate.** The amendments set forth in sections 1 and 2 shall be submitted to the qualified electors of Montana at the general election to be held in November 1994 by printing on the ballot the full title of this act and the following:

☐ FOR protection of public pension funds and beneficiaries.

☐ AGAINST protection of public pension funds and beneficiaries.

CONSTITUTIONAL AMENDMENT NO. 26

By Chapter 94, Laws of 1993, the Legislature submitted this proposal for a vote. The Montana Constitution currently provides that the governor must act on a bill passed by the legislature within five days after the bill is delivered to him if the legislature is in session, but gives the governor 25 days to act on a bill

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if the legislature has adjourned. This measure would amend the Constitution to provide a uniform period of 10 days for the governor to sign or veto a bill, whether or not the legislature is in session when the bill is delivered to him.

Chapter 94 was approved by the following vote at the General Election held November 8, 1994:

☐ FOR: 237,236

☐ AGAINST: 99,344

The title and text of Chapter 94 follows:

AN AMENDMENT TO ARTICLE VI, SECTION 10, OF THE MONTANA CONSTITUTION TO PROVIDE A UNIFORM TIME LIMIT FOR GUBERNATORIAL ACTION ON LEGISLATION BY INCREASING THE TIME THE GOVERNOR HAS TO ACT ON A BILL WHILE THE LEGISLATURE IS IN SESSION AND REDUCING THE TIME THE GOVERNOR HAS TO ACT ON A BILL AFTER THE LEGISLATURE HAS ADJOURNED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VI, section 10, of The Constitution of the State of Montana is amended to read:

"**Section 10. Veto power.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five 10 days after its delivery to him ~~if the legislature is in session or within 25 days if the legislature is~~ adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) (a) If the legislature is not in session when the governor vetoes a hill approved by two-thirds of the members present, he shall return the bill with his reasons therefor to the secretary of state. The secretary of state shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(b) The legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session.

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(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill."

Section 2. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1994 by printing on the ballot the full title of this act and the following:

☐ FOR providing a uniform time limit for gubernatorial action on bills.

☐ AGAINST providing a uniform time limit for gubernatorial action on bills.

CONSTITUTIONAL AMENDMENT NO. 27

By Chapter 545, Laws of 1993, the Legislature submitted this proposal for a vote. It would add a new section to the Montana Constitution providing that if a general statewide sales tax or use tax is enacted, the rate of tax could not exceed 4%. If passed, the amendment would apply to any general statewide sales or use tax, whether enacted by the Legislature or by public vote.

Chapter 545 was approved by the following vote at the General Election held November 8, 1994:

☐ FOR: 175,618

☐ AGAINST: 150,469

The title and text of Chapter 545 follows:

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII OF THE MONTANA CONSTITUTION TO LIMIT TO 4 PERCENT THE RATE OF A GENERAL STATEWIDE SALES TAX OR USE TAX; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII of The Constitution of the State of Montana is amended by adding a new section 15 that reads:

Section 15. Limitation on sales tax or use tax rates. The rate of a general statewide sales tax or use tax may not exceed 4%.

Section 2. **Effective date.** This amendment is effective upon approval by the electorate.

Section 3. **Submission to electorate.** The amendment set forth in section 1 shall be submitted to the qualified electors of Montana at the general election to be held November 8, 1994, by printing on the ballot tbe full title of this act and the following:

☐ FOR limiting the rate of a state sales tax or use tax to 4%.

☐ AGAINST limiting the rate of a state sales tax or use tax to 4%.

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CONSTITUTIONAL INITIATIVE NO. 118

By Constitutional Initiative No. 118, the people proposed to amend Montana's campaign finance laws to limit contributions to candidates for public office, forbid carryover of surplus campaign funds, restrict contributions to elected officials' leadership political committees, and include in-kind contributions within aggregate limits for contributions by political committees to state legislative candidates. For each election, contribution limits for individuals and political committees would be: $400 for governor/lt. governor; $200 for other statewide offices; and $100 for other offices. Limits on contributions from all political party organizations would include: $15,000 for governor/lt. governor; $5,000 for most statewide offices; $800 for state senator; and $500 for other offices.

Constitutional Initiative No. 118 was approved by the following vote at the General Election held November 8, 1994:

☐ FOR: 200,679

☐ AGAINST: 129,983

The text of Initiative No. 118 follows:

Be it enacted by the People of the State of Montana:

Section 1. Section 13-37-216, MCA, is amended to read:

"**13-37-216. Limitations on contributions.** (1)(a) Aggregate contributions for ~~all elections~~ each election in a campaign by a political committee or by an individual, other than the candidate, to a ~~candidate and political committees organized on his behalf~~ are limited as follows:

~~(a)~~ (i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed ~~$1500~~ $400;

~~(b)~~ (ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed ~~$750~~ $200;

~~(c) for a candidate for public service commissioner, district court judge, or state senator, not to exceed $400;~~ and

(d) (iii) for a candidate for any other public office, not to exceed ~~$250~~ $100.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this subsection, an independent committee means a committee which is not specifically organized on behalf of a particular candidate or which is not controlled either directly or indirectly by a candidate or candidate's committee and which does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

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(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For ~~the purpose~~ purposes of ~~limitation on contributions~~ this subsection, "political party organization" ~~organizations are independent committees~~ means any political organization that was represented on the official ballot at the most recent gubernatorial election. ~~Aggregate contributions by an independent committee to a candidate and political committees organized on his behalf for all elections in a campaign are limited as follows~~ Political party organizations may form political committees that are subject to the following aggregate limitations from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed ~~$8,000~~ $15,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed ~~$2,000~~ $5,000;

(c) for a candidate for public service commissioner, not to exceed ~~$1,000~~ $2,000;

(d) for a candidate for the state senate, not to exceed ~~$600~~ $800;

(e) for a candidate for any other public office, not to exceed ~~$300~~ $500.

~~(3)~~(4) ~~The limitations imposed by this section do not apply to public funds contributed to a~~ A candidate ~~under part 3 of this chapter~~ may not accept any contributions in excess of the limits in this section.

(5) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply."

Section 2. Section 13-37-218, MCA, is amended to read:

"13-27-218. Limitations on receipts from political committees. (1) A candidate for the state senate may receive no more than $1,000 in total combined monetary contributions from all political committees contributing to the campaign, and a candidate for the state house of representatives may receive no more than $600 in total combined monetary contributions from all political committees contributing to the campaign. The foregoing limitations must be multiplied by the inflation factor as defined in subsection (2) for the year in which general elections are held, and the resulting figure must be rounded off to the nearest $50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions ~~may not~~ must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

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(2) "Inflation factor" means a number determined for each year by dividing the consumer price index for June of the year by the consumer price index for June 1980. The consumer price index to be used in determining the inflation factor is the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor."

Section 3. **Surplus campaign funds.** (1) A candidate shall dispose of any surplus funds from the candidate's campaign within 120 days after the time of filing the closing campaign report pursuant to 13-37-228. In disposing of the surplus funds, a candidate may not contribute the funds to another campaign, including the candidate's own future campaign, or use the funds for personal benefit. The candidate shall provide a supplement to the closing campaign report to the commissioner showing the disposition of any surplus campaign funds.

(2) For purposes of this section, "personal benefit" means a use that will provide a direct or indirect benefit of any kind to the candidate or any member of the candidate's immediate family.

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Codification instruction.** Section 4 is intended to be codified as an integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to section 3.

Section 6. **Effective date.** If approved by the electorate, this act is effective January 1, 1995.

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1-2-115	enacted	Ch. 416	SB 135
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2-4-702	amended	Ch. 290	HB 414
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2-6-403	amended	Ch. 179	HB 282
2-7-503	amended	Ch. 430	HB 530
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2-7-513	amended	Ch. 430	HB 530
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3-5-116	amended	Ch. 394	SB 353
3-5-122	enacted	Ch. 394	SB 353
3-5-211	amended	Ch. 455	HB 17
3-5-403	amended	Ch. 18	SB 1
3-5-501	amended	Ch. 174	SB 220
3-5-901	amended	Ch. 535	SB 127
3-5-904	enacted	Ch. 361	HB 176
3-6-302	amended	Ch. 174	SB 220
3-7-103	amended	Ch. 421	SB 387
3-10-301	amended	Ch. 350	SB 278
3-10-501	amended	Ch. 174	SB 220
3-10-503	amended	Ch. 174	SB 220
3-10-511	amended	Ch. 174	SB 220
3-10-512	amended	Ch. 174	SB 220
3-10-518	enacted	Ch. 466	HB 429
3-10-601	amended	Ch. 18	SB 1
	amended	Ch. 509	SB 83
	amended	Ch. 546	SB 345
3-11-101	amended	Ch. 292	HB 417
3-11-201	amended	Ch. 292	HB 417
3-11-206	amended	Ch. 174	SB 220
5-1-106	amended	Ch. 545	SB 398
5-2-301	amended	Ch. 455	HB 17
	amended	Ch. 545	SB 398
5-2-501	enacted	Ch. 545	SB 398
5-2-502	enacted	Ch. 545	SB 398
5-2-503	enacted	Ch. 545	SB 398
5-2-504	enacted	Ch. 545	SB 398
5-4-210	enacted	Ch. 416	SB 135
5-5-211	amended	Ch. 513	HB 24
5-5-215	amended	Ch. 545	SB 398

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5-6-102	amended	Ch. 225	HB 329
5-6-106	amended	Ch. 225	HB 329
5-7-213	amended and renumbered 2-2-106	Ch. 562	SB 136
5-11-101	amended	Ch. 545	SB 398
5-11-102	amended	Ch. 545	SB 398
5-11-103	amended	Ch. 545	SB 398
5-11-105	amended	Ch. 545	SB 398
5-11-106	amended	Ch. 545	SB 398
5-11-107	amended	Ch. 545	SB 398
5-11-111	amended	Ch. 545	SB 398
5-11-112	amended	Ch. 545	SB 398
5-11-201	amended	Ch. 545	SB 398
5-11-202	amended	Ch. 545	SB 398
5-11-203	amended	Ch. 545	SB 398
5-11-205	amended	Ch. 545	SB 398
5-11-206	amended	Ch. 545	SB 398
5-11-207	amended	Ch. 545	SB 398
5-11-208	amended	Ch. 545	SB 398
5-11-209	amended	Ch. 23	HB 140
	amended	Ch. 545	SB 398
5-11-301	amended	Ch. 545	SB 398
5-11-402	amended	Ch. 545	SB 398
5-11-404	amended	Ch. 545	SB 398
5-11-405	amended	Ch. 545	SB 398
5-11-702	amended	Ch. 141	SB 392
5-11-703	amended	Ch. 141	SB 392
5-11-704	amended	Ch. 141	SB 392
5-12-204	amended	Ch. 545	SB 398
5-12-205	amended	Ch. 545	SB 398
5-12-301	amended	Ch. 545	SB 398
5-12-302	amended	Ch. 545	SB 398
5-12-303	amended	Ch. 545	SB 398
5-12-304	amended	Ch. 545	SB 398
5-12-402	repealed	Ch. 545	SB 398
5-13-202	amended	Ch. 545	SB 398
5-13-301	amended	Ch. 545	SB 398
5-13-302	amended	Ch. 545	SB 398
5-13-304	amended	Ch. 545	SB 398
5-13-305	amended	Ch. 545	SB 398
5-13-321	enacted	Ch. 183	HB 337
5-14-103	amended	Ch. 545	SB 398
5-15-104	amended	Ch. 545	SB 398
5-16-101	amended	Ch. 545	SB 398
5-16-104	amended	Ch. 545	SB 398
5-17-207	amended	Ch. 191	HB 331
5-19-104	amended	Ch. 545	SB 398
5-19-107	amended	Ch. 545	SB 398
5-21-105	amended	Ch. 552	HB 471
5-22-101	enacted	Ch. 414	HB 578
5-22-102	enacted	Ch. 414	HB 578
7-1-111	amended	Ch. 418	SB 234
7-1-201	enacted	Ch. 543	SB 377
7-1-202	enacted	Ch. 543	SB 377
7-1-203	enacted	Ch. 543	SB 377
7-1-2111	amended	Ch. 451	SB 412
7-2-2215	amended	Ch. 387	SB 193
7-2-2605	amended	Ch. 387	SB 193
7-2-2709	amended	Ch. 387	SB 193

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7-2-4104	amended	Ch. 387	SB 193
7-2-4106	amended	Ch. 387	SB 193
7-2-4205	amended	Ch. 66	SB 52
7-2-4305	amended	Ch. 66	SB 52
7-2-4313	amended	Ch. 66	SB 52
7-2-4314	amended	Ch. 66	SB 52
7-2-4323	amended	Ch. 66	SB 52
7-2-4324	amended	Ch. 66	SB 52
7-2-4409	amended	Ch. 66	SB 52
7-2-4502	amended	Ch. 66	SB 52
7-2-4506	amended	Ch. 66	SB 52
7-2-4601	amended	Ch. 66	SB 52
7-2-4606	amended	Ch. 66	SB 52
7-2-4610	amended	Ch. 66	SB 52
7-2-4704	amended	Ch. 66	SB 52
7-2-4705	amended	Ch. 66	SB 52
7-2-4710	amended	Ch. 66	SB 52
7-2-4741	amended	Ch. 66	SB 52
7-2-4751	amended	Ch. 66	SB 52
7-2-4902	amended	Ch. 387	SB 193
7-3-103	amended	Ch. 387	SB 193
7-3-149	amended	Ch. 387	SB 193
7-3-176	amended	Ch. 387	SB 193
7-3-181	amended	Ch. 216	HB 165
7-3-186	amended	Ch. 387	SB 193
7-3-187	amended	Ch. 387	SB 193
7-3-192	amended	Ch. 387	SB 193
7-3-1205	amended	Ch. 387	SB 193
7-3-1208	amended	Ch. 387	SB 193
7-3-1229	amended	Ch. 387	SB 193
7-3-1231	amended	Ch. 387	SB 193
7-3-1344	amended	Ch. 93	SB 60
7-3-4208	amended	Ch. 387	SB 193
7-3-4213	amended	Ch. 387	SB 193
7-3-4222	amended	Ch. 387	SB 193
7-3-4223	amended	Ch. 387	SB 193
7-3-4305	amended	Ch. 387	SB 193
7-3-4310	amended	Ch. 387	SB 193
7-3-4311	amended	Ch. 387	SB 193
7-3-4371	amended	Ch. 430	HB 530
7-3-4372	amended	Ch. 430	HB 530
7-4-102	amended	Ch. 216	HB 165
7-4-2211	amended	Ch. 216	HB 165
7-4-2502	amended	Ch. 325	HB 563
7-4-2503	amended	Ch. 230	SB 82
	amended	Ch. 233	SB 117
7-4-2504	amended	Ch. 230	SB 82
	amended	Ch. 233	SB 117
7-4-2611	amended	Ch. 216	HB 165
7-4-2613	amended	Ch. 391	SB 272
7-4-2634	amended	Ch. 179	HB 282
7-4-2812	amended	Ch. 336	HB 393
7-4-2905	amended	Ch. 24	SB 32
7-4-2913	amended	Ch. 546	SB 345
7-5-133	amended	Ch. 387	SB 193
7-5-136	amended	Ch. 387	SB 193
7-5-2123	amended	Ch. 299	SB 121
7-5-2401	amended	Ch. 507	HB 136

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7-5-2403	amended	Ch. 507	HB 136
7-5-2404	amended	Ch. 507	HB 136
7-5-2405	amended	Ch. 507	HB 136
7-5-2411	amended	Ch. 507	HB 136
7-5-2412	amended	Ch. 507	HB 136
7-5-2413	amended	Ch. 507	HB 136
7-5-4321	amended	Ch. 387	SB 193
7-6-202	amended	Ch. 406	HB 197
7-6-206	amended	Ch. 406	HB 197
7-6-210	repealed	Ch. 179	HB 282
7-6-601	enacted	Ch. 430	HB 530
7-6-602	enacted	Ch. 430	HB 530
7-6-603	enacted	Ch. 430	HB 530
7-6-604	enacted	Ch. 430	HB 530
7-6-1103	amended	Ch. 423	HB 420
7-6-2111	amended	Ch. 430	HB 530
7-6-2112	amended	Ch. 430	HB 530
7-6-2202	amended	Ch. 430	HB 530
7-6-2203	amended	Ch. 430	HB 530
7-6-2211	amended	Ch. 430	HB 530
7-6-2212	amended	Ch. 179	HB 282
7-6-2213	amended	Ch. 430	HB 530
7-6-2225	amended	Ch. 577	HB 569
7-6-2226	amended	Ch. 577	HB 569
7-6-2302	amended	Ch. 430	HB 530
7-6-2311	amended	Ch. 430	HB 530
7-6-2312	amended	Ch. 430	HB 530
7-6-2314	amended	Ch. 430	HB 530
7-6-2315	amended	Ch. 430	HB 530
7-6-2316	amended	Ch. 430	HB 530
7-6-2317	amended	Ch. 430	HB 530
7-6-2318	amended	Ch. 430	HB 530
7-6-2319	amended	Ch. 430	HB 530
7-6-2320	amended	Ch. 430	HB 530
7-6-2321	amended	Ch. 430	HB 530
7-6-2324	amended	Ch. 430	HB 530
7-6-2325	amended	Ch. 430	HB 530
7-6-2330	amended	Ch. 430	HB 530
7-6-2331	amended	Ch. 430	HB 530
7-6-2344	repealed	Ch. 104	HB 105
	amended	Ch. 387	SB 193
7-6-2427	amended	Ch. 546	SB 345
7-6-2512	amended	Ch. 520	HB 421
7-6-2513	amended	Ch. 390	SB 222
7-6-2525	amended	Ch. 430	HB 530
7-6-2531	amended	Ch. 215	HB 154
7-6-4103	amended	Ch. 430	HB 530
7-6-4104	amended	Ch. 430	HB 530
7-6-4105	amended	Ch. 430	HB 530
7-6-4106	amended	Ch. 430	HB 530
7-6-4107	amended	Ch. 430	HB 530
7-6-4108	amended	Ch. 430	HB 530
7-6-4109	amended	Ch. 430	HB 530
7-6-4110	amended	Ch. 430	HB 530
7-6-4111	amended	Ch. 430	HB 530
7-6-4112	amended	Ch. 430	HB 530
7-6-4113	amended	Ch. 179	HB 282
	amended	Ch. 430	HB 530

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7-6-4119	amended	Ch. 430	HB 530
7-6-4121	amended	Ch. 430	HB 530
7-6-4124	amended	Ch. 430	HB 530
7-6-4131	amended	Ch. 430	HB 530
7-6-4132	amended	Ch. 430	HB 530
7-6-4133	amended	Ch. 430	HB 530
7-6-4203	amended	Ch. 430	HB 530
7-6-4205	amended	Ch. 430	HB 530
7-6-4221	amended	Ch. 430	HB 530
7-6-4223	amended	Ch. 430	HB 530
7-6-4224	amended	Ch. 430	HB 530
7-6-4225	amended	Ch. 430	HB 530
7-6-4226	amended	Ch. 430	HB 530
7-6-4227	amended	Ch. 430	HB 530
7-6-4228	amended	Ch. 430	HB 530
7-6-4229	amended	Ch. 430	HB 530
7-6-4230	amended	Ch. 430	HB 530
7-6-4231	amended	Ch. 430	HB 530
7-6-4232	amended	Ch. 430	HB 530
7-6-4235	amended	Ch. 430	HB 530
7-6-4236	amended	Ch. 430	HB 530
7-6-4240	amended	Ch. 430	HB 530
7-6-4241	amended	Ch. 430	HB 530
7-6-4255	amended	Ch. 387	SB 193
7-6-4408	amended	Ch. 430	HB 530
7-6-4423	amended	Ch. 105	HB 115
7-6-4461	amended	Ch. 554	HB 524
7-6-4463	amended	Ch. 554	HB 524
7-6-4464	amended	Ch. 554	HB 524
7-7-109	amended	Ch. 423	HB 420
7-7-123	amended	Ch. 179	HB 282
7-7-131	enacted	Ch. 296	SB 8
7-7-132	formerly 7-7-4111	Ch. 296	SB 8
7-7-133	formerly 7-7-4112	Ch. 296	SB 8
7-7-134	formerly 7-7-4113	Ch. 296	SB 8
7-7-2101	amended	Ch. 451	SB 412
	amended	Ch. 570	SB 417
7-7-2203	amended	Ch. 451	SB 412
	amended	Ch. 570	SB 417
7-7-2210	amended	Ch. 423	HB 420
7-7-2223	amended	Ch. 387	SB 193
7-7-2227	amended	Ch. 387	SB 193
7-7-2229	amended	Ch. 387	SB 193
7-7-2237	amended	Ch. 387	SB 193
7-7-2238	amended	Ch. 423	HB 420
7-7-2251	amended	Ch. 423	HB 420
7-7-2252	amended	Ch. 423	HB 420
7-7-2254	amended	Ch. 423	HB 420
7-7-2255	amended	Ch. 423	HB 420
7-7-2256	amended	Ch. 423	HB 420
7-7-2257	amended	Ch. 423	HB 420
7-7-2259	amended	Ch. 423	HB 420
7-7-2262	amended	Ch. 423	HB 420
7-7-2267	repealed	Ch. 423	HB 420
7-7-2268	amended	Ch. 423	HB 420
7-7-2269	amended	Ch. 423	HB 420
7-7-2275	repealed	Ch. 423	HB 420
7-7-2301	amended	Ch. 423	HB 420

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7-7-2302	amended	Ch. 423	HB 420
7-7-2304	amended	Ch. 423	HB 420
7-7-2407	amended	Ch. 423	HB 420
7-7-2501	amended	Ch. 423	HB 420
7-7-4111	amended and renumbered 7-7-132	Ch. 296	SB 8
7-7-4112	amended and renumbered 7-7-133	Ch. 296	SB 8
7-7-4113	amended and renumbered 7-7-134	Ch. 296	SB 8
7-7-4201	amended	Ch. 570	SB 417
7-7-4202	amended	Ch. 570	SB 417
7-7-4209	amended	Ch. 423	HB 420
7-7-4226	amended	Ch. 387	SB 193
7-7-4227	amended	Ch. 387	SB 193
7-7-4235	amended	Ch. 387	SB 193
7-7-4236	amended	Ch. 423	HB 420
7-7-4254	amended	Ch. 423	HB 420
7-7-4255	amended	Ch. 423	HB 420
7-7-4257	amended	Ch. 423	HB 420
7-7-4259	amended	Ch. 423	HB 420
7-7-4262	amended	Ch. 423	HB 420
7-7-4267	repealed	Ch. 423	HB 420
7-7-4268	amended	Ch. 423	HB 420
7-7-4269	amended	Ch. 423	HB 420
7-7-4301	amended	Ch. 423	HB 420
7-7-4302	amended	Ch. 423	HB 420
7-7-4304	amended	Ch. 423	HB 420
7-7-4407	amended	Ch. 418	SB 234
7-7-4422	amended	Ch. 423	HB 420
7-7-4424	amended	Ch. 423	HB 420
7-7-4426	amended	Ch. 387	SB 193
7-7-4427	amended	Ch. 387	SB 193
7-7-4428	amended	Ch. 423	HB 420
7-7-4432	amended	Ch. 423	HB 420
7-7-4433	amended	Ch. 423	HB 420
7-7-4434	amended	Ch. 423	HB 420
7-8-2102	amended	Ch. 520	HB 421
7-8-2103	amended	Ch. 520	HB 421
	amended	Ch. 543	SB 377
7-8-2212	amended	Ch. 74	SB 99
7-8-2218	amended	Ch. 18	SB 1
7-8-2301	amended	Ch. 280	SB 258
7-8-2302	amended	Ch. 280	SB 258
7-8-2303	amended	Ch. 280	SB 258
7-8-2502	amended	Ch. 280	SB 258
7-8-2507	amended	Ch. 418	SB 234
7-8-4201	amended	Ch. 387	SB 193
7-11-305	amended	Ch. 387	SB 193
7-11-307	amended	Ch. 387	SB 193
7-12-2105	amended	Ch. 229	SB 2
7-12-2153	amended	Ch. 229	SB 2
7-12-2174	amended	Ch. 423	HB 420
7-12-2176	amended	Ch. 229	SB 2
7-12-2182	amended	Ch. 229	SB 2
7-12-2183	amended	Ch. 229	SB 2
7-12-2185	amended	Ch. 229	SB 2
7-12-4106	amended	Ch. 229	SB 2
7-12-4169	amended	Ch. 229	SB 2
7-12-4189	amended	Ch. 229	SB 2
7-12-4206	amended	Ch. 423	HB 420

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7-12-4222	amended	Ch. 229	SB 2
7-12-4223	amended	Ch. 229	SB 2
7-12-4225	amended	Ch. 229	SB 2
7-12-4243	amended	Ch. 387	SB 193
7-13-202	amended	Ch. 418	SB 234
7-13-213	amended	Ch. 543	SB 377
7-13-214	repealed 10/1/96	Ch. 543	SB 377
7-13-215	amended	Ch. 543	SB 377
7-13-231	amended	Ch. 418	SB 234
7-13-2208	amended	Ch. 387	SB 193
7-13-2218	amended	Ch. 518	HB 308
7-13-2231	amended	Ch. 387	SB 193
7-13-2274	amended	Ch. 518	HB 308
7-13-2275	amended	Ch. 518	HB 308
7-13-2301	amended	Ch. 518	HB 308
7-13-2321	amended	Ch. 518	HB 308
7-13-2323	amended	Ch. 387	SB 193
7-13-2324	amended	Ch. 518	HB 308
7-13-2331	enacted	Ch. 518	HB 308
7-13-2332	enacted	Ch. 518	HB 308
7-13-2341	amended	Ch. 387	SB 193
7-13-2510	amended	Ch. 543	SB 377
7-13-2521	amended	Ch. 543	SB 377
7-13-2522	repealed 10/1/96	Ch. 543	SB 377
7-13-2523	repealed 10/1/96	Ch. 543	SB 377
7-13-2524	repealed 10/1/96	Ch. 543	SB 377
7-13-2525	repealed 10/1/96	Ch. 543	SB 377
7-13-2526	repealed 10/1/96	Ch. 543	SB 377
7-13-4204	amended	Ch. 387	SB 193
7-13-4502	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
7-13-4513	amended	Ch. 418	SB 234
7-13-4517	amended	Ch. 418	SB 234
7-13-4535	enacted	Ch. 123	SB 299
7-13-4536	enacted	Ch. 123	SB 299
7-14-102	amended	Ch. 18	SB 1
7-14-120	amended	Ch. 418	SB 234
7-14-210	amended	Ch. 387	SB 193
7-14-241	amended	Ch. 245	HB 270
7-14-301	amended	Ch. 18	SB 1
7-14-1104	amended	Ch. 22	HB 139
7-14-1126	amended	Ch. 22	HB 139
7-14-1133	amended	Ch. 22	HB 139
7-14-1134	amended	Ch. 387	SB 193
7-14-2102	amended	Ch. 336	HB 393
7-14-2205	amended	Ch. 387	SB 193
7-14-2301	amended	Ch. 336	HB 393
7-14-2504	amended	Ch. 387	SB 193
7-14-2524	amended	Ch. 451	SB 412
7-14-2525	amended	Ch. 451	SB 412
7-14-4102	amended	Ch. 287	HB 249
7-14-4108	amended	Ch. 75	SB 104
7-14-4404	amended	Ch. 387	SB 193
7-14-4512	amended	Ch. 387	SB 193
7-14-4642	amended	Ch. 387	SB 193
7-14-4712	amended	Ch. 229	SB 2
7-14-4732	amended	Ch. 229	SB 2
7-15-2111	amended	Ch. 387	SB 193

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7-15-4322	amended	Ch. 423	HB 420
7-15-4408	amended	Ch. 387	SB 193
7-16-2105	amended	Ch. 543	SB 377
7-16-2203	amended	Ch. 543	SB 377
7-16-2204	repealed 10/1/96	Ch. 543	SB 377
7-16-2301	amended	Ch. 543	SB 377
7-16-2302	repealed 10/1/96	Ch. 543	SB 377
7-16-2303	repealed 10/1/96	Ch. 543	SB 377
7-16-2305	repealed 10/1/96	Ch. 543	SB 377
7-16-2306	repealed 10/1/96	Ch. 543	SB 377
7-16-2307	repealed 10/1/96	Ch. 543	SB 377
7-16-2308	repealed 10/1/96	Ch. 543	SB 377
7-16-2309	repealed 10/1/96	Ch. 543	SB 377
7-16-2310	repealed 10/1/96	Ch. 543	SB 377
7-16-2311	repealed 10/1/96	Ch. 543	SB 377
7-16-2313	repealed 10/1/96	Ch. 543	SB 377
7-16-2321	repealed 10/1/96	Ch. 543	SB 377
7-16-2324	amended	Ch. 468	HB 473
7-16-2327	amended	Ch. 451	SB 412
	amended	Ch. 543	SB 377
7-16-2411	amended	Ch. 387	SB 193
7-16-2442	amended	Ch. 387	SB 193
7-16-4201	amended	Ch. 543	SB 377
7-16-4202	repealed 10/1/96	Ch. 543	SB 377
7-16-4203	repealed 10/1/96	Ch. 543	SB 377
7-16-4204	repealed 10/1/96	Ch. 543	SB 377
7-16-4205	repealed 10/1/96	Ch. 543	SB 377
7-16-4206	repealed 10/1/96	Ch. 543	SB 377
7-16-4207	repealed 10/1/96	Ch. 543	SB 377
7-16-4208	repealed 10/1/96	Ch. 543	SB 377
7-16-4209	repealed 10/1/96	Ch. 543	SB 377
7-16-4210	repealed 10/1/96	Ch. 543	SB 377
7-16-4211	repealed 10/1/96	Ch. 543	SB 377
7 16-4221	repealed 10/1/96	Ch. 543	SB 377
7-16-4222	amended	Ch. 543	SB 377
7-16-4224	repealed 10/1/96	Ch. 543	SB 377
7-16-4301	repealed 10/1/96	Ch. 543	SB 377
7-16-4302	repealed 10/1/96	Ch. 543	SB 377
7-16-4303	repealed 10/1/96	Ch. 543	SB 377
7-16-4304	repealed 10/1/96	Ch. 543	SB 377
7-16-4305	repealed 10/1/96	Ch. 543	SB 377
7-16-4306	repealed 10/1/96	Ch. 543	SB 377
7-16-4307	repealed 10/1/96	Ch. 543	SB 377
7-16-4308	repealed 10/1/96	Ch. 543	SB 377
7-16-4309	repealed 10/1/96	Ch. 543	SB 377
7-21-2114	amended	Ch. 179	HB 282
7-21-3401	amended	Ch. 543	SB 377
7-21-3403	repealed 10/1/96	Ch. 543	SB 377
7-21-3404	repealed 10/1/96	Ch. 543	SB 377
7-21-3405	repealed 10/1/96	Ch. 543	SB 377
7-21-3406	amended	Ch. 543	SB 377
7-21-3426	amended	Ch. 216	HB 165
7-21-3452	amended	Ch. 216	HB 165
7-22-2103	amended	Ch. 543	SB 377
7-22-2105	repealed 10/1/96	Ch. 543	SB 377
7-22-2109	amended	Ch. 543	SB 377
7-22-2126	amended	Ch. 521	HB 445

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Title-Ch.-Sec.	Action	Chapter	Bill #
7-22-2151	amended	Ch. 418	SB 234
	amended	Ch. 519	HB 395
	amended	Ch. 546	SB 345
7-22-2215	amended	Ch. 543	SB 377
7-22-2216	amended	Ch. 543	SB 377
7-22-2403	amended	Ch. 418	SB 234
7-22-2409	amended	Ch. 418	SB 234
7-22-2411	amended	Ch. 543	SB 377
7-22-2413	repealed 10/1/96	Ch. 543	SB 377
7-22-2414	repealed 10/1/96	Ch. 543	SB 377
7-22-2415	amended	Ch. 543	SB 377
7-22-2418	amended	Ch. 418	SB 234
7-31-106	amended	Ch. 387	SB 193
7-31-107	amended	Ch. 387	SB 193
7-31-109	amended	Ch. 387	SB 193
7-32-235	amended	Ch. 387	SB 193
7-32-2141	amended	Ch. 390	SB 222
7-32-2222	amended	Ch. 388	SB 208
	amended	Ch. 546	SB 345
7-32-2227	amended	Ch. 350	SB 278
7-32-2242	amended	Ch. 388	SB 208
	amended	Ch. 546	SB 345
7-32-2245	amended	Ch. 388	SB 208
7-32-2302	amended	Ch. 258	HB 259
7-32-4112	amended	Ch. 150	HB 64
7-33-2109	amended	Ch. 170	HB 113
7-33-2311	amended	Ch. 137	SB 58
7-33-2402	amended	Ch. 212	HB 166
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
7-34-2110	amended	Ch. 387	SB 193
7-34-2201	amended	Ch. 520	HB 421
7-34-2202	amended	Ch. 520	HB 421
7-34-2203	amended	Ch. 520	HB 421
7-34-2204	amended	Ch. 520	HB 421
7-34-2301	amended	Ch. 418	SB 234
	amended	Ch. 520	HB 421
	amended	Ch. 546	SB 345
7-34-2302	repealed	Ch. 520	HB 421
7-34-2303	amended	Ch. 520	HB 421
7-34-2401	amended	Ch. 520	HB 421
7-34-2402	amended	Ch. 520	HB 421
7-34-2411	amended	Ch. 520	HB 421
7-34-2412	amended	Ch. 418	SB 234
	repealed	Ch. 520	HB 421
	amended	Ch. 546	SB 345
7-34-2414	amended	Ch. 387	SB 193
	amended	Ch. 520	HB 421
7-34-2415	amended	Ch. 520	HB 421
7-34-2416	amended	Ch. 520	HB 421
7-34-2417	amended	Ch. 520	HB 421
7-34-2418	amended	Ch. 520	HB 421
7-34-2501	amended	Ch. 520	HB 421
7-35-2106	amended	Ch. 387	SB 193
7-35-2108	amended	Ch. 543	SB 377
7-35-2109	amended	Ch. 543	SB 377
10-1-104	amended	Ch. 120	SB 69
10-1-105	amended	Ch. 91	HB 119

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10-1-207	amended	Ch. 20	HB 102
10-1-411	enacted	Ch. 120	SB 69
10-1-603	amended	Ch. 77	HB 114
10-2-401	amended	Ch. 546	SB 345
10-2-402	amended	Ch. 546	SB 345
10-2-403	amended	Ch. 546	SB 345
10-2-404	amended	Ch. 546	SB 345
10-2-416	amended	Ch. 546	SB 345
10-2-417	amended	Ch. 546	SB 345
10-2-501	amended	Ch. 45	HB 20
10-3-103	amended	Ch. 176	HB 142
10-3-104	amended	Ch. 176	HB 142
10-3-105	amended	Ch. 176	HB 142
10-3-111	amended	Ch. 176	HB 142
10-3-301	amended	Ch. 176	HB 142
10-3-305	amended	Ch. 176	HB 142
10-3-310	enacted	Ch. 176	HB 142
10-3-312	amended	Ch. 176	HB 142
	amended	Ch. 401	HB 18
10-3-1201	enacted	Ch. 270	HB 461
10-3-1202	enacted	Ch. 270	HB 461
10-3-1203	enacted	Ch. 270	HB 461
10-3-1204	enacted	Ch. 270	HB 461
10-3-1207	enacted	Ch. 270	HB 461
10-3-1208	enacted	Ch. 270	HB 461
10-3-1209	enacted	Ch. 270	HB 461
10-3-1210	enacted	Ch. 270	HB 461
10-3-1211	enacted	Ch. 270	HB 461
10-3-1214	enacted	Ch. 270	HB 461
10-3-1215	enacted	Ch. 270	HB 461
10-3-1216	enacted	Ch. 270	HB 461
10-3-1217	enacted	Ch. 270	HB 461
10-3-1218	enacted	Ch. 270	HB 461
13-2-115	amended	Ch. 161	HB 392
13-2-122	amended	Ch. 161	HB 392
13-2-402	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
13-4-106	amended	Ch. 195	HB 100
13-10-211	amended	Ch. 143	SB 94
13-10-302	amended	Ch. 143	SB 94
13-13-213	amended	Ch. 203	HB 319
13-13-214	amended	Ch. 119	SB 24
	amended	Ch. 203	HB 319
13-14-115	amended	Ch. 135	HB 284
13-14-117	amended	Ch. 135	HB 284
13-15-202	amended	Ch. 143	SB 94
13-15-401	amended	Ch. 118	HB 379
13-27-201	amended	Ch. 545	SB 398
13-27-202	amended	Ch. 545	SB 398
13-27-303	amended	Ch. 374	HB 404
13-27-406	amended	Ch. 119	SB 24
13-27-410	amended	Ch. 119	SB 24
13-27-504	amended	Ch. 545	SB 398
13-35-226	amended	Ch. 562	SB 136
13-37-121	amended	Ch. 410	HB 295
13-37-131	enacted	Ch. 483	SB 98

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13-37-226	amended	Ch. 18	SB 1
	amended	Ch. 86	HB 91
15-1-101	amended	Ch. 206	HB 520
	amended	Ch. 561	SB 86
15-1-105	repealed	Ch. 151	HB 144
15-1-111	amended	Ch. 570	SB 417
15-1-112	enacted	Ch. 570	SB 417
15-1-201	amended	Ch. 561	SB 86
15-1-205	amended	Ch. 9	SB 54
15-1-211	amended	Ch. 529	HB 550
15-1-406	amended	Ch. 348	SB 393
15-1-407	amended	Ch. 348	SB393
15-1-501	amended	Ch. 18	SB 1
	amended	Ch. 451	SB 412
15-1-701	amended	Ch. 365	HB 287
	amended	Ch. 529	HB 550
15-1-704	amended	Ch. 529	HB 550
15-1-708	amended	Ch. 529	HB 550
15-1-801	amended	Ch. 561	SB 86
15-1-1001	enacted	Ch. 574	HB 497
15-1-1002	enacted	Ch. 574	HB 497
15-1-1003	enacted	Ch. 574	HB 497
15-1-1004	enacted	Ch. 574	HB 497
15-1-1005	enacted	Ch. 574	HB 497
15-1-1006	enacted	Ch. 574	HB 497
15-1-1007	enacted	Ch. 574	HB 497
15-2-102	amended	Ch. 455	HB 17
15-2-201	amended	Ch. 529	HB 550
15-6-122	enacted	Ch. 347	SB 328
15-6-131	amended	Ch. 397	SB 407
15-6-133	amended	Ch. 485	SB 138
15-6-134	amended	Ch. 485	SB 138
	amended	Ch. 574	HB 497
15-6-135	amended	Ch. 418	SB 234
15-6-138	amended	Ch. 570	SB 417
15-6-151	amended	Ch. 574	HB 497
15-6-201	amended	Ch. 88	SB 49
	amended	Ch. 255	HB 65
	amended	Ch. 257	HB 219
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
	amended	Ch. 585	SB 397
15-6-202	amended	Ch. 99	SB 235
15-6-207	amended	Ch. 576	HB 565
15-6-208	amended	Ch. 451	SB 412
15-6-209	amended	Ch. 546	SB 345
15-6-216	enacted	Ch. 472	HB 545
15-7-102	amended	Ch. 30	SB 57
	amended	Ch. 574	HB 497
15-7-201	amended	Ch. 563	SB 198
15-7-202	amended	Ch. 474	HB 562
	amended	Ch. 485	SB 138
15-7-206	amended	Ch. 485	SB 138
15-7-221	amended	Ch. 485	SB 138
	amended	Ch. 563	SB 198
	repealed 1/1/98	Ch. 563	SB 198
15-7-304	amended	Ch. 532	HB 598
15-7-307	amended	Ch. 532	HB 598

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15-8-111	amended	Ch. 397	SB 407
15-8-301	amended	Ch. 347	SB 328
15-10-203	amended	Ch. 430	HB 530
15-15-102	amended	Ch. 30	SB 57
15-16-102	amended	Ch. 451	SB 412
15-16-119	amended	Ch. 589	HB 449
15-16-121	repealed 1/1/96	Ch. 451	SB 412
15-16-603	amended	Ch. 440	HB 588
15-18-111	amended	Ch. 248	HB 424
15-23-103	amended	Ch. 397	SB 407
	amended	Ch. 451	SB 412
15-23-104	amended	Ch. 451	SB 412
15-23-106	amended	Ch. 397	SB 407
	amended	Ch. 451	SB 412
15-23-115	amended	Ch. 397	SB 407
	amended	Ch. 451	SB 412
15-23-502	amended	Ch. 397	SB 407
15-23-503	amended	Ch. 397	SB 407
15-23-518	enacted	Ch. 397	SB 407
15-23-521	amended	Ch. 397	SB 407
15-23-601	repealed 1/1/96	Ch. 451	SB 412
15-23-602	repealed 1/1/96	Ch. 451	SB 412
15-23-603	repealed 1/1/96	Ch. 451	SB 412
15-23-605	repealed 1/1/96	Ch. 451	SB 412
15-23-606	repealed 1/1/96	Ch. 451	SB 412
15-23-607	repealed 1/1/96	Ch. 451	SB 412
15-23-608	repealed 1/1/96	Ch. 451	SB 412
15-23-609	repealed 1/1/96	Ch. 451	SB 412
15-23-610	repealed 1/1/96	Ch. 451	SB 412
15-23-611	repealed 1/1/96	Ch. 451	SB 412
15-23-612	repealed 1/1/96	Ch. 451	SB 412
15-23-613	repealed 1/1/96	Ch. 451	SB 412
15-23-614	repealed 1/1/96	Ch. 451	SB 412
15-23-621	repealed 1/1/96	Ch. 451	SB 412
15-23-631	repealed 1/1/96	Ch. 451	SB 412
15-23-703	amended	Ch. 318	HB 343
15-24-102	amended	Ch. 570	SB 417
15-24-303	amended	Ch. 576	HB 565
15-24-902	amended	Ch. 576	HB 565
15-24-903	amended	Ch. 576	HB 565
15-24-920	amended	Ch. 576	HB 565
15-24-921	amended	Ch. 206	HB 520
15-24-922	amended	Ch. 576	HB 565
15-24-925	amended	Ch. 509	SB 83
15-24-927	enacted	Ch. 576	HB 565
15-24-1901	amended	Ch. 277	HB 534
15-25-101	repealed	Ch. 18	SB 1
	repealed	Ch. 446	SB 219
15-25-102	repealed	Ch. 18	SB 1
	repealed	Ch. 446	SB 219
15-25-111	repealed	Ch. 18	SB 1
	repealed	Ch. 446	SB 219
	amended	Ch. 509	SB 83
15-25-112	repealed	Ch. 18	SB 1
	repealed	Ch. 446	SB 219
15-25-113	repealed	Ch. 18	SB 1
	repealed	Ch. 446	SB 219

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15-25-114	repealed	Ch. 18	SB 1
	repealed	Ch. 446	SB 219
15-25-115	repealed	Ch. 18	SB 1
	repealed	Ch. 446	SB 219
15-25-121	repealed	Ch. 18	SB 1
	repealed	Ch. 446	SB 219
	amended	Ch. 546	SB 345
15-25-122	repealed	Ch. 18	SB 1
	repealed	Ch. 446	SB 219
	amended	Ch. 509	SB 83
	amended	Ch. 546	SB 345
15-25-123	repealed	Ch. 18	SB 1
	repealed	Ch. 446	SB 219
	repealed	Ch. 509	SB 83
15-30-111	amended	Ch. 278	HB 570
	amended	Ch. 295	HB 560
	amended	Ch. 399	SB 418
	amended	Ch. 479	HB 272
15-30-121	amended	Ch. 284	HB 202
15-30-122	amended	Ch. 435	HB 209
15-30-123	amended	Ch. 399	SB 418
15-30-128	amended	Ch. 546	SB 345
15-30-142	amended	Ch. 435	HB 209
15-30-144	amended	Ch. 560	SB 56
15-30-149	amended	Ch. 572	HB 293
15-30-163	amended	Ch. 152	HB 199
15-30-176	amended	Ch. 574	HB 497
15-30-195	enacted	Ch. 29	HB 171
15-30-201	amended	Ch. 254	SB 255
	amended	Ch. 479	HB 272
	amended	Ch. 529	HB 550
	amended	Ch. 572	HB 293
15-30-202	amended	Ch. 254	SB 255
15-30-204	amended	Ch. 572	HB 293
15-30-210	enacted	Ch. 572	HB 293
15-30-211	enacted	Ch. 572	HB 293
15-30-248	enacted	Ch. 529	HB 550
15-30-303	amended	Ch. 529	HB 550
	amended	Ch. 546	SB 345
15-30-304	amended	Ch. 172	SB 139
15-31-111	amended	Ch. 54	SB 35
15-31-113	amended	Ch. 278	HB 570
15-31-114	amended	Ch. 278	HB 570
15-31-119	amended	Ch. 278	HB 570
15-31-510	amended	Ch. 54	SB 35
15-31-702	amended	Ch. 18	SB 1
15-32-102	amended	Ch. 418	SB 234
15-32-106	amended	Ch. 418	SB 234
15-32-203	amended	Ch. 418	SB 234
15-32-601	amended	Ch. 542	SB 358
15-32-602	amended	Ch. 542	SB 358
15-32-603	amended	Ch. 542	SB 358
15-35-102	amended	Ch. 318	HB 343
15-35-103	amended	Ch. 318	HB 343
15-35-108	amended	Ch. 18	SB 1
	amended	Ch. 442	SB 27
	amended	Ch. 456	HB 19
	amended	Ch. 509	SB 83

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15-36-101	repealed 1/1/96	Ch. 451	SB 412
	amended	Ch. 571	HB 90
	amended	Ch. 581	SB 338
15-36-102	repealed 1/1/96	Ch. 451	SB 412
15-36-103	repealed 1/1/96	Ch. 451	SB 412
15-36-104	repealed 1/1/96	Ch. 451	SB 412
15-36-105	repealed 1/1/96	Ch. 451	SB 412
15-36-106	repealed 1/1/96	Ch. 451	SB 412
15-36-107	repealed 1/1/96	Ch. 451	SB 412
15-36-108	repealed 1/1/96	Ch. 451	SB 412
15-36-109	repealed 1/1/96	Ch. 451	SB 412
15-36-110	repealed 1/1/96	Ch. 451	SB 412
15-36-112	amended	Ch. 18	SB 1
	repealed 1/1/96	Ch. 451	SB 412
	amended	Ch. 453	SB 424
15-36-113	repealed 1/1/96	Ch. 451	SB 412
15-36-114	repealed 1/1/96	Ch. 451	SB 412
15-36-120	repealed 1/1/96	Ch. 451	SB 412
15-36-121	repealed 1/1/96	Ch. 451	SB 412
	amended	Ch. 571	HB 90
	amended	Ch. 581	SB 338
15-36-122	repealed 1/1/96	Ch. 451	SB 412
15-36-126	repealed 1/1/96	Ch. 451	SB 412
15-36-301	enacted	Ch. 451	SB 412
15-36-302	enacted	Ch. 451	SB 412
15-36-303	enacted	Ch. 451	SB 412
	amended	Ch. 571	HB 90
	amended	Ch. 581	SB 338
15-36-304	enacted	Ch. 451	SB 412
	amended	Ch. 571	HB 90
	amended	Ch. 573	HB 418
	amended	Ch. 581	SB 338
15-36-305	enacted	Ch. 451	SB 412
15-36-309	enacted	Ch. 451	SB 412
15-36-310	enacted	Ch. 451	SB 412
15-36-311	enacted	Ch. 451	SB 412
15-36-312	enacted	Ch. 451	SB 412
15-36-313	enacted	Ch. 451	SB 412
15-36-314	enacted	Ch. 451	SB 412
15-36-315	enacted	Ch. 451	SB 412
15-36-319	enacted	Ch. 451	SB 412
15-36-320	enacted	Ch. 451	SB 412
15-36-321	enacted	Ch. 451	SB 412
15-36-322	enacted	Ch. 451	SB 412
15-36-323	enacted	Ch. 451	SB 412
	amended	Ch. 453	SB 424
15-36-324	enacted	Ch. 451	SB 412
	amended	Ch. 453	SB 424
15-36-325	enacted	Ch. 451	SB 412
15-36-326	enacted	Ch. 451	SB 412
15-37-117	amended	Ch. 18	SB 1
	amended	Ch. 31	SB 46
	amended	Ch. 577	HB 569
	amended	Ch. 584	SB 382
15-38-103	amended	Ch. 10	HB 38
	amended	Ch. 397	SB 407
15-38-104	amended	Ch. 10	HB 38
	amended	Ch. 397	SB 407

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15-38-105	amended	Ch. 451	SB 412
15-38-121	amended	Ch. 451	SB 412
15-38-129	enacted	Ch. 397	SB 407
15-38-202	amended	Ch. 451	SB 412
	amended	Ch. 577	HB 569
15-50-101	amended	Ch. 558	HB 601
15-50-205	amended	Ch. 558	HB 601
15-50-206	amended	Ch. 558	HB 601
15-50-307	enacted	Ch. 558	HB 601
15-50-308	enacted	Ch. 558	HB 601
15-50-309	enacted	Ch. 558	HB 601
15-50-310	enacted	Ch. 558	HB 601
15-50-311	enacted	Ch. 558	HB 601
15-51-103	amended	Ch. 18	SB 1
15-53-114	amended	Ch. 18	SB 1
15-59-108	amended	Ch. 18	SB 1
15-59-208	amended	Ch. 18	SB 1
15-60-101	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
15-60-102	amended	Ch. 509	SB 83
15-60-201	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
15-60-210	amended	Ch. 18	SB 1
	amended	Ch. 509	SB 83
15-61-101	enacted	Ch. 295	HB 560
15-61-102	enacted	Ch. 295	HB 560
15-61-201	enacted	Ch. 295	HB 560
15-61-202	enacted	Ch. 295	HB 560
15-61-203	enacted	Ch. 295	HB 560
15-61-204	enacted	Ch. 295	HB 560
15-61-205	enacted	Ch. 295	HB 560
15-65-121	amended	Ch. 18	SB 1
	amended	Ch. 442	SB 27
15-70-101	amended	Ch. 18	SB 1
	amended	Ch. 509	SB 83
15-70-102	amended	Ch. 509	SB 83
15-70-104	amended	Ch. 405	HB 164
15-70-108	enacted	Ch. 158	HB 141
15-70-110	enacted	Ch. 158	HB 141
15-70-112	enacted	Ch. 561	SB 86
15-70-113	enacted	Ch. 561	SB 86
15-70-114	enacted	Ch. 561	SB 86
15-70-115	enacted	Ch. 561	SB 86
15-70-125	enacted	Ch. 509	SB 83
15-70-201	amended	Ch. 158	HB 141
15-70-205	amended	Ch. 158	HB 141
15-70-222	amended	Ch. 158	HB 141
15-70-226	amended	Ch. 158	HB 141
15-70-235	amended	Ch. 158	HB 141
15-70-301	amended	Ch. 43	SB 53
15-70-302	amended	Ch. 43	SB 53
15-70-308	amended	Ch. 43	SB 53
15-70-321	amended	Ch. 43	SB 53
15-70-330	amended	Ch. 43	SB 53
15-70-356	amended	Ch. 569	SB 409
15-70-701	enacted	Ch. 405	HB 164
15-70-702	enacted	Ch. 405	HB 164
15-70-703	enacted	Ch. 405	HB 164

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15-70-704	enacted	Ch. 405	HB 164
15-70-705	enacted	Ch. 405	HB 164
15-70-706	enacted	Ch. 405	HB 164
15-70-707	enacted	Ch. 405	HB 164
15-70-711	enacted	Ch. 405	HB 164
15-70-712	enacted	Ch. 405	HB 164
15-70-713	enacted	Ch. 405	HB 164
15-70-714	enacted	Ch. 405	HB 164
15-70-715	enacted	Ch. 405	HB 164
15-70-716	enacted	Ch. 405	HB 164
15-70-717	enacted	Ch. 405	HB 164
15-70-718	enacted	Ch. 405	HB 164
15-70-719	enacted	Ch. 405	HB 164
15-70-720	enacted	Ch. 405	HB 164
15-71-102	amended	Ch. 405	HB 164
15-71-104	amended	Ch. 18	SB 1
	amended	Ch. 509	SB 83
16-1-103	amended	Ch. 530	HB 574
16-1-105	amended	Ch. 530	HB 574
16-1-106	amended	Ch. 530	HB 574
16-1-301	amended	Ch. 530	HB 574
16-1-302	amended	Ch. 530	HB 574
16-1-303	amended	Ch. 530	HB 574
16-1-304	amended	Ch. 530	HB 574
16-1-306	amended	Ch. 18	SB 1
16-1-401	amended	Ch. 18	SB 1
16-1-402	amended	Ch. 530	HB 574
16-1-404	amended	Ch. 18	SB 1
	amended	Ch. 546	SB 345
16-1-408	amended	Ch. 18	SB 1
	amended	Ch. 546	SB 345
16-1-410	amended	Ch. 18	SB 1
16-1-411	amended	Ch. 18	SB 1
	amended	Ch. 546	SB 345
16-2-101	amended	Ch. 530	HB 574
16-2-104	amended	Ch. 530	HB 574
16-2-105	amended	Ch. 530	HB 574
16-2-106	amended	Ch. 530	HB 574
16-2-107	amended	Ch. 530	HB 574
16-2-108	amended	Ch. 530	HB 574
16-2-109	enacted	Ch. 530	HB 574
16-2-110	enacted	Ch. 530	HB 574
16-2-201	amended	Ch. 530	HB 574
16-2-301	amended	Ch. 530	HB 574
16-2-302	repealed	Ch. 530	HB 574
16-2-303	repealed	Ch. 530	HB 574
16-2-401	enacted	Ch. 530	HB 574
16-2-402	enacted	Ch. 530	HB 574
16-2-403	enacted	Ch. 530	HB 574
16-2-404	enacted	Ch. 530	HB 574
16-2-405	enacted	Ch. 530	HB 574
16-2-406	enacted	Ch. 530	HB 574
16-2-407	enacted	Ch. 530	HB 574
16-2-408	enacted	Ch. 530	HB 574
16-3-103	amended	Ch. 530	HB 574
16-3-106	amended	Ch. 530	HB 574
16-3-220	amended	Ch. 139	SB 239
16-3-221	amended	Ch. 409	HB 286

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16-3-307	amended	Ch. 530	HB 574
16-3-401	amended	Ch. 530	HB 574
16-3-402	amended	Ch. 530	HB 574
16-3-403	amended	Ch. 530	HB 574
16-3-411	amended	Ch. 530	HB 574
16-3-416	amended	Ch. 226	HB 342
16-3-419	amended	Ch. 226	HB 342
16-4-105	amended	Ch. 228	HB 549
	amended	Ch. 530	HB 574
16-4-115	enacted	Ch. 228	HB 549
16-4-401	amended	Ch. 530	HB 574
16-4-402	amended	Ch. 228	HB 549
16-6-107	amended	Ch. 530	HB 574
16-6-303	amended	Ch. 530	HB 574
16-6-314	amended	Ch. 481	SB 64
16-10-102	amended	Ch. 578	HB 587
16-10-103	amended	Ch. 578	HB 587
16-10-104	amended	Ch. 578	HB 587
16-10-110	enacted	Ch. 578	HB 587
16-10-201	amended	Ch. 578	HB 587
16-10-204	amended	Ch. 578	HB 587
16-10-301	amended	Ch. 578	HB 587
16-10-303	amended	Ch. 578	HB 587
16-10-401	repealed	Ch. 578	HB 587
16-10-402	amended	Ch. 578	HB 587
16-10-403	amended	Ch. 578	HB 587
16-11-102	amended	Ch. 578	HB 587
16-11-111	amended	Ch. 578	HB 587
16-11-113	amended	Ch. 578	HB 587
16-11-114	amended	Ch. 578	HB 587
16-11-115	amended	Ch. 578	HB 587
16-11-116	amended	Ch. 578	HB 587
16-11-117	amended	Ch. 578	HB 587
16-11-118	amended	Ch. 578	HB 587
16-11-119	amended	Ch. 18	SB 1
	amended	Ch. 456	HB 19
	amended	Ch. 546	SB 345
16-11-121	amended	Ch. 578	HB 587
16-11-125	enacted	Ch. 578	HB 587
16-11-131	amended	Ch. 578	HB 587
16-11-132	amended	Ch. 578	HB 587
16-11-133	amended	Ch. 578	HB 587
16-11-143	amended	Ch. 578	HB 587
16-11-144	amended	Ch. 439	HB 539
	amended	Ch. 578	HB 587
16-11-145	amended	Ch. 578	HB 587
16-11-148	amended	Ch. 578	HB 587
16-11-149	amended	Ch. 578	HB 587
16-11-201	amended	Ch. 578	HB 587
16-11-202	amended	Ch. 578	HB 587
16-11-203	amended	Ch. 578	HB 587
16-11-204	amended	Ch. 578	HB 587
16-11-206	amended	Ch. 18	SB 1
16-11-304	amended	Ch. 439	HB 539
16-11-307	amended	Ch. 439	HB 539
16-11-308	amended	Ch. 439	HB 539
16-11-309	enacted	Ch. 439	HB 539
16-11-310	enacted	Ch. 439	HB 539

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17-1-101	amended	Ch. 325	HB 563
17-1-102	amended	Ch. 308	SB 156
17-1-111	amended	Ch. 325	HB 563
17-1-121	repealed	Ch. 325	HB 563
17-1-122	amended	Ch. 325	HB 563
17-1-124	enacted	Ch. 325	HB 563
17-1-204	amended	Ch. 47	HB 76
17-1-501	amended	Ch. 509	SB 83
17-1-502	amended	Ch. 509	SB 83
17-1-503	amended	Ch. 18	SB 1
	amended	Ch. 509	SB 83
17-1-504	amended	Ch. 252	HB 553
	amended	Ch. 509	SB 83
17-1-505	amended	Ch. 509	SB 83
17-1-507	enacted	Ch. 509	SB 83
17-1-508	enacted	Ch. 509	SB 83
17-2-102	amended	Ch. 308	SB 156
17-2-103	amended	Ch. 556	HB 576
17-2-105	amended	Ch. 47	HB 76
17-2-107	amended	Ch. 308	SB 156
17-2-108	amended	Ch. 339	SB 265
17-2-110	amended	Ch. 308	SB 156
17-2-111	amended	Ch. 509	SB 83
17-3-1001	amended	Ch. 546	SB 345
17-3-1002	amended	Ch. 546	SB 345
17-3-1004	amended	Ch. 325	HB 563
17-4-101	amended	Ch. 325	HB 563
	amended	Ch. 589	HB 449
17-4-102	amended	Ch. 325	HB 563
	amended	Ch. 589	HB 449
17-4-103	amended	Ch. 325	HB 563
	amended	Ch. 589	HB 449
17-4-104	amended	Ch. 325	HB 563
17-4-105	amended	Ch. 325	HB 563
	amended	Ch. 546	SB 345
	amended	Ch. 589	HB 449
17-4-106	amended	Ch. 325	HB 563
	amended	Ch. 589	HB 449
17-4-107	amended	Ch. 325	HB 563
17-4-108	amended	Ch. 325	HB 563
17-5-101	amended	Ch. 75	SB 104
	amended	Ch. 418	SB 234
17-5-202	amended	Ch. 75	SB 104
17-5-205	amended	Ch. 190	HB 321
17-5-430	amended	Ch. 546	SB 345
17-5-432	amended	Ch. 546	SB 345
17-5-704	amended	Ch. 442	SB 27
	amended	Ch. 509	SB 83
17-5-806	repealed	Ch. 51	HB 178
17-5-1602	amended	Ch. 208	SB 87
17-5-1604	amended	Ch. 208	SB 87
17-5-1606	amended	Ch. 208	SB 87
17-5-1607	amended	Ch. 208	SB 87
17-5-1609	amended	Ch. 208	SB 87
17-5-1611	amended	Ch. 208	SB 87
17-5-1623	amended	Ch. 208	SB 87
17-5-1643	amended	Ch. 208	SB 87
17-5-1644	amended	Ch. 208	SB 87

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17-5-1645	amended	Ch. 208	SB 87
17-5-1646	amended	Ch. 208	SB 87
17-5-1647	amended	Ch. 208	SB 87
17-5-1650	amended	Ch. 208	SB 87
	amended	Ch. 545	SB 398
17-5-1651	amended	Ch. 208	SB 87
17-6-103	amended	Ch. 179	HB 282
17-6-201	amended	Ch. 18	SB 1
17-6-212	amended	Ch. 40	HB 67
	amended	Ch. 325	HB 563
17-6-305	amended	Ch. 34	HB 30
	amended	Ch. 477	HB 602
17-6-308	amended	Ch. 559	SB 38
17-6-309	amended	Ch. 477	HB 602
17-6-311	amended	Ch. 2	SB 100
	amended	Ch. 477	HB 602
17-6-312	amended	Ch. 2	SB 100
	amended	Ch. 477	HB 602
17-6-316	enacted	Ch. 2	HB602
	enacted and amended	Ch. 477	SB 100
17-6-407	amended	Ch. 413	HB 354
17-6-409	amended	Ch. 509	SB 83
17-6-411	amended	Ch. 413	HB 354
17-6-501	enacted	Ch. 559	SB 38
17-6-502	enacted	Ch. 559	SB 38
17-6-503	enacted	Ch. 559	SB 38
17-6-504	enacted	Ch. 559	SB 38
17-6-505	enacted	Ch. 559	SB 38
17-6-509	enacted	Ch. 559	SB 38
17-6-510	enacted	Ch. 559	SB 38
17-6-511	enacted	Ch. 559	SB 38
17-6-512	enacted	Ch. 559	SB 38
17-7-102	amended	Ch. 308	SB 156
17-7-114	amended	Ch. 433	HB 577
	repealed	Ch. 545	SB 398
17-7-122	amended	Ch. 545	SB 398
17-7-205	enacted	Ch. 456	HB 19
17-7-206	enacted	Ch. 547	HB 5
17-7-304	amended	Ch. 308	SB 156
17-7-402	amended	Ch. 36	HB 43
	amended	Ch. 545	SB 398
	amended	Ch. 556	HB 576
17-7-404	amended	Ch. 545	SB 398
17-7-502	amended	Ch. 18	SB 1
	amended	Ch. 29	HB 171
	amended	Ch. 176	HB 142
	amended	Ch. 291	HB 415
	amended	Ch. 429	HB 518
	amended	Ch. 439	HB 539
	amended	Ch. 442	SB 27
	amended	Ch. 446	SB 219
	amended	Ch. 451	SB 412
	amended	Ch. 502	SB 388
	amended	Ch. 509	SB 83
	amended	Ch. 526	HB 509
	amended	Ch. 553	HB 493
	amended	Ch. 557	HB 594
17-8-101	amended	Ch. 556	HB 576

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17-8-211	amended	Ch. 325	HB 563
17-8-244	amended	Ch. 530	HB 574
17-8-301	amended	Ch. 325	HB 563
17-8-303	amended	Ch. 5	SB 14
	amended	Ch. 325	HB 563
	amended	Ch. 546	SB 345
17-8-304	amended	Ch. 40	HB 67
17-8-305	amended	Ch. 325	HB 563
	amended	Ch. 473	HB 552
17-8-306	amended	Ch. 325	HB 563
17-8-307	amended	Ch. 325	HB 563
18-1-106	amended	Ch. 558	HB 601
18-1-118	amended	Ch. 545	SB 398
18-1-202	amended	Ch. 51	HB 178
18-1-203	amended	Ch. 51	HB 178
18-2-101	amended	Ch. 241	SB 337
18-2-102	amended	Ch. 241	SB 337
18-2-111	amended	Ch. 470	HB 514
18-2-201	amended	Ch. 130	HB 163
18-2-202	amended	Ch. 130	HB 163
18-2-203	amended	Ch. 130	HB 163
18-2-204	amended	Ch. 130	HB 163
18-2-205	amended	Ch. 130	HB 163
18-2-206	amended	Ch. 130	HB 163
18-2-207	amended	Ch. 130	HB 163
18-2-208	amended	Ch. 130	HB 163
18-2-301	amended	Ch. 546	SB 345
18-2-302	amended	Ch. 130	HB 163
18-2-407	amended	Ch. 90	HB 47
18-4-132	amended	Ch. 359	SB 408
18-4-133	amended	Ch. 546	SB 345
18-4-304	amended	Ch. 130	HB 163
18-4-312	amended	Ch. 130	HB 163
18-4-313	amended	Ch. 130	HB 163
	amended	Ch. 546	SB 345
18-5-402	amended	Ch. 546	SB 345
18-8-103	amended	Ch. 359	SB 408
19-1-202	amended	Ch. 412	HB 325
19-1-602	amended	Ch. 412	HB 325
19-2-303	amended	Ch. 412	HB 325
19-2-401	amended	Ch. 412	HB 325
19-2-403(10)	enacted	Ch. 412	HB 325
19-2-406	amended	Ch. 412	HB 325
19-2-704	amended	Ch. 412	HB 325
19-2-706	enacted	Ch. 524	HB 490
19-2-907	amended	Ch. 111	HB 205
19-3-111	enacted	Ch. 121	SB 238
19-3-403	amended	Ch. 308	SB 156
	amended	Ch. 412	HB 325
19-3-509	amended	Ch. 412	HB 325
19-3-511	amended	Ch. 412	HB 325
19-3-1015	amended	Ch. 412	HB 325
19-3-1106	amended	Ch. 460	HB 298
19-3-1205	amended	Ch. 412	HB 325
19-5-101	amended	Ch. 455	HB 17
19-5-409	enacted	Ch. 180	HB 324
19-5-612	amended	Ch. 412	HB 325
19-6-612	amended	Ch. 412	HB 325

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19-6-802	amended	Ch. 412	HB 325
19-6-804	enacted	Ch. 180	HB 324
19-7-101	amended	Ch. 412	HB 325
19-7-403	amended	Ch. 162	HB 306
19-7-404	amended	Ch. 162	HB 306
19-7-501	amended	Ch. 162	HB 306
19-7-502	amended	Ch. 162	HB 306
19-7-503	amended	Ch. 162	HB 306
19-7-504	amended	Ch. 162	HB 306
19-7-612	amended	Ch. 412	HB 325
19-7-802	amended	Ch. 412	HB 325
19-7-901	amended	Ch. 162	HB 306
19-8-504	amended	Ch. 509	SB 83
19-8-712	amended	Ch. 412	HB 325
19-8-902	amended	Ch. 412	HB 325
19-8-904	enacted	Ch. 180	HB 324
19-9-405	amended	Ch. 412	HB 325
19-9-411	enacted	Ch. 180	HB 324
19-9-904	amended	Ch. 412	HB 325
19-13-404	amended	Ch. 412	HB 325
19-13-405	enacted	Ch. 180	HB 324
19-13-601	amended	Ch. 541	SB 357
19-13-604	amended	Ch. 541	SB 357
19-13-605	amended	Ch. 541	SB 357
19-13-701	amended	Ch. 541	SB 357
19-13-704	amended	Ch. 541	SB 357
19-13-803	amended	Ch. 541	SB 357
19-13-804	amended	Ch. 412	HB 325
19-13-902	amended	Ch. 541	SB 357
19-13-1007	amended	Ch. 541	SB 357
19-13-1009	amended	Ch. 541	SB 357
19-15-101	repealed	Ch. 18	SB 1
19-15-102	repealed	Ch. 18	SB 1
19-17-102	amended	Ch. 175	HB 63
19-17-103	amended	Ch. 175	HB 63
19-17-106	enacted	Ch. 175	HB 63
19-17-107	enacted	Ch. 175	HB 63
19-17-108	enacted	Ch. 175	HB 63
19-17-201	amended	Ch. 175	HB 63
19-17-204	amended	Ch. 175	HB 63
19-17-301	amended	Ch. 175	HB 63
19-17-302	amended	Ch. 175	HB 63
19-17-401	amended	Ch. 175	HB 63
19-17-402	amended	Ch. 137	SB 58
	amended	Ch. 175	HB 63
19-17-403	amended	Ch. 175	HB 63
19-17-404	amended	Ch. 175	HB 63
19-17-405	amended	Ch. 175	HB 63
19-17-407	amended	Ch. 175	HB 63
19-17-408	amended	Ch. 175	HB 63
19-17-409	amended	Ch. 175	HB 63
19-17-501	amended	Ch. 175	HB 63
19-17-502	amended	Ch. 175	HB 63
19-17-503	amended	Ch. 175	HB 63
19-17-504	amended	Ch. 175	HB 63
19-17-505	amended	Ch. 175	HB 63
19-17-506	amended	Ch. 175	HB 63
19-20-101	amended	Ch. 111	HB 205

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19-20-203	amended	Ch. 111	HB 205
19-20-207	repealed	Ch. 111	HB 205
19-20-302	amended	Ch. 111	HB 205
	amended	Ch. 308	SB 156
19-20-305	enacted	Ch. 111	HB 205
19-20-402	amended	Ch. 136	HB 316
19-20-403	amended	Ch. 136	HB 316
19-20-405	amended	Ch. 136	HB 316
19-20-408	amended	Ch. 136	HB 316
19-20-409	amended	Ch. 412	HB 325
19-20-411	amended	Ch. 136	HB 316
19-20-412	amended	Ch. 136	HB 316
19-20-414	enacted	Ch. 111	HB 205
19-20-602	amended	Ch. 111	HB 205
19-20-706	amended	Ch. 111	HB 205
19-20-715	enacted	Ch. 111	HB 205
19-20-904	amended	Ch. 111	HB 205
20-1-101	amended	Ch. 308	SB 156
20-3-204	amended	Ch. 216	HB 165
20-4-108	amended	Ch. 58	HB 25
20-4-109	amended	Ch. 509	SB 83
20-4-110	amended	Ch. 486	SB 140
20-5-101	amended	Ch. 214	HB 77
20-5-202	amended	Ch. 457	HB 167
20-5-321	amended	Ch. 458	HB 186
	amended	Ch. 546	SB 345
20-5-324	amended	Ch. 509	SB 83
20-5-402	amended	Ch. 308	SB 156
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
20-6-104	amended	Ch. 285	HB 233
20-6-621	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
20-6-624	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
20-6-704	enacted	Ch. 285	HB 233
20-7-404	amended	Ch. 546	SB 345
20-7-420	amended	Ch. 509	SB 83
20-7-422	amended	Ch. 458	HB 186
20-7-436	amended	Ch. 18	SB 1
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
20-7-504	amended	Ch. 509	SB 83
20-7-505	amended	Ch. 509	SB 83
20-7-514	amended	Ch. 432	HB 561
20-7-605	amended	Ch. 509	SB 83
20-7-701	amended	Ch. 308	SB 156
20-7-705	amended	Ch. 38	HB 49
20-8-104	amended	Ch. 291	HB 415
20-8-105	repealed	Ch. 291	HB 415
20-8-106	amended	Ch. 291	HB 415
20-8-107	amended	Ch. 291	HB 415
20-8-116	amended	Ch. 291	HB 415
	amended	Ch. 546	SB 345
20-9-104	amended	Ch. 18	SB 1
	amended	Ch. 451	SB 412
	amended	Ch. 506	SB 423
20-9-115	amended	Ch. 18	SB 1

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20-9-121	amended	Ch. 260	HB 368
20-9-134	amended	Ch. 260	HB 368
20-9-141	amended	Ch. 451	SB 412
	amended	Ch. 580	SB 161
20-9-161	amended	Ch. 451	SB 412
20-9-165	amended	Ch. 260	HB 368
20-9-166	amended	Ch. 509	SB 83
20-9-201	amended	Ch. 493	SB 250
20-9-204	amended	Ch. 39	HB 51
20-9-206	repealed	Ch. 260	HB 368
20-9-209	amended	Ch. 260	HB 368
20-9-212	amended	Ch. 260	HB 368
	amended	Ch. 308	SB 156
20-9-213	amended	Ch. 260	HB 368
	amended	Ch. 406	HB 197
20-9-221	amended	Ch. 260	HB 368
20-9-222	repealed	Ch. 260	HB 368
20-9-224	repealed	Ch. 260	HB 368
20-9-231	amended	Ch. 577	HB 569
20-9-314	amended	Ch. 18	SB 1
20-9-331	amended	Ch. 451	SB 412
	amended	Ch. 509	SB 83
	amended	Ch. 580	SB 161
20-9-333	amended	Ch. 451	SB 412
	amended	Ch. 509	SB 83
	amended	Ch. 580	SB 161
20-9-342	amended	Ch. 509	SB 83
20-9-343	amended	Ch. 509	SB 83
	amended	Ch. 517	HB 201
20-9-346	amended	Ch. 509	SB 83
	amended	Ch. 586	HB 416
20-9-353	amended	Ch. 266	HB 431
20-9-360	amended	Ch. 509	SB 83
	amended	Ch. 580	SB 161
20-9-361	amended	Ch. 509	SB 83
20-9-367	amended	Ch. 586	HB 416
20-9-369	amended	Ch. 586	HB 416
20-9-370	amended	Ch. 18	SB 1
	amended	Ch. 586	HB 416
20-9-371	amended	Ch. 586	HB 416
20-9-406	amended	Ch. 570	SB 417
	amended	Ch. 586	HB 416
20-9-408	amended	Ch. 423	HB 420
20-9-409	repealed	Ch. 423	HB 420
20-9-412	amended	Ch. 423	HB 420
20-9-422	amended	Ch. 586	HB 416
20-9-427	amended	Ch. 423	HB 420
20-9-429	amended	Ch. 423	HB 420
20-9-430	amended	Ch. 423	HB 420
20-9-431	amended	Ch. 423	HB 420
20-9-432	amended	Ch. 423	HB 420
20-9-433	amended	Ch. 423	HB 420
20-9-434	amended	Ch. 423	HB 420
20-9-439	amended	Ch. 586	HB 416
20-9-466	amended	Ch. 18	SB 1
20-9-471	amended	Ch. 37	HB 44
20-9-501	amended	Ch. 451	SB 412
	amended	Ch. 580	SB 161

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20-9-507	amended	Ch. 451	SB 412
20-9-508	amended	Ch. 506	SB 423
20-9-512	amended	Ch. 129	HB 151
20-9-515	enacted	Ch. 493	SB 250
20-9-533	enacted	Ch. 517	HB 201
20-9-534	enacted	Ch. 517	HB 201
20-9-615	enacted	Ch. 506	SB 423
20-10-101	amended	Ch. 298	SB 112
20-10-103	amended	Ch. 298	SB 112
20-10-126	enacted	Ch. 298	SB 112
20-10-127	enacted	Ch. 298	SB 112
20-10-128	enacted	Ch. 298	SB 112
20-10-131	amended	Ch. 298	SB 112
20-10-132	amended	Ch. 298	SB 112
20-10-141	amended	Ch. 298	SB 112
20-10-142	amended	Ch. 298	SB 112
20-10-144	amended	Ch. 451	SB 412
	amended	Ch. 580	SB 161
20-10-146	amended	Ch. 451	SB 412
	amended	Ch. 580	SB 161
20-15-210	amended	Ch. 260	HB 368
20-15-325	amended	Ch. 260	HB 368
20-15-326	amended	Ch. 260	HB 368
20-15-404	amended	Ch. 260	HB 368
	amended	Ch. 423	HB 420
20-16-101	repealed	Ch. 308	SB 156
20-16-102	repealed	Ch. 308	SB 156
20-16-103	repealed	Ch. 308	SB 156
20-16-104	repealed	Ch. 308	SB 156
20-16-105	repealed	Ch. 308	SB 156
20-16-106	repealed	Ch. 308	SB 156
20-16-107	repealed	Ch. 308	SB 156
20-16-108	repealed	Ch. 308	SB 156
20-16-109	repealed	Ch. 308	SB 156
20-16-201	repealed	Ch. 308	SB 156
20-16-202	repealed 12/31/95	Ch. 308	SB 156
20-16-203	repealed	Ch. 308	SB 156
20-16-204	repealed	Ch. 308	SB 156
20-16-205	repealed	Ch. 308	SB 156
20-16-206	repealed	Ch. 308	SB 156
20-16-207	repealed	Ch. 308	SB 156
20-25-201	amended	Ch. 308	SB 156
20-25-211	amended	Ch. 308	SB 156
20-25-212	amended	Ch. 418	SB 234
20-25-234	amended	Ch. 206	HB 520
20-25-251	repealed	Ch. 308	SB 156
20-25-301	amended	Ch. 308	SB 156
20-25-303	amended	Ch. 308	SB 156
20-25-307	enacted	Ch. 370	HB 351
20-25-308	enacted	Ch. 371	HB 352
	amended	Ch. 478	HB 603
20-25-401	repealed	Ch. 308	SB 156
20-25-421	amended	Ch. 546	SB 345
20-25-422	amended	Ch. 370	HB 351
20-25-431	repealed	Ch. 308	SB 156
20-25-432	repealed	Ch. 308	SB 156
20-25-433	repealed	Ch. 308	SB 156
20-25-434	repealed	Ch. 308	SB 156

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20-25-439	enacted	Ch. 308	SB 156
20-25-501	amended	Ch. 308	SB 156
20-25-503	amended	Ch. 308	SB 156
20-25-604	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
20-26-1401	repealed	Ch. 429	HB 518
20-26-1402	repealed	Ch. 429	HB 518
20-26-1403	repealed	Ch. 429	HB 518
20-26-1404	repealed	Ch. 429	HB 518
20-26-1407	repealed	Ch. 429	HB 518
	amended	Ch. 546	SB 345
20-26-1408	repealed	Ch. 429	HB 518
20-26-1409	repealed	Ch. 429	HB 518
20-26-1410	repealed	Ch. 429	HB 518
20-26-1411	repealed	Ch. 429	HB 518
20-32-101	amended	Ch. 308	SB 156
20-32-102	amended	Ch. 308	SB 156
20-32-103	amended	Ch. 308	SB 156
22-1-103	amended	Ch. 339	SB 265
22-1-218	amended	Ch. 545	SB 398
22-1-225	enacted	Ch. 339	SB 265
22-1-226	enacted	Ch. 339	SB 265
22-1-303	amended	Ch. 387	SB 193
22-1-402	amended	Ch. 387	SB 193
22-3-421	amended	Ch. 343	HB 485
22-3-423	amended	Ch. 343	HB 485
22-3-428	enacted	Ch. 343	HB 485
22-3-429	enacted	Ch. 343	HB 485
22-3-430	enacted	Ch. 343	HB 485
23-1-116	amended	Ch. 476	HB 600
23-1-131	repealed	Ch. 509	SB 83
23-1-302	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
23-1-303	amended	Ch. 546	SB 345
23-1-312	amended	Ch. 546	SB 345
23-1-313	amended	Ch. 308	SB 156
23-2-507	amended	Ch. 509	SB 83
23-2-518	amended	Ch. 476	HB 600
23-2-519	amended	Ch. 476	HB 600
23-2-522	amended	Ch. 418	SB 234
23-2-523	amended	Ch. 345	SB 303
23-2-531	amended	Ch. 345	SB 303
23-2-533	amended	Ch. 476	HB 600
23-2-534	enacted	Ch. 476	HB 600
23-2-536	amended	Ch. 476	HB 600
23-2-631	amended	Ch. 210	SB 268
23-2-633	amended	Ch. 206	HB 520
23-2-644	amended	Ch. 509	SB 83
23-2-733	amended	Ch. 140	SB 243
23-2-807	amended	Ch. 509	SB 83
23-2-823	amended	Ch. 509	SB 83
23-4-101	amended	Ch. 207	SB 19
23-4-202	amended	Ch. 509	SB 83
23-5-112	amended	Ch. 546	SB 345
23-5-116	amended	Ch. 132	HB 173
	amended	Ch. 178	HB 208
23-5-117	amended	Ch. 480	HB 537
23-5-319	enacted	Ch. 148	HB 559

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23-5-608	amended	Ch. 227	HB 527
23-5-610	amended	Ch. 18	SB 1
23-5-629	enacted	Ch. 480	HB 537
23-7-202	amended	Ch. 509	SB 83
23-7-203	repealed	Ch. 545	SB 398
23-7-211	amended	Ch. 359	SB 408
23-7-311	amended	Ch. 19	HB 28
23-7-312	amended	Ch. 325	HB 563
23-7-402	amended	Ch. 509	SB 83
25-2-122	amended	Ch. 332	SB 63
25-9-301	amended	Ch. 60	SB 29
25-9-302	amended	Ch. 60	SB 29
25-9-303	amended	Ch. 60	SB 29
25-9-403	amended	Ch. 461	HB 309
25-9-411	enacted	Ch. 461	HB 309
25-9-412	enacted	Ch. 461	HB 309
25-13-101	amended	Ch. 60	SB 29
26-1-602	amended	Ch. 18	SB 1
26-2-111	enacted	Ch. 138	SB 59
26-2-515	enacted	Ch. 450	SB 372
27-1-222	amended	Ch. 206	HB 520
27-1-703	amended	Ch. 330	SB 212
27-1-717	amended	Ch. 304	SB 298
27-1-718	amended	Ch. 546	SB 345
27-1-721	enacted	Ch. 415	SB 90
27-1-732	amended	Ch. 357	SB 341
27-2-201	amended	Ch. 60	SB 29
	amended	Ch. 125	HB 69
	amended	Ch. 264	HB 385
27-2-205	amended	Ch. 16	SB 7
27-2-211	amended	Ch. 60	SB 29
27-2-401	amended	Ch. 46	HB 37
27-2-404	amended	Ch. 592	SB 132
27-6-103	amended	Ch. 366	HB 301
27-6-206	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
27-6-604	amended	Ch. 59	HB 26
27-6-606	amended	Ch. 59	HB 26
27-6-702	amended	Ch. 16	SB 7
27-6-704	amended	Ch. 59	HB 26
27-9-103	amended	Ch. 153	HB 231
27-12-206	amended	Ch. 509	SB 83
27-19-201	amended	Ch. 350	SB 278
27-19-306	amended	Ch. 575	HB 543
27-19-307	amended	Ch. 575	HB 543
27-19-316	amended	Ch. 350	SB 278
27-19-403	amended	Ch. 575	HB 543
27-32-302	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
30-9-104	amended	Ch. 530	HB 574
30-10-103	amended	Ch. 239	SB 317
30-10-201	amended	Ch. 261	HB 372
30-10-209	amended	Ch. 261	HB 372
30-13-201	amended	Ch. 449	SB 340
30-13-202	amended	Ch. 449	SB 340
30-13-206	amended	Ch. 449	SB 340
30-13-209	amended	Ch. 449	SB 340
30-13-213	amended	Ch. 449	SB 340

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30-13-217	amended	Ch. 449	SB 340
30-14-403	amended	Ch. 269	HB 454
30-14-404	amended	Ch. 269	HB 454
30-14-408	amended	Ch. 269	HB 454
30-14-803	amended	Ch. 358	SB 378
30-14-1201	enacted	Ch. 259	HB 335
30-14-1202	enacted	Ch. 259	HB 335
30-14-1203	enacted	Ch. 259	HB 335
30-14-1204	enacted	Ch. 259	HB 335
30-14-1205	enacted	Ch. 259	HB 335
30-14-1206	enacted	Ch. 259	HB 335
30-14-1207	enacted	Ch. 259	HB 335
30-16-103	amended	Ch. 355	SB 311
30-16-301	enacted	Ch. 355	SB 311
30-16-302	enacted	Ch. 355	SB 311
30-16-303	enacted	Ch. 355	SB 311
31-1-211	amended	Ch. 265	HB 428
31-1-601	repealed	Ch. 252	HB 553
31-1-602	repealed	Ch. 252	HB 553
31-1-603	repealed	Ch. 252	HB 553
31-3-141	amended	Ch. 546	SB 345
32-1-202	amended	Ch. 265	HB 428
32-1-204	amended	Ch. 265	HB 428
32-1-231	amended	Ch. 64	HB 118
32-1-371	amended	Ch. 265	HB 428
32-1-372	amended	Ch. 307	HB 409
32-1-376	enacted	Ch. 265	HB 428
32-1-377	enacted	Ch. 265	HB 428
32-1-381	amended	Ch. 265	HB 428
32-1-382	amended	Ch. 265	HB 428
32-1-383	amended	Ch. 265	HB 428
32-1-437	amended	Ch. 265	HB 428
32-1-465	amended	Ch. 265	HB 428
32-1-537	amended	Ch. 325	HB 563
32-3-704	amended	Ch. 18	SB 1
32-3-801	amended	Ch. 18	SB 1
32-6-102	amended	Ch. 265	HB 428
32-6-103	amended	Ch. 265	HB 428
32-6-104	amended	Ch. 265	HB 428
32-6-201	repealed	Ch. 265	HB 428
32-6-202	repealed	Ch. 265	HB 428
32-6-203	repealed	Ch. 265	HB 428
32-6-204	repealed	Ch. 265	HB 428
32-6-301	amended	Ch. 265	HB 428
32-6-305	repealed	Ch. 265	HB 428
32-6-307	repealed	Ch. 265	HB 428
32-6-308	repealed	Ch. 265	HB 428
32-6-309	repealed	Ch. 265	HB 428
33-1-102	amended	Ch. 502	SB 388
	amended	Ch. 590	SB 223
33-1-207	amended	Ch. 379	HB 556
33-1-208	amended	Ch. 379	HB 556
33-1-209	amended	Ch. 379	HB 556
33-1-311	amended	Ch. 379	HB 556
33-1-413	amended	Ch. 379	HB 556
33-1-501	amended	Ch. 379	HB 556
33-1-1111	amended	Ch. 420	SB 376
33-1-1201	enacted	Ch. 237	SB 253

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33-1-1202	enacted	Ch. 237	SB 253
33-1-1203	enacted	Ch. 237	SB 253
33-1-1204	enacted	Ch. 237	SB 253
33-1-1205	enacted	Ch. 237	SB 253
33-1-1206	enacted	Ch. 237	SB 253
33-1-1210	enacted	Ch. 237	SB 253
33-1-1211	enacted	Ch. 237	SB 253
33-2-117	amended	Ch. 379	HB 556
33-2-301	amended	Ch. 379	HB 556
33-2-302	amended	Ch. 379	HB 556
33-2-305	amended	Ch. 379	HB 556
33-2-307	amended	Ch. 379	HB 556
33-2-501	amended	Ch. 379	HB 556
33-2-521	amended	Ch. 379	HB 556
33-2-523	amended	Ch. 379	HB 556
33-2-525	amended	Ch. 379	HB 556
33-2-526	amended	Ch. 379	HB 556
33-2-528	amended	Ch. 379	HB 556
33-2-529	amended	Ch. 379	HB 556
33-2-531	amended	Ch. 379	HB 556
33-2-537	enacted	Ch. 379	HB 556
33-2-701	amended	Ch. 379	HB 556
33-2-704	enacted	Ch. 377	HB 466
33-2-705	amended	Ch. 379	HB 556
33-2-708	amended	Ch. 98	SB 216
	amended	Ch. 379	HB 556
33-2-803	amended	Ch. 379	HB 556
33-2-806	amended	Ch. 379	HB 556
33-2-820	amended	Ch. 379	HB 556
33-2-1111	amended	Ch. 379	HB 556
33-2-1201	amended	Ch. 379	HB 556
33-2-1216	amended	Ch. 379	HB 556
33-2-1217	amended	Ch. 379	HB 556
33-2-1218	amended	Ch. 379	HB 556
33-2-1394	amended	Ch. 379	HB 556
33-2-1510	amended	Ch. 379	HB 556
33-2-1605	amended	Ch. 379	HB 556
33-2-1901	enacted	Ch. 370	HB 556
33-2-1902	enacted	Ch. 370	HB 556
33-2-1903	enacted	Ch. 370	HB 556
33-2-1904	enacted	Ch. 370	HB 556
33-2-1905	enacted	Ch. 370	HB 556
33-2-1906	enacted	Ch. 370	HB 556
33-2-1907	enacted	Ch. 370	HB 556
33-2-1908	enacted	Ch. 370	HB 556
33-2-1909	enacted	Ch. 370	HB 556
33-2-1910	enacted	Ch. 370	HB 556
33-2-1911	enacted	Ch. 370	HB 556
33-2-1912	enacted	Ch. 370	HB 556
33-2-1913	enacted	Ch. 370	HB 556
33-3-431	amended	Ch. 379	HB 556
33-3-701	enacted	Ch. 370	HB 556
33-3-702	enacted	Ch. 370	HB 556
33-3-703	enacted	Ch. 370	HB 556
33-3-704	enacted	Ch. 370	HB 556
33-4-202	amended	Ch. 379	HB 556
33-4-203	amended	Ch. 379	HB 556
33-4-501	amended	Ch. 281	SB 277

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33-5-401	amended	Ch. 379	HB 556
33-7-117	amended	Ch. 379	HB 556
33-10-104	amended	Ch. 65	HB 193
33-10-201	amended	Ch. 379	HB 556
33-10-202	amended	Ch. 379	HB 556
33-10-204	amended	Ch. 65	HB 193
33-11-102	amended	Ch. 379	HB 556
33-11-104	amended	Ch. 379	HB 556
33-11-108	amended	Ch. 379	HB 556
33-14-304	amended	Ch. 379	HB 556
33-15-301	amended	Ch. 379	HB 556
33-15-303	amended	Ch. 379	HB 556
33-15-308	enacted	Ch. 173	SB 177
33-15-415	enacted	Ch. 370	HB 556
33-15-416	enacted	Ch. 370	HB 556
33-16-201	amended	Ch. 320	HB 387
33-16-202	amended	Ch. 379	HB 556
33-16-231	repealed	Ch. 79	SB 196
33-16-232	repealed	Ch. 79	SB 196
33-16-233	repealed	Ch. 79	SB 196
33-16-234	repealed	Ch. 79	SB 196
33-16-235	repealed	Ch. 79	SB 196
	amended	Ch. 379	HB 556
33-16-236	repealed	Ch. 79	SB 196
33-16-303	amended	Ch. 186	SB 384
33-16-403	amended	Ch. 186	SB 384
33-16-1002	amended	Ch. 186	SB 384
33-16-1004	repealed	Ch. 186	SB 384
33-16-1005	repealed	Ch. 186	SB 384
33-16-1008	enacted	Ch. 186	SB 384
33-16-1011	amended	Ch. 186	SB 384
	amended	Ch. 290	HB 414
33-16-1012	amended	Ch. 186	SB 384
	amended	Ch. 290	HB 414
33-16-1020	enacted	Ch. 186	SB 384
33-16-1021	enacted	Ch. 186	SB 384
33-16-1022	enacted	Ch. 186	SB 384
33-16-1023	enacted	Ch. 186	SB 384
33-16-1024	enacted	Ch. 186	SB 384
33-16-1025	enacted	Ch. 186	SB 384
33-16-1026	enacted	Ch. 186	SB 384
33-16-1027	enacted	Ch. 186	SB 384
33-16-1028	enacted	Ch. 186	SB 384
33-16-1029	enacted	Ch. 186	SB 384
33-16-1030	enacted	Ch. 186	SB 384
33-16-1031	enacted	Ch. 186	SB 384
33-16-1032	enacted	Ch. 186	SB 384
33-16-1033	enacted	Ch. 186	SB 384
33-16-1034	enacted	Ch. 186	SB 384
33-16-1035	enacted	Ch. 186	SB 384
33-16-1036	enacted	Ch. 186	SB 384
33-17-102	amended	Ch. 379	HB 556
33-17-207	repealed	Ch. 98	SB 216
33-17-208	repealed	Ch. 98	SB 216
33-17-209	repealed	Ch. 98	SB 216
33-17-211	amended	Ch. 379	HB 556
33-17-405	amended	Ch. 379	HB 556
33-17-503	amended	Ch. 379	HB 556

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33-17-603	amended	Ch. 379	HB 556
33-17-1203	amended	Ch. 98	SB 216
33-18-210	amended	Ch. 320	HB 387
	amended	Ch. 427	HB 488
33-18-212	amended	Ch. 379	HB 556
33-18-214	enacted	Ch. 357	SB 341
33-18-301	amended	Ch. 379	HB 556
33-22-101	amended	Ch. 527	HB 533
33-22-109	enacted	Ch. 522	HB 466
33-22-110	amended	Ch. 522	HB 446
33-22-131	amended	Ch. 379	HB 556
33-22-132	amended	Ch. 379	HB 556
33-22-201	amended	Ch. 379	HB 556
33-22-202	amended	Ch. 379	HB 556
33-22-241	enacted	Ch. 527	HB 533
33-22-242	enacted	Ch. 527	HB 533
33-22-243	enacted	Ch. 527	HB 533
33-22-244	enacted	Ch. 527	HB 533
33-22-245	enacted	Ch. 527	HB 533
33-22-301	amended	Ch. 379	HB 556
33-22-303	amended	Ch. 379	HB 556
33-22-501	amended	Ch. 375	HB 405
33-22-504	amended	Ch. 379	HB 556
33-22-508	amended	Ch. 379	HB 556
	amended	Ch. 527	HB 533
33-22-521	enacted	Ch. 527	HB 533
33-22-522	enacted	Ch. 527	HB 533
33-22-702	amended	Ch. 448	SB 339
	amended	Ch. 546	SB 345
33-22-703	amended	Ch. 448	SB 339
33-22-705	amended	Ch. 546	SB 345
33-22-1107	amended	Ch. 240	SB 329
33-22-1114	amended	Ch. 240	SB 329
33-22-1116	enacted	Ch. 240	SB 329
33-22-1117	enacted	Ch. 240	SB 329
33-22-1119	amended	Ch. 240	SB 329
33-22-1120	amended	Ch. 379	HB 556
33-22-1121	amended	Ch. 240	SB 329
33-22-1202	amended	Ch. 504	SB 402
	amended	Ch. 546	SB 345
33-22-1501	amended	Ch. 357	SB 341
33-22-1503	amended	Ch. 357	SB 341
33-22-1504	amended	Ch. 357	SB 341
33-22-1512	amended	Ch. 357	SB 341
33-22-1515	amended	Ch. 357	SB 341
33-22-1516	amended	Ch. 357	SB 341
33-22-1517	enacted	Ch. 357	SB 341
33-22-1518	enacted	Ch. 357	SB 341
33-22-1521	amended	Ch. 357	SB 341
33-22-1803	amended	Ch. 377	HB 466
	amended	Ch. 379	HB 556
33-22-1804	amended	Ch. 377	HB 466
33-22-1809	amended	Ch. 377	HB 466
	amended	Ch. 378	HB 511
33-22-1811	amended	Ch. 377	HB 466
	amended	Ch. 379	HB 556
	amended	Ch. 522	HB 446
33-22-1812	repealed	Ch. 377	HB 466

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33-22-1815	enacted	Ch. 375	HB 405
33-22-1816	enacted	Ch. 375	HB 405
33-22-1817	enacted	Ch. 375	HB 405
33-22-1818	amended	Ch. 377	HB 466
33-22-1819	amended	Ch. 377	HB 466
	amended	Ch. 379	HB 556
33-22-1820	amended	Ch. 377	HB 466
33-22-1821	amended	Ch. 377	HB 466
33-22-1827	enacted	Ch. 377	HB 466
33-22-1828	enacted	Ch. 377	HB 466
33-25-201	amended	Ch. 250	HB 475
33-30-102	amended	Ch. 379	HB 556
33-30-107	amended	Ch. 379	HB 556
33-30-108	amended	Ch. 379	HB 556
33-30-202	amended	Ch. 379	HB 556
33-30-204	amended	Ch. 379	HB 556
33-30-311	amended	Ch. 379	HB 556
33-30-312	amended	Ch. 98	SB 216
	repealed	Ch. 379	HB 556
33-30-313	repealed	Ch. 379	HB 556
33-30-1001	amended	Ch. 379	HB 556
33-30-1007	amended	Ch. 527	HB 533
33-31-111	amended	Ch. 379	HB 556
33-31-115	enacted	Ch. 502	SB 388
33-31-202	amended	Ch. 590	SB 223
33-31-301	amended	Ch. 590	SB 223
33-31-321	enacted	Ch. 527	HB 533
33-31-322	enacted	Ch. 527	HB 533
33-35-101	enacted	Ch. 420	SB 376
33-35-102	enacted	Ch. 420	SB 376
33-35-103	enacted	Ch. 420	SB 376
33-35-201	enacted	Ch. 420	SB 376
33-35-202	enacted	Ch. 420	SB 376
33-35-203	enacted	Ch. 420	SB 376
33-35-205	enacted	Ch. 420	SB 376
33-35-209	enacted	Ch. 420	SB 376
33-35-210	enacted	Ch. 420	SB 376
33-35-211	enacted	Ch. 420	SB 376
33-35-301	enacted	Ch. 420	SB 376
33-35-302	enacted	Ch. 420	SB 376
33-35-303	enacted	Ch. 420	SB 376
33-35-306	enacted	Ch. 420	SB 376
33-35-307	enacted	Ch. 420	SB 376
35-10-102	amended	Ch. 449	SB 340
35-10-116	amended	Ch. 449	SB 340
35-10-307	amended	Ch. 449	SB 340
35-10-308	amended	Ch. 449	SB 340
35-10-312	amended	Ch. 449	SB 340
35-10-401	amended	Ch. 449	SB 340
35-10-621	amended	Ch. 449	SB 340
35-10-628	amended	Ch. 449	SB 340
35-10-629	amended	Ch. 449	SB 340
35-10-635	amended	Ch. 449	SB 340
35-10-636	amended	Ch. 449	SB 340
35-10-701	enacted	Ch. 449	SB 340
35-10-702	enacted	Ch. 449	SB 340
35-10-703	enacted	Ch. 449	SB 340
35-10-710	enacted	Ch. 449	SB 340

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35-21-901	enacted	Ch. 41	HB 210
35-21-902	enacted	Ch. 41	HB 210
35-21-903	enacted	Ch. 41	HB 210
37-1-101	amended	Ch. 429	HB 518
37-1-121	amended	Ch. 429	HB 518
37-1-131	amended	Ch. 429	HB 518
37-1-301	enacted	Ch. 429	HB 518
37-1-302	enacted	Ch. 429	HB 518
37-1-303	enacted	Ch. 429	HB 518
37-1-304	enacted	Ch. 429	HB 518
37-1-305	enacted	Ch. 429	HB 518
37-1-306	enacted	Ch. 429	HB 518
37-1-307	enacted	Ch. 429	HB 518
37-1-308	enacted	Ch. 429	HB 518
37-1-309	enacted	Ch. 429	HB 518
37-1-310	enacted	Ch. 429	HB 518
37-1-311	enacted	Ch. 429	HB 518
37-1-312	enacted	Ch. 429	HB 518
37-1-313	enacted	Ch. 429	HB 518
37-1-314	enacted	Ch. 429	HB 518
37-1-315	enacted	Ch. 429	HB 518
37-1-316	enacted	Ch. 429	HB 518
37-1-317	enacted	Ch. 429	HB 518
37-1-318	enacted	Ch. 429	IIB 518
37-1-319	enacted	Ch. 429	HB 518
37-2-104	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-2-301	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-3-301	amended	Ch. 145	SB 240
37-3-309	amended	Ch. 429	HB 518
37-3-313	amended	Ch. 429	HB 518
37-3-315	enacted	Ch. 145	SB 240
37-3-322	repealed	Ch. 429	HB 518
37-3-323	amended	Ch. 429	HB 518
37-3-403	amended	Ch. 429	HB 518
37-4-306	repealed	Ch. 429	HB 518
37-4-307	amended	Ch. 429	HB 518
37-4-321	repealed	Ch. 429	HB 518
37-4-323	repealed	Ch. 429	HB 518
37-4-324	repealed	Ch. 429	HB 518
37-4-402	amended	Ch. 429	HB 518
37-4-404	repealed	Ch. 429	HB 518
37-4-406	amended	Ch. 429	HB 518
37-5-303	repealed	Ch. 429	HB 518
37-5-304	repealed	Ch. 429	HB 518
37-5-307	amended	Ch. 429	HB 518
37-5-311	repealed	Ch. 429	HB 518
37-6-101	amended	Ch. 402	HB 121
37-6-102	amended	Ch. 402	HB 121
37-6-107	enacted	Ch. 402	HB 121
37-6-302	amended	Ch. 429	HB 518
37-6-303	amended	Ch. 429	HB 518
37-6-304	amended	Ch. 429	HB 518
37-6-310	repealed	Ch. 429	HB 518
37-6-311	amended	Ch. 429	HB 518
37-7-101	amended	Ch. 429	HB 518

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37-7-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-7-203	repealed	Ch. 429	HB 518
37-7-302	amended	Ch. 429	HB 518
37-7-303	amended	Ch. 429	HB 518
37-7-304	repealed	Ch. 429	HB 518
37-7-305	repealed	Ch. 429	HB 518
37-7-311	repealed	Ch. 429	HB 518
37-7-321	amended	Ch. 429	HB 518
37-7-606	amended	Ch. 429	HB 518
37-7-607	repealed	Ch. 429	HB 518
37-7-608	repealed	Ch. 429	HB 518
37-7-701	amended	Ch. 274	HB 536
37-7-703	amended	Ch. 274	HB 536
37-7-710	repealed	Ch. 429	HB 518
37-7-712	enacted	Ch. 274	HB 536
37-8-102	amended	Ch. 308	SB 156
37-8-103	amended	Ch. 525	HB 504
37-8-202	amended	Ch. 422	SB 395
37-8-407	repealed	Ch. 429	HB 518
37-8-409	amended	Ch. 422	SB 395
	amended	Ch. 429	HB 518
37-8-417	repealed	Ch. 429	HB 518
37-8-430	repealed	Ch. 429	HB 518
37-8-431	amended	Ch. 429	HB 518
37-8-433	repealed	Ch. 429	HB 518
37-8-441	repealed	Ch. 429	HB 518
37-8-442	repealed	Ch. 429	HB 518
37-9-101	amended	Ch. 418	SB 234
	amended	Ch. 429	HB 518
	amended	Ch. 546	SB 345
37-9-203	amended	Ch. 429	HB 518
37-9-302	amended	Ch. 429	HB 518
37-9-303	repealed	Ch. 429	HB 518
37-9-304	amended	Ch. 429	HB 518
37-9-305	amended	Ch. 429	HB 518
37-9-311	repealed	Ch. 429	HB 518
37-10-204	repealed	Ch. 429	HB 518
37-10-303	repealed	Ch. 429	HB 518
37-10-304	amended	Ch. 429	HB 518
37-10-308	repealed	Ch. 429	HB 518
37-10-311	repealed	Ch. 429	HB 518
37-11-101	amended	Ch. 253	SB 171
37-11-105	amended	Ch. 253	SB 171
37-11-201	amended	Ch. 253	SB 171
37-11-202	repealed	Ch. 429	HB 518
37-11-203	amended	Ch. 253	SB 171
37-11-301	amended	Ch. 253	SB 171
37-11-303	amended	Ch. 253	SB 171
	amended	Ch. 429	HB 518
37-11-304	amended	Ch. 253	SB 171
	amended	Ch. 429	HB 518
37-11-305	amended	Ch. 253	SB 171
37-11-306	amended	Ch. 253	SB 171
37-11-307	amended	Ch. 253	SB 171
37-11-308	amended	Ch. 253	SB 171
	amended	Ch. 429	HB 518
37-11-309	amended	Ch. 253	SB 171

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37-11-320	amended	Ch. 253	SB 171
37-11-321	amended	Ch. 253	SB 171
37-12-201	amended	Ch. 429	HB 518
37-12-302	amended	Ch. 168	SB 327
37-12-303	repealed	Ch. 429	HB 518
37-12-307	amended	Ch. 429	HB 518
37-12-321	repealed	Ch. 429	HB 518
37-12-322	amended	Ch. 429	HB 518
37-13-103	amended	Ch. 340	SB 307
37-13-104	amended	Ch. 340	SB 307
37-13-301	amended	Ch. 340	SB 307
37-13-305	repealed	Ch. 429	HB 518
37-13-306	amended	Ch. 429	HB 518
37-13-311	repealed	Ch. 429	HB 518
37-13-312	repealed	Ch. 429	HB 518
37-13-313	repealed	Ch. 429	HB 518
37-13-314	repealed	Ch. 429	HB 518
37-14-304	repealed	Ch. 429	HB 518
37-14-321	repealed	Ch. 429	HB 518
37-14-322	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-15-102	amended	Ch. 429	HB 518
37-15-202	amended	Ch. 429	HB 518
37-15-305	repealed	Ch. 429	HB 518
37-15-308	amended	Ch. 429	HB 518
37-15-309	repealed	Ch. 429	HB 518
37-15-321	repealed	Ch. 429	HB 518
37-16-202	amended	Ch. 72	SB 95
37-16-301	amended	Ch. 429	HB 518
37-16-401	amended	Ch. 72	SB 95
37-16-403	amended	Ch. 72	SB 95
37-16-404	amended	Ch. 72	SB 95
37-16-405	amended	Ch. 72	SB 95
37-16-406	amended	Ch. 72	SB 95
37-16-407	amended	Ch. 72	SB 95
37-16-411	amended	Ch. 72	SB 95
37-16-414	repealed	Ch. 429	HB 518
37-17-102	amended	Ch. 18	SB 1
37-17-202	amended	Ch. 429	HB 518
37-17-302	amended	Ch. 362	HB 184
37-17-304	amended	Ch. 362	HB 184
37-17-306	amended	Ch. 429	HB 518
37-17-307	amended	Ch. 429	HB 518
37-17-308	amended	Ch. 362	HB 184
37-17-309	enacted	Ch. 362	HB 184
37-17-310	enacted	Ch. 362	HB 184
37-17-311	repealed	Ch. 429	HB 518
37-17-318	repealed	Ch. 429	HB 518
37-18-202	amended	Ch. 429	HB 518
37-18-303	amended	Ch. 429	HB 518
37-18-304	repealed	Ch. 429	HB 518
37-18-305	amended	Ch. 429	HB 518
37-18-307	amended	Ch. 429	HB 518
37-18-311	repealed	Ch. 429	HB 518
37-19-301	amended	Ch. 429	HB 518
37-19-305	repealed	Ch. 429	HB 518
37-19-306	amended	Ch. 429	HB 518
37-19-311	repealed	Ch. 429	HB 518

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37-19-312	repealed	Ch. 429	HB 518
37-19-316	repealed	Ch. 429	HB 518
37-19-401	amended	Ch. 429	HB 518
37-19-404	repealed	Ch. 429	HB 518
37-19-702	amended	Ch. 429	HB 518
37-20-103	amended	Ch. 321	HB 442
37-20-302	amended	Ch. 429	HB 518
37-20-403	amended	Ch. 429	HB 518
37-20-404	amended	Ch. 327	SB 310
37-20-409	repealed	Ch. 429	HB 518
37-21-101	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-22-304	amended	Ch. 429	HB 518
37-22-306	repealed	Ch. 429	HB 518
37-22-311	repealed	Ch. 429	HB 518
37-22-312	repealed	Ch. 429	HB 518
37-23-102	amended	Ch. 536	SB 226
37-23-103	amended	Ch. 429	HB 518
37-23-201	amended	Ch. 536	SB 226
37-23-202	amended	Ch. 429	HB 518
37-23-204	repealed	Ch. 429	HB 518
37-23-205	amended	Ch. 429	HB 518
37-23-207	repealed	Ch. 429	HB 518
37-23-211	repealed	Ch. 429	HB 518
37-23-212	repealed	Ch. 429	HB 518
37-23-311	amended	Ch. 536	SB 226
37-24-202	amended	Ch. 429	HB 518
37-24-305	repealed	Ch. 429	HB 518
37-24-307	repealed	Ch. 429	HB 518
37-24-308	amended	Ch. 429	HB 518
37-24-309	repealed	Ch. 429	HB 518
37-25-306	repealed	Ch. 429	HB 518
37-25-307	amended	Ch. 429	HB 518
37-26-201	amended	Ch. 429	HB 518
37-26-403	amended	Ch. 429	HB 518
37-26-404	repealed	Ch. 429	HB 518
37-26-408	repealed	Ch. 429	HB 518
37-26-409	repealed	Ch. 429	HB 518
37-26-410	repealed	Ch. 429	HB 518
37-27-105	amended	Ch. 429	HB 518
37-27-213	repealed	Ch. 429	HB 518
37-27-216	repealed	Ch. 429	HB 518
37-27-320	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-27-321	amended	Ch. 418	SB 234
	amended	Ch. 515	HB 89
	amended	Ch. 546	SB 345
37-28-201	amended	Ch. 429	HB 518
37-28-202	amended	Ch. 429	HB 518
37-28-203	amended	Ch. 429	HB 518
37-28-206	repealed	Ch. 429	HB 518
37-28-210	repealed	Ch. 429	HB 518
37-28-301	repealed	Ch. 429	HB 518
37-29-201	amended	Ch. 429	HB 518
37-29-303	amended	Ch. 429	HB 518
37-29-306	amended	Ch. 429	HB 518
37-29-311	repealed	Ch. 429	HB 518
37-29-312	repealed	Ch. 429	HB 518

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37-29-313	repealed	Ch. 429	HB 518
37-29-321	repealed	Ch. 429	HB 518
37-29-403	amended	Ch. 429	HB 518
37-30-301	amended	Ch. 429	HB 518
37-30-305	amended	Ch. 429	HB 518
37-30-306	repealed	Ch. 429	HB 518
37-30-307	amended	Ch. 546	SB 345
37-30-309	repealed	Ch. 429	HB 518
37-30-403	amended	Ch. 418	SB 234
37-30-412	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-30-422	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-30-502	repealed	Ch. 429	HB 518
37-31-204	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-31-304	amended	Ch. 308	SB 156
37-31-306	repealed	Ch. 429	HB 518
37-31-307	repealed	Ch. 429	HB 518
37-31-308	amended	Ch. 546	SB 345
37-31-322	amended	Ch. 429	HB 518
37-31-331	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-31-332	repealed	Ch. 429	HB 518
37-32-303	repealed	Ch. 429	HB 518
37-32-305	amended	Ch. 429	HB 518
37-32-310	repealed	Ch. 429	HB 518
37-34-201	amended	Ch. 429	HB 518
37-34-304	repealed	Ch. 429	HB 518
37-34-305	amended	Ch. 429	HB 518
37-34-306	repealed	Ch. 429	HB 518
37-34-308	repealed	Ch. 429	HB 518
37-40-102	amended	Ch. 108	HB 148
37-40-203	amended	Ch. 429	HB 518
37-40-303	repealed	Ch. 429	HB 518
37-40-304	amended	Ch. 429	HB 518
37-40-311	repealed	Ch. 429	HB 518
37-41-104	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
37-42-101	amended	Ch. 488	SB 153
37-42-102	amended	Ch. 418	SB 234
	amended	Ch. 488	SB 153
37-47-101	amended	Ch. 328	HB 196
37-47-102	repealed	Ch. 328	HB 196
37-47-201	amended	Ch. 328	HB 196
37-47-301	amended	Ch. 328	HB 196
37-47-302	amended	Ch. 328	HB 196
37-47-303	amended	Ch. 328	HB 196
37-47-304	amended	Ch. 328	HB 196
37-47-305	amended	Ch. 328	HB 196
37-47-306	amended	Ch. 328	HB 196
37-47-307	amended	Ch. 328	HB 196
	amended	Ch. 429	HB 518
37-47-309	repealed	Ch. 328	HB 196
37-47-313	enacted	Ch. 328	HB 196
37-47-314	enacted	Ch. 328	HB 196
37-47-315	enacted	Ch. 459	HB 195
37-47-341	amended	Ch. 328	HB 196

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37-47-342	repealed	Ch. 429	HB 518
37-47-343	amended	Ch. 328	HB 196
37-47-345	amended	Ch. 328	HB 196
37-47-346	repealed	Ch. 429	HB 518
37-47-351	enacted	Ch. 328	HB 196
37-47-401	amended	Ch. 328	HB 196
37-47-402	amended	Ch. 328	HB 196
37-47-403	amended	Ch. 328	HB 196
37-47-404	amended	Ch. 328	HB 196
37-50-203	amended	Ch. 429	HB 518
37-50-314	amended	Ch. 429	HB 518
37-50-317	amended	Ch. 429	HB 518
37-50-321	repealed	Ch. 429	HB 518
37-50-322	repealed	Ch. 429	HB 518
37-50-336	repealed	Ch. 429	HB 518
37-51-102	amended	Ch. 565	SB 224
37-51-103	amended	Ch. 565	SB 224
37-51-204	amended	Ch. 429	HB 518
37-51-206	repealed	Ch. 429	HB 518
37-51-301	amended	Ch. 565	SB 224
37-51-302	amended	Ch. 565	SB 224
37-51-303	amended	Ch. 565	SB 224
37-51-305	amended	Ch. 565	SB 224
37-51-306	amended	Ch. 429	HB 518
	amended	Ch. 565	SB 224
37-51-308	amended	Ch. 565	SB 224
37-51-309	amended	Ch. 565	SB 224
37-51-311	amended	Ch. 429	HB 518
37-51-312	amended	Ch. 565	SB 224
37-51-313	enacted	Ch. 565	SB 224
37-51-314	enacted	Ch. 565	SB 224
37-51-315	enacted	Ch. 565	SB 224
37-51-321	amended	Ch. 565	SB 224
37-51-322	repealed	Ch. 429	HB 518
	amended	Ch. 565	SB 224
37-51-323	amended	Ch. 565	SB 224
37-51-401	amended	Ch. 565	SB 224
37-51-602	amended	Ch. 565	SB 224
37-51-604	repealed	Ch. 429	HB 518
37-51-606	repealed	Ch. 429	HB 518
37-53-211	amended	Ch. 429	HB 518
37-53-302	amended	Ch. 429	HB 518
37-53-501	repealed	Ch. 429	HB 518
37-53-502	repealed	Ch. 429	HB 518
37-53-503	repealed	Ch. 429	HB 518
37-54-105	amended	Ch. 429	HB 518
37-54-210	amended	Ch. 429	HB 518
37-54-211	amended	Ch. 429	HB 518
37-54-302	amended	Ch. 429	HB 518
37-54-310	amended	Ch. 429	HB 518
37-54-311	amended	Ch. 429	HB 518
37-54-401	repealed	Ch. 429	HB 518
37-54-402	repealed	Ch. 429	HB 518
37-54-406	repealed	Ch. 429	HB 518
37-54-417	repealed	Ch. 429	HB 518
37-60-202	amended	Ch. 429	HB 518
37-60-212	repealed	Ch. 429	HB 518
37-60-301	amended	Ch. 429	HB 518

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37-60-307	repealed	Ch. 429	HB 518
37-60-308	repealed	Ch. 429	HB 518
37-60-312	amended	Ch. 429	HB 518
37-60-321	repealed	Ch. 429	HB 518
37-60-322	repealed	Ch. 429	HB 518
37-60-411	amended	Ch. 429	HB 518
37-62-101	repealed	Ch. 429	HB 518
37-62-102	repealed	Ch. 429	HB 518
37-62-201	repealed	Ch. 429	HB 518
37-62-202	repealed	Ch. 429	HB 518
37-62-203	repealed	Ch. 429	HB 518
37-62-204	repealed	Ch. 429	HB 518
37-62-205	repealed	Ch. 429	HB 518
37-62-206	repealed	Ch. 429	HB 518
37-62-207	repealed	Ch. 429	HB 518
37-62-208	repealed	Ch. 429	HB 518
37-62-209	repealed	Ch. 429	HB 518
37-62-212	repealed	Ch. 429	HB 518
37-62-213	repealed	Ch. 429	HB 518
37-62-301	repealed	Ch. 429	HB 518
37-62-302	repealed	Ch. 429	HB 518
37-62-303	repealed	Ch. 429	HB 518
37-62-311	repealed	Ch. 429	HB 518
37-65-305	repealed	Ch. 429	HB 518
37-65-306	amended	Ch. 429	HB 518
37-65-321	repealed	Ch. 429	HB 518
37-66-306	repealed	Ch. 429	HB 518
37-66-307	amended	Ch. 429	HB 518
37-66-321	repealed	Ch. 429	HB 518
37-66-323	repealed	Ch. 429	HB 518
37-67-101	amended	Ch. 108	HB 148
37-67-202	amended	Ch. 429	HB 518
37-67-303	amended	Ch. 108	HB 148
37-67-304	amended	Ch. 108	HB 148
37-67-305	amended	Ch. 108	HB 148
37-67-306	amended	Ch. 107	HB 147
37-67-307	amended	Ch. 108	HB 148
37-67-308	amended	Ch. 108	HB 148
37-67-310	amended	Ch. 108	HB 148
37-67-311	amended	Ch. 108	HB 148
37-67-312	amended	Ch. 108	HB 148
37-67-313	amended	Ch. 108	HB 148
37-67-314	amended	Ch. 108	HB 148
37-67-315	amended	Ch. 107	HB 147
37-67-319	repealed	Ch. 429	HB 518
37-67-320	amended	Ch. 108	HB 148
	amended	Ch. 429	HB 518
37-67-331	amended	Ch. 108	HB 148
37-67-332	amended	Ch. 107	HB 147
37-68-201	amended	Ch. 429	HB 518
37-68-306	repealed	Ch. 429	HB 518
37-68-309	repealed	Ch. 429	HB 518
37-68-310	amended	Ch. 113	HB 243
	amended	Ch. 429	HB 518
37-68-312	amended	Ch. 429	HB 518
37-68-315	enacted	Ch. 368	HB 326
37-68-321	repealed	Ch. 429	HB 518
37-69-309	repealed	Ch. 429	HB 518

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37-69-319	enacted	Ch. 368	HB 326
37-69-320	amended	Ch. 221	HB 252
37-69-322	repealed	Ch. 429	HB 518
37-69-401	enacted	Ch. 221	HB 252
37-69-402	enacted	Ch. 221	HB 252
37-71-101	repealed	Ch. 558	HB 601
37-71-102	repealed	Ch. 558	HB 601
37-71-103	repealed	Ch. 558	HB 601
37-71-104	repealed	Ch. 558	HB 601
37-71-105	repealed	Ch. 558	HB 601
37-71-201	repealed	Ch. 558	HB 601
37-71-202	amended	Ch. 75	SB 104
	repealed	Ch. 558	HB 601
37-71-203	repealed	Ch. 558	HB 601
37-71-204	repealed	Ch. 558	HB 601
37-71-211	amended	Ch. 500	SB 354
	repealed	Ch. 558	HB 601
37-71-212	amended	Ch. 429	HB 518
	repealed	Ch. 558	HB 601
37-71-213	amended	Ch. 429	HB 518
	repealed	Ch. 558	HB 601
37-71-301	repealed	Ch. 558	HB 601
37-71-302	repealed	Ch. 558	HB 601
37-72-101	amended	Ch. 514	HB 68
39-2-304	amended	Ch. 358	SB 378
	amended	Ch. 445	SB 201
39-3-201	amended	Ch. 479	HB 272
39-3-212	amended	Ch. 90	HB 47
39-3-213	amended	Ch. 5	SB 14
	amended	Ch. 325	HB 563
39-3-216	amended	Ch. 90	HB 47
39-3-217	amended	Ch. 90	HB 47
39-3-402	amended	Ch. 206	HB 520
	amended	Ch. 479	HB 272
39-3-403	amended	Ch. 90	HB 47
39-3-406	amended	Ch. 48	HB 98
	amended	Ch. 114	HB 285
	amended	Ch. 382	SB 80
39-3-601	repealed	Ch. 90	HB 47
39-3-602	repealed	Ch. 90	HB 47
39-3-603	repealed	Ch. 90	HB 47
39-3-604	repealed	Ch. 90	HB 47
39-3-605	repealed	Ch. 90	HB 47
39-3-606	repealed	Ch. 90	HB 47
39-3-607	repealed	Ch. 90	HB 47
39-3-608	repealed	Ch. 90	HB 47
39-3-703	amended	Ch. 500	SB 354
39-3-704	repealed	Ch. 500	SB 354
39-3-705	amended	Ch. 500	SB 354
39-3-706	amended	Ch. 500	SB 354
39-5-101	repealed	Ch. 429	HB 518
39-5-102	repealed	Ch. 429	HB 518
39-5-103	repealed	Ch. 429	HB 518
39-5-104	repealed	Ch. 429	HB 518
39-5-105	repealed	Ch. 429	HB 518
39-5-201	repealed	Ch. 429	HB 518
39-5-202	repealed	Ch. 429	HB 518
39-5-203	repealed	Ch. 429	HB 518

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39-5-204	repealed	Ch. 429	HB 518
39-5-205	repealed	Ch. 429	HB 518
39-5-206	repealed	Ch. 429	HB 518
39-5-207	repealed	Ch. 429	HB 518
39-5-208	repealed	Ch. 429	HB 518
39-5-209	repealed	Ch. 429	HB 518
39-5-301	repealed	Ch. 429	HB 518
39-5-302	repealed	Ch. 429	HB 518
39-5-303	repealed	Ch. 429	HB 518
39-5-304	repealed	Ch. 429	HB 518
39-5-305	repealed	Ch. 429	HB 518
39-5-306	repealed	Ch. 429	HB 518
39-5-307	repealed	Ch. 429	HB 518
39-5-308	repealed	Ch. 429	HB 518
39-5-310	repealed	Ch. 429	HB 518
39-5-311	repealed	Ch. 429	HB 518
39-5-312	repealed	Ch. 429	HB 518
39-5-401	repealed	Ch. 429	HB 518
39-5-402	repealed	Ch. 429	HB 518
39-5-403	repealed	Ch. 429	HB 518
39-5-404	repealed	Ch. 429	HB 518
39-5-405	repealed	Ch. 429	HB 518
39-5-406	repealed	Ch. 429	HB 518
39-7-303	amended	Ch. 127	HB 99
39-8-101	enacted	Ch. 344	SB 264
39-8-102	enacted	Ch. 344	SB 264
39-8-201	enacted	Ch. 344	SB 264
39-8-202	enacted	Ch. 344	SB 264
39-8-203	enacted	Ch. 344	SB 264
39-8-204	enacted	Ch. 344	SB 264
39-8-205	enacted	Ch. 344	SB 264
39-8-206	enacted	Ch. 344	SB 264
39-8-207	enacted	Ch. 344	SB 264
39-8-301	enacted	Ch. 344	SB 264
39-8-302	enacted	Ch. 344	SB 264
39-8-303	enacted	Ch. 344	SB 264
39-8-304	enacted	Ch. 344	SB 264
39-8-305	enacted	Ch. 344	SB 264
39-8-401	enacted	Ch. 344	SB 264
39-8-402	enacted	Ch. 344	SB 264
39-8-403	enacted	Ch. 344	SB 264
39-9-101	enacted	Ch. 500	SB 354
39-9-102	enacted	Ch. 500	SB 354
39-9-103	enacted	Ch. 500	SB 354
39-9-201	enacted	Ch. 500	SB 354
39-9-202	enacted	Ch. 500	SB 354
39-9-203	enacted	Ch. 500	SB 354
39-9-204	enacted	Ch. 500	SB 354
39-9-205	enacted	Ch. 500	SB 354
39-9-206	enacted	Ch. 500	SB 354
39-9-207	enacted	Ch. 500	SB 354
39-9-211	enacted	Ch. 500	SB 354
39-9-301	enacted	Ch. 500	SB 354
39-9-302	enacted	Ch. 500	SB 354
39-9-303	enacted	Ch. 500	SB 354
39-9-304	enacted	Ch. 500	SB 354
39-9-401	enacted	Ch. 500	SB 354
39-9-402	enacted	Ch. 500	SB 354

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39-9-403	enacted	Ch. 500	SB 354
39-9-404	enacted	Ch. 500	SB 354
39-9-405	enacted	Ch. 500	SB 354
39-9-406	enacted	Ch. 500	SB 354
39-9-407	enacted	Ch. 500	SB 354
39-9-408	enacted	Ch. 500	SB 354
39-9-409	enacted	Ch. 500	SB 354
39-9-410	enacted	Ch. 500	SB 354
39-29-101	amended	Ch. 308	SB 156
39-30-103	amended	Ch. 308	SB 156
	amended	Ch. 545	SB 398
	amended	Ch. 546	SB 345
39-30-106	amended	Ch. 546	SB 345
39-30-107	amended	Ch. 546	SB 345
39-31-103	amended	Ch. 108	HB 148
39-31-105	amended	Ch. 90	HB 47
39-31-309	amended	Ch. 90	HB 47
39-51-201	amended	Ch. 195	HB 100
39-51-203	amended	Ch. 195	HB 100
39-51-204	amended	Ch. 48	HB 98
	amended	Ch. 95	SB 125
	amended	Ch. 195	HB 100
39-51-304	amended	Ch. 18	SB 1
39-51-505	enacted	Ch. 195	HB 100
39-51-603	amended	Ch. 195	HB 100
39-51-1105	amended	Ch. 529	HB 550
39-51-1109	amended	Ch. 195	HB 100
39-51-1301	amended	Ch. 195	HB 100
39-51-1303	amended	Ch. 195	HB 100
	amended	Ch. 529	HB 550
39-51-1304	amended	Ch. 195	HB 100
	amended	Ch. 529	HB 550
39-51-1307	enacted	Ch. 529	HB 550
39-51-2104	amended	Ch. 195	HB 100
39-51-2203	amended	Ch. 195	HB 100
39-51-2307	amended	Ch. 195	HB 100
39-51-2403	amended	Ch. 195	HB 100
39-51-2404	amended	Ch. 195	HB 100
39-51-2407	amended	Ch. 195	HB 100
39-51-3207	amended	Ch. 325	HB 563
39-71-107	enacted	Ch. 243	SB 375
39-71-116	amended	Ch. 234	SB 151
	amended	Ch. 243	SB 375
	amended	Ch. 516	HB 200
39-71-117	amended	Ch. 308	SB 156
	amended	Ch. 344	SB 264
	amended	Ch. 516	HB 200
39-71-118	amended	Ch. 131	HB 168
	amended	Ch. 308	SB 156
	amended	Ch. 344	SB 264
	amended	Ch. 424	HB 462
	amended	Ch. 516	HB 200
39-71-119	amended	Ch. 243	SB 375
39-71-120	amended	Ch. 500	SB 354
39-71-123	amended	Ch. 131	HB 168
	amended	Ch. 243	SB 375
39-71-201	amended	Ch. 514	HB 68
39-71-315	amended	Ch. 516	HB 200

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39-71-318	amended	Ch. 516	HB 200
39-71-401	amended	Ch. 48	HB 98
	amended	Ch. 95	SB 125
	amended	Ch. 112	HB 216
	amended	Ch. 142	SB 22
	amended	Ch. 516	HB 200
39-71-407	amended	Ch. 243	SB 375
39-71-416	enacted	Ch. 243	SB 375
39-71-432	amended	Ch. 516	HB 200
39-71-433	amended	Ch. 516	HB 200
39-71-435	amended	Ch. 186	SB 384
39-71-503	amended	Ch. 516	HB 200
39-71-504	amended	Ch. 516	HB 200
39-71-507	amended	Ch. 516	HB 200
39-71-516	amended	Ch. 516	HB 200
39-71-532	amended	Ch. 18	SB 1
39-71-603	amended	Ch. 243	SB 375
39-71-609	amended	Ch. 243	SB 375
39-71-613	amended	Ch. 235	SB 233
39-71-615	enacted	Ch. 243	SB 375
39-71-701	amended	Ch. 243	SB 375
39-71-702	amended	Ch. 243	SB 375
39-71-703	amended	Ch. 243	SB 375
39-71-710	amended	Ch. 243	SB 375
	amended	Ch. 516	HB 200
39-71-711	amended	Ch. 243	SB 375
39-71-712	amended	Ch. 243	SB 375
39-71-721	amended	Ch. 243	SB 375
	amended	Ch. 516	HB 200
39-71-723	amended	Ch. 243	SB 375
	amended	Ch. 516	HB 200
39-71-727	amended	Ch. 243	SB 375
39-71-737	amended	Ch. 516	HB 200
39-71-741	amended	Ch. 243	SB 375
39-71-743	amended	Ch. 424	HB 462
	amended	Ch. 546	SB 345
39-71-744	amended	Ch. 243	SB 375
	amended	Ch. 308	SB 156
	amended	Ch. 546	SB 345
39-71-902	amended	Ch. 516	HB 200
39-71-1003	amended	Ch. 546	SB 345
39-71-1004	amended	Ch. 546	SB 345
39-71-1006	formerly 39-71-2001	Ch. 243	SB 375
39-71-1011	amended	Ch. 243	SB 375
	amended	Ch. 546	SB 345
39-71-1014	amended	Ch. 546	SB 345
39-71-1031	amended	Ch. 546	SB 345
39-71-1032	amended	Ch. 243	SB 375
39-71-1108	amended	Ch. 516	HB 200
39-71-1505	amended	Ch. 238	SB 287
39-71-2001	amended and renumbered 39-71-1006	Ch. 243	SB 375
	amended	Ch. 546	SB 345
39-71-2103	amended	Ch. 516	HB 200
39-71-2106	amended	Ch. 83	HB 152
39-71-2204	amended	Ch. 186	SB 384
39-71-2205	amended	Ch. 186	SB 384
39-71-2211	amended	Ch. 186	SB 384
39-71-2311	amended	Ch. 305	SB 374

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39-71-2313	amended	Ch. 305	SB 374
39-71-2316	amended	Ch. 186	SB 384
	amended	Ch. 305	SB 374
39-71-2320	amended	Ch. 424	HB 462
39-71-2339	amended	Ch. 305	SB 374
39-71-2363	amended	Ch. 424	HB 462
39-71-2411	amended	Ch. 516	HB 200
39-71-2501	amended	Ch. 172	SB 139
	amended	Ch. 246	HB 320
	amended	Ch. 509	SB 83
	amended	Ch. 572	HB 293
39-71-2503	amended	Ch. 172	SB 139
	amended	Ch. 246	HB 320
	amended	Ch. 509	SB 83
	amended	Ch. 529	HB 550
	amended	Ch. 572	HB 293
39-71-2504	amended	Ch. 18	SB 1
	amended	Ch. 509	SB 83
39-71-2505	amended	Ch. 27	SB 33
39-71-2506	enacted	Ch. 572	HB 293
39-71-2905	amended	Ch. 516	HB 200
39-71-2909	amended	Ch. 235	SB 233
39-71-2911	enacted	Ch. 243	SB 375
39-72-403	amended	Ch. 243	SB 375
39-72-601	amended	Ch. 516	HB 200
39-72-602	amended	Ch. 516	HB 200
39-72-612	amended	Ch. 516	HB 200
39-72-704	amended	Ch. 243	SB 375
40-1-107	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-1-203	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-1-204	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-1-206	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-1-208	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-1-209	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-1-402	amended	Ch. 109	HB 174
40-4-108	amended	Ch. 109	HB 174
40-4-121	amended	Ch. 350	SB 278
40-4-123	amended	Ch. 350	SB 278
40-4-124	amended	Ch. 350	SB 278
40-4-204	amended	Ch. 60	SB 29
	amended	Ch. 504	SB 402
	amended	Ch. 546	SB 345
40-4-205	amended	Ch. 394	SB 353
	amended	Ch. 546	SB 345
40-4-208	amended	Ch. 504	SB 402
	amended	Ch. 546	SB 345
40-4-209	amended	Ch. 546	SB 345
40-4-212	amended	Ch. 467	HB 444
40-4-215	amended	Ch. 18	SB 1
	amended	Ch. 546	SB 345
40-4-217	amended	Ch. 350	SB 278
	amended	Ch. 467	HB 444

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40-4-218	amended	Ch. 546	SB 345
40-4-219	amended	Ch. 350	SB 278
	amended	Ch. 467	HB 444
40-4-226	enacted	Ch. 201	HB 253
40-5-103	amended	Ch. 546	SB 345
40-5-143	amended	Ch. 546	SB 345
40-5-158	amended	Ch. 546	SB 345
40-5-161	amended	Ch. 546	SB 345
40-5-162	amended	Ch. 546	SB 345
40-5-164	amended	Ch. 546	SB 345
40-5-165	amended	Ch. 546	SB 345
40-5-173	amended	Ch. 546	SB 345
40-5-181	enacted	Ch. 60	SB 29
40-5-185	amended	Ch. 546	SB 345
40-5-196	amended	Ch. 546	SB 345
40-5-201	amended	Ch. 60	SB 29
	amended	Ch. 504	SB 402
	amended	Ch. 546	SB 345
40-5-202	amended	Ch. 264	HB 385
	amended	Ch. 546	SB 345
40-5-206	amended	Ch. 264	HB 385
40-5-208	amended	Ch. 504	SB 402
40-5-221	amended	Ch. 264	HB 385
40-5-226	amended	Ch. 264	HB 385
40-5-232	amended	Ch. 70	SB 36
40-5-233	amended	Ch. 70	SB 36
40-5-234	amended	Ch. 70	SB 36
40-5-235	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-5-236	amended	Ch. 70	SB 36
40-5-237	amended	Ch. 70	SB 36
40-5-238	enacted	Ch. 264	HB 385
40-5-255	amended	Ch. 60	SB 29
	amended	Ch. 264	HB 385
40-5-303	amended	Ch. 546	SB 345
40-5-308	amended	Ch. 276	HB 55
40-5-309	amended	Ch. 60	SB 29
40-5-312	enacted	Ch. 276	HB 55
40-5-313	enacted	Ch. 276	HB 55
40-5-314	enacted	Ch. 276	HB 55
40-5-315	amended	Ch. 546	SB 345
40-5-402	amended	Ch. 546	SB 345
40-5-403	amended	Ch. 546	SB 345
40-5-414	amended	Ch. 60	SB 29
40-5-416	amended	Ch. 60	SB 29
40-5-440	repealed	Ch. 504	SB 402
40-5-441	repealed	Ch. 504	SB 402
40-5-442	repealed	Ch. 504	SB 402
40-5-443	amended	Ch. 264	HB 385
40-5-701	amended	Ch. 546	SB 345
40-5-704	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-5-801	enacted	Ch. 504	SB 402
40-5-802	enacted	Ch. 504	SB 402
40-5-803	enacted	Ch. 504	SB 402
40-5-804	enacted	Ch. 504	SB 402
40-5-805	enacted	Ch. 504	SB 402
40-5-806	enacted	Ch. 504	SB 402

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40-5-807	enacted	Ch. 504	SB 402
40-5-808	enacted	Ch. 504	SB 402
40-5-809	enacted	Ch. 504	SB 402
40-5-810	enacted	Ch. 504	SB 402
40-5-811	enacted	Ch. 504	SB 402
40-5-812	enacted	Ch. 504	SB 402
40-5-813	enacted	Ch. 504	SB 402
40-5-814	enacted	Ch. 504	SB 402
40-5-815	enacted	Ch. 504	SB 402
40-5-816	enacted	Ch. 504	SB 402
40-5-817	enacted	Ch. 504	SB 402
40-5-818	enacted	Ch. 504	SB 402
40-5-819	enacted	Ch. 504	SB 402
40-5-820	enacted	Ch. 504	SB 402
40-5-821	enacted	Ch. 504	SB 402
40-5-822	enacted	Ch. 504	SB 402
40-5-823	enacted	Ch. 504	SB 402
40-5-824	enacted	Ch. 504	SB 402
40-5-825	enacted	Ch. 504	SB 402
40-6-102	amended	Ch. 70	SB 36
40-6-105	amended	Ch. 70	SB 36
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-6-106	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-6-107	amended	Ch. 546	SB 345
40-6-110	amended	Ch. 546	SB 345
40-6-115	amended	Ch. 70	SB 36
40-6-116	amended	Ch. 504	SB 402
	amended	Ch. 546	SB 345
40-6-117	amended	Ch. 70	SB 36
40-6-118	amended	Ch. 70	SB 36
40-6-119	amended	Ch. 282	SB 286
40-6-123	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-6-125	amended	Ch. 458	HB 186
40-6-126	amended	Ch. 418	SB 234
	amended	Ch. 458	HB 186
	amended	Ch. 546	SB 345
40-6-128	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
40-6-135	amended	Ch. 546	SB 345
40-6-233	amended	Ch. 528	HB 540
40-8-103	amended	Ch. 275	SB 150
	amended	Ch. 546	SB 345
40-8-110	amended	Ch. 546	SB 345
40-8-111	amended	Ch. 369	HB 340
	amended	Ch. 458	HB 186
	amended	Ch. 546	SB 345
40-8-121	amended	Ch. 546	SB 345
40-8-124	amended	Ch. 546	SB 345
40-8-126	amended	Ch. 275	SB 150
	amended	Ch. 515	HB 89
	amended	Ch. 546	SB 345
40-8-126(12)	enacted	Ch. 275	SB 150
40-9-102	amended	Ch. 546	SB 345
40-15-101	enacted	Ch. 350	SB 278
40-15-102	enacted	Ch. 350	SB 278

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40-15-103	enacted	Ch. 350	SB 278
40-15-201	enacted	Ch. 350	SB 278
40-15-202	enacted	Ch. 350	SB 278
40-15-203	enacted	Ch. 350	SB 278
40-15-204	enacted	Ch. 350	SB 278
40-15-301	enacted	Ch. 350	SB 278
40-15-302	enacted	Ch. 350	SB 278
40-15-303	enacted	Ch. 350	SB 278
41-1-405	amended	Ch. 469	HB 482
41-2-104	amended	Ch. 89	HB 31
41-3-101	amended	Ch. 494	SB 271
	amended	Ch. 564	SB 206
41-3-102	amended	Ch. 458	HB 186
	amended	Ch. 528	HB 540
	amended	Ch. 546	SB 345
	amended	Ch. 564	SB 206
41-3-103	amended	Ch. 458	HB 186
41-3-107	amended	Ch. 546	SB 345
41-3-108	amended	Ch. 546	SB 345
41-3-201	amended	Ch. 458	HB 186
	amended	Ch. 546	SB 345
41-3-202	amended	Ch. 146	SB 270
	amended	Ch. 546	SB 345
	amended	Ch. 564	SB 206
41-3-203	amended	Ch. 458	HB 186
41-3-204	amended	Ch. 146	SB 270
41-3-205	amended	Ch. 458	HB 186
	amended	Ch. 546	SB 345
	amended	Ch. 564	SB 206
41-3-206	amended	Ch. 564	SB 206
41-3-208	amended	Ch. 546	SB 345
41-3-301	amended	Ch. 546	SB 345
41-3-302	amended	Ch. 546	SB 345
41-3-401	amended	Ch. 458	HB 186
	amended	Ch. 546	SB 345
41-3-402	amended	Ch. 458	HB 186
	amended	Ch. 546	SB 345
41-3-403	amended	Ch. 458	HB 186
41-3-404	amended	Ch. 458	HB 186
41-3-406	amended	Ch. 458	HB 186
	amended	Ch. 546	SB 345
41-3-408	amended	Ch. 458	HB 186
41-3-602	amended	Ch. 458	HB 186
41-3-603	amended	Ch. 458	HB 186
41-3-607	amended	Ch. 458	HB 186
41-3-609	amended	Ch. 458	HB 186
41-3-609(5)	enacted	Ch. 369	HB 340
41-3-611	amended	Ch. 458	HB 186
41-3-702	amended	Ch. 546	SB 345
41-3-704	amended	Ch. 546	SB 345
41-3-1002	amended	Ch. 386	SB 174
	amended	Ch. 545	SB 398
41-3-1003	amended	Ch. 386	SB 174
	amended	Ch. 546	SB 345
41-3-1004	amended	Ch. 386	SB 174
	amended	Ch. 546	SB 345
41-3-1006	amended	Ch. 546	SB 345

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41-3-1008	amended	Ch. 386	SB 174
	amended	Ch. 546	SB 345
41-3-1009	amended	Ch. 386	SB 174
41-3-1010	amended	Ch. 386	SB 174
	amended	Ch. 546	SB 345
41-3-1011	amended	Ch. 386	SB 174
	amended	Ch. 546	SB 345
41-3-1012	amended	Ch. 546	SB 345
41-3-1013	amended	Ch. 386	SB 174
	amended	Ch. 546	SB 345
41-3-1014	amended	Ch. 386	SB 174
	amended	Ch. 546	SB 345
41-3-1101	amended	Ch. 546	SB 345
41-3-1102	amended	Ch. 546	SB 345
41-3-1103	amended	Ch. 546	SB 345
41-3-1104	amended	Ch. 546	SB 345
41-3-1112	repealed	Ch. 458	HB 186
41-3-1114	amended	Ch. 546	SB 345
41-3-1122	amended	Ch. 546	SB 345
41-3-1132	amended	Ch. 546	SB 345
41-3-1151	amended	Ch. 255	HB 65
41-4-103	amended	Ch. 546	SB 345
41-4-104	amended	Ch. 546	SB 345
41-5-102	amended	Ch. 528	HB 540
41-5-103	amended	Ch. 546	SB 345
41-5-203	amended	Ch. 376	HB 457
41-5-206	amended	Ch. 438	HB 380
	amended	Ch. 546	SB 345
41-5-208	enacted	Ch. 438	HB 380
41-5-301	amended	Ch. 546	SB 345
41-5-304	amended	Ch. 528	HB 540
41-5-306	amended	Ch. 528	HB 540
41-5-311	amended	Ch. 18	SB 1
41-5-403	amended	Ch. 528	HB 540
	amended	Ch. 546	SB 345
41-5-514	amended	Ch. 528	HB 540
41-5-521	amended	Ch. 466	HB 429
41-5-522	amended	Ch. 528	HB 540
41-5-523	amended	Ch. 438	HB 380
	amended	Ch. 546	SB 345
41-5-525	amended	Ch. 403	HB 150
41-5-526	amended	Ch. 403	HB 150
41-5-527	amended	Ch. 403	HB 150
41-5-530	amended	Ch. 546	SB 345
41-5-601	repealed	Ch. 466	HB 429
	amended	Ch. 481	SB 64
41-5-602	repealed	Ch. 466	HB 429
	amended	Ch. 481	SB 64
41-5-603	amended	Ch. 466	HB 429
	amended	Ch. 481	SB 64
41-5-604	amended	Ch. 251	HB 551
	amended	Ch. 466	HB 429
	amended	Ch. 481	SB 64
	amended	Ch. 528	HB 540
41-5-605	enacted	Ch. 466	HB 429
41-5-702	amended	Ch. 205	HB 474
41-5-706	enacted	Ch. 205	HB 474
41-5-802	amended	Ch. 528	HB 540

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41-5-811	amended	Ch. 528	HB 540
41-5-1004	amended	Ch. 8	SB 26
41-5-1101	enacted	Ch. 438	HB 380
41-5-1102	enacted	Ch. 438	HB 380
41-5-1103	enacted	Ch. 438	HB 380
41-5-1104	enacted	Ch. 438	HB 380
41-5-1105	enacted	Ch. 438	HB 380
44-1-1005	amended	Ch. 80	HB 48
44-2-314	amended	Ch. 325	HB 563
44-2-601	amended	Ch. 125	HB 69
	amended	Ch. 372	HB 356
44-4-101	amended	Ch. 455	HB 17
44-5-202	amended	Ch. 546	SB 345
44-5-213	amended	Ch. 546	SB 345
44-5-303	amended	Ch. 125	HB 69
44-5-311	enacted	Ch. 125	HB 69
44-6-101	enacted	Ch. 251	HB 551
44-6-102	enacted	Ch. 251	HB 551
44-6-103	enacted	Ch. 251	HB 551
44-6-106	enacted	Ch. 251	HB 551
44-6-107	enacted	Ch. 251	HB 551
44-6-108	enacted	Ch. 251	HB 551
44-6-110	enacted	Ch. 251	HB 551
44-12-206	amended	Ch. 545	SB 398
44-13-102	amended	Ch. 219	HB 226
44-13-103	amended	Ch. 545	SB 398
45-1-205	amended	Ch. 247	HB 355
45-2-101	amended	Ch. 18	SB 1
	amended	Ch. 354	SB 293
45-2-103	amended	Ch. 354	SB 293
45-2-104	amended	Ch. 354	SB 293
45-5-102	amended	Ch. 482	SB 66
45-5-103	amended	Ch. 482	SB 66
45-5-202	amended	Ch. 482	SB 66
45-5-206	amended	Ch. 18	SB 1
	amended	Ch. 350	SB 278
45-5-220	amended	Ch. 350	SB 278
45-5-302	amended	Ch. 482	SB 66
45-5-303	amended	Ch. 482	SB 66
45-5-304	amended	Ch. 467	HB 444
45-5-401	amended	Ch. 482	SB 66
45-5-502	amended	Ch. 550	HB 157
45-5-503	amended	Ch. 482	SB 66
	amended	Ch. 550	HB 157
45-5-504	amended	Ch. 550	HB 157
45-5-507	amended	Ch. 550	HB 157
45-5-620	amended	Ch. 187	HB 161
45-5-621	amended	Ch. 546	SB 345
45-5-624	amended	Ch. 481	SB 64
45-5-625	amended	Ch. 187	HB 161
	amended	Ch. 482	SB 66
	amended	Ch. 546	SB 345
	amended	Ch. 550	HB 157
45-5-626	amended	Ch. 350	SB 278
45-5-627	amended	Ch. 482	SB 66
45-5-637	enacted	Ch. 376	HB 457
45-6-103	amended	Ch. 124	HB 46
45-6-104	enacted	Ch. 533	HB 607

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45-6-301	amended	Ch. 237	SB 253
45-6-313	enacted	Ch. 354	SB 293
45-7-102	amended	Ch. 351	HB 347
45-7-209	amended	Ch. 351	HB 347
45-8-109	amended	Ch. 546	SB 345
45-8-313	enacted	Ch. 555	HB 547
45-8-314	enacted	Ch. 555	HB 547
45-8-321	amended	Ch. 408	HB 232
45-8-324	amended	Ch. 408	HB 232
45-8-329	enacted	Ch. 408	HB 232
45-8-330	enacted	Ch. 408	HB 232
45-8-360	enacted	Ch. 317	HB 332
45-9-130	enacted	Ch. 446	SB 219
45-9-202	amended	Ch. 546	SB 345
45-9-205	amended	Ch. 125	HB 69
45-9-206	enacted	Ch. 537	SB 229
45-9-208	enacted	Ch. 50	HB 108
45-10-108	enacted	Ch. 50	HB 108
46-1-202	amended	Ch. 546	SB 345
46-3-110	amended	Ch. 177	HB 179
46-3-112	amended	Ch. 177	HB 179
46-3-113	amended	Ch. 177	HB 179
46-3-114	amended	Ch. 177	HB 179
46-3-115	amended	Ch. 177	HB 179
46-5-212	amended	Ch. 310	SB 246
46-6-105	amended	Ch. 350	SB 278
46-6-311	amended	Ch. 350	SB 278
46-6-602	amended	Ch. 350	SB 278
46-6-603	enacted	Ch. 350	SB 278
46-9-302	amended	Ch. 350	SB 278
46-11-111	amended	Ch. 18	SB 1
46-11-701	amended	Ch. 125	HB 69
46-14-221	amended	Ch. 211	HB 117
	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
46-14-222	amended	Ch. 546	SB 345
46-14-301	amended	Ch. 546	SB 345
46-14-302	amended	Ch. 546	SB 345
46-14-303	amended	Ch. 546	SB 345
46-14-304	amended	Ch. 546	SB 345
46-14-312	amended	Ch. 256	HB 84
	amended	Ch. 546	SB 345
46-15-101	amended	Ch. 138	SB 59
46-16-110	amended	Ch. 7	SB 10
46-16-130	amended	Ch. 447	SB 316
46-17-201	amended	Ch. 7	SB 10
46-18-101	amended	Ch. 125	HB 69
	amended	Ch. 546	SB 345
46-18-105	amended	Ch. 546	SB 345
46-18-111	amended	Ch. 482	SB 66
	amended	Ch. 546	SB 345
46-18-112	amended	Ch. 125	HB 69
46-18-113	amended	Ch. 125	HB 69
46-18-115	amended	Ch. 125	HB 69
46-18-130	enacted	Ch. 306	HB 357
46-18-131	enacted	Ch. 306	HB 357
46-18-132	enacted	Ch. 306	HB 357

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46-18-201	amended	Ch. 125	HB 69
	amended	Ch. 394	SB 353
	amended	Ch. 407	HB 214
	amended	Ch. 482	SB 66
	amended	Ch. 546	SB 345
46-18-202	amended	Ch. 125	HB 69
	amended	Ch. 350	SB 278
	amended	Ch. 550	HB 157
46-18-219	enacted and amended	Ch. 482	SB 66
46-18-222	amended	Ch. 125	HB 69
	amended	Ch. 482	SB 66
46-18-225	amended	Ch. 482	SB 66
	amended	Ch. 546	SB 345
46-18-235	amended	Ch. 509	SB 83
	amended	Ch. 546	SB 345
46-18-241	amended	Ch. 125	HB 69
	amended	Ch. 310	SB 246
46-18-242	amended	Ch. 125	HB 69
46-18-243	amended	Ch. 125	HB 69
46-18-244	amended	Ch. 125	HB 69
46-18-245	amended	Ch. 125	HB 69
46-18-246	amended	Ch. 125	HB 69
46-18-247	amended	Ch. 125	HB 69
46-18-248	amended	Ch. 18	SB 1
46-18-250	amended	Ch. 18	SB 1
46-18-251	enacted	Ch. 125	HB 69
46-18-254	amended	Ch. 407	HB 214
	amended	Ch. 546	SB 345
46-18-255	amended	Ch. 407	HB 214
46-18-302	amended	Ch. 125	HB 69
46-18-304	amended	Ch. 18	SB 1
46-18-401	amended	Ch. 372	HB 356
46-18-402	amended	Ch. 372	HB 356
46-18-403	amended	Ch. 388	SB 208
46-18-404	repealed	Ch. 372	HB 356
46-18-502	amended	Ch. 482	SB 66
46-18-801	amended	Ch. 555	HB 547
46-18-1001	amended	Ch. 546	SB 345
46-18-1004	amended	Ch. 546	SB 345
46-19-102	amended	Ch. 388	SB 208
46-19-202	amended	Ch. 546	SB 345
46-19-303	amended	Ch. 546	SB 345
46-19-305	amended	Ch. 546	SB 345
46-19-402	amended	Ch. 546	SB 345
46-21-105	amended	Ch. 96	SB 165
46-23-103	amended	Ch. 546	SB 345
46-23-104	amended	Ch. 546	SB 345
46-23-106	amended	Ch. 546	SB 345
46-23-201	amended	Ch. 372	HB 356
	amended	Ch. 482	SB 66
	amended	Ch. 546	SB 345
46-23-202	amended	Ch. 125	HB 69
	amended	Ch. 372	HB 356
46-23-204	repealed	Ch. 125	HB 69
46-23-210	amended	Ch. 125	HB 69
46-23-215	amended	Ch. 125	HB 69
46-23-216	amended	Ch. 372	HB 356
46-23-217	amended	Ch. 372	HB 356

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46-23-302	amended	Ch. 546	SB 345
46-23-315	amended	Ch. 546	SB 345
46-23-401	amended	Ch. 546	SB 345
46-23-405	amended	Ch. 125	HB 69
46-23-411	amended	Ch. 482	SB 66
46-23-426	amended	Ch. 372	HB 356
46-23-501	amended	Ch. 407	HB 214
46-23-502	amended	Ch. 407	HB 214
	amended	Ch. 546	SB 345
	amended	Ch. 550	HB 157
46-23-503	amended	Ch. 407	HB 214
	amended	Ch. 546	SB 345
46-23-504	amended	Ch. 407	HB 214
46-23-505	amended	Ch. 407	HB 214
46-23-506	amended	Ch. 407	HB 214
	amended	Ch. 550	HB 157
46-23-507	amended	Ch. 407	HB 214
	amended	Ch. 550	HB 157
46-23-508	enacted	Ch. 407	HB 214
	enacted	Ch. 550	HB 157
46-23-1001	amended	Ch. 546	SB 345
46-23-1004	amended	Ch. 499	SB 350
46-23-1005	enacted	Ch. 350	SB 278
46-23-1011	amended	Ch. 125	HB 69
46-23-1021	amended	Ch. 125	HB 69
46-23-1024	amended	Ch. 546	SB 345
46-23-1025	amended	Ch. 125	HB 69
46-23-1032	enacted	Ch. 219	HB 226
46-24-103	amended	Ch. 125	HB 69
46-24-104	amended	Ch. 125	HB 69
46-24-201	amended	Ch. 125	HB 69
46-24-202	amended	Ch. 125	HB 69
46-24-203	amended	Ch. 125	HB 69
46-24-205	amended	Ch. 125	HB 69
46-24-207	amended	Ch. 466	HB 429
46-24-211	enacted	Ch. 125	HB 69
46-24-212	enacted	Ch. 125	HB 69
46-24-213	enacted	Ch. 125	HB 69
49-3-204	amended	Ch. 546	SB 345
49-4-301	amended	Ch. 202	HB 318
	amended	Ch. 392	SB 295
49-4-302	amended	Ch. 392	SB 295
	amended	Ch. 489	SB 163
49-4-304	amended	Ch. 489	SB 163
49-4-305	amended	Ch. 392	SB 295
49-4-502	amended	Ch. 546	SB 345
49-4-507	amended	Ch. 546	SB 345
50-1-101	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-1-102	amended	Ch. 546	SB 345
50-1-103	amended	Ch. 546	SB 345
50-1-104	amended	Ch. 546	SB 345
50-1-201	repealed	Ch. 378	HB 511
50-1-202	amended	Ch. 324	HB 557
	amended	Ch. 546	SB 345
50-1-203	amended	Ch. 383	SB 124
50-1-301	repealed	Ch. 546	SB 345

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50-1-302	amended	Ch. 418	SB 234
	repealed	Ch. 546	SB 345
50-1-401	enacted	Ch. 323	HB 542
50-1-402	enacted	Ch. 323	HB 542
50-1-403	enacted	Ch. 323	HB 542
50-1-404	enacted	Ch. 323	HB 542
50-1-405	enacted	Ch. 323	HB 542
50-1-406	enacted	Ch. 323	HB 542
50-2-101	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-2-116	amended	Ch. 324	HB 557
	amended	Ch. 418	SB 234
	amended	Ch. 471	HB 521
50-2-130	enacted	Ch. 471	HB 521
50-3-102	amended	Ch. 546	SB 345
50-4-101	repealed	Ch. 378	HB 511
50-4-102	amended	Ch. 366	HB 301
	repealed	Ch. 378	HB 511
	amended	Ch. 398	SB 416
	amended	Ch. 546	SB 345
50-4-103	enacted	Ch. 378	HB 511
50-4-104	enacted	Ch. 378	HB 511
50-4-201	repealed	Ch. 378	HB 511
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-4-202	repealed	Ch. 378	HB 511
50-4-203	enacted	Ch. 378	HB 511
50-4-204	enacted	Ch. 378	HB 511
50-4-205	enacted	Ch. 378	HB 511
50-4-206	enacted	Ch. 378	HB 511
50-4-301	repealed	Ch. 378	HB 511
50-4-302	repealed	Ch. 378	HB 511
50-4-303	repealed	Ch. 378	HB 511
50-4-304	repealed	Ch. 378	HB 511
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-4-305	repealed	Ch. 378	HB 511
50-4-306	repealed	Ch. 378	HB 511
50-4-307	repealed	Ch. 378	HB 511
50-4-308	repealed	Ch. 378	HB 511
50-4-309	repealed	Ch. 378	HB 511
50-4-310	repealed	Ch. 378	HB 511
	amended	Ch. 546	SB 345
50-4-311	repealed	Ch. 378	HB 511
50-4-312	enacted	Ch. 349	HB 531
50-4-401	repealed	Ch. 378	HB 511
50-4-402	repealed	Ch. 378	HB 511
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-4-403	enacted	Ch. 378	HB 511
50-4-501	repealed	Ch. 378	HB 511
50-4-502	amended	Ch. 378	HB 511
50-4-503	repealed	Ch. 378	HB 511
50-4-504	enacted	Ch. 378	HB 511
50-4-601	amended	Ch. 378	HB 511
	amended	Ch. 526	HB 509
50-4-602	amended	Ch. 526	HB 509

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50-4-603	amended	Ch. 378	HB 511
	amended	Ch. 526	HB 509
50-4-604	amended	Ch. 378	HB 511
50-4-605	enacted	Ch. 378	HB 511
50-4-609	amended	Ch. 378	HB 511
50-4-610	amended	Ch. 378	HB 511
50-4-611	amended	Ch. 378	HB 511
	amended	Ch. 526	HB 509
50-4-612	amended	Ch. 378	HB 511
50-4-621	enacted and amended	Ch. 526	HB 509
50-4-622	enacted and amended	Ch. 526	HB 509
50-4-623	enacted and amended	Ch. 526	HB 509
50-5-101	amended	Ch. 255	HB 65
	amended	Ch. 366	HB 301
	amended	Ch. 398	SB 416
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-5-103	amended	Ch. 366	HB 301
50-5-106	amended	Ch. 546	SB 345
50-5-114	amended	Ch. 546	SB 345
50-5-115	amended	Ch. 514	HB 68
50-5-204	amended	Ch. 366	HB 301
50-5-207	amended	Ch. 546	SB 345
50-5-208	amended	Ch. 546	SB 345
50-5-213	enacted	Ch. 366	HB 301
50-5-214	enacted	Ch. 366	HB 301
50-5-215	enacted	Ch. 366	HB 301
50-5-216	enacted	Ch. 366	HB 301
50-5-226	amended	Ch. 366	HB 301
	amended	Ch. 546	SB 345
50-5-227	amended	Ch. 366	HB 301
	amended	Ch. 546	SB 345
50-5-301	amended	Ch. 255	HB 65
	amended	Ch. 366	HB 301
	amended	Ch. 398	SB 416
	amended	Ch. 546	SB 345
50-5-302	amended	Ch. 398	SB 416
50-5-304	amended	Ch. 398	SB 416
50-5-306	amended	Ch. 398	SB 416
50-5-310	amended	Ch. 398	SB 416
50-5-602	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-5-1103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-5-1104	amended	Ch. 255	HB 65
50-6-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-6-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
	amended	Ch. 579	HB 591
50-6-104	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-6-203	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-6-207	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-6-302	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345

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50-6-308	amended	Ch. 546	SB 345
50-6-310	amended	Ch. 546	SB 345
50-6-314	amended	Ch. 546	SB 345
50-6-315	amended	Ch. 546	SB 345
50-6-316	amended	Ch. 546	SB 345
50-6-324	amended	Ch. 546	SB 345
50-6-325	amended	Ch. 546	SB 345
50-6-326	amended	Ch. 546	SB 345
50-6-327	amended	Ch. 546	SB 345
50-6-401	enacted	Ch. 579	HB 591
50-6-402	enacted	Ch. 579	HB 591
50-6-403	enacted	Ch. 579	HB 591
50-6-404	enacted	Ch. 579	HB 591
50-6-410	enacted	Ch. 579	HB 591
50-6-411	enacted	Ch. 579	HB 591
50-6-412	enacted	Ch. 579	HB 591
50-6-415	enacted	Ch. 579	HB 591
50-8-101	amended	Ch. 255	HB 65
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-8-102	amended	Ch. 546	SB 345
50-9-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-10-101	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-15-101	amended	Ch. 418	SB 234
	amended	Ch. 515	HB 89
	amended	Ch. 546	SB 345
50-15-102	amended	Ch. 515	HB 89
50-15-103	amended	Ch. 515	HB 89
50-15-110	repealed	Ch. 515	HB 89
50-15-111	amended	Ch. 515	HB 89
50-15-112	repealed	Ch. 515	HB 89
50-15-113	repealed	Ch. 515	HB 89
	amended	Ch. 546	SB 345
50-15-121	enacted	Ch. 515	HB 89
50-15-122	enacted	Ch. 515	HB 89
50-15-123	enacted	Ch. 515	HB 89
50-15-124	enacted	Ch. 515	HB 89
50-15-201	repealed	Ch. 515	HB 89
50-15-204	amended	Ch. 515	HB 89
50-15-205	repealed	Ch. 515	HB 89
50-15-206	repealed	Ch. 515	HB 89
	amended	Ch. 546	SB 345
50-15-210	amended	Ch. 70	SB 36
50-15-221	enacted	Ch. 515	HB 89
50-15-222	enacted	Ch. 515	HB 89
50-15-223	enacted	Ch. 515	HB 89
50-15-303	amended	Ch. 515	HB 89
50-15-304	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-15-311	enacted	Ch. 515	HB 89
50-15-403	amended	Ch. 515	HB 89
50-15-405	amended	Ch. 515	HB 89
50-15-702	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-16-101	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345

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50-16-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-16-530	amended	Ch. 396	SB 401
50-16-542	amended	Ch. 515	HB 89
50-16-602	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-16-701	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-16-712	enacted	Ch. 396	SB 401
50-16-1003	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-17-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-18-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-18-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-18-104	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-18-105	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-18-109	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-18-113	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-19-101	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-19-201	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-19-303	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-20-104	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
	amended	Ch. 566	SB 292
50-20-106	amended	Ch. 566	SB 292
50-20-107	repealed	Ch. 469	HB 482
50-20-109	amended	Ch. 321	HB 442
	amended	Ch. 354	SB 293
50-20-112	amended	Ch. 566	SB 292
50-20-201	enacted	Ch. 469	HB 482
50-20-202	enacted	Ch. 469	HB 482
50-20-203	enacted	Ch. 469	HB 482
50-20-204	enacted	Ch. 469	HB 482
50-20-205	enacted	Ch. 469	HB 482
50-20-208	enacted	Ch. 469	HB 482
50-20-209	enacted	Ch. 469	HB 482
50-20-211	enacted	Ch. 469	HB 482
50-20-212	enacted	Ch. 469	HB 482
50-20-215	enacted	Ch. 469	HB 482
50-20-301	enacted	Ch. 566	SB 292
50-20-302	enacted	Ch. 566	SB 292
50-20-303	enacted	Ch. 566	SB 292
50-20-304	enacted	Ch. 566	SB 292
50-20-305	enacted	Ch. 566	SB 292
50-20-306	enacted	Ch. 566	SB 292
50-20-307	enacted	Ch. 566	SB 292
50-20-308	enacted	Ch. 566	SB 292

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50-21-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-21-103	amended	Ch. 546	SB 345
50-23-101	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-23-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-23-105	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-23-106	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-30-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-31-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-31-307	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-31-501	amended	Ch. 546	SB 345
50-32-101	amended	Ch. 198	HB 169
50-34-101	repealed	Ch. 182	HB 334
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-34-102	repealed	Ch. 182	HB 334
50-34-103	repealed	Ch. 182	HB 334
50-34-104	repealed	Ch. 182	HB 334
50-34-105	repealed	Ch. 182	HB 334
50-34-106	repealed	Ch. 182	HB 334
50-34-107	repealed	Ch. 182	HB 334
50-34-108	repealed	Ch. 182	HB 334
50-34-109	repealed	Ch. 182	HB 334
50-34-110	repealed	Ch. 182	HB 334
50-36-101	repealed	Ch. 181	HB 333
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-36-102	repealed	Ch. 181	HB 333
50-36-103	repealed	Ch. 181	HB 333
50-36-104	repealed	Ch. 181	HB 333
50-36-105	repealed	Ch. 181	HB 333
50-36-106	repealed	Ch. 181	HB 333
50-36-107	repealed	Ch. 181	HB 333
50-39-101	amended	Ch. 514	HB 68
50-39-102	amended	Ch. 514	HB 68
50-39-103	amended	Ch. 514	HB 68
50-39-104	amended	Ch. 514	HB 68
50-39-106	amended	Ch. 514	HB 68
50-39-107	amended	Ch. 514	HB 68
50-40-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-40-204	amended	Ch. 308	SB 156
50-44-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-49-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-49-108	repealed	Ch. 18	SB 1
50-50-102	amended	Ch. 315	SB 296
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-50-103	amended	Ch. 315	SB 296

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50-50-202	amended	Ch. 315	SB 296
50-51-102	amended	Ch. 366	HB 301
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-51-201	amended	Ch. 366	HB 301
50-52-101	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-53-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-53-115	enacted	Ch. 155	SB 400
50-60-204	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-60-803	amended	Ch. 418	SB 234
50-61-102	amended	Ch. 212	HB 166
50-61-114	amended	Ch. 212	HB 166
50-63-202	amended	Ch. 212	HB 166
50-70-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-70-105	amended	Ch. 546	SB 345
50-70-106	repealed	Ch. 546	SB 345
50-70-108	amended	Ch. 546	SB 345
50-70-109	amended	Ch. 546	SB 345
50-70-110	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-70-111	amended	Ch. 546	SB 345
50-70-112	amended	Ch. 546	SB 345
50-70-113	amended	Ch. 546	SB 345
50-70-114	amended	Ch. 546	SB 345
50-70-116	amended	Ch. 546	SB 345
50-70-117	amended	Ch. 546	SB 345
50-71-103	amended	Ch. 514	HB 68
50-71-109	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
50-71-323	amended	Ch. 514	HB 68
50-74-101	amended	Ch. 514	HB 68
50-74-219	amended	Ch. 514	HB 68
50-74-303	amended	Ch. 514	HB 68
50-74-304	amended	Ch. 514	HB 68
50-74-305	amended	Ch. 308	SB 156
	amended	Ch. 514	HB 68
50-74-307	amended	Ch. 514	HB 68
50-74-309	amended	Ch. 514	HB 68
50-74-312	amended	Ch. 514	HB 68
50-74-314	amended	Ch. 514	HB 68
50-74-317	amended	Ch. 514	HB 68
50-76-102	amended	Ch. 514	HB 68
50-76-103	amended	Ch. 514	HB 68
50-76-104	amended	Ch. 514	HB 68
50-76-106	amended	Ch. 514	HB 68
50-76-110	amended	Ch. 514	HB 68
50-77-101	amended	Ch. 404	HB 158
50-77-101(3),(4)	enacted	Ch. 404	HB 158
50-78-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-1-101	amended	Ch. 546	SB 345
52-1-102	amended	Ch. 546	SB 345

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52-1-103	amended	Ch. 255	HB 65
	amended	Ch. 458	HB 186
	amended	Ch. 546	SB 345
52-1-105	repealed	Ch. 546	SB 345
52-1-110	amended	Ch. 443	SB 55
	amended	Ch. 546	SB 345
52-2-101	amended	Ch. 18	SB 1
	amended	Ch. 458	HB 186
	amended	Ch. 546	SB 345
52-2-102	amended	Ch. 494	SB 271
52-2-111	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-2-112	amended	Ch. 458	HB 186
52-2-113	amended	Ch. 255	HB 65
	amended	Ch. 458	HB 186
52-2-117	amended	Ch. 144	SB 217
52-2-121	enacted	Ch. 326	SB 244
52-2-202	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-2-203	amended	Ch. 546	SB 345
52-2-211	amended	Ch. 458	HB 186
	amended	Ch. 466	HB 429
	amended	Ch. 546	SB 345
52-2-303	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-2-401	amended	Ch. 546	SB 345
52-2-503	amended	Ch. 546	SB 345
52-2-505	amended	Ch. 18	SB 1
52-2-522	amended	Ch. 546	SB 345
52-2-523	amended	Ch. 546	SB 345
52-2-527	amended	Ch. 546	SB 345
52-2-703	amended	Ch. 546	SB 345
52-2-704	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-2-731	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-2-733	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-2-735	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-3-101	amended	Ch. 546	SB 345
52-3-102	amended	Ch. 546	SB 345
52-3-103	amended	Ch. 546	SB 345
52-3-111	amended	Ch. 546	SB 345
52-3-202	amended	Ch. 255	HB 65
	amended	Ch. 465	HB 366
	amended	Ch. 546	SB 345
52-3-207	amended	Ch. 465	HB 366
52-3-301	repealed	Ch. 366	HB 301
52-3-302	repealed	Ch. 366	HB 301
	amended	Ch. 546	SB 345
52-3-303	repealed	Ch. 366	HB 301
52-3-304	repealed	Ch. 366	HB 301
52-3-305	repealed	Ch. 366	HB 301
52-3-311	repealed	Ch. 366	HB 301
52-3-312	repealed	Ch. 366	HB 301
52-3-313	repealed	Ch. 366	HB 301
52-3-314	repealed	Ch. 366	HB 301

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52-3-401	amended	Ch. 546	SB 345
52-3-502	amended	Ch. 546	SB 345
52-3-603	amended	Ch. 546	SB 345
52-3-605	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-3-801	amended	Ch. 255	HB 65
52-3-802	amended	Ch. 255	HB 65
52-3-803	amended	Ch. 255	HB 65
	amended	Ch. 465	HB 366
52-3-804	amended	Ch. 255	HB 65
	amended	Ch. 465	HB 366
	amended	Ch. 546	SB 345
52-3-805	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
52-3-811	amended	Ch. 255	HB 65
	amended	Ch. 418	SB 234
	amended	Ch. 465	HB 366
	amended	Ch. 546	SB 345
52-3-812	amended	Ch. 255	HB 65
	amended	Ch. 465	HB 366
52-3-813	amended	Ch. 18	SB 1
	amended	Ch. 255	HB 65
	amended	Ch. 465	HB 366
	amended	Ch. 546	SB 345
52-3-814	amended	Ch. 465	HB 366
52-3-815	amended	Ch. 255	HB 65
	amended	Ch. 465	HB 366
52-3-825	amended	Ch. 255	HB 65
	amended	Ch. 465	HB 366
52-4-101	amended	Ch. 255	HB 65
	repealed	Ch. 465	HB 366
	amended	Ch. 546	SB 345
52-4-102	amended	Ch. 255	HB 65
	repealed	Ch. 465	HB 366
52-4-103	amended	Ch. 255	HB 65
	repealed	Ch. 465	HB 366
52-4-104	amended	Ch. 255	HB 65
	repealed	Ch. 465	HB 366
52-4-105	amended	Ch. 255	HB 65
	repealed	Ch. 465	HB 366
52-4-106	repealed	Ch. 465	HB 366
52-4-107	repealed	Ch. 465	HB 366
52-4-108	repealed	Ch. 465	HB 366
52-4-110	repealed	Ch. 465	HB 366
52-4-202	amended	Ch. 546	SB 345
52-4-204	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-4-205	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
52-5-101	amended	Ch. 546	SB 345
52-5-102	amended	Ch. 546	SB 345
52-5-103	amended	Ch. 546	SB 345
52-5-107	amended	Ch. 546	SB 345
52-5-108	amended	Ch. 546	SB 345
52-5-109	amended	Ch. 546	SB 345
52-5-110	amended	Ch. 546	SB 345
52-5-111	amended	Ch. 546	SB 345
52-5-112	amended	Ch. 546	SB 345

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52-5-113	amended	Ch. 546	SB 345
52-5-120	amended	Ch. 546	SB 345
52-5-121	amended	Ch. 546	SB 345
52-5-126	amended	Ch. 546	SB 345
52-5-127	amended	Ch. 546	SB 345
52-5-128	amended	Ch. 546	SB 345
52-5-129	amended	Ch. 546	SB 345
52-6-101	amended	Ch. 546	SB 345
52-6-102	amended	Ch. 546	SB 345
52-6-103	amended	Ch. 350	SB 278
	amended	Ch. 546	SB 345
52-6-104	amended	Ch. 546	SB 345
52-6-105	amended	Ch. 509	SB 83
53-1-101	repealed	Ch. 546	SB 345
53-1-105	amended	Ch. 546	SB 345
53-1-106	amended	Ch. 546	SB 345
53-1-201	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-1-202	amended	Ch. 94	SB 120
	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
	amended	Ch. 557	HB 594
53-1-203	amended	Ch. 316	HB 304
	amended	Ch. 546	SB 345
53-1-204	amended	Ch. 546	SB 345
53-1-206	amended	Ch. 546	SB 345
53-1-301	amended	Ch. 18	SB 1
	amended	Ch. 546	SB 345
53-1-303	amended	Ch. 546	SB 345
53-1-304	amended	Ch. 546	SB 345
53-1-401	amended	Ch. 546	SB 345
	amended	Ch. 590	SB 223
53-1-402	amended	Ch. 35	HB 36
	amended	Ch. 94	SB 120
	amended	Ch. 590	SB 223
53-1-409	amended	Ch. 35	HB 36
53-1-411	amended	Ch. 35	HB 36
53-1-413	amended	Ch. 35	HB 36
	amended	Ch. 557	HB 594
	amended	Ch. 590	SB 223
53-1-501	amended	Ch. 546	SB 345
53-1-502	amended	Ch. 546	SB 345
53-1-601	enacted	Ch. 546	SB 345
53-1-602	enacted	Ch. 546	SB 345
53-1-603	enacted	Ch. 546	SB 345
53-1-604	enacted	Ch. 546	SB 345
53-2-101	amended	Ch. 546	SB 345
53-2-105	amended	Ch. 491	SB 209
53-2-211	amended	Ch. 491	SB 209
53-2-303	amended	Ch. 546	SB 345
53-2-304	amended	Ch. 546	SB 345
53-2-305	amended	Ch. 546	SB 345
53-2-306	amended	Ch. 546	SB 345
53-2-322	amended	Ch. 418	SB 234
	amended	Ch. 443	SB 55
	amended	Ch. 546	SB 345
53-2-501	amended	Ch. 546	SB 345
53-2-503	amended	Ch. 546	SB 345

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53-2-601	repealed	Ch. 492	SB 236
53-2-602	amended	Ch. 546	SB 345
53-2-603	amended	Ch. 590	SB 223
53-2-606	amended	Ch. 546	SB 345
53-2-608	amended	Ch. 546	SB 345
53-2-609	amended	Ch. 546	SB 345
53-2-610	amended	Ch. 546	SB 345
53-2-611	repealed	Ch. 492	SB 236
53-2-613	amended	Ch. 60	SB 29
	amended	Ch. 546	SB 345
53-2-801	amended	Ch. 546	SB 345
53-2-802	amended	Ch. 520	HB 421
	amended	Ch. 546	SB 345
53-2-803	amended	Ch. 546	SB 345
53-2-811	amended	Ch. 546	SB 345
53-2-812	amended	Ch. 546	SB 345
53-2-813	amended	Ch. 546	SB 345
53-2-901	enacted	Ch. 491	SB 209
53-2-902	enacted	Ch. 491	SB 209
53-2-903	enacted	Ch. 491	SB 209
53-2-904	enacted	Ch. 491	SB 209
53-2-1110	amended	Ch. 6	SB 16
53-3-115	amended	Ch. 546	SB 345
53-4-201	amended	Ch. 491	SB 209
	amended	Ch. 546	SB 345
53-4-202	amended	Ch. 491	SB 209
53-4-203	repealed	Ch. 200	HB 245
	amended	Ch. 546	SB 345
53-4-212	amended	Ch. 491	SB 209
53-4-222	amended	Ch. 546	SB 345
53-4-241	amended	Ch. 491	SB 209
53-4-242	amended	Ch. 546	SB 345
53-4-243	repealed	Ch. 200	HB 245
53-4-244	amended	Ch. 546	SB 345
53-4-246	amended	Ch. 546	SB 345
53-4-249	enacted	Ch. 200	HB 245
53-4-601	enacted	Ch. 491	SB 209
53-4-602	enacted	Ch. 491	SB 209
53-4-603	enacted	Ch. 491	SB 209
53-4-606	enacted	Ch. 491	SB 209
53-4-607	enacted	Ch. 491	SB 209
53-4-608	enacted	Ch. 491	SB 209
53-4-609	enacted	Ch. 491	SB 209
53-4-611	enacted	Ch. 491	SB 209
53-4-612	enacted	Ch. 491	SB 209
53-4-613	enacted	Ch. 491	SB 209
53-4-702	amended	Ch. 491	SB 209
	amended	Ch. 546	SB 345
53-4-706	amended	Ch. 491	SB 209
53-4-707	amended	Ch. 200	HB 245
	amended	Ch. 491	SB 209
53-4-717	amended	Ch. 491	SB 209
53-4-719	amended	Ch. 546	SB 345
53-5-401	repealed	Ch. 492	SB 236
	amended	Ch. 546	SB 345
53-6-101	amended	Ch. 491	SB 209
	amended	Ch. 546	SB 345
53-6-104	amended	Ch. 546	SB 345

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53-6-106	amended	Ch. 354	SB 293
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-6-107	amended	Ch. 354	SB 293
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-6-108	amended	Ch. 354	SB 293
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-6-110	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-6-111	amended	Ch. 354	SB 293
	amended	Ch. 546	SB 345
53-6-112	amended	Ch. 546	SB 345
53-6-113	amended	Ch. 491	SB 209
	amended	Ch. 546	SB 345
53-6-114	amended	Ch. 546	SB 345
53-6-115	amended	Ch. 546	SB 345
53-6-116	amended	Ch. 546	SB 345
53-6-117	amended	Ch. 546	SB 345
53-6-131	amended	Ch. 491	SB 209
	amended	Ch. 544	SB 385
	amended	Ch. 546	SB 345
	amended	Ch. 590	SB 223
53-6-132	amended	Ch. 546	SB 345
	amended	Ch. 590	SB 223
53-6-133	amended	Ch. 546	SB 345
53-6-134	amended	Ch. 491	SB 209
	amended	Ch. 546	SB 345
53-6-140	enacted	Ch. 295	HB 560
53-6-142	amended	Ch. 546	SB 345
53-6-143	amended	Ch. 492	SB 236
	amended	Ch. 546	SB 345
53-6-144	amended	Ch. 492	SB 236
53-6-145	enacted	Ch. 525	HB 504
53-6-150	amended	Ch. 546	SB 345
53-6-155	enacted	Ch. 354	SB 293
53-6-156	enacted	Ch. 354	SB 293
53-6-157	enacted	Ch. 354	SB 293
53-6-158	enacted	Ch. 354	SB 293
53-6-159	enacted	Ch. 354	SB 293
53-6-160	enacted	Ch. 354	SB 293
53-6-165	enacted	Ch. 492	SB 236
53-6-166	enacted	Ch. 492	SB 236
53-6-167	enacted	Ch. 492	SB 236
53-6-168	enacted	Ch. 492	SB 236
53-6-169	enacted	Ch. 492	SB 236
53-6-171	enacted	Ch. 492	SB 236
53-6-172	enacted	Ch. 492	SB 236
53-6-173	enacted	Ch. 492	SB 236
53-6-174	enacted	Ch. 492	SB 236
53-6-175	enacted	Ch. 492	SB 236
53-6-176	enacted	Ch. 492	SB 236
53-6-177	enacted	Ch. 492	SB 236
53-6-178	enacted	Ch. 492	SB 236
53-6-179	enacted	Ch. 492	SB 236
53-6-180	enacted	Ch. 492	SB 236
53-6-181	enacted	Ch. 492	SB 236

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53-6-182	enacted	Ch. 492	SB 236
53-6-183	enacted	Ch. 492	SB 236
53-6-184	enacted	Ch. 492	SB 236
53-6-185	enacted	Ch. 492	SB 236
53-6-186	enacted	Ch. 492	SB 236
53-6-187	enacted	Ch. 492	SB 236
53-6-188	enacted	Ch. 492	SB 236
53-6-189	enacted	Ch. 492	SB 236
53-6-401	amended	Ch. 255	HB 65
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-6-601	enacted	Ch. 384	SB 158
53-6-602	enacted	Ch. 384	SB 158
53-6-603	enacted	Ch. 384	SB 158
53-6-701	enacted	Ch. 502	SB 388
53-6-702	enacted	Ch. 502	SB 388
53-6-703	enacted	Ch. 502	SB 388
53-6-704	enacted	Ch. 502	SB 388
53-6-705	enacted	Ch. 502	SB 388
53-6-706	enacted	Ch. 502	SB 388
53-6-707	enacted	Ch. 502	SB 388
53-6-708	enacted	Ch. 502	SB 388
53-6-709	enacted	Ch. 502	SB 388
53-7-101	amended	Ch. 546	SB 345
53-7-202	amended	Ch. 546	SB 345
53-7-301	amended	Ch. 546	SB 345
53-9-105	amended	Ch. 546	SB 345
53-9-109	amended	Ch. 18	SB 1
53-9-128	amended	Ch. 125	HB 69
53-10-501	amended	Ch. 546	SB 345
53-18-101	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-18-102	amended	Ch. 325	HB 563
53-18-103	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-18-105	amended	Ch. 255	HB 65
53-19-102	amended	Ch. 546	SB 345
53-20-101	amended	Ch. 255	HB 65
53-20-102	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-103	amended	Ch. 255	HB 65
53-20-104	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-105	repealed	Ch. 255	HB 65
53-20-106	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-107	amended	Ch. 255	HB 65
53-20-111	repealed	Ch. 255	HB 65
53-20-112	amended	Ch. 255	HB 65
53-20-113	amended	Ch. 255	HB 65
53-20-114	amended	Ch. 255	HB 65
53-20-116	amended	Ch. 255	HB 65
53-20-118	amended	Ch. 255	HB 65
53-20-121	amended	Ch. 255	HB 65
53-20-125	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-126	amended	Ch. 255	HB 65
53-20-127	amended	Ch. 255	HB 65

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53-20-128	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-129	amended	Ch. 255	HB 65
53-20-130	amended	Ch. 255	HB 65
53-20-131	amended	Ch. 255	HB 65
53-20-132	amended	Ch. 255	HB 65
53-20-133	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-146	amended	Ch. 255	HB 65
53-20-161	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-162	amended	Ch. 255	HB 65
53-20-163	amended	Ch. 546	SB 345
53-20-165	amended	Ch. 255	HB 65
53-20-202	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-203	amended	Ch. 255	HB 65
53-20-204	amended	Ch. 255	HB 65
53-20-205	amended	Ch. 255	HB 65
53-20-206	amended	Ch. 255	HB 65
53-20-207	amended	Ch. 255	HB 65
53-20-209	amended	Ch. 255	HB 65
53-20-213	amended	Ch. 255	HB 65
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-20-214	amended	Ch. 546	SB 345
53-20-301	amended	Ch. 255	HB 65
53-20-302	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-303	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-304	amended	Ch. 255	HB 65
	amended	Ch. 546	SB 345
53-20-305	amended	Ch. 255	HB 65
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-20-306	amended	Ch. 546	SB 345
53-20-307	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-20-504	amended	Ch. 546	SB 345
53-20-505	amended	Ch. 546	SB 345
53-21-102	amended	Ch. 546	SB 345
53-21-104	amended	Ch. 434	HB 41
53-21-106	amended	Ch. 546	SB 345
53-21-111	amended	Ch. 590	SB 223
53-21-127	amended	Ch. 434	HB 41
53-21-138	amended	Ch. 546	SB 345
53-21-139	amended	Ch. 546	SB 345
53-21-145	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-21-165	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-21-201	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-21-202	amended	Ch. 546	SB 345
53-21-204	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-21-206	amended	Ch. 590	SB 223

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53-21-212	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
53-21-402	amended	Ch. 546	SB 345
53-21-411	amended	Ch. 94	SB 120
	amended	Ch. 546	SB 345
53-21-412	repealed	Ch. 94	SB 120
	amended	Ch. 546	SB 345
53-21-413	amended	Ch. 94	SB 120
	amended	Ch. 546	SB 345
53-21-414	enacted	Ch. 94	SB 120
53-21-601	amended	Ch. 546	SB 345
53-21-603	amended	Ch. 165	SB 84
53-22-102	amended	Ch. 546	SB 345
53-22-104	amended	Ch. 546	SB 345
53-24-103	amended	Ch. 546	SB 345
53-24-204	amended	Ch. 546	SB 345
53-24-207	amended	Ch. 165	SB 84
53-24-209	amended	Ch. 164	SB 40
53-24-215	amended	Ch. 249	HB 436
53-24-301	amended	Ch. 164	SB 40
53-24-302	amended	Ch. 18	SB 1
53-24-303	amended	Ch. 165	SB 84
53-24-304	repealed	Ch. 165	SB 84
53-30-101	amended	Ch. 18	SB 1
	amended	Ch. 546	SB 345
53-30-102	amended	Ch. 546	SB 345
53-30-105	amended	Ch. 372	HB 356
	repealed 1/31/97	Ch. 372	HB 356
	amended	Ch. 546	SB 345
53-30-106	amended	Ch. 546	SB 345
53-30-110	amended	Ch. 546	SB 345
53-30-111	amended	Ch. 546	SB 345
53-30-131	amended	Ch. 546	SB 345
53-30-132	amended	Ch. 372	HB 356
	amended	Ch. 546	SB 345
53-30-133	amended	Ch. 546	SB 345
53-30-141	amended	Ch. 546	SB 345
53-30-303	amended	Ch. 546	SB 345
53-30-401	amended	Ch. 546	SB 345
53-30-501	enacted	Ch. 316	HB 304
53-30-502	enacted	Ch. 316	HB 304
53-30-503	enacted	Ch. 316	HB 304
53-30-504	enacted	Ch. 316	HB 304
53-30-505	enacted	Ch. 316	HB 304
53-30-506	enacted	Ch. 316	HB 304
53-30-507	enacted	Ch. 316	HB 304
60-1-103	amended	Ch. 75	SB 104
60-1-206	enacted	Ch. 67	HB 73
60-2-110	amended	Ch. 75	SB 104
60-2-112	amended	Ch. 286	HB 246
60-2-129	amended	Ch. 75	SB 104
60-2-210	amended	Ch. 106	HB 146
60-2-216	repealed	Ch. 308	SB 156
60-2-218	amended	Ch. 363	HB 194
60-2-224	repealed	Ch. 509	SB 83
60-3-201	amended	Ch. 356	SB 321
	amended	Ch. 442	SB 27
60-3-219	amended	Ch. 75	SB 104

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60-3-303	amended	Ch. 75	SB 104
60-3-304	amended	Ch. 75	SB 104
60-4-202	amended	Ch. 232	SB 114
60-4-203	amended	Ch. 232	SB 114
60-4-204	repealed	Ch. 232	SB 114
60-4-401	amended	Ch. 231	SB 103
60-4-403	amended	Ch. 231	SB 103
60-6-101	amended	Ch. 75	SB 104
60-7-201	amended	Ch. 75	SB 104
60-7-204	amended	Ch. 75	SB 104
60-11-111	amended	Ch. 418	SB 234
	amended	Ch. 545	SB 398
61-1-104	amended	Ch. 314	SB 294
61-1-120	amended	Ch. 283	SB 355
61-1-134	amended	Ch. 53	SB 34
61-1-303	amended	Ch. 75	SB 104
61-1-320	enacted	Ch. 358	SB 378
61-1-502	amended	Ch. 53	SB 34
61-1-510	enacted	Ch. 88	SB 49
61-1-511	enacted	Ch. 358	SB 378
61-2-102	amended	Ch. 538	SB 361
61-2-103	amended	Ch. 538	SB 361
61-2-107	amended	Ch. 18	SB 1
	amended	Ch. 509	SB 83
61-2-302	amended	Ch. 481	SB 64
61-3-203	amended	Ch. 342	HB 307
61-3-212	amended	Ch. 188	HB 204
61-3-303	amended	Ch. 88	SB 49
	amended	Ch. 257	HB 219
61-3-311	amended	Ch. 42	SB 47
61-3-312	amended	Ch. 42	SB 47
61-3-313	amended	Ch. 42	SB 47
	amended	Ch. 88	SB 49
61-3-321	amended	Ch. 81	HB 96
	amended	Ch. 88	SB 49
61-3-332	amended	Ch. 81	HB 96
61-3-407	enacted	Ch. 126	HB 97
61-3-424	amended	Ch. 489	SB 163
61-3-426	enacted	Ch. 489	SB 163
61-3-452	amended	Ch. 489	SB 163
61-3-453	amended	Ch. 489	SB 163
61-3-454	amended	Ch. 489	SB 163
61-3-456	enacted	Ch. 257	HB 219
61-3-502	amended	Ch. 81	HB 96
	amended	Ch. 257	HB 219
	amended	Ch. 509	SB 83
61-3-503	amended	Ch. 580	SB 161
61-3-504	amended	Ch. 257	HB 219
	amended	Ch. 489	SB 163
	amended	Ch. 580	SB 161
61-3-509	amended	Ch. 580	SB 161
61-3-510	amended	Ch. 81	HB 96
61-3-527	enacted	Ch. 580	SB 161
61-3-535	amended	Ch. 580	SB 161
61-3-537	amended	Ch. 217	HB 188
61-3-708	enacted	Ch. 358	SB 378
61-3-709	enacted	Ch. 358	SB 378
61-3-710	enacted	Ch. 358	SB 378

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61-3-712	amended	Ch. 75	SB 104
61-3-716	amended	Ch. 42	SB 47
61-3-721	amended	Ch. 42	SB 47
	amended	Ch. 88	SB 49
61-3-722	amended	Ch. 42	SB 47
61-3-724	amended	Ch. 42	SB 47
61-3-725	amended	Ch. 42	SB 47
61-4-111	amended	Ch. 342	HB 307
61-4-112	amended	Ch. 342	HB 307
	amended	Ch. 509	SB 83
61-5-104	amended	Ch. 53	SB 34
61-5-105	amended	Ch. 364	HB 248
61-5-106	amended	Ch. 364	HB 248
61-5-107	amended	Ch. 364	HB 248
61-5-110	amended	Ch. 53	SB 34
	amended	Ch. 364	HB 248
61-5-111	amended	Ch. 364	HB 248
61-5-117	amended	Ch. 53	SB 34
61-5-118	enacted	Ch. 53	SB 34
61-5-121	amended	Ch. 364	HB 248
	amended	Ch. 509	SB 83
61-5-212	amended	Ch. 447	SB 316
61-5-214	amended	Ch. 441	SB 13
61-5-405	amended	Ch. 354	SB 293
61-6-301	amended	Ch. 393	SB 297
61-6-302	amended	Ch. 393	SB 297
61-6-304	amended	Ch. 393	SB 297
	amended	Ch. 534	SB 113
61-8-204	amended	Ch. 509	SB 83
61-8-303	amended	Ch. 75	SB 104
	amended	Ch. 78	SB 160
	amended	Ch. 287	HB 249
61-8-309	amended	Ch. 73	SB 96
61-8-310	amended	Ch. 287	HB 249
61-8-356	amended	Ch. 283	SB 355
61-8-402	amended	Ch. 444	SB 189
	amended	Ch. 447	SB 316
61-8-403	amended	Ch. 444	SB 189
61-8-409	enacted	Ch. 447	SB 316
61-8-410	enacted	Ch. 447	SB 316
61-8-421	amended	Ch. 447	SB 316
61-8-422	enacted	Ch. 447	SB 316
61-8-711	amended	Ch. 134	HB 250
61-8-714	amended	Ch. 447	SB 316
	amended	Ch. 546	SB 345
	amended	Ch. 567	SB 333
61-8-720	amended	Ch. 134	HB 250
61-8-722	amended	Ch. 447	SB 316
	amended	Ch. 546	SB 345
	amended	Ch. 567	SB 333
61-8-724	enacted	Ch. 334	HB 294
61-8-806	amended	Ch. 53	SB 34
61-8-808	amended	Ch. 53	SB 34
61-8-901	enacted	Ch. 283	SB 355
61-8-902	enacted	Ch. 283	SB 355
61-8-903	enacted	Ch. 283	SB 355
61-8-904	enacted	Ch. 283	SB 355
61-8-905	enacted	Ch. 283	SB 355

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61-8-906	enacted	Ch. 283	SB 355
61-8-907	enacted	Ch. 283	SB 355
61-8-908	enacted	Ch. 283	SB 355
61-8-909	enacted	Ch. 283	SB 355
61-8-910	enacted	Ch. 283	SB 355
61-8-911	enacted	Ch. 283	SB 355
61-9-405	amended	Ch. 133	HB 180
61-9-416	amended	Ch. 283	SB 355
61-9-511	amended	Ch. 134	HB 250
61-10-101	amended	Ch. 236	SB 245
61-10-104	amended	Ch. 209	SB 205
	amended	Ch. 313	SB 283
61-10-105	repealed	Ch. 236	SB 245
61-10-107	amended	Ch. 236	SB 245
61-10-108	amended	Ch. 236	SB 245
61-10-109	amended	Ch. 236	SB 245
61-10-110	amended	Ch. 236	SB 245
61-10-121	amended	Ch. 71	SB 91
	amended	Ch. 236	SB 245
61-10-124	amended	Ch. 236	SB 245
	amended	Ch. 312	SB 281
61-10-125	amended	Ch. 71	SB 91
61-10-126	amended	Ch. 236	SB 245
	amended	Ch. 509	SB 83
61-10-128	amended	Ch. 236	SB 245
61-10-141	amended	Ch. 236	SB 245
61-10-144	amended	Ch. 62	SB 68
	amended	Ch. 236	SB 245
61-10-145	amended	Ch. 236	SB 245
61-10-148	amended	Ch. 509	SB 83
61-10-201	amended	Ch. 88	SB 49
	amended	Ch. 236	SB 245
61-10-206	amended	Ch. 314	SB 294
61-10-211	amended	Ch. 88	SB 49
61-10-214	amended	Ch. 18	SB 1
61-10-222	amended	Ch. 342	HB 307
61-10-225	amended	Ch. 509	SB 83
61-10-226	amended	Ch. 509	SB 83
61-11-203	amended	Ch. 393	SB 297
61-11-204	amended	Ch. 338	SB 185
61-11-205	repealed	Ch. 338	SB 185
61-11-206	repealed	Ch. 338	SB 185
61-11-207	amended	Ch. 338	SB 185
61-11-208	repealed	Ch. 338	SB 185
61-11-209	repealed	Ch. 338	SB 185
61-11-210	amended	Ch. 338	SB 185
61-11-211	amended	Ch. 338	SB 185
61-11-212	amended	Ch. 338	SB 185
61-11-213	amended	Ch. 338	SB 185
61-12-201	amended	Ch. 360	HB 111
61-12-206	amended	Ch. 360	HB 111
	amended	Ch. 538	SB 361
61-12-208	amended	Ch. 360	HB 111
61-12-402	amended	Ch. 283	SB 355
67-1-204	amended	Ch. 206	HB 520
67-4-211	amended	Ch. 418	SB 234
67-11-303	amended	Ch. 387	SB 193
69-1-105	amended	Ch. 271	HB 467

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69-1-224	amended	Ch. 117	HB 310
69-3-109	amended	Ch. 373	HB 360
69-3-112	enacted	Ch. 166	SB 284
69-3-203	amended	Ch. 82	HB 138
69-3-1002	amended	Ch. 546	SB 345
69-3-1006	amended	Ch. 546	SB 345
69-3-1204	amended	Ch. 418	SB 234
69-3-1205	amended	Ch. 418	SB 234
69-4-603	amended	Ch. 551	HB 396
69-5-108	amended	Ch. 167	SB 302
69-7-101	amended	Ch. 288	HB 289
69-7-102	repealed	Ch. 288	HB 289
69-7-121	repealed	Ch. 288	HB 289
69-12-101	amended	Ch. 358	SB 378
69-12-102	amended	Ch. 283	SB 355
	amended	Ch. 358	SB 378
69-12-103	repealed	Ch. 358	SB 378
69-12-301	amended	Ch. 358	SB 378
69-12-405	repealed	Ch. 358	SB 378
69-14-721	amended	Ch. 588	HB 448
70-6-511	enacted	Ch. 335	HB 322
70-6-512	enacted	Ch. 335	HB 322
70-6-513	enacted	Ch. 335	HB 322
70-6-514	enacted	Ch. 335	HB 322
70-9-309	amended	Ch. 5	SB 14
70-9-601	enacted	Ch. 17	HB 126
70-16-301	amended	Ch. 303	SB 211
70-16-302	amended	Ch. 303	SB 211
70-24-103	amended	Ch. 18	SB 1
70-24-311	amended	Ch. 389	SB 218
70-24-422	amended	Ch. 389	SB 218
70-24-436	amended	Ch. 389	SB 218
70-25-201	amended	Ch. 389	SB 218
71-3-902	amended	Ch. 56	SB 106
72-1-103	amended	Ch. 592	SB 132
72-2-113	amended	Ch. 18	SB 1
72-2-116	amended	Ch. 18	SB 1
	amended	Ch. 592	SB 132
72-2-221	amended	Ch. 592	SB 132
72-2-222	amended	Ch. 592	SB 132
72-2-223	amended	Ch. 592	SB 132
72-2-224	amended	Ch. 592	SB 132
72-2-225	amended	Ch. 592	SB 132
72-2-227	amended	Ch. 592	SB 132
72-2-228	enacted	Ch. 592	SB 132
72-2-230	enacted	Ch. 592	SB 132
72-2-331	amended	Ch. 592	SB 132
72-2-332	amended	Ch. 592	SB 132
72-2-613	amended	Ch. 592	SB 132
72-2-712	amended	Ch. 592	SB 132
72-2-716	amended	Ch. 592	SB 132
72-2-717	amended	Ch. 592	SB 132
72-2-719	amended	Ch. 592	SB 132
72-2-721	amended	Ch. 592	SB 132
72-2-811	amended	Ch. 592	SB 132
72-2-813	amended	Ch. 592	SB 132
72-2-814	amended	Ch. 592	SB 132
72-2-1017	amended	Ch. 592	SB 132

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72-3-102	amended	Ch. 592	SB 132
72-3-122	amended	Ch. 592	SB 132
72-3-131	amended	Ch. 592	SB 132
72-3-132	amended	Ch. 592	SB 132
72-3-317	amended	Ch. 592	SB 132
72-6-201	amended	Ch. 592	SB 132
72-6-213	amended	Ch. 592	SB 132
72-6-226	amended	Ch. 592	SB 132
72-14-204	amended	Ch. 5	SB 14
72-14-205	amended	Ch. 5	SB 14
72-14-206	amended	Ch. 5	SB 14
72-14-207	amended	Ch. 5	SB 14
72-14-209	amended	Ch. 5	SB 14
72-14-210	amended	Ch. 5	SB 14
72-14-403	amended	Ch. 5	SB 14
72-16-217	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
72-16-301	amended	Ch. 592	SB 132
72-16-308	amended	Ch. 592	SB 132
72-16-502	amended	Ch. 391	SB 272
72-16-503	amended	Ch. 391	SB 272
72-17-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
72-33-108	amended	Ch. 18	SB 1
72-33-701	amended	Ch. 592	SB 132
72-34-513	amended	Ch. 592	SB 132
72-34-517	enacted	Ch. 592	SB 132
75-1-102	amended	Ch. 352	SB 231
75-1-103	amended	Ch. 352	SB 231
75-1-106	enacted	Ch. 352	SB 231
75-1-201	amended	Ch. 331	SB 288
	amended	Ch. 352	SB 231
	amended	Ch. 418	SB 234
	amended	Ch. 545	SB 398
75-1-321	repealed	Ch. 545	SB 398
75-1-322	repealed	Ch. 545	SB 398
75-1-323	amended	Ch. 545	SB 398
75-1-324	amended	Ch. 545	SB 398
75-1-1101	amended	Ch. 270	HB 461
75-2-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-2-111	amended	Ch. 471	HB 521
75-2-207	enacted	Ch. 471	HB 521
75-2-211	amended	Ch. 85	SB 48
75-2-230	enacted	Ch. 498	SB 349
75-2-231	amended	Ch. 498	SB 349
75-2-301	amended	Ch. 471	HB 521
75-2-403	amended	Ch. 85	SB 48
75-2-413	amended	Ch. 85	SB 48
	amended	Ch. 498	SB 349
75-2-502	amended	Ch. 418	SB 234
75-2-503	amended	Ch. 471	HB 521
75-3-103	amended	Ch. 418	SB 234
75-3-201	amended	Ch. 471	HB 521
75-3-401	amended	Ch. 418	SB 234
75-3-410	enacted	Ch. 471	HB 521
75-3-502	amended	Ch. 418	SB 234

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75-3-602	amended	Ch. 185	HB 502
	amended	Ch. 418	SB 234
75-3-606	amended	Ch. 185	HB 502
75-5-103	amended	Ch. 418	SB 234
	amended	Ch. 495	SB 330
	amended	Ch. 497	SB 331
	amended	Ch. 501	SB 371
	amended	Ch. 546	SB 345
75-5-106	amended	Ch. 497	SB 331
75-5-201	amended	Ch. 471	HB 521
75-5-203	enacted	Ch. 471	HB 521
75-5-221	amended	Ch. 297	SB 78
	amended	Ch. 418	SB 234
75-5-301	amended	Ch. 497	SB 331
	amended	Ch. 501	SB 371
	amended	Ch. 539	SB 346
75-5-302	amended	Ch. 497	SB 331
	amended	Ch. 539	SB 346
75-5-303	amended	Ch. 495	SB 330
	amended	Ch. 501	SB 371
75-5-304	amended	Ch. 497	SB 331
75-5-305	amended	Ch. 497	SB 331
75-5-309	enacted	Ch. 497	SB 331
75-5-310	enacted	Ch. 497	SB 331
75-5-311	amended	Ch. 471	HB 521
75-5-312	enacted	Ch. 539	SB 346
75-5-315	enacted	Ch. 501	SB 371
75-5-316	enacted	Ch. 501	SB 371
75-5-317	enacted	Ch. 501	SB 371
75-5-401	amended	Ch. 297	SB 78
	amended	Ch. 497	SB 331
	amended	Ch. 582	SB 362
75-5-403	amended	Ch. 497	SB 331
75-5-507	repealed	Ch. 509	SB 83
75-5-516	amended	Ch. 297	SB 78
75-5-601	amended	Ch. 297	SB 78
75-5-605	amended	Ch. 497	SB 331
	amended	Ch. 582	SB 362
75-5-614	amended	Ch. 497	SB 331
75-5-616	amended	Ch. 297	SB 78
75-5-617	enacted	Ch. 297	SB 78
75-5-621	amended	Ch. 297	SB 78
75-5-631	amended	Ch. 297	SB 78
	amended	Ch. 497	SB 331
75-5-632	amended	Ch. 297	SB 78
75-5-634	amended	Ch. 509	SB 83
75-5-635	amended	Ch. 509	SB 83
75-5-636	amended	Ch. 297	SB 78
	amended	Ch. 497	SB 331
75-5-1105	amended	Ch. 418	SB 234
75-5-1106	amended	Ch. 418	SB 234
75-5-1112	amended	Ch. 553	HB 493
75-5-1113	amended	Ch. 553	HB 493
75-5-1121	amended	Ch. 553	HB 493
75-6-102	amended	Ch. 418	SB 234
	amended	Ch. 488	SB 153
	amended	Ch. 546	SB 345

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75-6-103	amended	Ch. 471	HB 521
	amended	Ch. 488	SB 153
75-6-109	amended	Ch. 302	SB 204
	amended	Ch. 509	SB 83
75-6-110	enacted	Ch. 302	SB 204
75-6-112	amended	Ch. 488	SB 153
	amended	Ch. 497	SB 331
75-6-114	amended	Ch. 302	SB 204
	amended	Ch. 509	SB 83
75-6-115	amended	Ch. 509	SB 83
75-6-116	enacted	Ch. 471	HB 521
75-6-120	enacted	Ch. 488	SB 153
75-6-201	enacted	Ch. 553	HB 493
75-6-202	enacted	Ch. 553	HB 493
75-6-203	enacted	Ch. 553	HB 493
75-6-204	enacted	Ch. 553	HB 493
75-6-205	enacted	Ch. 553	HB 493
75-6-211	enacted	Ch. 553	HB 493
75-6-212	enacted	Ch. 553	HB 493
75-6-213	enacted	Ch. 553	HB 493
75-6-214	enacted	Ch. 553	HB 493
75-6-215	enacted	Ch. 553	HB 493
75-6-221	enacted	Ch. 553	HB 493
75-6-222	enacted	Ch. 553	HB 493
75-6-223	enacted	Ch. 553	HB 493
75-6-224	enacted	Ch. 553	HB 493
75-6-225	enacted	Ch. 553	HB 493
75-7-103	amended	Ch. 426	HB 478
75-7-106	amended	Ch. 426	HB 478
75-7-111	amended	Ch. 426	HB 478
75-7-112	amended	Ch. 426	HB 478
75-7-113	amended	Ch. 426	HB 478
75-7-114	amended	Ch. 426	HB 478
75-7-117	amended	Ch. 418	SB 234
	amended	Ch. 426	HB 478
75-7-121	amended	Ch. 426	HB 478
75-7-122	amended	Ch. 426	HB 478
75-7-123	amended	Ch. 426	HB 478
75-7-401	amended	Ch. 418	SB 234
75-7-411	amended	Ch. 418	SB 234
75-10-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-10-107	enacted	Ch. 471	HB 521
75-10-203	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-10-204	amended	Ch. 471	HB 521
75-10-402	amended	Ch. 28	HB 75
75-10-403	amended	Ch. 28	HB 75
	amended	Ch. 218	HB 215
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
	amended	Ch. 568	SB 386
75-10-404	amended	Ch. 418	SB 234
75-10-405	amended	Ch. 28	HB 75
	amended	Ch. 471	HB 521
75-10-410	amended	Ch. 28	HB 75
75-10-415	amended	Ch. 28	HB 75
75-10-416	amended	Ch. 28	HB 75

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75-10-418	amended	Ch. 28	HB 75
75-10-422	amended	Ch. 28	HB 75
75-10-424	amended	Ch. 28	HB 75
75-10-426	enacted	Ch. 218	HB 215
75-10-427	enacted	Ch. 218	HB 215
75-10-501	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-10-503	amended	Ch. 418	SB 234
75-10-513	amended	Ch. 18	SB 1
75-10-532	amended	Ch. 418	SB 234
75-10-602	amended	Ch. 418	SB 234
75-10-603	amended	Ch. 471	HB 521
75-10-623	amended	Ch. 418	SB 234
75-10-625	amended	Ch. 418	SB 234
75-10-626	amended	Ch. 418	SB 234
75-10-628	repealed	Ch. 418	SB 234
75-10-701	amended	Ch. 418	SB 234
	amended	Ch. 490	SB 200
	amended	Ch. 584	SB 382
75-10-704	amended	Ch. 452	SB 415
75-10-711	amended	Ch. 490	SB 200
75-10-715	amended	Ch. 490	SB 200
75-10-718	amended	Ch. 490	SB 200
75-10-721	amended	Ch. 584	SB 382
75-10-722	amended	Ch. 490	SB 200
	amended	Ch. 584	SB 382
75-10-725	enacted	Ch. 367	HB 315
75-10-730	enacted	Ch. 584	SB 382
75-10-731	enacted	Ch. 584	SB 382
75-10-732	enacted	Ch. 584	SB 382
75-10-733	enacted	Ch. 584	SB 382
75-10-734	enacted	Ch. 584	SB 382
75-10-735	enacted	Ch. 584	SB 382
75-10-736	enacted	Ch. 584	SB 382
75-10-737	enacted	Ch. 584	SB 382
75-10-738	enacted	Ch. 584	SB 382
75-10-802	amended	Ch. 418	SB 234
75-10-903	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-10-913	amended	Ch. 418	SB 234
75-10-918	amended	Ch. 418	SB 234
75-10-919	amended	Ch. 18	SB 1
75-10-921	amended	Ch. 546	SB 345
75-10-950	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-10-1003	amended	Ch. 418	SB 234
75-10-1101	amended	Ch. 418	SB 234
75-11-203	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-11-209	amended	Ch. 568	SB 386
75-11-216	enacted	Ch. 568	SB 386
75-11-217	repealed	Ch. 568	SB 386
75-11-232	enacted	Ch. 505	SB 406
75-11-302	amended	Ch. 418	SB 234
75-11-307	amended	Ch. 55	SB 71
75-15-103	amended	Ch. 75	SB 104
	amended	Ch. 510	SB 181
75-15-105	amended	Ch. 510	SB 181

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75-15-111	amended	Ch. 510	SB 181
75-15-113	amended	Ch. 510	SB 181
75-15-122	amended	Ch. 510	SB 181
75-15-203	amended	Ch. 75	SB 104
75-20-104	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
	amended	Ch. 583	SB 366
75-20-202	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
	amended	Ch. 583	SB 366
75-20-203	amended	Ch. 583	SB 366
75-20-205	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-20-208	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-20-211	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-20-212	amended	Ch. 583	SB 366
75-20-213	amended	Ch. 418	SB 234
75-20-215	amended	Ch. 418	SB 234
75-20-216	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-20-217	amended	Ch. 583	SB 366
75-20-218	amended	Ch. 418	SB 234
75-20-219	amended	Ch. 418	SB 234
75-20-220	amended	Ch. 418	SB 234
	amended	Ch. 583	SB 366
75-20-221	amended	Ch. 418	SB 234
	amended	Ch. 583	SB 366
75-20-225	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-20-226	amended	Ch. 418	SB 234
75-20-301	amended	Ch. 418	SB 234
	amended	Ch. 583	SB 366
75-20-302	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-20-303	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
	amended	Ch. 583	SB 366
75-20-304	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
75-20-401	amended	Ch. 418	SB 234
75-20-402	amended	Ch. 418	SB 234
75-20-406	amended	Ch. 418	SB 234
75-20-501	amended	Ch. 418	SB 234
75-20-502	repealed	Ch. 583	SB 366
75-20-1202	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
76-1-604	amended	Ch. 387	SB 193
76-2-101	amended	Ch. 591	HB 358
76-2-205	amended	Ch. 591	HB 358
76-2-411	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
76-2-412	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
76-2-901	enacted	Ch. 309	SB 207
76-2-902	enacted	Ch. 309	SB 207
76-2-903	enacted	Ch. 309	SB 207

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76-3-102	amended	Ch. 468	HB 473
76-3-207	amended	Ch. 468	HB 473
76-3-305	amended	Ch. 100	SB 254
76-3-501	amended	Ch. 471	HB 521
76-3-504	amended	Ch. 418	SB 234
	amended	Ch. 471	HB 521
76-3-505	amended	Ch. 418	SB 234
76-3-507	amended	Ch. 468	HB 473
76-3-510	enacted	Ch. 468	HB 473
76-3-511	enacted	Ch. 471	HB 521
76-3-601	amended	Ch. 506	SB 423
76-3-603	amended	Ch. 468	HB 473
76-3-606	repealed	Ch. 468	HB 473
76-3-607	repealed	Ch. 468	HB 473
76-3-608	amended	Ch. 468	HB 473
76-3-609	amended	Ch. 468	HB 473
76-3-611	amended	Ch. 293	HB 425
76-3-620	enacted	Ch. 224	HB 292
76-3-621	enacted	Ch. 468	HB 473
76-3-625	enacted	Ch. 468	HB 473
76-4-102	amended	Ch. 418	SB 234
76-4-104	amended	Ch. 224	HB 292
	amended	Ch. 471	HB 521
76-4-135	enacted	Ch. 471	HB 521
76-5-102	amended	Ch. 418	SB 234
76-5-103	amended	Ch. 418	SB 234
76-5-106	amended	Ch. 418	SB 234
76-5-109	amended	Ch. 418	SB 234
76-5-201	amended	Ch. 418	SB 234
76-5-202	amended	Ch. 418	SB 234
76-5-203	amended	Ch. 418	SB 234
76-5-204	amended	Ch. 418	SB 234
76-5-205	amended	Ch. 418	SB 234
76-5-206	amended	Ch. 418	SB 234
76-5-208	amended	Ch. 418	SB 234
76-5-209	amended	Ch. 418	SB 234
76-5-301	amended	Ch. 418	SB 234
76-5-302	amended	Ch. 418	SB 234
76-5-402	amended	Ch. 418	SB 234
76-5-404	amended	Ch. 418	SB 234
76-5-405	amended	Ch. 418	SB 234
76-5-406	amended	Ch. 418	SB 234
76-11-101	amended	Ch. 418	SB 234
76-11-102	amended	Ch. 418	SB 234
76-11-203	repealed	Ch. 418	SB 234
76-11-204	repealed	Ch. 418	SB 234
76-12-104	amended	Ch. 418	SB 234
76-13-102	amended	Ch. 418	SB 234
76-13-132	amended	Ch. 418	SB 234
76-13-302	amended	Ch. 418	SB 234
76-13-401	amended	Ch. 418	SB 234
76-13-415	amended	Ch. 418	SB 234
76-13-501	amended	Ch. 418	SB 234
76-13-601	amended	Ch. 418	SB 234
76-15-103	amended	Ch. 418	SB 234
76-15-201	amended	Ch. 418	SB 234
76-15-203	amended	Ch. 418	SB 234
76-15-204	amended	Ch. 418	SB 234

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76-15-205	amended	Ch. 418	SB 234
76-15-206	amended	Ch. 418	SB 234
76-15-207	amended	Ch. 418	SB 234
76-15-209	amended	Ch. 418	SB 234
76-15-210	amended	Ch. 418	SB 234
76-15-211	amended	Ch. 418	SB 234
76-15-212	amended	Ch. 418	SB 234
76-15-213	amended	Ch. 418	SB 234
76-15-216	amended	Ch. 418	SB 234
76-15-301	amended	Ch. 418	SB 234
76-15-303	amended	Ch. 184	HB 455
76-15-305	amended	Ch. 418	SB 234
76-15-314	amended	Ch. 418	SB 234
76-15-319	amended	Ch. 418	SB 234
76-15-408	amended	Ch. 418	SB 234
76-15-505	amended	Ch. 418	SB 234
76-15-530	amended	Ch. 418	SB 234
	amended	Ch. 509	SB 83
76-15-721	amended	Ch. 418	SB 234
76-15-725	amended	Ch. 418	SB 234
76-15-726	amended	Ch. 418	SB 234
76-15-727	amended	Ch. 418	SB 234
76-15-803	amended	Ch. 418	SB 234
76-15-804	amended	Ch. 418	SB 234
76-15-806	amended	Ch. 418	SB 234
76-15-807	amended	Ch. 418	SB 234
76-15-808	amended	Ch. 418	SB 234
76-15-809	amended	Ch. 418	SB 234
76-16-103	amended	Ch. 418	SB 234
76-16-104	amended	Ch. 418	SB 234
76-16-105	amended	Ch. 418	SB 234
76-16-109	amended	Ch. 418	SB 234
76-16-202	amended	Ch. 418	SB 234
76-16-203	amended	Ch. 418	SB 234
76-16-207	amended	Ch. 418	SB 234
76-16-209	amended	Ch. 418	SB 234
76-16-210	amended	Ch. 418	SB 234
76-16-211	amended	Ch. 418	SB 234
76-16-213	amended	Ch. 418	SB 234
76-16-307	amended	Ch. 418	SB 234
76-16-319	amended	Ch. 418	SB 234
76-16-325	amended	Ch. 418	SB 234
77-1-101	amended	Ch. 370	HB 351
	amended	Ch. 418	SB 234
77-1-110	enacted	Ch. 273	HB 501
77-1-113	amended	Ch. 418	SB 234
77-1-202	amended	Ch. 222	HB 263
77-1-211	amended	Ch. 418	SB 234
77-1-222	repealed	Ch. 18	SB 1
77-1-613	amended	Ch. 157	HB 50
77-1-706	amended	Ch. 418	SB 234
77-1-707	amended	Ch. 418	SB 234
77-1-808	amended	Ch. 509	SB 83
77-1-809	amended	Ch. 509	SB 83
77-1-810	amended	Ch. 509	SB 83
77-2-102	amended	Ch. 300	SB 122
77-2-103	amended	Ch. 300	SB 122
77-2-107	amended	Ch. 418	SB 234

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77-2-215	amended	Ch. 418	SB 234
77-2-302	amended	Ch. 418	SB 234
77-2-327	amended	Ch. 418	SB 234
77-2-342	amended	Ch. 418	SB 234
77-2-351	amended	Ch. 272	HB 489
77-2-401	amended	Ch. 418	SB 234
77-5-104	amended	Ch. 418	SB 234
77-5-115	enacted	Ch. 419	SB 347
77-5-201	amended	Ch. 223	HB 274
77-5-204	amended	Ch. 157	HB 50
77-5-221	enacted	Ch. 517	HB 201
77-5-222	enacted	Ch. 517	HB 201
77-5-223	enacted	Ch. 517	HB 201
77-5-302	amended	Ch. 418	SB 234
77-5-402	amended	Ch. 418	SB 234
77-6-306	amended	Ch. 418	SB 234
80-4-402	amended	Ch. 337	HB 513
80-4-429	amended	Ch. 337	HB 513
80-6-1102	amended	Ch. 57	SB 108
80-6-1107	amended	Ch. 57	SB 108
80-6-1108	amended	Ch. 57	SB 108
80-6-1111	amended	Ch. 57	SB 108
80-6-1113	repealed	Ch. 57	SB 108
80-6-1114	repealed	Ch. 57	SB 108
80-6-1115	repealed	Ch. 57	SB 108
80-7-106	amended	Ch. 147	SB 275
80-7-801	amended	Ch. 220	HB 235
80-7-811	amended	Ch. 220	HB 235
80-7-812	repealed	Ch. 220	HB 235
80-7-813	amended	Ch. 220	HB 235
80-7-814	amended	Ch. 220	HB 235
80-7-815	amended	Ch. 220	HB 235
80-7-816	enacted	Ch. 220	HB 235
80-7-821	repealed	Ch. 220	HB 235
80-7-901	enacted	Ch. 521	HB 445
80-7-902	enacted	Ch. 521	HB 445
80-7-903	enacted	Ch. 521	HB 445
80-7-904	enacted	Ch. 521	HB 445
80-7-905	enacted	Ch. 521	HB 445
80-7-906	enacted	Ch. 521	HB 445
80-7-907	enacted	Ch. 521	HB 445
80-7-908	enacted	Ch. 521	HB 445
80-7-909	enacted	Ch. 521	HB 445
80-7-910	enacted	Ch. 521	HB 445
80-7-911	enacted	Ch. 521	HB 445
80-7-912	enacted	Ch. 521	HB 445
80-7-921	enacted	Ch. 521	HB 445
80-7-922	enacted	Ch. 521	HB 445
80-7-923	enacted	Ch. 521	HB 445
80-7-924	enacted	Ch. 521	HB 445
80-8-110	amended	Ch. 418	SB 234
80-8-201	amended	Ch. 418	SB 234
80-8-211	amended	Ch. 189	HB 212
80-8-304	amended	Ch. 189	HB 212
80-8-305	amended	Ch. 189	HB 212
	amended	Ch. 418	SB 234
80-8-306	amended	Ch. 189	HB 212
80-10-207	amended	Ch. 220	HB 235

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80-11-306	repealed	Ch. 220	HB 235
80-11-310	amended	Ch. 220	HB 235
	amended	Ch. 509	SB 83
80-15-102	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
80-15-104	amended	Ch. 418	SB 234
80-15-105	amended	Ch. 418	SB 234
	amended	Ch. 471	HB 521
80-15-107	amended	Ch. 418	SB 234
80-15-108	amended	Ch. 418	SB 234
80-15-110	enacted	Ch. 471	HB 521
80-15-201	amended	Ch. 418	SB 234
80-15-202	amended	Ch. 189	HB 212
	amended	Ch. 418	SB 234
80-15-203	amended	Ch. 418	SB 234
80-15-211	amended	Ch. 418	SB 234
80-15-213	amended	Ch. 418	SB 234
80-15-216	amended	Ch. 418	SB 234
80-15-217	amended	Ch. 418	SB 234
80-15-219	repealed	Ch. 418	SB 234
80-15-301	amended	Ch. 418	SB 234
80-15-302	amended	Ch. 418	SB 234
80-15-403	amended	Ch. 189	HB 212
	amended	Ch. 192	SB 289
	amended	Ch. 418	SB 234
80-15-411	amended	Ch. 418	SB 234
80-15-412	amended	Ch. 189	HB 212
	amended	Ch. 418	SB 234
81-1-102	amended	Ch. 503	SB 389
81-2-106	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
81-2-120	enacted	Ch. 346	SB 312
81-2-121	enacted	Ch. 540	SB 352
81-2-702	amended	Ch. 206	HB 520
81-3-104	amended	Ch. 14	HB 56
81-3-107	amended	Ch. 14	HB 56
81-3-211	amended	Ch. 380	HB 564
81-4-201	amended	Ch. 206	HB 520
81-4-209	amended	Ch. 92	SB 44
81-4-213	amended	Ch. 92	SB 44
81-4-217	amended	Ch. 92	SB 44
81-4-621	amended	Ch. 92	SB 44
81-5-101	amended	Ch. 92	SB 44
81-5-104	amended	Ch. 206	HB 520
81-6-302	amended	Ch. 206	HB 520
81-7-101	amended	Ch. 244	SB 394
81-7-102	amended	Ch. 244	SB 394
81-7-104	amended	Ch. 244	SB 394
81-7-118	amended	Ch. 244	SB 394
81-7-401	amended	Ch. 206	HB 520
81-7-501	amended	Ch. 244	SB 394
81-7-505	amended	Ch. 244	SB 394
81-7-601	enacted	Ch. 76	SB 111
81-7-602	enacted	Ch. 76	SB 111
81-7-603	enacted	Ch. 76	SB 111
81-7-604	enacted	Ch. 76	SB 111
81-7-605	enacted	Ch. 76	SB 111
81-8-213	amended	Ch. 160	HB 386

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81-8-214	amended	Ch. 11	HB 95
81-8-231	amended	Ch. 11	HB 95
81-8-264	enacted	Ch. 160	HB 386
81-8-265	enacted	Ch. 160	HB 386
81-8-271	amended	Ch. 11	HB 95
81-8-302	amended	Ch. 11	HB 95
81-8-601	repealed	Ch. 21	HB 107
81-8-602	repealed	Ch. 21	HB 107
81-8-603	repealed	Ch. 21	HB 107
81-8-604	repealed	Ch. 21	HB 107
81-8-605	repealed	Ch. 21	HB 107
81-8-606	repealed	Ch. 21	HB 107
81-8-607	repealed	Ch. 21	HB 107
81-8-608	repealed	Ch. 21	HB 107
81-8-609	repealed	Ch. 21	HB 107
81-8-610	repealed	Ch. 21	HB 107
81-8-611	repealed	Ch. 21	HB 107
81-8-612	repealed	Ch. 21	HB 107
81-8-901	enacted	Ch. 102	SB 319
81-8-902	enacted	Ch. 102	SB 319
81-9-202	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
81-9-233	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
81-21-103	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
81-22-208	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
81-22-209	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
81-22-301	amended	Ch. 418	SB 234
81-22-403	amended	Ch. 418	SB 234
81-22-404	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
81-22-414	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
81-22-421	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
81-23-101	amended	Ch. 242	SB 364
	amended	Ch. 333	HB 280
	amended	Ch. 546	SB 345
81-23-102	amended	Ch. 242	SB 364
81-23-103	amended	Ch. 333	HB 280
	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
81-23-105	amended	Ch. 333	HB 280
81-23-202	amended	Ch. 242	SB 364
	amended	Ch. 333	HB 280
81-23-203	amended	Ch. 333	HB 280
81-23-302	amended	Ch. 242	SB 364
	amended	Ch. 333	HB 280
81-23-303	amended	Ch. 242	SB 364
81-23-406	amended	Ch. 333	HB 280
82-4-102	amended	Ch. 418	SB 234
82-4-103	amended	Ch. 418	SB 234
82-4-111	amended	Ch. 418	SB 234
82-4-112	amended	Ch. 418	SB 234
82-4-123	amended	Ch. 418	SB 234

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82-4-129	amended	Ch. 418	SB 234
82-4-141	amended	Ch. 418	SB 234
82-4-203	amended	Ch. 159	HB 162
	amended	Ch. 418	SB 234
82-4-204	amended	Ch. 418	SB 234
82-4-205	amended	Ch. 418	SB 234
82-4-221	amended	Ch. 159	HB 162
82-4-223	amended	Ch. 418	SB 234
82-4-226	amended	Ch. 159	HB 162
	amended	Ch. 418	SB 234
82-4-227	amended	Ch. 418	SB 234
82-4-231	amended	Ch. 418	SB 234
82-4-232	amended	Ch. 418	SB 234
82-4-235	amended	Ch. 193	SB 365
82-4-239	amended	Ch. 418	SB 234
82-4-240	amended	Ch. 418	SB 234
82-4-242	amended	Ch. 418	SB 234
82-4-251	amended	Ch. 418	SB 234
82-4-254	amended	Ch. 418	SB 234
82-4-303	amended	Ch. 418	SB 234
82-4-304	amended	Ch. 204	HB 381
82-4-305	amended	Ch. 329	SB 186
82-4-306	amended	Ch. 418	SB 234
82-4-308	amended	Ch. 418	SB 234
82-4-311	amended	Ch. 418	SB 234
82-4-321	amended	Ch. 418	SB 234
82-4-322	amended	Ch. 418	SB 234
82-4-323	amended	Ch. 418	SB 234
82-4-331	amended	Ch. 418	SB 234
82-4-332	amended	Ch. 418	SB 234
82-4-334	amended	Ch. 418	SB 234
82-4-335	amended	Ch. 418	SB 234
82-4-336	amended	Ch. 418	SB 234
	amended	Ch. 464	HB 338
82-4-337	amended	Ch. 204	HB 381
	amended	Ch. 418	SB 234
82-4-338	amended	Ch. 395	SB 373
	amended	Ch. 418	SB 234
82-4-339	amended	Ch. 418	SB 234
82-4-340	amended	Ch. 418	SB 234
82-4-341	amended	Ch. 204	HB 381
	amended	Ch. 418	SB 234
82-4-342	amended	Ch. 418	SB 234
82-4-349	amended	Ch. 418	SB 234
82-4-352	amended	Ch. 418	SB 234
82-4-360	amended	Ch. 418	SB 234
82-4-361	amended	Ch. 204	HB 381
82-4-362	amended	Ch. 204	HB 381
	amended	Ch. 418	SB 234
82-4-371	enacted	Ch. 329	SB 186
82-4-372	enacted	Ch. 329	SB 186
82-4-403	amended	Ch. 418	SB 234
82-4-421	amended	Ch. 418	SB 234
82-4-422	amended	Ch. 418	SB 234
82-4-423	amended	Ch. 418	SB 234
82-4-424	amended	Ch. 418	SB 234
82-4-425	amended	Ch. 418	SB 234

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82-4-426	amended	Ch. 418	SB 234
	amended	Ch. 509	SB 83
82-4-427	amended	Ch. 418	SB 234
82-4-431	amended	Ch. 418	SB 234
82-4-432	amended	Ch. 418	SB 234
82-4-433	amended	Ch. 418	SB 234
82-4-434	amended	Ch. 418	SB 234
82-4-441	amended	Ch. 418	SB 234
82-4-445	enacted	Ch. 320	SB 186
82-4-446	enacted	Ch. 320	SB 186
82-11-118	amended	Ch. 451	SB 412
82-11-131	amended	Ch. 573	HB 418
82-11-132	repealed 1/1/96	Ch. 451	SB 412
82-11-133	repealed 1/1/96	Ch. 451	SB 412
82-11-135	amended	Ch. 451	SB 412
82-11-149	amended	Ch. 509	SB 83
82-11-162	amended	Ch. 451	SB 412
85-1-102	amended	Ch. 18	SB 1
	amended	Ch. 418	SB 234
85-1-201	amended	Ch. 418	SB 234
85-1-202	amended	Ch. 301	SB 147
	repealed	Ch. 418	SB 234
85-1-203	amended	Ch. 418	SB 234
	amended	Ch. 545	SB 398
85-1-204	amended	Ch. 301	SB 147
	amended	Ch. 418	SB 234
85-1-206	amended	Ch. 301	SB 147
	amended	Ch. 418	SB 234
85-1-209	amended	Ch. 301	SB 147
	amended	Ch. 418	SB 234
85-1-210	amended	Ch. 301	SB 147
	amended	Ch. 418	SB 234
85-1-211	amended	Ch. 301	SB 147
	amended	Ch. 418	SB 234
85-1-212	repealed	Ch. 418	SB 234
85-1-215	amended	Ch. 301	SB 147
85-1-301	amended	Ch. 418	SB 234
85-1-303	amended	Ch. 418	SB 234
85-1-305	amended	Ch. 418	SB 234
85-1-306	amended	Ch. 418	SB 234
85-1-307	amended	Ch. 418	SB 234
85-1-308	amended	Ch. 418	SB 234
85-1-309	amended	Ch. 418	SB 234
85-1-310	amended	Ch. 418	SB 234
85-1-321	amended	Ch. 418	SB 234
85-1-323	amended	Ch. 418	SB 234
85-1-502	amended	Ch. 418	SB 234
85-1-503	amended	Ch. 418	SB 234
85-1-504	amended	Ch. 418	SB 234
85-1-505	amended	Ch. 418	SB 234
85-1-508	amended	Ch. 418	SB 234
85-1-509	amended	Ch. 418	SB 234
85-1-514	amended	Ch. 418	SB 234
85-1-603	amended	Ch. 442	SB 27
85-1-604	amended	Ch. 577	HB 569
85-1-621	amended	Ch. 545	SB 398
85-1-623	repealed	Ch. 437	HB 279
85-1-624	enacted	Ch. 437	HB 279

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85-1-801	enacted	Ch. 301	SB 147
85-1-802	enacted	Ch. 301	SB 147
85-1-803	enacted	Ch. 301	SB 147
85-1-804	enacted	Ch. 301	SB 147
85-1-805	enacted	Ch. 301	SB 147
85-1-806	enacted	Ch. 301	SB 147
85-1-807	enacted	Ch. 301	SB 147
85-1-808	enacted	Ch. 301	SB 147
85-1-809	enacted	Ch. 301	SB 147
85-1-810	enacted	Ch. 301	SB 147
85-1-811	enacted	Ch. 301	SB 147
85-2-102	amended	Ch. 418	SB 234
	amended	Ch. 487	SB 144
85-2-105	amended	Ch. 418	SB 234
	amended	Ch. 545	SB 398
85-2-112	amended	Ch. 418	SB 234
85-2-113	amended	Ch. 418	SB 234
85-2-122	amended	Ch. 418	SB 234
85-2-125	amended	Ch. 487	SB 144
85-2-141	amended	Ch. 418	SB 234
85-2-232	amended	Ch. 197	HB 137
85-2-233	amended	Ch. 421	SB 387
85-2-235	amended	Ch. 421	SB 387
85-2-304	amended	Ch. 418	SB 234
85-2-306	amended	Ch. 418	SB 234
85-2-311	amended	Ch. 418	SB 234
85-2-316	amended	Ch. 418	SB 234
85-2-319	amended	Ch. 418	SB 234
85-2-330	amended	Ch. 418	SB 234
85-2-331	amended	Ch. 418	SB 234
85-2-335	amended	Ch. 487	SB 144
85-2-336	amended	Ch. 418	SB 234
	amended	Ch. 487	SB 144
85-2-338	amended	Ch. 487	SB 144
85-2-341	amended	Ch. 418	SB 234
85-2-343	amended	Ch. 418	SB 234
85-2-402	amended	Ch. 322	HB 472
	amended	Ch. 487	SB 144
85-2-404	amended	Ch. 487	SB 144
85-2-407	amended	Ch. 322	HB 472
85-2-408	enacted	Ch. 322	HB 472
85-2-409	enacted	Ch. 322	HB 472
85-2-426	amended	Ch. 418	SB 234
85-2-436	amended	Ch. 418	SB 234
	amended	Ch. 487	SB 144
	amended	Ch. 545	SB 398
85-2-437	amended	Ch. 418	SB 234
85-2-439	enacted	Ch. 487	SB 144
85-2-502	amended	Ch. 418	SB 234
85-2-506	amended	Ch. 418	SB 234
85-2-507	amended	Ch. 418	SB 234
85-2-512	amended	Ch. 418	SB 234
85-2-514	amended	Ch. 418	SB 234
85-2-519	repealed	Ch. 418	SB 234
85-2-520	amended	Ch. 418	SB 234
85-2-603	amended	Ch. 418	SB 234
85-2-701	amended	Ch. 418	SB 234
85-2-806	amended	Ch. 418	SB 234

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85-2-905	amended	Ch. 31	SB 46
85-3-101	amended	Ch. 418	SB 234
85-3-102	amended	Ch. 418	SB 234
85-3-104	amended	Ch. 418	SB 234
85-3-201	amended	Ch. 418	SB 234
85-3-202	amended	Ch. 418	SB 234
85-3-203	amended	Ch. 418	SB 234
85-3-206	amended	Ch. 418	SB 234
85-3-207	amended	Ch. 418	SB 234
85-3-212	amended	Ch. 418	SB 234
85-3-214	amended	Ch. 418	SB 234
85-6-109	amended	Ch. 418	SB 234
85-7-102	amended	Ch. 418	SB 234
85-7-1616	amended	Ch. 179	HB 282
85-7-1837	enacted	Ch. 87	HB 170
85-7-1913	amended	Ch. 179	HB 282
85-8-612	amended	Ch. 325	HB 563
85-9-104	amended	Ch. 418	SB 234
85-9-202	amended	Ch. 418	SB 234
85-9-204	amended	Ch. 418	SB 234
85-9-206	amended	Ch. 387	SB 193
85-9-611	repealed	Ch. 179	HB 282
85-9-623	amended	Ch. 387	SB 193
85-20-109	amended	Ch. 418	SB 234
87-1-102	amended	Ch. 101	SB 285
	amended	Ch. 417	SB 210
87-1-111	amended	Ch. 417	SB 210
87-1-114	amended	Ch. 509	SB 83
87-1-201	amended	Ch. 459	HB 195
87-1-206	amended	Ch. 325	HB 563
87-1-215	repealed	Ch. 346	SB 312
87-1-216	enacted	Ch. 346	SB 312
87-1-223	amended	Ch. 418	SB 234
87-1-224	amended	Ch. 418	SB 234
87-1-226	amended	Ch. 546	SB 345
87-1-229	enacted	Ch. 268	HB 439
87-1-242	amended	Ch. 459	HB 195
87-1-259	amended	Ch. 263	HB 384
87-1-265	enacted	Ch. 459	HB 195
87-1-266	enacted	Ch. 459	HB 195
87-1-267	enacted	Ch. 459	HB 195
87-1-268	enacted	Ch. 459	HB 195
87-1-269	enacted	Ch. 459	HB 195
87-1-272	enacted	Ch. 463	HB 349
87-1-273	enacted	Ch. 463	HB 349
87-1-301	amended	Ch. 267	HB 433
87-1-303	amended	Ch. 418	SB 234
	amended	Ch. 546	SB 345
87-1-503	amended	Ch. 328	HB 196
	amended	Ch. 417	SB 210
87-1-601	amended	Ch. 417	SB 210
	amended	Ch. 418	SB 234
87-1-603	amended	Ch. 325	HB 563
87-1-605	amended	Ch. 18	SB 1
	amended	Ch. 428	HB 512
87-1-801	enacted	Ch. 122	SB 269
87-1-802	enacted	Ch. 122	SB 269
87-1-803	enacted	Ch. 122	SB 269

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87-1-804	enacted	Ch. 122	SB 269
87-1-805	enacted	Ch. 122	SB 269
87-2-101	amended	Ch. 417	SB 210
87-2-102	amended	Ch. 417	SB 210
87-2-103	amended	Ch. 417	SB 210
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87-4-408	amended	Ch. 503	SB 389
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87-4-424	amended	Ch. 503	SB 389
87-4-426	amended	Ch. 503	SB 389
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Ch. 516, sec. 7	repealed	Ch. 171	HB 278
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Ch. 381, sec. 27	repealed	Ch. 255	HB 65
Ch. 530, sec. 8	repealed	Ch. 171	HB 278
Ch. 712, sec. 9	amended	Ch. 542	SB 358
Ch. 749, sec. 4	amended	Ch. 217	HB 188
Ch. 754, sec. 3	repealed	Ch. 129	HB 151
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Ch. 252	HB 553
Ch. 253	SB 171
Ch. 254	SB 255
Ch. 255	HB 65
Ch. 256	HB 84
Ch. 257	HB 219
Ch. 258	HB 259
Ch. 259	HB 335
Ch. 260	HB 368
Ch. 261	HB 372
Ch. 262	HB 375
Ch. 263	HB 384
Ch. 264	HB 385
Ch. 265	HB 428
Ch. 266	HB 431
Ch. 267	HB 433
Ch. 268	HB 439
Ch. 269	HB 454
Ch. 270	HB 461
Ch. 271	HB 467
Ch. 272	HB 489
Ch. 273	HB 501
Ch. 274	HB 536
Ch. 275	SB 150
Ch. 276	HB 55
Ch. 277	HB 534
Ch. 278	HB 570
Ch. 279	HB 572
Ch. 280	SB 258
Ch. 281	SB 277
Ch. 282	SB 286
Ch. 283	SB 355
Ch. 284	HB 202
Ch. 285	HB 233
Ch. 286	HB 246
Ch. 287	HB 249
Ch. 288	HB 289
Ch. 289	HB 323
Ch. 290	HB 414
Ch. 291	HB 415
Ch. 292	HB 417
Ch. 293	HB 425
Ch. 294	HB 434
Ch. 295	HB 560
Ch. 296	SB 8
Ch. 297	SB 78
Ch. 298	SB 112
Ch. 299	SB 121
Ch. 300	SB 122
Ch. 301	SB 147
Ch. 302	SB 204
Ch. 303	SB 211
Ch. 304	SB 298
Ch. 305	SB 374
Ch. 306	HB 357
Ch. 307	HB 409
Ch. 308	SB 156
Ch. 309	SB 207
Ch. 310	SB 246
Ch. 311	SB 251
Ch. 312	SB 281
Ch. 313	SB 283
Ch. 314	SB 294
Ch. 315	SB 296
Ch. 316	HB 304
Ch. 317	HB 332
Ch. 318	HB 343
Ch. 319	HB 376
Ch. 320	HB 387
Ch. 321	HB 442
Ch. 322	HB 472

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Chapter No.	Bill No.
Ch. 323	HB 542
Ch. 324	HB 557
Ch. 325	HB 563
Ch. 326	SB 244
Ch. 327	SB 310
Ch. 328	HB 196
Ch. 329	SB 186
Ch. 330	SB 212
Ch. 331	SB 288
Ch. 332	SB 63
Ch. 333	HB 280
Ch. 334	HB 294
Ch. 335	HB 322
Ch. 336	HB 393
Ch. 337	HB 513
Ch. 338	SB 185
Ch. 339	SB 265
Ch. 340	SB 307
Ch. 341	HB 273
Ch. 342	HB 307
Ch. 343	HB 485
Ch. 344	SB 264
Ch. 345	SB 303
Ch. 346	SB 312
Ch. 347	SB 328
Ch. 348	SB 393
Ch. 349	HB 531
Ch. 350	SB 278
Ch. 351	HB 347
Ch. 352	SB 231
Ch. 353	SB 242
Ch. 354	SB 293
Ch. 355	SB 311
Ch. 356	SB 321
Ch. 357	SB 341
Ch. 358	SB 378
Ch. 359	SB 408
Ch. 360	HB 111
Ch. 361	HB 176
Ch. 362	HB 184
Ch. 363	HB 194
Ch. 364	HB 248
Ch. 365	HB 287
Ch. 366	HB 301
Ch. 367	HB 315
Ch. 368	HB 326
Ch. 369	HB 340
Ch. 370	HB 351
Ch. 371	HB 352
Ch. 372	HB 356
Ch. 373	HB 360
Ch. 374	HB 404
Ch. 375	HB 405
Ch. 376	HB 457
Ch. 377	HB 466
Ch. 378	HB 511
Ch. 379	HB 556
Ch. 380	HB 564
Ch. 381	SB 76
Ch. 382	SB 80
Ch. 383	SB 124
Ch. 384	SB 158
Ch. 385	SB 167
Ch. 386	SB 174
Ch. 387	SB 193
Ch. 388	SB 208
Ch. 389	SB 218
Ch. 390	SB 222
Ch. 391	SB 272
Ch. 392	SB 295
Ch. 393	SB 297
Ch. 394	SB 353
Ch. 395	SB 373
Ch. 396	SB 401
Ch. 397	SB 407
Ch. 398	SB 416
Ch. 399	SB 418
Ch. 400	HB 8
Ch. 401	HB 18
Ch. 402	HB 121
Ch. 403	HB 150
Ch. 404	HB 158
Ch. 405	HB 164
Ch. 406	HB 197
Ch. 407	HB 214
Ch. 408	HB 232
Ch. 409	HB 286
Ch. 410	HB 295
Ch. 411	HB 305
Ch. 412	HB 325
Ch. 413	HB 354
Ch. 414	HB 578
Ch. 415	SB 90
Ch. 416	SB 135
Ch. 417	SB 210
Ch. 418	SB 234
Ch. 419	SB 347
Ch. 420	SB 376
Ch. 421	SB 387
Ch. 422	SB 395
Ch. 423	HB 420
Ch. 424	HB 462
Ch. 425	HB 464
Ch. 426	HB 478
Ch. 427	HB 488
Ch. 428	HB 512
Ch. 429	HB 518
Ch. 430	HB 530
Ch. 431	HB 544
Ch. 432	HB 561
Ch. 433	HB 577
Ch. 434	HB 41
Ch. 435	HB 209
Ch. 436	HB 240

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Chapter No.	Bill No.
Ch. 437	HB 279
Ch. 438	HB 380
Ch. 439	HB 539
Ch. 440	HB 588
Ch. 441	SB 13
Ch. 442	SB 27
Ch. 443	SB 55
Ch. 444	SB 189
Ch. 445	SB 201
Ch. 446	SB 219
Ch. 447	SB 316
Ch. 448	SB 339
Ch. 449	SB 340
Ch. 450	SB 372
Ch. 451	SB 412
Ch. 452	SB 415
Ch. 453	SB 424
Ch. 454	HB 7
Ch. 455	HB 17
Ch. 456	HB 19
Ch. 457	HB 167
Ch. 458	HB 186
Ch. 459	HB 195
Ch. 460	HB 298
Ch. 461	HB 309
Ch. 462	HB 311
Ch. 463	HB 349
Ch. 464	HB 338
Ch. 465	HB 366
Ch. 466	HB 429
Ch. 467	HB 444
Ch. 468	HB 473
Ch. 469	HB 482
Ch. 470	HB 514
Ch. 471	HB 521
Ch. 472	HB 545
Ch. 473	HB 552
Ch. 474	HB 562
Ch. 475	HB 585
Ch. 476	HB 600
Ch. 477	HB 602
Ch. 478	HB 603
Ch. 479	HB 272
Ch. 480	HB 537
Ch. 481	SB 64
Ch. 482	SB 66
Ch. 483	SB 98
Ch. 484	SB 126
Ch. 485	SB 138
Ch. 486	SB 140
Ch. 487	SB 144
Ch. 488	SB 153
Ch. 489	SB 163
Ch. 490	SB 200
Ch. 491	SB 209
Ch. 492	SB 236
Ch. 493	SB 250
Ch. 494	SB 271
Ch. 495	SB 330
Ch. 496	SB 324
Ch. 497	SB 331
Ch. 498	SB 349
Ch. 499	SB 350
Ch. 500	SB 354
Ch. 501	SB 371
Ch. 502	SB 388
Ch. 503	SB 389
Ch. 504	SB 402
Ch. 505	SB 406
Ch. 506	SB 423
Ch. 507	HB 136
Ch. 508	HB 460
Ch. 509	SB 83
Ch. 510	SB 181
Ch. 511	HB 4
Ch. 512	HB 6
Ch. 513	HB 24
Ch. 514	HB 68
Ch. 515	HB 89
Ch. 516	HB 200
Ch. 517	HB 201
Ch. 518	HB 308
Ch. 519	HB 395
Ch. 520	HB 421
Ch. 521	HB 445
Ch. 522	HB 446
Ch. 523	HB 484
Ch. 524	HB 490
Ch. 525	HB 504
Ch. 526	HB 509
Ch. 527	HB 533
Ch. 528	HB 540
Ch. 529	HB 550
Ch. 530	HB 574
Ch. 531	HB 584
Ch. 532	HB 598
Ch. 533	HB 607
Ch. 534	SB 113
Ch. 535	SB 127
Ch. 536	SB 226
Ch. 537	SB 229
Ch. 538	SB 361
Ch. 539	SB 346
Ch. 540	SB 352
Ch. 541	SB 357
Ch. 542	SB 358
Ch. 543	SB 377
Ch. 544	SB 385
Ch. 545	SB 398
Ch. 546	SB 345
Ch. 547	HB 5
Ch. 548	HB 9
Ch. 549	HB 15
Ch. 550	HB 157

Chapter No.	Bill No.
Ch. 551	HB 396
Ch. 552	HB 471
Ch. 553	HB 493
Ch. 554	HB 524
Ch. 555	HB 547
Ch. 556	HB 576
Ch. 557	HB 594
Ch. 558	HB 601
Ch. 559	SB 38
Ch. 560	SB 56
Ch. 561	SB 86
Ch. 562	SB 136
Ch. 563	SB 198
Ch. 564	SB 206
Ch. 565	SB 224
Ch. 566	SB 292
Ch. 567	SB 333
Ch. 568	SB 386
Ch. 569	SB 409
Ch. 570	SB 417
Ch. 571	HB 90
Ch. 572	HB 293
Ch. 573	HB 418
Ch. 574	HB 497
Ch. 575	HB 543
Ch. 576	HB 565
Ch. 577	HB 569
Ch. 578	HB 587
Ch. 579	HB 591
Ch. 580	SB 161
Ch. 581	SB 338
Ch. 582	SB 362
Ch. 583	SB 366
Ch. 584	SB 382
Ch. 585	SB 397
Ch. 586	HB 416
Ch. 587	HB 3
Ch. 588	HB 448
Ch. 589	HB 449
Ch. 590	SB 223
Ch. 591	HB 358
Ch. 592	SB 132
Ch. 593	HB 2

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TABLES

OF

EFFECTIVE DATES

BY CHAPTER NUMBER

and

BY EFFECTIVE DATE

Section 1-2-201, MCA, as amended by Ch. 466, Laws of 1981, provides that:

"Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein."

The following is a list of specially designated effective dates for the 54th Legislature in regular session.

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EFFECTIVE DATES

BY CHAPTER NUMBER

Ch.		Bill #		Eff. Date
Ch.	1	HB	1	01/13/95
Ch.	2	SB	100	01/20/95
Ch.	4	HB	23	07/01/95
Ch.	5	SB	14	01/26/95
Ch.	6	SB	16	01/26/95
Ch.	8	SB	26	07/01/95
Ch.	10	HB	38	01/27/95
Ch.	12	HB	40	01/27/95
Ch.	13	HB	14	01/27/95
Ch.	15	SB	6	01/27/95
Ch.	17	HB	126	02/02/95
Ch.	18 (§§ 73 & 75)	SB	1	02/02/95
Ch.	18 (§ 12)	SB	1	07/01/95
Ch.	22	HB	139	02/02/95
Ch.	23	HB	140	02/02/95
Ch.	25	SB	3	07/01/95
Ch.	26	SB	21	02/02/95
Ch.	27	SB	33	02/02/95
Ch.	28	HB	75	02/06/95
Ch.	29 (§§ 5-7)	HB	171	02/06/95
Ch.	29 (§§ 1-4)	HB	171	07/01/95
Ch.	30	SB	57	02/06/95
Ch.	31	SB	46	02/06/95
Ch.	32	SB	70	03/01/96
Ch.	33	SB	45	02/07/95
Ch.	36	HB	43	02/08/95
Ch.	37	HB	44	07/01/95
Ch.	38	HB	49	02/08/95
Ch.	39	HB	51	02/08/95
Ch.	42	SB	47	01/01/96
Ch.	43	SB	53	02/09/95
Ch.	44	HB	16	02/09/95
Ch.	45	HB	20	07/01/95
Ch.	47	HB	76	02/09/95
Ch.	48	HB	98	02/09/95
Ch.	49	HB	106	02/09/95
Ch.	51	HB	178	02/09/95
Ch.	52	SB	4	07/01/95
Ch.	53 (§§ 1-3 & 7-11)	SB	34	02/09/95
Ch.	53 (§ 5)	SB	34	10/01/99
Ch.	54	SB	35	02/09/95
Ch.	55 (§§ 1 & 3)	SB	71	02/09/95
Ch.	55 (§ 2)	SB	71	09/30/95
Ch.	56	SB	106	02/10/95
Ch.	57	SB	108	02/10/95
Ch.	58	HB	25	02/13/95
Ch.	61	HB	12	07/01/95
Ch.	63	HB	10	07/01/95
Ch.	66	SB	52	02/16/95

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Ch.			Bill #		Eff. Date
Ch.	68		HB	54	02/22/95
Ch.	69		SB	37	01/01/2001 (Contingent upon voter approval)
Ch.	70		SB	36	07/01/95
Ch.	75		SB	104	07/01/95
Ch.	77		HB	114	03/06/95
Ch.	79		SB	196	03/03/95
Ch.	80		HB	48	03/07/95
Ch.	81		HB	96	03/06/95
Ch.	82		HB	138	03/06/95
Ch.	83		HB	152	03/07/95
Ch.	84		SB	25	07/01/95
Ch.	88		SB	49	01/01/96
Ch.	89		HB	31	03/09/95
Ch.	90		HB	47	03/09/95
Ch.	91		HB	119	03/09/95
Ch.	95		SB	125	03/09/95
Ch.	97		SB	202	03/09/95
Ch.	99		SB	235	03/09/95
Ch.	103		HB	61	03/10/95
Ch.	110		HB	175	03/10/95
Ch.	111	(§§ 1-3, 5-7, & 9-13)	HB	205	03/10/95
Ch.	111	(§§ 4 & 8)	HB	205	07/01/95
Ch.	112		HB	216	07/01/95
Ch.	113		HB	243	03/10/95
Ch.	114		HB	285	03/13/95
Ch.	117		HB	310	03/10/95
Ch.	121		SB	238	03/10/95
Ch.	123		SB	299	03/10/95
Ch.	127		HB	99	03/13/95
Ch.	128		HB	104	03/13/95
Ch.	129		HB	151	07/01/95
Ch.	130		HB	163	03/13/95
Ch.	131		HB	168	07/01/95
Ch.	132		HB	173	03/13/95
Ch.	136		HB	316	07/01/95
Ch.	141		SB	392	07/01/95
Ch.	142		SB	22	03/15/95
Ch.	144		SB	217	03/15/95
Ch.	145		SB	240	03/15/95
Ch.	147		SB	275	01/01/96
Ch.	149		SB	203	(Effective upon signature of parties)
Ch.	150		HB	64	03/16/95
Ch.	151		HB	144	03/16/95
Ch.	152		HB	199	03/16/95
Ch.	154		SB	304	03/16/95
Ch.	155		SB	400	03/16/95
Ch.	156		HB	229	11/05/96 (Contingent upon voter approval)
Ch.	157	(§§ 1 & 3-5)	HB	50	06/30/95
Ch.	158	(§§ 1, 2, & 4-10)	HB	141	03/17/95
Ch.	158	(§ 3)	HB	141	01/01/96
Ch.	162		HB	306	07/01/95
Ch.	166		SB	284	03/17/95
Ch.	169		HB	463	07/01/97 (Contingent upon voter approval)
Ch.	171		HB	278	07/01/95

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Ch.			Bill #		Eff. Date
Ch.	172		SB	139	03/20/95
Ch.	175		HB	63	07/01/95
Ch.	178		HB	208	03/21/95
Ch.	179		HB	282	07/01/95
Ch.	180		HB	324	03/21/95
Ch.	181		HB	333	07/01/95
Ch.	182		HB	334	07/01/95
Ch.	189		HB	212	07/01/95
Ch.	190		HB	321	03/22/95
Ch.	191		HB	331	03/22/95
Ch.	193		SB	365	(Effective upon signature of Secretary of U.S. Department of Interior)
Ch.	195	(§ 1)	HB	100	01/01/96
Ch.	195	(§§ 2-10 & 12-21)	HB	100	03/23/95
Ch.	196		HB	135	07/01/95
Ch.	197		HB	137	03/23/95
Ch.	204	(§§ 1 & 6)	HB	381	03/23/95
Ch.	207		SB	19	03/23/95
Ch.	213	(§§ 2-4)	HB	11	03/24/95
Ch.	213	(§ 1)	HB	11	07/01/95
Ch.	214		HB	77	03/24/95
Ch.	215		HB	154	03/24/95
Ch.	217		HB	188	03/24/95
Ch.	219		HB	226	07/01/95
Ch.	220		HB	235	03/24/95
Ch.	228		HB	549	03/24/95
Ch.	229		SB	2	03/24/95
Ch.	230		SB	82	03/24/95
Ch.	233		SB	117	07/01/95
Ch.	235		SB	233	07/01/95
Ch.	236		SB	245	03/24/95
Ch.	237		SB	253	07/01/95
Ch.	238		SB	287	03/24/95
Ch.	242		SB	364	01/01/96
Ch.	243		SB	375	07/01/95
Ch.	244		SB	394	(Effective when the gray wolf is removed from the threatened/endangered species list)
Ch.	246		HB	320	03/27/95
Ch.	251		HB	551	03/27/95
Ch.	252		HB	553	03/27/95
Ch.	254		SB	255	03/27/95
Ch.	255		HB	65	03/28/95
Ch.	260		HB	368	07/01/95
Ch.	261		HB	372	03/27/95
Ch.	262		HB	375	03/28/95
Ch.	263		HB	384	03/01/96
Ch.	264		HB	385	03/28/95
Ch.	265	(§§ 1-4 & 8-18)	HB	428	03/27/95
Ch.	265	(§§ 5-7)	HB	428	09/29/95
Ch.	266		HB	431	07/01/95
Ch.	270		HB	461	03/28/95
Ch.	274		HB	536	03/28/95
Ch.	276		HB	55	03/29/95
Ch.	278		HB	570	03/29/95
Ch.	279		HB	572	03/29/95
Ch.	283		SB	355	03/29/95

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Ch.			Bill #		Eff. Date
Ch.	284		HB	202	03/30/95
Ch.	285		HB	233	03/30/95
Ch.	291		HB	415	03/30/95
Ch.	295		HB	560	01/01/96
Ch.	297		SB	78	07/01/95
Ch.	298	(§§ 1-4, 6-11, & 13)	SB	112	07/01/95
Ch.	298	(§§ 5 & 12)	SB	112	03/30/95
Ch.	299		SB	121	07/01/95
Ch.	300		SB	122	03/30/95
Ch.	301		SB	147	07/01/95
Ch.	305		SB	374	07/01/95
Ch.	306		HB	357	03/31/95
Ch.	307		HB	409	03/31/95
Ch.	308	(§ 35(2))	SB	156	12/31/95
Ch.	308	(§ 34)	SB	156	01/01/96
Ch.	308	(§§ 1-33, 35(1), & 36-38)	SB	156	07/01/95
Ch.	314		SB	294	01/01/96
Ch.	315		SB	296	03/31/95
Ch.	316		HB	304	04/03/95
Ch.	318		HB	343	04/03/95
Ch.	323		HB	542	04/03/95
Ch.	325		HB	563	07/01/95
Ch.	328	(§§ 20, 21, & 25)	HB	196	07/01/95
Ch.	329		SB	186	04/05/95
Ch.	330		SB	212	04/05/95
Ch.	333		HB	280	07/01/95
Ch.	334		HB	294	04/07/95
Ch.	337		HB	513	04/07/95
Ch.	339		SB	265	07/01/95
Ch.	341		HB	273	01/01/98 (Contingent upon voter approval)
Ch.	342		HB	307	01/01/96
Ch.	343		HB	485	04/10/95
Ch.	344		SB	264	07/01/95
Ch.	345		SB	303	04/10/95
Ch.	346		SB	312	04/10/95
Ch.	348		SB	393	04/10/95
Ch.	351		HB	347	04/11/95
Ch.	353		SB	242	04/11/95
Ch.	354	(§§ 1 & 6-19)	SB	293	04/11/95
Ch.	354	(§§ 2-5)	SB	293	07/01/95
Ch.	355		SB	311	07/01/95
Ch.	356		SB	321	07/01/95
Ch.	358		SB	378	07/01/95
Ch.	359		SB	408	04/11/95
Ch.	361		HB	176	07/01/95
Ch.	364	(§§ 4 & 8)	HB	248	04/12/95
Ch.	365		HB	287	04/12/95
Ch.	369		HB	340	04/12/95
Ch.	370		HB	351	07/01/95
Ch.	371		HB	352	07/01/95
Ch.	372	(§§ 1, 2, 4-6, 8-11, 12(1), & 13)	HB	356	04/12/95
Ch.	372	(§§ 3, 7, & 12(2))	HB	356	01/31/97
Ch.	373		HB	360	04/12/95
Ch.	374		HB	404	04/12/95
Ch.	378	(§§ 1-8 & 21-25)	HB	511	04/12/95
Ch.	378	(§§ 9-20)	HB	511	07/01/95
Ch.	379	(§§ 31 & 100)	HB	556	04/12/95

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Ch.			Bill #		Eff. Date
Ch.	380		HB	564	04/12/95
Ch.	381		SB	76	04/12/95
Ch.	382		SB	80	04/12/95
Ch.	385		SB	167	04/12/95
Ch.	386		SB	174	07/01/95
Ch.	388		SB	208	04/12/95
Ch.	390		SB	222	04/12/95
Ch.	391		SB	272	04/12/95
Ch.	394		SB	353	04/12/95
Ch.	397		SB	407	04/12/95
Ch.	398	(§§ 1-7 & 16)	SB	416	04/12/95 (Contingent upon adequate HB 2 funding level. Otherwise, §§ 1-7 are void & §§ 8-15 are effective 07/01/95)
Ch.	399		SB	418	04/12/95
Ch.	400		HB	8	07/01/95
Ch.	401		HB	18	04/13/95
Ch.	403		HB	150	04/13/95
Ch.	404		HB	158	04/13/95
Ch.	405	(§§ 18 & 21)	HB	164	04/13/95
Ch.	405	(§§ 1-17, 19, & 20)	HB	164	01/01/96
Ch.	406		HB	197	04/13/95
Ch.	411		HB	305	07/01/95
Ch.	412		HB	325	04/13/95
Ch.	413		HB	354	07/01/95
Ch.	414		HB	578	07/01/95
Ch.	415		SB	90	04/13/95
Ch.	417		SB	210	07/01/95
Ch.	418		SB	234	07/01/95
Ch.	421		SB	387	04/13/95
Ch.	422		SB	395	04/13/95
Ch.	423		HB	420	04/13/95
Ch.	424	(§§ 1, 2, & 4-6)	HB	462	04/13/95
Ch.	424	(§ 3)	HB	462	07/01/97
Ch.	425		HB	464	04/13/95
Ch.	426	(§§ 1, 2, & 9-11)	HB	478	04/13/95
Ch.	428		HB	512	07/01/95
Ch.	429	(§§ 19, 21, & 134)	HB	518	04/13/95 (For drafting rules that will be adopted on or after 10/01/95)
Ch.	430		HB	530	04/13/95
Ch.	431		HB	544	04/13/95
Ch.	432		HB	561	01/01/96
Ch.	433		HB	577	04/13/95
Ch.	436		HB	240	07/01/95
Ch.	437		HB	279	04/14/95
Ch.	438		HB	380	04/14/95
Ch.	440		HB	588	04/14/95
Ch.	442	(§§ 7 & 8)	SB	27	04/14/95
Ch.	442	(§§ 1-6)	SB	27	07/01/95
Ch.	443		SB	55	07/01/95
Ch.	444	(§§ 1(7), 3, & 4)	SB	189	04/14/95
Ch.	445		SB	201	04/14/95
Ch.	446		SB	219	01/01/96
Ch.	450		SB	372	07/01/95
Ch.	451	(§§ 16 & 54)	SB	412	04/14/95
Ch.	451	(§§ 1-15, 17-53, & 55)	SB	412	01/01/96
Ch.	452		SB	415	04/14/95

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Ch.			Bill #		Eff. Date
Ch.	453		SB	424	04/14/95
Ch.	454		HB	7	07/01/95
Ch.	455	(§§ 1-19 & 22-24)	HB	17	04/14/95
Ch.	455	(§§ 20 & 21)	HB	17	07/01/95
Ch.	456		HB	19	07/01/95
Ch.	457		HB	167	07/01/95
Ch.	458		HB	186	04/14/95
Ch.	459	(§§ 11-17)	HB	195	04/14/95
Ch.	459	(§§ 5-9)	HB	195	03/01/96
Ch.	460		HB	298	07/01/95
Ch.	463	(§§ 1, 2, & 4-6)	HB	349	04/14/95
Ch.	463	(§ 3)	HB	349	07/01/95
Ch.	465		HB	366	04/14/95
Ch.	466		HB	429	04/14/95
Ch.	467		HB	444	04/15/95
Ch.	470		HB	514	07/01/95
Ch.	471		HB	521	04/14/95
Ch.	473		HB	552	07/01/95
Ch.	475		HB	585	04/14/95
Ch.	476		HB	600	06/30/95
Ch.	477		HB	602	04/14/95
Ch.	478		HB	603	04/14/95
Ch.	479		HB	272	04/15/95
Ch.	482	(§§ 19-21)	SB	66	07/01/95
Ch.	482	(§§ 1-18)	SB	66	07/01/97
Ch.	484		SB	126	04/14/95
Ch.	485		SB	138	04/14/95
Ch.	486		SB	140	04/15/95
Ch.	487		SB	144	04/14/95
Ch.	489		SB	163	01/01/96
Ch.	490		SB	200	04/14/95
Ch.	492	(§§ 1 & 28-32)	SB	236	04/14/95
Ch.	492	(§§ 2-27)	SB	236	07/01/95
Ch.	493		SB	250	04/15/95
Ch.	497		SB	331	04/15/95
Ch.	498		SB	349	04/14/95
Ch.	502		SB	388	07/01/95
Ch.	503		SB	389	07/01/95
Ch.	504		SB	402	07/01/95
Ch.	506		SB	423	04/15/95
Ch.	508		HB	460	07/01/95
Ch.	509	(§§ 81 & 84)	SB	83	04/21/95
Ch.	509	(§§ 1-80, 82, & 83)	SB	83	07/01/95
Ch.	510		SB	181	04/21/95
Ch.	511		HB	4	04/25/95
Ch.	512	(§§ 2-7)	HB	6	04/25/95
Ch.	512	(§ 1)	HB	6	07/01/95
Ch.	513		HB	24	04/25/95
Ch.	514		HB	68	07/01/95
Ch.	515		HB	89	01/01/96
Ch.	516	(§§ 5, 12, 21, & 24-28)	HB	200	04/25/95
Ch.	516	(§§ 1-4 & 6)	HB	200	07/01/95
Ch.	517		HB	201	07/01/95
Ch.	518		HB	308	04/25/95
Ch.	519		HB	395	07/01/95
Ch.	520		HB	421	04/25/95
Ch.	521	(§§ 1-5, 9, & 18-20)	HB	445	04/25/95
Ch.	521	(§§ 6-8 & 10-17)	HB	445	01/01/96

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Ch.	522		HB	446	04/21/95
Ch.	523		HB	484	07/01/95
Ch.	524		HB	490	04/21/95
Ch.	526		HB	509	04/25/95
Ch.	527		HB	533	01/01/96
Ch.	529	(§§ 1, 5-13, & 15-18)	HB	550	04/25/95
Ch.	529	(§ 14)	HB	550	07/01/95
Ch.	529	(§§ 2-4)	HB	550	07/01/96
Ch.	530	(§§ 1-25 & 27-44)	HB	574	04/25/95
Ch.	530	(§ 26)	HB	574	07/01/95
Ch.	531		HB	584	04/25/95
Ch.	532		HB	598	04/21/95
Ch.	533		HB	607	04/25/95
Ch.	535		SB	127	07/01/95
Ch.	536		SB	226	01/01/96
Ch.	537		SB	229	04/21/95
Ch.	538		SB	361	07/01/95
Ch.	539		SB	346	04/27/95
Ch.	540		SB	352	04/27/95
Ch.	541		SB	357	07/01/95
Ch.	543		SB	377	10/01/96
Ch.	544		SB	385	07/01/95
Ch.	545	(§§ 16, 42, 49, 81, & 83)	SB	398	04/27/95
Ch.	545	(§§ 1-15, 17-41, 43-48, 50-80, & 82)	SB	398	07/01/95
Ch.	546		SB	345	07/01/95
Ch.	547		HB	5	04/26/95
Ch.	548		HB	9	07/01/95
Ch.	549		HB	15	04/26/95
Ch.	552		HB	471	04/26/95
Ch.	553		HB	493	04/27/95
Ch.	554		HB	524	04/26/95
Ch.	556		HB	576	07/01/95
Ch.	557	(§§ 1, 2, & 4-11)	HB	594	04/26/95
Ch.	557	(§ 3)	HB	594	(Effective 20 days after Governor's declaration of completion)
Ch.	558		HB	601	04/26/95
Ch.	559		SB	38	04/26/95
Ch.	560		SB	56	04/26/95
Ch.	561		SB	86	07/01/95
Ch.	562		SB	136	07/01/95
Ch.	563	(§§ 1, 3, 5, & 6)	SB	198	04/26/95
Ch.	563	(§ 2)	SB	198	01/01/97
Ch.	563	(§ 4)	SB	198	01/01/98
Ch.	566		SB	292	07/01/95
Ch.	568		SB	386	04/27/95
Ch.	569		SB	409	07/01/95
Ch.	571		HB	90	07/01/95
Ch.	572		HB	293	05/01/95
Ch.	573	(§§ 1, 2(1), & 3)	HB	418	07/01/95
Ch.	573	(§ 2(2) & 2(3))	HB	418	01/01/96
Ch.	574		HB	497	05/01/95
Ch.	577		HB	569	07/01/95
Ch.	578		HB	587	07/01/95
Ch.	579	(§§ 4(2), 12, & 13)	HB	591	05/01/95
Ch.	580		SB	161	01/01/96
Ch.	581		SB	338	05/01/95

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Ch.	583	SB	366	05/01/95
Ch.	584	SB	382	05/01/95
Ch.	585	SB	397	05/01/95
Ch.	586	HB	416	07/01/95
		(Note: Governor's line item veto sustained)		
Ch.	587	HB	3	04/28/95
		(Note: Governor's line item veto sustained)		
Ch.	589	HB	449	07/01/95
Ch.	593	HB	2	07/01/95

EFFECTIVE DATES

BY DATE

Eff. Date	Ch.	Bill #
01/13/95	Ch. 1	HB 1
01/20/95	Ch. 2	SB 100
01/26/95	Ch. 5	SB 14
01/26/95	Ch. 6	SB 16
01/27/95	Ch. 10	HB 38
01/27/95	Ch. 12	HB 40
01/27/95	Ch. 13	HB 14
01/27/95	Ch. 15	SB 6
02/02/95	Ch. 17	HB 126
02/02/95	Ch. 18	SB 1 (§§ 73 & 75)
02/02/95	Ch. 22	HB 139
02/02/95	Ch. 23	HB 140
02/02/95	Ch. 26	SB 21
02/02/95	Ch. 27	SB 33
02/06/95	Ch. 28	HB 75
02/06/95	Ch. 29	HB 171 (§§ 5-7)
02/06/95	Ch. 30	SB 57
02/06/95	Ch. 31	SB 46
02/07/95	Ch. 33	SB 45
02/08/95	Ch. 36	HB 43
02/08/95	Ch. 38	HB 49
02/08/95	Ch. 39	HB 51
02/09/95	Ch. 43	SB 53
02/09/95	Ch. 44	HB 16
02/09/95	Ch. 47	HB 76
02/09/95	Ch. 48	HB 98
02/09/95	Ch. 49	HB 106
02/09/95	Ch. 51	HB 178
02/09/95	Ch. 53	SB 34 (§§ 1-3 & 7-11)
02/09/95	Ch. 54	SB 35
02/09/95	Ch. 55	SB 71 (§§ 1 & 3)
02/10/95	Ch. 56	SB 106
02/10/95	Ch. 57	SB 108
02/13/95	Ch. 58	HB 25
02/16/95	Ch. 66	SB 52
02/22/95	Ch. 68	HB 54
03/03/95	Ch. 79	SB 196
03/06/95	Ch. 77	HB 114
03/06/95	Ch. 81	HB 96
03/06/95	Ch. 82	HB 138
03/07/95	Ch. 80	HB 48
03/07/95	Ch. 83	HB 152
03/09/95	Ch. 89	HB 31
03/09/95	Ch. 90	HB 47
03/09/95	Ch. 91	HB 119

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03/09/95	Ch. 95	SB 125
03/09/95	Ch. 97	SB 202
03/09/95	Ch. 99	SB 235
03/10/95	Ch. 103	HB 61
03/10/95	Ch. 110	HB 175
03/10/95	Ch. 111	HB 205
		(§§ 1-3, 5-7, & 9-13)
03/10/95	Ch. 113	HB 243
03/10/95	Ch. 117	HB 310
03/10/95	Ch. 121	SB 238
03/10/95	Ch. 123	SB 299
03/13/95	Ch. 114	HB 285
03/13/95	Ch. 127	HB 99
03/13/95	Ch. 128	HB 104
03/13/95	Ch. 130	HB 163
03/13/95	Ch. 132	HB 173
03/15/95	Ch. 142	SB 22
03/15/95	Ch. 144	SB 217
03/15/95	Ch. 145	SB 240
03/16/95	Ch. 150	HB 64
03/16/95	Ch. 151	HB 144
03/16/95	Ch. 152	HB 199
03/16/95	Ch. 154	SB 304
03/16/95	Ch. 155	SB 400
03/17/95	Ch. 158	HB 141
		(§§ 1, 2, & 4-10)
03/17/95	Ch. 166	SB 284
03/20/95	Ch. 172	SB 139
03/21/95	Ch. 178	HB 208
03/21/95	Ch. 180	HB 324
03/22/95	Ch. 190	HB 321
03/22/95	Ch. 191	HB 331
03/23/95	Ch. 195	HB 100
		(§§ 2-10 & 12-21)
03/23/95	Ch. 197	HB 137
03/23/95	Ch. 204	HB 381
		(§§ 1 & 6)
03/23/95	Ch. 207	SB 19
03/24/95	Ch. 213	HB 11
		(§§ 2-4)
03/24/95	Ch. 214	HB 77
03/24/95	Ch. 215	HB 154
03/24/95	Ch. 217	HB 188
03/24/95	Ch. 220	HB 235
03/24/95	Ch. 228	HB 549
03/24/95	Ch. 229	SB 2
03/24/95	Ch. 230	SB 82
03/24/95	Ch. 236	SB 245
03/24/95	Ch. 238	SB 287
03/27/95	Ch. 246	HB 320
03/27/95	Ch. 251	HB 551
03/27/95	Ch. 252	HB 553
03/27/95	Ch. 254	SB 255
03/27/95	Ch. 261	HB 372
03/27/95	Ch. 265	HB 428
		(§§ 1-4 & 8-18)
03/28/95	Ch. 255	HB 65
03/28/95	Ch. 262	HB 375

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03/28/95	Ch. 264	HB 385
03/28/95	Ch. 270	HB 461
03/28/95	Ch. 274	HB 536
03/29/95	Ch. 276	HB 55
03/29/95	Ch. 278	HB 570
03/29/95	Ch. 279	HB 572
03/29/95	Ch. 283	SB 355
03/30/95	Ch. 284	HB 202
03/30/95	Ch. 285	HB 233
03/30/95	Ch. 291	HB 415
03/30/95	Ch. 298	SB 112 (§§ 5 & 12)
03/30/95	Ch. 300	SB 122
03/31/95	Ch. 306	HB 357
03/31/95	Ch. 307	HB 409
03/31/95	Ch. 315	SB 296
04/03/95	Ch. 316	HB 304
04/03/95	Ch. 318	HB 343
04/03/95	Ch. 323	HB 542
04/05/95	Ch. 329	SB 186
04/05/95	Ch. 330	SB 212
04/07/95	Ch. 334	HB 294
04/07/95	Ch. 337	HB 513
04/10/95	Ch. 343	HB 485
04/10/95	Ch. 345	SB 303
04/10/95	Ch. 346	SB 312
04/10/95	Ch. 348	SB 393
04/11/95	Ch. 351	HB 347
04/11/95	Ch. 353	SB 242
04/11/95	Ch. 354	SB 293 (§§ 1 & 6-19)
04/11/95	Ch. 359	SB 408
04/12/95	Ch. 364	HB 248 (§§ 4 & 8)
04/12/95	Ch. 365	HB 287
04/12/95	Ch. 369	HB 340
04/12/95	Ch. 372	HB 356 (§§ 1, 2, 4-6, 8-11, 12(1), & 13)
04/12/95	Ch. 373	HB 360
04/12/95	Ch. 374	HB 404
04/12/95	Ch. 378	HB 511 (§§ 1-8 & 21-25)
04/12/95	Ch. 379	HB 556 (§§ 31 & 100)
04/12/95	Ch. 380	HB 564
04/12/95	Ch. 381	SB 76
04/12/95	Ch. 382	SB 80
04/12/95	Ch. 385	SB 167
04/12/95	Ch. 388	SB 208
04/12/95	Ch. 390	SB 222
04/12/95	Ch. 391	SB 272
04/12/95	Ch. 394	SB 353
04/12/95	Ch. 397	SB 407
04/12/95	Ch. 398	SB 416 (§§ 1-7 & 16 are contingent upon adequate HB 2 funding level. Otherwise, §§ 1-7 are void & §§ 8-15 are effective 07/01/95)
04/12/95	Ch. 399	SB 418

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04/13/95	Ch. 401	HB 18
04/13/95	Ch. 403	HB 150
04/13/95	Ch. 404	HB 158
04/13/95	Ch. 405	HB 164 (§§ 18 & 21)
04/13/95	Ch. 406	HB 197
04/13/95	Ch. 412	HB 325
04/13/95	Ch. 415	SB 90
04/13/95	Ch. 421	SB 387
04/13/95	Ch. 422	SB 395
04/13/95	Ch. 423	HB 420
04/13/95	Ch. 424	HB 462 (§§ 1, 2, & 4-6)
04/13/95	Ch. 425	HB 464
04/13/95	Ch. 426	HB 478 (§§ 1, 2, & 9-11)
04/13/95	Ch. 429	HB 518 (§§ 19, 21, & 134, for drafting rules that will be adopted on or after 10/01/95)
04/13/95	Ch. 430	HB 530
04/13/95	Ch. 431	HB 544
04/13/95	Ch. 433	HB 577
04/14/95	Ch. 437	HB 279
04/14/95	Ch. 438	HB 380
04/14/95	Ch. 440	HB 588
04/14/95	Ch. 442	SB 27 (§§ 7 & 8)
04/14/95	Ch. 444	SB 189 (§§ 1(7), 3, & 4)
04/14/95	Ch. 445	SB 201
04/14/95	Ch. 451	SB 412 (§§ 16 & 54)
04/14/95	Ch. 452	SB 415
04/14/95	Ch. 453	SB 424
04/14/95	Ch. 455	HB 17 (§§ 1-19 & 22-24)
04/14/95	Ch. 458	HB 186
04/14/95	Ch. 459	HB 195 (§§ 11-17)
04/14/95	Ch. 463	HB 349 (§§ 1, 2, & 4-6)
04/14/95	Ch. 465	HB 366
04/14/95	Ch. 466	HB 429
04/14/95	Ch. 471	HB 521
04/14/95	Ch. 475	HB 585
04/14/95	Ch. 477	HB 602
04/14/95	Ch. 478	HB 603
04/14/95	Ch. 484	SB 126
04/14/95	Ch. 485	SB 138
04/14/95	Ch. 487	SB 144
04/14/95	Ch. 490	SB 200
04/14/95	Ch. 492	SB 236 (§§ 1 & 28-32)
04/14/95	Ch. 498	SB 349
04/15/95	Ch. 467	HB 444
04/15/95	Ch. 479	HB 272
04/15/95	Ch. 486	SB 140

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04/15/95	Ch. 493	SB 250
04/15/95	Ch. 497	SB 331
04/15/95	Ch. 506	SB 423
04/21/95	Ch. 509	SB 83
		(§§ 81 & 84)
04/21/95	Ch. 510	SB 181
04/21/95	Ch. 522	HB 446
04/21/95	Ch. 524	HB 490
04/21/95	Ch. 532	HB 598
04/21/95	Ch. 537	SB 229
04/25/95	Ch. 511	HB 4
04/25/95	Ch. 512	HB 6
		(§§ 2-7)
04/25/95	Ch. 513	HB 24
04/25/95	Ch. 516	HB 200
		(§§ 5, 12, 21, & 24-28)
04/25/95	Ch. 518	HB 308
04/25/95	Ch. 520	HB 421
04/25/95	Ch. 521	HB 445
		(§§ 1-5, 9, & 18-20)
04/25/95	Ch. 526	HB 509
04/25/95	Ch. 529	HB 550
		(§§ 1, 5-13, & 15-18)
04/25/95	Ch. 530	HB 574
		(§§ 1-25 & 27-44)
04/25/95	Ch. 531	HB 584
04/25/95	Ch. 533	HB 607
04/26/95	Ch. 547	HB 5
04/26/95	Ch. 549	HB 15
04/26/95	Ch. 552	HB 471
04/26/95	Ch. 554	HB 524
04/26/95	Ch. 557	HB 594
		(§§ 1, 2, & 4-11)
04/26/95	Ch. 558	HB 601
04/26/95	Ch. 559	SB 38
04/26/95	Ch. 560	SB 56
04/26/95	Ch. 563	SB 198
		(§§ 1, 3, 5, & 6)
04/27/95	Ch. 539	SB 346
04/27/95	Ch. 540	SB 352
04/27/95	Ch. 545	SB 398
		(§§ 16, 42, 49, 81, & 83)
04/27/95	Ch. 553	HB 493
04/27/95	Ch. 568	SB 386
04/28/95	Ch. 587	HB 3
		(Note: Governor's line item veto sustained)
05/01/95	Ch. 572	HB 293
05/01/95	Ch. 574	HB 497
05/01/95	Ch. 579	HB 591
		(§§ 4(2), 12, & 13)
05/01/95	Ch. 581	SB 338
05/01/95	Ch. 583	SB 366
05/01/95	Ch. 584	SB 382
05/01/95	Ch. 585	SB 397
06/30/95	Ch. 157	HB 50
		(§§ 1 & 3-5)
06/30/95	Ch. 476	HB 600
07/01/95	Ch. 4	HB 23

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07/01/95	Ch. 8	SB 26
07/01/95	Ch. 18	SB 1 (§ 12)
07/01/95	Ch. 25	SB 3
07/01/95	Ch. 29	HB 171 (§§ 1-4)
07/01/95	Ch. 37	HB 44
07/01/95	Ch. 45	HB 20
07/01/95	Ch. 52	SB 4
07/01/95	Ch. 61	HB 12
07/01/95	Ch. 63	HB 10
07/01/95	Ch. 70	SB 36
07/01/95	Ch. 75	SB 104
07/01/95	Ch. 84	SB 25
07/01/95	Ch. 111	HB 205 (§§ 4 & 8)
07/01/95	Ch. 112	HB 216
07/01/95	Ch. 129	HB 151
07/01/95	Ch. 131	HB 168
07/01/95	Ch. 136	HB 316
07/01/95	Ch. 141	SB 392
07/01/95	Ch. 162	HB 306
07/01/95	Ch. 171	HB 278
07/01/95	Ch. 175	HB 63
07/01/95	Ch. 179	HB 282
07/01/95	Ch. 181	HB 333
07/01/95	Ch. 182	HB 334
07/01/95	Ch. 189	HB 212
07/01/95	Ch. 196	HB 135
07/01/95	Ch. 213	HB 11 (§ 1)
07/01/95	Ch. 219	HB 226
07/01/95	Ch. 233	SB 117
07/01/95	Ch. 235	SB 233
07/01/95	Ch. 237	SB 253
07/01/95	Ch. 243	SB 375
07/01/95	Ch. 260	HB 368
07/01/95	Ch. 266	HB 431
07/01/95	Ch. 297	SB 78
07/01/95	Ch. 298	SB 112 (§§ 1-4, 6-11, & 13)
07/01/95	Ch. 299	SB 121
07/01/95	Ch. 301	SB 147
07/01/95	Ch. 305	SB 374
07/01/95	Ch. 308	SB 156 (§§ 1-33, 35(1), & 36-38)
07/01/95	Ch. 325	HB 563
07/01/95	Ch. 328	HB 196 (§§ 20, 21, & 25)
07/01/95	Ch. 333	HB 280
07/01/95	Ch. 339	SB 265
07/01/95	Ch. 344	SB 264
07/01/95	Ch. 354	SB 293 (§§ 2-5)
07/01/95	Ch. 355	SB 311
07/01/95	Ch. 356	SB 321
07/01/95	Ch. 358	SB 378
07/01/95	Ch. 361	HB 176

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07/01/95	Ch. 370	HB 351
07/01/95	Ch. 371	HB 352
07/01/95	Ch. 378	HB 511 (§§ 9-20)
07/01/95	Ch. 386	SB 174
07/01/95	Ch. 400	HB 8
07/01/95	Ch. 411	HB 305
07/01/95	Ch. 413	HB 354
07/01/95	Ch. 414	HB 578
07/01/95	Ch. 417	SB 210
07/01/95	Ch. 418	SB 234
07/01/95	Ch. 428	HB 512
07/01/95	Ch. 436	HB 240
07/01/95	Ch. 442	SB 27 (§§ 1-6)
07/01/95	Ch. 443	SB 55
07/01/95	Ch. 450	SB 372
07/01/95	Ch. 454	HB 7
07/01/95	Ch. 455	HB 17 (§§ 20 & 21)
07/01/95	Ch. 456	HB 19
07/01/95	Ch. 457	HB 167
07/01/95	Ch. 460	HB 298
07/01/95	Ch. 463	HB 349 (§ 3)
07/01/95	Ch. 470	HB 514
07/01/95	Ch. 473	HB 552
07/01/95	Ch. 482	SB 66 (§§ 19-21)
07/01/95	Ch. 492	SB 236 (§§ 2-27)
07/01/95	Ch. 502	SB 388
07/01/95	Ch. 503	SB 389
07/01/95	Ch. 504	SB 402
07/01/95	Ch. 508	HB 460
07/01/95	Ch. 509	SB 83 (§§ 1-80, 82, & 83)
07/01/95	Ch. 512	HB 6 (§ 1)
07/01/95	Ch. 514	HB 68
07/01/95	Ch. 516	HB 200 (§§ 1-4 & 6)
07/01/95	Ch. 517	HB 201
07/01/95	Ch. 519	HB 395
07/01/95	Ch. 523	HB 484
07/01/95	Ch. 529	HB 550 (§ 14)
07/01/95	Ch. 530	HB 574 (§ 26)
07/01/95	Ch. 535	SB 127
07/01/95	Ch. 538	SB 361
07/01/95	Ch. 541	SB 357
07/01/95	Ch. 544	SB 385
07/01/95	Ch. 545	SB 398 (§§ 1-15, 17-41, 43-48, 50-80, & 82)
07/01/95	Ch. 546	SB 345
07/01/95	Ch. 548	HB 9
07/01/95	Ch. 556	HB 576

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07/01/95	Ch. 561	SB 86
07/01/95	Ch. 562	SB 136
07/01/95	Ch. 566	SB 292
07/01/95	Ch. 569	SB 409
07/01/95	Ch. 571	HB 90
07/01/95	Ch. 573	HB 418
		(§§ 1, 2(1), & 3)
07/01/95	Ch. 577	HB 569
07/01/95	Ch. 578	HB 587
07/01/95	Ch. 586	HB 416
	(Note: Governor's line item veto sustained)	
07/01/95	Ch. 589	HB 449
07/01/95	Ch. 593	HB 2
09/29/95	Ch. 265	HB 428
		(§§ 5-7)
09/30/95	Ch. 55	SB 71
		(§ 2)
12/31/95	Ch. 308	SB 156
		(§ 35(2))
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01/01/96	Ch. 158	HB 141
		(§ 3)
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		(§ 1)
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		(§§ 1-17, 19, & 20)
01/01/96	Ch. 432	HB 561
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		(§§ 1-15, 17-53, & 55)
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		(§§ 6-8 & 10-17)
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		(§ 2(2) & 2(3))
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11/05/96	Ch. 156	HB 229
	(Contingent upon voter approval)	
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Eff. Date	Ch.	Bill #
01/31/97	Ch. 372	HB 356 (§§ 3, 7, & 12(2))
07/01/97	Ch. 169	HB 463 (Contingent upon voter approval)
07/01/97	Ch. 424	HB 462 (§ 3)
07/01/97	Ch. 482	SB 66 (§§ 1-18)
01/01/98	Ch. 341	HB 273 (Contingent upon voter approval)
01/01/98	Ch. 563	SB 198 (§ 4)
10/01/99	Ch. 53	SB 34 (§ 5)
01/01/2001	Ch. 69	SB 37 (Contingent upon voter approval)
?	Ch. 149	SB 203 (Effective upon signature of parties)
?	Ch. 193	SB 365 (Effective upon signature of Secretary of U.S. Department of Interior)
?	Ch. 244	SB 394 (Effective when the gray wolf is removed from the threatened/endangered species list)
?	Ch. 557	HB 594 (§ 3 is effective 20 days after Governor's declaration of completion)

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CODE

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2	1	Voided by sec. 7, Ch. 477 (coordination section)
	2	Voided by sec. 7, Ch. 477 (coordination section)
	3	17-6-311
	4	17-6-312
	5	17-6-316
	6	Codification instruction
	7	Effective date
3	1	2-4-305
4	1	1-11-301
	2	2-6-110
	3	Effective date
5	1	17-8-303
	2	39-3-213
	3	70-9-309
	4	72-14-204
	5	72-14-205
	6	72-14-206
	7	72-14-207
	8	72-14-209
	9	72-14-210
	10	72-14-403
	11	Retroactive applicability
	12	Effective date
6	1	53-2-1110
	2	Coordination instruction
	3	Effective date
7	1	46-16-110
	2	46-17-201
8	1	41-5-1004
	2	Effective date
9	1	15-1-205
10	1	15-38-103
	2	15-38-104
	3	Effective date — retroactive applicability
11	1	81-8-214
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	3	81-8-271
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	5	Severability
12	1	Sec. 12, Ch. 581, L. 1993
	2	Retroactive applicability
	3	Effective date
13	1	Time limits
	2	Appropriation
	3	Effective date
14	1	81-3-104
	2	81-3-107
15	1	Repealer
	2	Effective date
16	1	27-2-205
	2	27-6-702
17	1	70-9-601
	2	Codification instruction
	3	Effective date
18	1	1-2-201
	2	1-11-302
	3	2-2-102
	4	3-5-403
	5	3-10-601
	6	7-8-2218
	7	7-14-102
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	15	15-51-103
	16	15-53-114
	17	15-59-108
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	19	15-60-210
	20	15-65-121
	21	15-70-101
	22	15-71-104
	23	16-1-306
	24	16-1-401
	25	16-1-404
	26	16-1-408
	27	16-1-410
	28	16-1-411
	29	16-11-119
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	41	26-1-602
	42	32-3-704
	43	32-3-801
	44	37-17-102
	45	39-51-304
	46	39-71-532
	47	39-71-2504
	48	40-4-215
	49	41-5-311
	50	45-2-101
	51	45-5-206
	52	46-11-111
	53	46-18-248
	54	46-18-250
	55	46-18-304
	56	52-2-101
	57	52-2-505
	58	52-3-813
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	65	70-24-103
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	67	72-2-116
	68	72-33-108
	69	75-10-513
	70	75-10-919
	71	85-1-102
	72	87-1-605
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	74	Repealer
	75	Effective dates
19	1	23-7-311
20	1	10-1-207
21	1	Repealer
22	1	7-14-1104
	2	7-14-1126
	3	7-14-1133
	4	Effective date
23	1	5-11-209
	2	Effective date
24	1	7-4-2905
25	1	2-15-225
	2	Effective date
26	1	Voided by sec. 30, Ch. 186; sec. 5, Ch. 305 (coordination sections)
	2	Voided by sec. 30, Ch. 186; sec. 5, Ch. 305 (coordination sections)
27	1	39-71-2505
	2	Effective date — retroactive applicability date
28	1	75-10-402
	2	75-10-403
	3	75-10-405
	4	75-10-410
	5	75-10-415
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	9	75-10-424
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29	1	15-30-195(1)
	2	15-30-195(2)-(11)
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	6	Codification instruction
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	3	Effective date
31	1	15-37-117
	2	85-2-905
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	4	Effective date
32	1	87-2-401
	2	87-2-402
	3	87-2-411
	4	87-2-412
	5	Effective date
33	1-4	Repealed by Ch. 451, L. 1995
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35	1	53-1-402
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	3	53-1-411
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36	1	17-7-402
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37	1	20-9-471
	2	Effective date
38	1	20-7-705
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	3	Effective date
39	1	20-9-204
	2	Effective date
40	1	17-6-212
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	9	Effective date
43	1	15-70-301
	2	15-70-302
	3	15-70-308
	4	15-70-321
	5	15-70-330
	6	Effective date — retroactive applicability
44	1	Time limits
	2	Appropriation
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45	1	10-2-501
	2	Appropriation
	3	Effective date
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	2	39-51-204
	3	39-71-401
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	2	2-18-320
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52	1	2-15-1813 (renum. 2-15-217)
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	3	Notification of tribal governments
	4	Effective date
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	2	61-1-502
	3	61-5-104
	4	61-5-110
	5	61-5-110
	6	61-5-118
	7	61-5-117
	8	61-8-806
	9	61-8-808
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	11	Effective dates
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54	1	15-31-111
	2	15-31-510
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55	1	2-15-2108
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56	1	71-3-902
	2	Effective date
57	1	80-6-1102
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	4	80-6-1111
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	6	Effective date
58	1	20-4-108
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59	1	27-6-604
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	4	Matching funds for low-income energy assistance — appropriation
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	7	Northern Montana college tractor resource center — appropriation
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65	1	33-10-104
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66	1	7-2-4205
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	4	Art. V, sec. 14, Mont. Const.
	5	Art. VI, sec. 1, Mont. Const.
	6	Art. VI, sec. 2, Mont. Const.
	7	Art. VI, sec. 3, Mont. Const.
	8	Art. VI, sec. 4, Mont. Const.
	9	Art. VI, sec. 6, Mont. Const.
	10	Art. VI, sec. 7, Mont. Const.
	11	Art. VI, sec. 10, Mont. Const.
	12	Art. X, sec. 4, Mont. Const.
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76	1	81-7-601
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	3	81-7-603
	4	81-7-604
	5	81-7-605
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77	1	10-1-603
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78	1	61-8-303
79	1	Repealer
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80	1	44-1-1005
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81	1	61-3-321
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82	1	69-3-203
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83	1	39-71-2106
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84	1	2-18-102
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85	1	75-2-211
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86	1	13-37-226
87	1	85-7-1837
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	12	Applicability
	13	Effective date
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110	1	3-5-111
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111	1	19-2-907
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114	1	39-3-406
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115	1	87-2-702
116	1	87-3-111
117	1	69-1-224
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118	1	13-15-401
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120	1	10-1-104
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128	1	Sec. 5, Ch. 5, Sp. L. July 1992
	2	Repealer
	3	Effective date
129	1	20-9-512
	2	Repealer
	3	Effective date
130	1	18-2-201
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	3	18-2-203
	4	18-2-204
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	6	18-2-206
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	8	18-2-208
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	10	18-4-304
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	12	18-4-313
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131	1	39-71-118
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132	1	23-5-116
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134	1	61-8-711
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136	1	19-20-402
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138	1	26-2-111
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149	1	85-20-401
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	2	Codification instruction
	3	Effective date
156	1	Art. X, sec. 9, Mont. Const.
	2	Effective date
	3	Transition
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157	1	77-1-613
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158	1	15-70-201
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	8	Codification instruction
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159	1	82-4-203
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161	1	13-2-115
	2	13-2-122
162	1	19-7-403
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	3	19-7-501
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163	1	2-17-131
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166	1	69-3-112(4)
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167	1	69-5-108
168	1	37-12-302
169	1	Art. VIII, sec. 13, Mont. Const.
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170	1	7-33-2109
171	1	Repealer
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172	1	15-30-304
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173	1	33-15-308
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174	1	3-1-114
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175	1	19-17-106
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	24	Codification instruction
	25	Effective date
176	1	10-3-103
	2	10-3-104
	3	10-3-105
	4	10-3-111
	5	10-3-301
	6	10-3-305
	7	10-3-312
	8	10-3-310
	9	17-7-502
	10	Codification instruction
177	1	46-3-110
	2	46-3-112
	3	46-3-113
	4	46-3-114
	5	46-3-115
178	1	23-5-116
	2	Effective date
179	1	2-6-402
	2	2-6-403
	3	2-9-702
	4	2-9-802
	5	7-4-2634
	6	7-6-2212
	7	7-6-4113
	8	7-7-123
	9	7-21-2114
	10	17-6-103
	11	85-7-1616
	12	85-7-1913
	13	Repealer
	14	Effective date
180	1	19-5-409
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181	1	Repealer
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182	1	Repealer
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183	1	5-13-321
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184	1	76-15-303
185	1	75-3-602
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188	1	61-3-212
189	1	80-8-211
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	9	Effective date
190	1	17-5-205
	2	Effective date
191	1	5-17-207
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192	1	80-15-403
193	1	82-4-235
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194	1	87-3-401
195	1	13-4-106
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	6	Voided by sec. 16, Ch. 529 (coordination section)
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196	1	2-15-501
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197	1	85-2-232
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198	1	50-32-101
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199	1	90-1-108
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201	1	40-4-226
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202	1	49-4-301
203	1	13-13-213
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204	1	82-4-304
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205	1	41-5-706
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207	1	23-4-101
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208	1	17-5-1602
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215	1	7-6-2531
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216	1	7-3-181
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218	1	75-10-403
	2	75-10-426
	3	75-10-427
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219	1	46-23-1032
	2	44-13-102
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220	1	80-7-801
	2	80-7-811
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221	1	37-69-401
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222	1	77-1-202
223	1	77-5-201
224	1	76-4-104
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225	1	5-6-102
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226	1	16-3-416
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227	1	23-5-608
228	1	16-4-115
	2	16-4-105
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	4	Codification instruction
	5	Effective date
229	1	7-12-2105
	2	7-12-2153
	3	7-12-2176
	4	7-12-2182
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	13	7-14-4712
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230	1	7-4-2503
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231	1	60-4-401
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232	1	60-4-202
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233	1	7-4-2503
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234	1	39-71-116
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236	1	61-10-101
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239	1	30-10-103
240	1	33-22-1107
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243	1	39-71-2911
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244	1	81-7-101
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245	1	7-14-241
246	1	39-71-2501
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247	1	45-1-205
248	1	15-18-111
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252	1	17-1-504
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253	1	37-11-101
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255	1	53-20-102
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257	1	61-3-456
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259	1	30-14-1201
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260	1	20-9-121
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261	1	30-10-201
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262	1	87-3-111
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263	1	87-2-501
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272	1	77-2-351
273	1	77-1-110
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274	1	2-18-704
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	5	Codification instruction
	6	Severability
	7	Effective date
275	1	40-8-103
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277	1	15-24-1901
278	1	15-30-111
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279	1	90-5-112
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	3	Effective date
280	1	7-8-2301
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281	1	33-4-501
282	1	40-6-119
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283	1	61-8-901
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284	1	15-30-121
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285	1	20-6-704
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286	1	60-2-112
287	1	7-14-4102
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288	1	69-7-101
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289	1	Voided by sec. 3 (coordination section)
	2	Voided by sec. 3 (coordination section)
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290	1	2-4-702
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291	1	20-8-104
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292	1	1-11-101
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	8	75-5-631
	9	75-5-632
	10	75-5-636
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	12	Effective dates — retroactive applicability
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299	1	7-5-2123
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300	1	77-2-102
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301	1	85-1-801
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302	1	75-6-110
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303	1	70-16-301
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304	1	27-1-717
305	1	39-71-2311
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306	1	46-18-130
	2	46-18-131
	3	46-18-132
	4	Effective date
	5	Termination
307	1	32-1-372
	2	Effective date
308	1	2-15-1520
	2	2-18-401
	3	17-1-102
	4	17-2-102
	5	17-2-107
	6	17-2-110
	7	17-7-102
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	11	20-1-101
	12	20-5-402
	13	20-7-701
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	15	20-25-201
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	36	Name change — directions to code commissioner
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310	1	46-5-212
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311	1	90-4-1001
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312	1	61-10-124
313	1	61-10-104
314	1	61-1-104

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316	1	53-30-501
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317	1	45-8-360
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318	1	15-35-102
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319	1	1-1-510
320	1	33-16-201
	2	33-18-210
321	1	37-20-103
	2	50-20-109
322	1	85-2-408
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323	1	50-1-401
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324	1	50-1-202
	2	50-2-116
325	1	2-18-411
	2	2-18-412
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	37	Effective date
326	1	52-2-121
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327	1	2-15-1841
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328	1	37-47-101
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	15	37-47-401
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330	1	27-1-703
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331	1	75-1-201
332	1	25-2-122
333	1	2-15-1802
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	2	81-23-101
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	10	Effective date
334	1	61-8-724
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335	1	70-6-511
	2	70-6-512
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336	1	7-4-2812
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337	1	80-4-402
	2	80-4-429
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338	1	61-11-204
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339	1	22-1-225
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	3	17-2-108
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340	1	37-13-103
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341	1	Art. V, sec. 6, Mont. Const.
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	3	Effective date
342	1	61-3-203
	2	61-4-111
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	7	Effective date
343	1	2-15-1512
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	6	22-3-430
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	9	Effective date
344	1	39-8-101
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	22	Effective date
345	1	23-2-523
	2	23-2-531
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346	1	81-2-120
	2	87-1-216
	3	Codification instruction
	4	Repealer
	5	Effective date
347	1	15-6-122
	2	15-8-301
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348	1	15-1-406
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349	1	50-4-312
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352	1	75-1-102
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353	1	2-15-1881
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	3	Effective date
354	1	53-6-155
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	19	Effective dates
355	1	30-16-103
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356	1	60-3-201
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357	1	33-22-1517
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358	1	61-3-708
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359	1	23-7-211
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360	1	61-12-201
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361	1	3-1-317
	2	3-5-904
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362	1	37-17-302
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365	1	15-1-701
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367	1	75-10-725
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368	1	37-68-315
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369	1	40-8-111
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	5	Effective date
370	1	20-25-422
	2	20-25-307
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371	1	20-25-308
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372	1	44-2-601
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373	1	69-3-109
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374	1	13-27-303
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375	1	33-22-501
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376	1	45-5-637
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377	1	33-22-1803
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379	1	2-6-109
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	6	33-1-501
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	8	33-2-301
	9	33-2-302
	10	33-2-305
	11	33-2-307
	12	33-2-501
	13	33-2-521
	14	33-2-523
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	25	33-2-820
	26	33-2-1111
	27	33-2-1201
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	87	33-2-1906
	88	33-2-1907
	89	33-2-1908
	90	33-2-1909
	91	33-2-1910
	92	33-2-1911
	93	33-2-1912
	94	33-2-1913
	95	33-22-1811
	96	33-1-413
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	98	Codification instruction
	99	Severability
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380	1	81-3-211
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381	1	Sec. 11, Ch. 387, L. 1993
	2	Effective date
382	1	39-3-406
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385	1	2-1-401
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	4	2-1-404
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	7	2-1-407
	8	2-1-408
	9	Severability
	10	Effective date
386	1	41-3-1002
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	5	41-3-1009
	6	41-3-1010
	7	41-3-1011
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387	1	7-2-2215
	2	7-2-2605
	3	7-2-2709
	4	7-2-4104
	5	7-2-4106
	6	7-2-4902
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	12	7-3-192
	13	7-3-1205
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	15	7-3-1229
	16	7-3-1231
	17	7-3-4208
	18	7-3-4213
	19	7-3-4222
	20	7-3-4223
	21	7-3-4305
	22	7-3-4310
	23	7-3-4311
	24	7-5-133
	25	7-5-136
	26	7-5-4321
	27	7-6-2344
	28	7-6-4255
	29	7-7-2223
	30	7-7-2227
	31	7-7-2229
	32	7-7-2237
	33	7-7-4226
	34	7-7-4227
	35	7-7-4235
	36	7-7-4426
	37	7-7-4427
	38	7-8-4201
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388	1	7-32-2222
	2	7-32-2242
	3	7-32-2245
	4	46-18-403
	5	46-19-102
	6	Effective date
389	1	70-24-311
	2	70-24-422
	3	70-24-436
	4	70-25-201
390	1	7-6-2513
	2	7-32-2141
	3	Effective date
391	1	72-16-502
	2	72-16-503
	3	7-4-2613
	4	Effective date

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392	1	49-4-301
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	3	49-4-305
393	1	61-6-301
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	3	61-6-304
	4	61-11-203
394	1	3-5-113
	2	3-5-122
	3	3-5-116
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	51	7-7-2501
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	54	Effective date
424	1	39-71-118
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	3	39-71-2320
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425	1	87-4-603
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426	1	75-7-103
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427	1	33-18-210
428	1	87-1-605
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429	1	37-1-301
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	61	Voided by sec. 130 (coordination section)
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434	1	53-21-104
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439	1	16-11-144
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440	1	15-16-603
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441	1	61-5-214
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446	1	45-9-130
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447	1	61-8-409
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448	1	33-22-702
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450	1	26-2-515
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451	1	15-36-301
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456	1	15-35-108
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457	1	20-5-202
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466	1	41-5-605
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	5	Voided by sec. 10 (coordination section)
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467	1	40-4-212
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468	1	7-16-2324
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470	1	18-2-111
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473	1	17-8-305
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	9	Sec. 6, Ch. 511, L. 1993
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477	1	17-6-305
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478	1	Exemptions
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479	1	39-3-201
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480	1	23-5-629
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481	1	16-6-314
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484	1	2-6-110
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486	1	20-4-110
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487	1	85-2-335
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490	1	75-10-701
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492	1	53-6-165
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495	1	75-5-103
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496	1	1-2-116
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499	1	46-23-1004
500	1	39-9-101
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502	1	53-6-701
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503	1	81-1-102
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504	1	40-5-801
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515	1	37-27-321
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518	1	7-13-2218
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519	1	7-22-2151
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	17	7-22-2126
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522	1	33-22-110
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	6	Effective date
	7	Codification instruction
523	1	Department to contract for study of converting Montana medicaid program to private insurance — report to legislature and legislative finance committee required
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524	1	2-18-1202
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	5	19-2-706
	6	Authority to transfer funding
	7	Appropriation
	8	Repealer
	9	Codification instruction
	10	Retroactive applicability
	11	Effective date
	12	Termination
525	1	53-6-145
	2	37-8-103
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526	1	50-4-601
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	8	15-1-704
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	10	39-51-1304
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	5	Effective date
532	1	15-7-304
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533	1	45-6-104
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534	1	61-6-304
535	1	Voided by sec. 2 (coordination section)
	2	Coordination instruction 3-5-901
	3	Effective date
536	1	37-23-102
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537	1	45-9-206
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538	1	2-15-2007
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539	1	75-5-301
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540	1	Voided by sec. 3 (coordination section)
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542	1	15-32-601
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544	1	53-6-131
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	4	Certain functions of director and department of corrections and human services transferred to director or department of public health and human services
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LAWS AND RESOLUTIONS

OF THE

STATE OF MONTANA

Passed by the

FIFTY-THIRD LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
November 29, 1993, through December 18, 1993

COMPILED BY MONTANA LEGISLATIVE COUNCIL

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OFFICERS AND MEMBERS OF THE MONTANA SENATE 1993

50 Members

30 Democrats 20 Republicans

OFFICERS

President . . . . . Fred Van Valkenburg
President Pro Tempore . . . . . J.D. Lynch
Majority Leader . . . . . Greg Jergeson
Majority Whip . . . . . Steve Doherty
Minority Leader . . . . . Bruce Crippen
Minority Whip . . . . . John Harp
Secretary of the Senate . . . . . Claudia Clifford

MEMBERS

Name	Residence or Mailing Address	Dist No	Party
Aklestad, Gary C.	PO Box 32, Galata MT 59444	6	Republican
Bartlett, Sue	416 N Beattie, Helena MT 59601	23	Democrat
Beck, Thomas A. (Tom)	651 Greenhouse Rd, Deer Lodge MT 59722	24	Republican
Bianchi, Don	490 Secretariat Circle, Belgrade MT 59714	39	Democrat
Blaylock, Chet	502 3rd Ave, Laurel MT 59044	43	Democrat
[1]Brenden, John	Box 970, Scobey MT 59263	10	Republican
Brown, Robert (Bob)	333 Cougar Trail, Whitefish MT 59937	2	Republican
Bruski-Maus, Betty	PO Box 234, Wibaux MT 59353	12	Democrat
Burnett, James H. (Jim)	PO Box 4460, Luther MT 59051	42	Republican
Christiaens, B.F. (Chris)	709 4th Ave N, Great Falls MT 59401	18	Democrat
Crippen, Bruce D.	PO Box 80747, Billings MT 59108-0747	45	Republican
Devlin, Gerry	PO Box 186, Terry MT 59349	13	Republican
Doherty, Steve	1531 3rd Ave SW, Great Falls MT 59404	20	Democrat
Eck, Dorothy	10 W Garfield, Bozeman MT 59715	40	Democrat
Forrester, Gary	2527 Gardiner St R 8, B[illegible]ngs MT 59101	49	Democrat
Franklin, Eve	4021 4th Ave S, Great Falls MT 59405	17	Democrat
Fritz, Harry	1817 Daniel Dr, Missoula MT 59802	28	Democrat
Gage, Delwyn	PO Box 787, Cut Bank MT 59427	5	Republican
Grosfield, Lorents	HC 87, Box 2145, Big Timber MT 59011	41	Republican
[2]Hager, Connye	150 Norris Ct, Billings MT 59105	48	Republican
[3]Hager, Thomas O. (Tom)	150 Norris Ct, Billings MT 59105	48	Republican
Halligan, Mike	201 W Main Suite 310, Missoula MT 59802	29	Democrat
Harding, Ethel M.	PO Box 251, Polson MT 59860	25	Republican
Harp, John G.	53 Willow Dr, Kalispell MT 59901	4	Republican
Hertel, John R.	Rte 1, PO Box 30, Moore MT 59464	15	Republican
Hockett, Bob	Shambo Rte, Box 306, Havre MT 59501	7	Democrat
Jacobson, Judy H.	330 Blacktail Canyon Rd, Butte MT 59701	36	Democrat
Jergeson, Greg	RR 71, Box 8, Chinook MT 59523	8	Democrat
Keating, Thomas F.	PO Box 20522, Billings MT 59104	44	Republican
Kennedy, Jr., John (Ed)	5567 Montana Hwy 35, Kalispell MT 59901	3	Democrat
Klampe, Terry	PO Box 368, Florence MT 59833	31	Democrat
Koehnke, Francis	PO Box 692, Townsend MT 59644	16	Democrat
Lynch, John (J.D.)	527 W Mercury, Butte MT 59701	35	Democrat
McClernan, Henry	3 N Excelsior, Butta MT 59701	34	Democrat
Mesaros, Kenneth (Ken)	2191 Millegan Rd, Cascade MT 59421	21	Republican
[4]Nathe, Dennis G.	PO Box 4, Redstone MT 59257	10	Republican
Pipinich, Bob	4430 Hwy 200 Marshall Grade, Missoula MT 59802	33	Democrat
Rea, Jack (Doc)	PO Box 1106, Helena MT 59624	38	Democrat

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Rye, David	2211 Oak St, Billings MT 59102	47	Republican
Stang, Barry (Spook)	142 Montana Hwy 135 S, St. Regis MT 59866	26	Democrat
Swift, Bernie A.	236 Rose Ln, Hamilton MT 59840	32	Republican
Swysgood, Charles (Chuck)	506 S Atlantic, Dillon MT 59725	37	Republican
Toews, Daryl	SR 266 Box 34, Lustre MT 59225	9	Republican
Towe, Thomas E. (Tom)	2525 Sixth Ave N, Billings MT 59101	46	Democrat
Tveit, Larry J.	RR 1, Box 1475, Fairview MT 59221	11	Republican
Van Valkenburg, Fred R.	112 University, Missoula MT 59801	30	Democrat
Vaughn, Eleanor L.	251 Maboney Rd, PO Box 45, Libby MT 59923	1	Democrat
Waterman, Mignon	530 Hazelgreen Place, Helena MT 59601	22	Democrat
Weeding, Cecil F.	PO Box 78, Jordan MT 59337	14	Democrat
Weldon, Jeff	24460 Doney Rd, Arlee MT 59821	27	Democrat
Wilson, William F. (Bill)	1305 2nd Ave N, Great Falls MT 59401	19	Democrat
Yellowtail, Bill	PO Box 308, Wyola MT 59089	50	Democrat

[1]Assumed Senator Nathe's position March 2, 1993.
[2]Assumed Senator Thomas Hager's position May 10, 1993.
[3]Deceased April 24, 1993.
[4]Deceased February 21, 1993.

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OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES 1993

100 Members

53 Republicans 47 Democrats

OFFICERS

Speaker . . . . . John Mercer
Speaker Pro Tempore . . . . . Marian Hanson
Majority Leader . . . . . Larry Hal Grinde
Majority Whip . . . . . Jim Rice
Minority Leader . . . . . Ted Schye
Minority Whip . . . . . Bill Strizich
Chief Clerk of the House . . . . . Marilyn Miller

MEMBERS

Name	Residence or Mailing Address	Dist No	Party
Anderson, Shiell	Hayhook Ranch, Rte 85 Box 4251, Livingston MT 59047	81	Republican
Bachini, Bob	409 19th St, Havre MT 59501	14	Democrat
Bardanouve, Francis	PO Box 367, Harlem MT 59526	16	Democrat
Barnett, Joe	204 N Davis, Belgrade MT 59714	76	Republican
Barnhart, Beverly	614 S 6th, Bozeman MT 59715	80	Democrat
Benedict, Steve	PO Box 668, Hamilton MT 59840	64	Republican
Bergman, Ellen	1019 S Strevell, Miles City MT 59301	26	Republican
Bergsagel, Ernest	HC 84, Box 8045, Malta MT 59538	17	Republican
Bird, Joann T. (Jody)	50 T-Bird Ln, Superior MT 59872	52	Democrat
Boharski, William E.	PO Box 2965, Kalispell MT 59901	4	Republican
Bohlinger, John C.	2712 Virginia Ln, Billings MT 59102	94	Republican
Brandewie, Ray	25200 Hwy 35, Bigfork MT 59911	49	Republican
Brooke, Vivian M.	1610 Madeline Ave, Missoula MT 59801	56	Democrat
Brown, Dave	3040 Ottawa, Butte MT 59701	72	Democrat
Clark, Robert C.	PO Box 216, Ryegate MT 59074	31	Republican
Cobb, John	PO Box 388, Augusta MT 59410	42	Republican
Cocchiarella, Vicki	535 Livingston Ave, Missoula MT 59801	59	Democrat
Daily, Fred (Fritz)	1057 W Steel, Butte MT 59701	69	Democrat
Davis, Ervin	604 N Main, Charlo MT 59824	53	Democrat
DeBruycker, Roger	HC 77 Box 8, Floweree MT 59440	13	Republican
Dolezal, Edward J.	3236 Fifth Ave S, Great Falls MT 59405	34	Democrat
Dowell, Tim	46 West View Dr, Kalispell MT 59901	5	Democrat
Driscoll, Jerry L.	4344 Stone St, Billings MT 59101	92	Democrat
Elliott, Jim	100 Trout Creek Rd, Trout Creek MT 59874	51	Democrat
Ellis, Jr., Alvin A.	Rte 1, Box 4840, Red Lodge MT 59068	84	Republican
Endy, William R. (Bill)	178 Kountz Rd, Whitehall MT 59759	74	Democrat
Ewer, David	1016 5th Ave, Helena MT 59601	45	Democrat
Fagg, Russell	PO Box 176, Billings MT 59103	89	Republican
Feland, Gary	215 11th Ave N, Shelby MT 59474	12	Republican
Fisher, Marjorie I.	Box 565, Whitefish MT 59937	3	Republican
Foster, Mike	PO Box 126, Townsend MT 59644	32	Republican
Galvin, Patrick G.	105 29th Ave NW, Great Falls MT 59404	40	Democrat
Gervais, Floyd (Bob)	PO Box 1810, Browning MT 59417	9	Democrat
Gilbert, Bob	PO Drawer 1228, Sidney MT 59270	22	Republican
Grady, Edward J. (Ed)	Star Route, Canyon Creek MT 59633	47	Republican
Grimes, Duane	Gruber Estates, Box 81, Clancy MT 59634	75	Republican
Grinde, Larry Hal	RR 3, Lowistown MT 59457	30	Republican
Hansen, Stella Jean	841 Woodford St, Missoula MT 59801	57	Democrat

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Hanson, H.S. (Sonny)	2237 Green Terrace Dr, Billings MT 59102	87	Republican
Hanson, Marian W.	PO Box 237, Ashland MT 59003	100	Republican
Harper, Hal	9 Comstock Rd, Helena MT 59601	44	Democrat
Harrington, Dan W.	1201 N Excelsior, Butte MT 59701	68	Democrat
Hayne, Harriet	PO Box 285, Dupuyer MT 59432	10	Republican
Herron, Jack R.	360 5th Ave E N, Kalispell MT 59901	6	Republican
Hibbard, Chase	725 Madison, Helena MT 59601	46	Republican
Johnson, John	124 Gresham, Glendive MT 59330	23	Democrat
Johnson, Royal C.	2915 Illinois, Billings MT 59102	88	Republican
Kadas, Mike	922 Taylor, Missoula MT 59802	55	Democrat
Kasten, Betty Lou	HC 77, Box A-14, Brockway MT 59214	28	Republican
Keller, Vernon V.	HC 55, Box 355, Fishtail MT 59028	83	Republican
Knox, Dick	HCR Box 14, Winifred MT 59489	29	Republican
Larson, Don	PO Box 285, Seeley Lake MT 59868	65	Democrat
Mason, Gary D.	1368 Auction Way, Corvallis MT 59828	63	Republican
McCaffree, Ed	PO Box 1354, Forsyth MT 59327	27	Democrat
McCarthy, Bea	1906 Ogden, Anaconda MT 59711	66	Democrat
McCulloch, Scott T.	611 Tabriz Dr, Billings MT 59105	96	Democrat
Menahan, William T. (Red)	1304 W Fifth, Anaconda MT 59711	67	Democrat
Mercer, John A.	PO Box 450, Polson MT 59860	50	Republican
Mills, Norm	1908 9th St W, Billings MT 59104	90	Republican
Molnar, Brad	Box 524, Laurel MT 59044	85	Republican
Nelson, Linda J.	HC 51, Box 30, Medicine Lake MT 59247	19	Democrat
Nelson, Thomas E.	1116 Moon Valley Rd, Billings MT 59105	95	Republican
Orr, Scott J.	PO Box 1318, Libby MT 59923-1318	2	Republican
Pavlovich, Robert J. (Bob)	1375 Harrison Ave, Butte MT 59701	70	Democrat
Peck, Ray	729 Fourth Ave, Havre MT 59501	15	Democrat
Peterson, Mary Lou	234 Glen Lake Dr, Eureka MT 59917	1	Republican
Quilici, Joe	3040 Kossuth, Butte MT 59701	71	Democrat
Raney, Bob	212 S Sixth St, Livingston MT 59047	82	Democrat
Ream, Robert R. (Bob)	5950 Wildcat Rd, Missoula MT 59802	54	Democrat
Rehbein, Jr., William	PO Box 156, Lambert MT 59243	21	Republican
Rice, Jim	1525 Williamsburg Rd, Helena MT 59601	43	Republican
Rice, Sheila	1501 4th Ave N, Great Falls MT 59401	36	Democrat
Rose, John (Sam)	Box 604, Choteau MT 59422	11	Republican
Russell, Angela	PO Box 333, Lodge Grass MT 59050	99	Democrat
Ryan, William M. (Bill)	8 18th Ave S, Great Falls MT 59405	38	Democrat
Sayles, Tim	4528 N Ave West, Missoula MT 59801	61	Republican
Schwinden, Dore	Box 6060, Wolf Point MT 59201	20	Democrat
Schye, Ted	N Star Route, Glasgow MT 59230	18	Democrat
[2]Shea, Debbie	100 Moon Ln, Butte MT 59701	72	Democrat
Simon, Bruce T.	217 Clark Ave, Billings MT 59101	91	Republican
Simpkins, Richard D.	1221 Park Garden Rd, Great Falls MT 59404	39	Republican
Smith, Liz	311 Freezeout Ln, Deer Lodge MT 59722	48	Republican
Spring, Wilbur	2383 Penwell Bridge Rd, Belgrade MT 59714	77	Republican
Squires, Carolyn M.	2111 S Tenth St W, Missoula MT 59801	58	Democrat
Stanford, Wayne	420 Dry Gulch Rd, Stevensville MT 59870	62	Democrat
Stovall, Jay	8325 Pryor Rd, Billings MT 59101	98	Republican
Strizich, William S. (Bill)	736 27th Ave NE, Great Falls MT 59404	41	Democrat
Swanson, Emily	1716 S Willson, Bozeman MT 59715	79	Democrat
Tash, Bill	45 Vista Dr, Dillon MT 59725	73	Republican
Tocle, Howard	1625 McDonald, Missoula MT 59801	60	Democrat
Tunby, Rolph	PO Box 56, Plevna MT 59344	24	Republican
Tuss, Carley	1910 Colorado Ave, Black Eagle MT 59414	35	Democrat
Vogel, Randy	5953 Lazy Ln, Billings MT 59106	86	Republican
Wagner, Douglas T.	PO Box 21, Hungry Horse MT 59919	8	Republican
Wallin, Norm	2422 Springcreek Dr, Bozeman MT 59715	78	Republican
Wanzenried, David E.	307 1st Ave E #12, Kalispell MT 59901	7	Democrat
Whalen, Timothy J.	101 Avenue C, Billings MT 59101	93	Democrat
Winslow, Karyl	4608 Box Canyon, Billings MT 59103	97	Republican
Wiseman, William R.	3310 Centennial Ct, Great Falls MT 59404	33	Republican
Wyatt, Diana E.	300 31st St S, Great Falls MT 59405	37	Democrat
Zook, Tom	c/o Broadus Stage, Miles City MT 59301	25	Republican

[1]Resigned October 20, 1993.
[2]Assumed Representative Brown's position.

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9 *(Senate Bill No. 18; Halligan)* AN ACT PROVIDING REDUCED NET PROCEEDS TAX RATES AND REDUCED SEVERANCE TAX RATES ON THE INCREMENTAL PRODUCTION OF OIL FROM ENHANCED RECOVERY PROJECTS THAT BEGIN AFTER DECEMBER 31, 1993, AND BEFORE JANUARY 1, 2002; PROVIDING THAT INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS IS TAXED AT EXISTING HIGHER RATES IN CALENDAR QUARTERS IN WHICH THE PRICE PER BARREL OF OIL IS EQUAL TO OR GREATER THAN $30; EXEMPTING FROM NET PROCEEDS TAXATION FOR A PERIOD OF 18 MONTHS THE PRODUCTION OF OIL FROM HORIZONTALLY COMPLETED WELLS; REQUIRING THAT THE BOARD OF OIL AND GAS CONSERVATION APPROVE ENHANCED RECOVERY PROJECTS IN ORDER FOR THE PROJECTS TO QUALIFY FOR THE REDUCED TAX RATES; REQUIRING THAT THE BOARD ESTABLISH A FEE SCHEDULE TO DEFRAY THE EXPENSES FOR REVIEWING PROPOSED ENHANCED RECOVERY PROJECTS; AMENDING SECTIONS 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-6-208, 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, 15-23-613, 15-36-101, 20-9-141, 20-9-331, 20-9-333, AND 20-10-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 4021

10 *(House Bill No. 15; Larson)* AN ACT GENERALLY REVISING THE LAWS RELATING TO MOTOR FUEL; STATUTORILY APPROPRIATING MOTOR FUEL TAXES TO COUNTIES AND INCORPORATED CITIES AND TOWNS; CLARIFYING THE SPECIAL FUEL LICENSE TAX RATE; EXEMPTING DYED SPECIAL FUEL FROM TAXATION; PROVIDING THAT DYED FUEL MAY BE USED FOR OFF-HIGHWAY USE; PROVIDING A TAX REFUND FOR SPECIAL FUEL USED OFF-HIGHWAY; PROVIDING A REFUND FOR SPECIAL FUEL USED BY GOVERNMENT AGENCIES; REVISING THE ENFORCEMENT OF MOTOR FUEL LAWS; PROVIDING PENALTIES FOR CERTAIN VIOLATIONS OF THE MOTOR FUELS LAWS; AMENDING SECTIONS 15-70-101, 15-70-301, 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306, 15-70-311, 15-70-321, 15-70-324, 15-70-330, 15-70-341, 15-70-343, 15-70-349, 15-70-356, 15-70-361, 15-70-364, 17-7-502, AND 61-12-206, MCA; REPEALING SECTIONS 15-70-309 AND 15-70-315, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE 4044

11 *(House Bill No. 43; J. Rice)* AN ACT EXPANDING THE CONDITIONS UNDER WHICH A STATE AGENCY MAY PURCHASE OFFICE SUPPLIES DIRECTLY FROM A SUPPLIER; AND AMENDING SECTION 18-4-302, MCA 4059

12 *(House Bill No. 7; Zook)* AN ACT REVISING THE DEFINITIONS OF TERMINOLOGY USED IN STATE BUDGETING; REQUIRING THAT THE EXECUTIVE BUDGET AND THE BUDGET ANALYSIS OF THE LEGISLATIVE FISCAL ANALYST BE BASED ON THE LEVEL OF FUNDING TO MAINTAIN OPERATIONS AND SERVICES AUTHORIZED BY THE PREVIOUS LEGISLATURE; AMENDING SECTIONS 5-12-303 AND 17-7-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 4060

13 *(House Bill No. 30; Larson)* AN ACT PROVIDING THAT AGENCY BUDGET SUBMISSIONS INCLUDE A REFERENCE SPECIFYING

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WHETHER AN AGENCY PROGRAM IS DISCRETIONARY OR MANDATED BY FEDERAL OR STATE LAW; AMENDING SECTIONS 17-7-111 AND 17-7-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 4063

14 *(House Bill No. 34; Cobb)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE MONTANA MEDICAID PROGRAM; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO SUBMIT ESTIMATES OF MEDICAID EXPENDITURES TO THE LEGISLATIVE FINANCE COMMITTEE; REVISING ELIGIBILITY AND THE MEDICAL SERVICES THAT MAY BE COVERED; AMENDING SECTIONS 53-6-101 AND 53-6-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 4066

15 *(House Bill No. 36; Peterson)* AN ACT REQUIRING A PERSON TO APPEAR BEFORE THE COUNTY TAX APPEAL BOARD, UNLESS THE REQUIREMENT TO APPEAR IS WAIVED BY THE BOARD, BEFORE AN APPEAL MAY BE MADE TO THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 15-2-301, 15-15-103, AND 15-15-104, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE 4073

16 *(House Bill No. 40; Wanzenried)* AN ACT ELIMINATING STATUTORY REFERENCES TO THE DIVISION OF HEALTH AND ENVIRONMENTAL SCIENCES WITHIN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 2-15-2105 AND 75-10-621, MCA; REPEALING SECTION 2-15-2103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 4075

17 *(House Bill No. 68; Hibbard)* AN ACT REMOVING STATE RESTRICTIONS ON LOANS TO DIRECTORS OF BANKS; AMENDING SECTION 32-1-467, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 4078

18 *(Senate Bill No. 5; B. Brown)* AN ACT INCREASING THE LICENSE FEE FOR LOBBYISTS; PROVIDING FOR WAIVER OF THE FEE; AMENDING SECTION 5-7-103, MCA; AND PROVIDING EFFECTIVE DATES 4078

19 *(Senate Bill No. 23; Christiaens)* AN ACT PROVIDING THAT THE YEARLY CLOTHING ALLOWANCE FOR FOSTER CHILDREN MAY NOT EXCEED AN APPROPRIATION FOR THAT PURPOSE; AMENDING SECTION 41-3-1103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 4079

20 *(Senate Bill No. 28; Jergeson)* AN ACT REQUIRING THE LEGISLATIVE AUDITOR TO ESTABLISH A TOLL-FREE NUMBER FOR THE REPORTING OF WASTE, FRAUD, AND ABUSE IN STATE GOVERNMENT; PROVIDING FOR THE REVIEW, VERIFICATION, AND REFERRAL OF INFORMATION RECEIVED THROUGH THE TOLL-FREE NUMBER; PROVIDING FOR CORRECTIVE ACTION; PROVIDING THAT ANY MONEY RECOVERED BE DEPOSITED IN THE GENERAL FUND; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 4081

21 *(Senate Bill No. 29; Jacobson)* AN ACT REVISING THE LOCAL CITIZEN REVIEW BOARD PILOT PROGRAM; CLARIFYING THE DUTIES OF THE SUPREME COURT ADMINISTRATOR TO OVERSEE THE PROGRAM AND PREPARE REQUIRED REPORTS; AMENDING SECTION 41-3-1004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 4082

22 *(Senate Bill No. 31; Gage)* AN ACT GENERALLY REVISING THE LAWS GOVERNING LEGISLATIVE PUBLICATIONS; ELIMINATING THE REQUIREMENT THAT LEGISLATIVE JOURNALS BE PUBLISHED AND DISTRIBUTED IN A PRINTED FORMAT; REVISING THE CONTENT OF ANCILLARY PUBLICATIONS; REVISING THE DISTRIBU-

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TION OF SESSION LAWS; AMENDING SECTIONS 1-11-303, 5-11-201, 5-11-202, AND 5-11-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *4083*

23 *(Senate Bill No. 32; B. Brown)* AN ACT PROVIDING FINANCIAL INCENTIVES TO STATE AGENCIES AND EMPLOYEES, EXCEPT DIRECTORS AND LEGISLATORS, AND TO NONEMPLOYEES WHO SAVE COSTS IN AND IMPROVE THE EFFECTIVENESS OF STATE GOVERNMENT; AMENDING SECTIONS 2-15-112, 2-18-1101, 2-18-1102, 2-18-1103, 2-18-1105, 2-18-1106, AND 17-7-304, MCA; REPEALING SECTION 2-18-1104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE *4086*

24 *(Senate Bill No. 51; Gage)* AN ACT REVISING THE STATE EMPLOYEE PROTECTION ACT; AMENDING SECTION 2-18-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *4092*

25 *(Senate Bill No. 27; Van Valkenburg)* AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 3, OF THE MONTANA CONSTITUTION TO ALLOW EQUALIZATION OF PROPERTY VALUES FOR PROPERTY TAX PURPOSES TO BE BASED ON CLASSIFICATION AND ON ACQUISITION VALUES AND TO LIMIT INCREASES IN VALUATION OF PROPERTY AS PROVIDED BY LAW *4093*

26 *(House Bill No. 66; Larson)* AN ACT REVISING DRIVER'S LICENSE RENEWALS; REQUIRING THE DEPARTMENT OF JUSTICE TO NOTIFY A PERSON BY MAIL WHEN THE PERSON'S DRIVER'S LICENSE IS UP FOR RENEWAL; ALLOWING A PERSON TO RENEW A DRIVER'S LICENSE BY MAIL; AMENDING SECTION 61-5-111, MCA; AND PROVIDING AN EFFECTIVE DATE *4093*

27 *(House Bill No. 50; Swanson)* AN ACT RESTRUCTURING THE PROPERTY VALUATION AND ASSESSMENT FUNCTIONS OF THE DEPARTMENT OF REVENUE; GENERALLY REVISING PROPERTY TAX ASSESSMENT AND LEVY PROCEDURES TO CONFORM WITH PRACTICE AND ADVANCED TECHNOLOGY FOR ASSESSMENT, COMPUTATION, AND LEVY OF PROPERTY TAXES; MAKING THE DEPARTMENT OF REVENUE RESPONSIBLE FOR ASSESSMENT, COMPUTATION, AND LEVY OF CERTAIN TAXES; ELIMINATING THE STATUTORY DUTIES OF COUNTY ASSESSORS; ESTABLISHING A SPECIAL PROPERTY VALUATION IMPROVEMENT FUND; ASSESSING LIVESTOCK AS OF FEBRUARY 1; CLARIFYING THE ELIGIBILITY OF COUNTY ASSESSORS AND DEPUTY ASSESSORS FOR THE RETIREMENT INCENTIVE PROGRAM; REQUIRING THE DEPARTMENT OF REVENUE TO PAY RETIREMENT INCENTIVE COSTS FOR COUNTY ASSESSORS AND DEPUTY ASSESSORS; PERMITTING COUNTY ASSESSORS TO BECOME EMPLOYEES OF THE DEPARTMENT OF REVENUE; CREATING AN ADVISORY COMMITTEE ON THE VALUATION AND TAXATION OF MOTOR VEHICLES AND MOBILE HOMES; REDUCING THE FISCAL 1995 GENERAL FUND APPROPRIATION TO THE DEPARTMENT OF REVENUE; APPROPRIATING FUNDS FROM THE PROPERTY VALUATION IMPROVEMENT FUND TO THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 2-6-110, 5-18-115, 7-3-1301, 7-3-1309, 7-3-4252, 7-4-2401, 7-4-2505, 7-4-3007, 7-6-4409, 7-6-4410, 7-6-4412, 7-6-4413, 7-8-2513, 7-12-4181, 7-12-4184, 7-13-233, 7-13-2304, 7-13-2306, 7-13-2527, 7-13-2528, 7-13-4309, 7-13-4507, 7-14-2735, 7-14-2738, 7-14-2739, 7-14-2740, 7-14-2742, 7-14-2743, 7-14-2744, 7-14-2745, 7-14-2755, 15-1-101, 15-1-111, 15-1-201, 15-1-202, 15-1-205, 15-1-303, 15-6-207, 15-7-102, 15-7-106, 15-7-107, 15-7-208, 15-7-209, 15-7-304, 15-7-308, 15-7-402, 15-7-403,

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28 *(House Bill No. 4; Benedict)* AN ACT ALLOWING THE USE OF INMATE LABOR FOR CONSTRUCTION OF THE DAIRY DORMITORY AT THE MONTANA STATE PRISON AS AUTHORIZED IN SECTIONS 2 AND 18, CHAPTER 624, LAWS OF 1993; UNDER CERTAIN CIRCUMSTANCES, ALLOWING THE PROJECT TO BE EXEMPT FROM PUBLIC BIDDING, BONDING, CONTRACTS, WORKERS' COMPENSATION COVERAGE, OR LABOR AND WAGE REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *4175*

29 *(House Bill No. 8; Benediet)* AN ACT ALLOWING THE USE OF MONTANA STATE PRISON STAFF FOR INSTALLATION AND MAINTENANCE OF THE MONTANA STATE PRISON SECURITY FENCE REAUTHORIZED IN SECTION 18, CHAPTER 624, LAWS OF 1993; EXEMPTING THE PROJECT FROM PUBLIC BIDDING REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE *4177*

30 *(House Bill No. 2; Zook)* AN ACT GENERALLY REVISING APPROPRIATIONS AND APPROPRIATION LAWS FOR THE BIENNIUM ENDING JUNE 30, 1995; PROHIBITING THE PASS-THROUGH OF GENERAL FUND REDUCTIONS TO LOCAL GOVERNMENTS; AMENDING SECTIONS 11 AND 15, CHAPTER 623, LAWS OF 1993, CITED AS THE GENERAL APPROPRIATIONS ACT OF 1993; AMENDING SECTION 2, CHAPTER 624, LAWS OF 1993, AND SECTION 1, CHAPTER 550, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . *4177*

31 *(House Bill No. 33; Cobb)* AN ACT REVISING THE LAWS RELATING TO THE MONTANA MEDICAID PROGRAM; REVISING MEDICAID MANAGED CARE; PERMITTING A CAPITATED HEALTH CARE SYSTEM; CREATING ADVISORY GROUPS; REQUIRING SYSTEMS PROPOSALS TO BE SUBMITTED TO THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 53-6-104 AND 53-6-116, MCA; REPEALING SECTION 53-6-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE FOR THE ADVISORY GROUP *4273*

32 *(House Bill No. 56; Cocchiarella)* AN ACT CLARIFYING THAT MANDATORY APPROVAL FOR ATTENDANCE OUTSIDE A CHILD'S SCHOOL

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DISTRICT OF RESIDENCE IS NOT REQUIRED IF CERTAIN GEOGRAPHIC CONDITIONS ARE MET AND IF THE DISTRICT OF RESIDENCE PROVIDES TRANSPORTATION AND IS WITHIN THE SAME COUNTY AS THE CHILD'S SCHOOL DISTRICT OF CHOICE; AMENDING SECTION 20-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . *4274*

33 *(House Bill No 60; DeBruycker)* AN ACT ELIMINATING THE CLEAN COAL TECHNOLOGY DEMONSTRATION FUND; ELIMINATING THE CLEAN COAL TECHNOLOGY PROGRAM; AMENDING SECTION 17-5-703, MCA; REPEALING SECTIONS 15-24-2301, 15-24-2302, 90-4-901, 90-4-902, 90-4-903, 90-4-904, 90-4-905, AND 90-4-906, MCA; SECTION 11, CHAPTER 722, LAWS OF 1991; AND SECTIONS 1, 2, 3, 4, AND 5, CHAPTER 515, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *4276*

34 *(House Bill No. 64; Kadas)* AN ACT INCREASING FROM 2 MILLS TO 3 MILLS THE MAXIMUM AMOUNT THAT A BOARD OF TRUSTEES OF A UNIFIED K-12 SCHOOL DISTRICT MAY LEVY FOR ADULT EDUCATION; AMENDING SECTION 20-7-705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *4278*

35 *(Senate Bill No. 1; Gage)* AN ACT ALLOWING SCHOOL DISTRICTS TO USE ANTICIPATED AMOUNTS RATHER THAN ACTUAL AMOUNTS TO DETERMINE REVENUE AVAILABLE FOR REDUCTION OF PROPERTY TAXES IN SUPPORT OF DISTRICT GENERAL FUND BUDGETS; AMENDING SECTIONS 20-9-104 AND 20-9-141, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE *4279*

36 *(Senate Bill No. 46; Klampe)* AN ACT ELIMINATING THE VOLUNTARY CONSOLIDATION AND ANNEXATION INCENTIVE PLAN FOR SCHOOL DISTRICTS; ELIMINATING STATE FINANCIAL ASSISTANCE THROUGH GENERAL BONUS PAYMENTS AND TRANSPORTATION BONUS PAYMENTS TO SCHOOL DISTRICTS THAT CONSOLIDATE OR ANNEX; AMENDING SECTIONS 17-7-502, 20-6-703, AND 20-9-104, MCA; REPEALING SECTIONS 20-6-401, 20-6-402, 20-6-403, 20-6-404, 20-6-405, 20-6-406, 20-6-407, AND 20-6-408, MCA; AND PROVIDING AN EFFECTIVE DATE *4281*

37 *(House Bill No. 21; Peterson)* AN ACT CLARIFYING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION TO ANNUALLY PREPARE A STATE INDIRECT COST RECOVERY PLAN FOR CERTAIN STATE AGENCIES; REQUIRING THAT STATE AGENCIES PAY THE INDIRECT COSTS IN A TIMELY MANNER; ELIMINATING THE REQUIREMENT THAT THE BOARD OF INVESTMENTS DEDUCT FROM INVESTMENT EARNINGS CERTAIN PROGRAM COSTS INCURRED BY AN AGENCY; AMENDING SECTIONS 17-3-111 AND 17-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *4284*

38 *(House Bill No. 22; H. S. Hanson)* AN ACT REDUCING THE BASIC ENTITLEMENT AND THE PER-ANB ENTITLEMENT FOR SCHOOL DISTRICT FUNDING BY 4.5 PERCENT; REQUIRING VOTER APPROVAL FOR THE BASE BUDGET PORTION OF A SCHOOL DISTRICT GENERAL FUND THAT EXCEEDS THE MANDATORY GROWTH LEVELS; REQUIRING VOTER APPROVAL FOR THE OVER-BASE BUDGET OF A SCHOOL DISTRICT IF THE BUDGET EXCEEDS THE PREVIOUS YEAR'S GENERAL FUND BUDGET OR THE PREVIOUS YEAR'S GENERAL FUND BUDGET PER-ANB; LIMITING THE OVER-BASE BUDGET OF A DISTRICT TO 104 PERCENT OF THE PREVIOUS YEAR'S GENERAL FUND BUDGET OR 104 PERCENT OF THE PREVIOUS YEAR'S GENERAL FUND BUDGET PER-ANB; REQUIRING

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THE TRUSTEES OF A SCHOOL DISTRICT TO DEDUCT 4.5 PERCENT FROM THE GENERAL FUND BUDGET FOR THE SCHOOL FISCAL YEAR ENDING JUNE 30, 1994, FOR THE PURPOSES OF BUDGETING FOR THE SCHOOL FISCAL YEAR ENDING JUNE 30, 1995, IF THE DEDUCTION WILL NOT CAUSE A SCHOOL DISTRICT BUDGET TO FALL BELOW THE BASE BUDGET; AMENDING SECTIONS 20-9-306 AND 20-9-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE *4287*

39 *(House Bill No. 89; Kasten)* AN ACT ALLOCATING TO THE STATE GENERAL FUND CERTAIN REVENUE PREVIOUSLY DEPOSITED IN THE TRAFFIC EDUCATION ACCOUNT; REDUCING STATE TRAFFIC EDUCATION REIMBURSEMENTS TO SCHOOL DISTRICTS; REVISING DUTIES OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION RELATING TO TRAFFIC EDUCATION; AMENDING SECTIONS 3-10-601, 20-7-504, 20-7-506, 20-7-507, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE *4292*

40 *(Senate Bill No. 43; Fritz)* AN ACT REVISING THE ALLOCATION OF THE DISTRIBUTOR'S GASOLINE LICENSE TAX; REDUCING THE ALLOCATION TO THE SNOWMOBILE ACCOUNT FROM 1/2 OF 1 PERCENT TO 23/64 OF 1 PERCENT; AMENDING SECTION 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE *4296*

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2 *(Burnett)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES TO EXAMINE INEFFICIENCIES IN THE PROVISION OF SERVICES TO THE ELDERLY BY STATE GOVERNMENT AGENCIES AND TO MAKE RECOMMENDATIONS TO THE 54TH LEGISLATURE CONCERNING POSSIBLE LEGISLATION TO ADDRESS AND ALLEVIATE SIMILAR FUTURE PROBLEMS *4301*

3 *(Forrester)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF DIRECTORS OF THE MONTANA STATE COMPENSATION INSURANCE FUND TO MEET WITH REPRESENTATIVES OF THE BUSINESS COMMUNITY, PRIOR TO IMPLEMENTING A SYSTEM OF ADVANCE PREMIUM PAYMENT ON JUNE 1, 1994, IN ORDER TO DEVELOP RECOMMENDATIONS TO CAUSE THE LEAST DISRUPTION TO AND ECONOMIC HARDSHIP ON THOSE BUSINESSES ADVERSELY AFFECTED BY THE NEW PREMIUM SYSTEM *4301*

4 *(Bruski-Maus)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STRONGLY URGING THE UNITED STATES CONGRESS TO REFRAIN FROM IMPOSING NEW STANDARDS AND RESTRICTIONS ON ABOVEGROUND STORAGE TANKS *4302*

5 *(Rea)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING DEB GREENOUGH FOR WINNING THE 1993 WORLD BAREBACK BRONC RIDING CHAMPIONSHIP AND DAN MORTENSEN FOR WINNING THE 1993 WORLD SADDLE BRONC RIDING CHAMPIONSHIP . . . *4303*

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5	*(Bohlinger)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO STUDY THE FEASIBILITY OF OPERATING A PROGRAM TO PREPARE RECIPIENTS OF PUBLIC ASSISTANCE FOR EMPLOYMENT IN STATE-FUNDED PROGRAMS THAT PROVIDE SERVICES TO PEOPLE WITH DISABILITIES AND TO REPORT ITS FINDINGS TO THE 54TH LEGISLATURE	*4306*

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3	*(Vaughn)* A RESOLUTION OF THE SENATE OF THE FIRST SPECIAL SESSION OF THE FIFTY-THIRD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED NOVEMBER 29, 1993, TO THE SENATE PURSUANT TO SECTION 5-5-303, MCA	*4308*
4	*(Vaughn)* A RESOLUTION OF THE SENATE OF THE FIRST SPECIAL SESSION OF THE FIFTY-THIRD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED NOVEMBER 29, 1993, TO THE SENATE PURSUANT TO SECTION 5-5-303, MCA	*4313*

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SESSION LAWS

Enacted by the

FIFTY-THIRD LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
November 29, 1993, through December 18, 1993

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA LEGISLATIVE COUNCIL

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CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FIRST SPECIAL SESSION OF THE 53RD LEGISLATURE, CONVENING NOVEMBER 29, 1993, AND FOR OTHER LEGISLATIVE PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Operations appropriations.** The following amounts are appropriated from the general fund for the biennium ending June 30, 1994, for the operation of the respective agencies:

House of Representatives	$394,459
Senate	$205,659
Legislative Council	$124,215
Legislative Fiscal Analyst	$12,840

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved December 2, 1993.

CHAPTER NO. 2

[HB 6]

AN ACT DEPOSITING TO THE GENERAL FUND CERTAIN FEES ADMINISTERED BY THE HIGHWAY TRAFFIC SAFETY DIVISION OF THE DEPARTMENT OF JUSTICE; AMENDING SECTION 61-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-107, MCA, is amended to read:

"**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of $100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) (a) The department shall deposit ~~one-half of~~ the fees collected under subsection (1) in the general fund. ~~to~~ *One-half of the fees must* be appropriated and used for funding county drinking and driving prevention programs as provided in 61-2-108. For each fiscal year, an amount up to $50,000 of the money from the fees remaining in the general fund after appropriation for those programs is statutorily appropriated, as provided in 17-7-502, to the department to purchase and maintain equipment used to analyze breath for the presence of alcohol.

(b) ~~The remaining fees collected under subsection (1) that are not allocated under subsection (2)(a) must be deposited in an account in the state special revenue fund to be distributed to county treasurers. The department shall~~

~~distribute to each county treasurer money in the account collected as license reinstatement fees in that county. The county treasurer shall distribute the money to each incorporated city or town in the county in the ratio that the population of the incorporated city or town bears to the total population of incorporated cities or towns in the county, based on figures provided by the most recent official census. An incorporated city or town shall distribute the money to state and local government entities, and private entities working with state and local government entities, that operate programs within the county that address the problems and concerns of minors, including but not limited to substance abuse and delinquency and chemical free youth facilities and programs. Up to one half of the money distributed under this subsection (b) may be used for adult chemical dependency programs and law enforcement training programs and for equipment for local government law enforcement agencies within the respective jurisdiction~~ *On or before June 30, 1994, the department shall transfer to the general fund the balance of the driver's license reinstatement fee state special revenue account."*

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved December 16, 1993.

CHAPTER NO. 3

[HB 14]

AN ACT LIMITING THE FUND BALANCE IN THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT; DEPOSITING THE FUND BALANCE THAT IS OVER THE LIMIT AS OF MARCH 31 OF EACH YEAR IN THE GENERAL FUND; TRANSFERRING THE GREATER OF $250,000 OR THE EXCESS FUND BALANCE FROM THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT TO THE GENERAL FUND IN FISCAL YEAR 1994; AMENDING SECTION 53-9-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT TERMINATION PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-9-109, MCA, is amended to read:

"53-9-109. Crime victims compensation account. *(1)* There is a crime victims compensation and assistance account in the state special revenue fund. There ~~shall~~ *must* be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. ~~The~~ *Except as provided in subsections (2) and (3), the* money in the account ~~is to~~ *must* be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the division. ~~No~~

(2) The fund balance in the account *as of March 31 of each year is limited to $500,000. Whenever the fund balance on March 31 exeeeds $500,000, the amount of the fund balanee in excess of $500,000 must* ~~at the end of a fiscal year may~~ be deposited in the general fund.

(3) On or before March 31, 1994, the division shall transfer $250,000 or the fund balance in excess of $500,000, whichever is greater, from the crime victims compensation and assistance account to the general fund."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Contingent tormination.** [This act] terminates if the governor certifies to the secretary of state that federal crime victims compensation funds will not be awarded. The termination is effective on the date of receipt of the certification by the secretary of state.

Approved December 16, 1993.

CHAPTER NO. 4

[SB 7]

AN ACT REDUCING THE NUMBER OF COUNTY ELECTION ADMINISTRATOR WORKSHOPS; AMENDING SECTION 13-1-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-203, MCA, is amended to read:

"13-1-203. **Chief election officer to advise, assist, and train.** The secretary of state shall advise and assist election administrators with regard to application, operation, and interpretation of Title 13, except for chapters 35, 36, or 37. ~~He~~ *The secretary of state* shall hold at least one workshop ~~each year~~ *every 2 years* to provide training and assistance te election administrators. Election administrators ~~shall~~ *must* be reimbursed, from funds appropriated to the secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, ~~such~~ *the* workshops may be held in several sessions at separate locations in the state."

Section 2. **Effective date.** [This act] is effective January 1, 1994.

Approved December 16, 1993.

CHAPTER NO. 5

[SB 13]

AN ACT PROVIDING THAT AN INDEMNITY BOND IS NOT REQUIRED FOR ISSUANCE OF A DUPLICATE STATE AUDITOR WARRANT IF A STATE AGENCY APPROVES ITS ISSUANCE AND AGREES TO ASSUME THE RISK OF THE ORIGINAL WARRANT BEING CASHED; AMENDING SECTION 17-8-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-306, MCA, is amended to read:

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"**17-8-306. Issuance of duplicate warrant.** (1) The state auditor may issue a duplicate warrant whenever any warrant drawn by ~~him~~ *the state auditor* upon the treasurer of the state is lost or destroyed. This duplicate warrant must he in the same form as the original, except that it must have plainly printed across its face the word "duplicate"~~, and except as herein provided, no such~~. *A duplicate* warrant may *not* be issued or delivered unless the person entitled to receive ~~the same~~ *it* deposits with the state auditor a bond in double the amount for which the duplicate warrant is issued~~, conditioned to save Montana~~ *indemnifying the state* and its officers ~~harmless on account of~~ *and employees from any loss resulting from* the issuance of the duplicate warrant.

(2) No *A* bond of indemnity is *not* required when:

(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) the owner or custodian is the state of Montana or any agency or officer ~~thereof~~ *of the state*;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) the state auditor has chosen to waive the requirement upon receipt of evidence that the original warrant has been lost or destroyed as a result of a disaster or other major occurrence;

(e) the amount of the lost or destroyed warrant is less than $300;

(f) it can be established that a crime has been committed and *that* as a result ~~of such crime that~~ a Montana warrant has been stolen or destroyed;

(g) it can be established that a Montana warrant has been mailed to an incorrect payee;

(h) the payee is a vendor or contractor doing business with the state of Montana;

(i) the payee is a recipient of public assistance under Title 53;

(j) the payee is a recipient of a monthly annuity under Title 19; ~~or~~

(k) the payee is a recipient of student financial assistance administered or insured by the guaranteed student loan program pursuant to Title 20, chapter 26*; or*

(l) a state agency approves the issuance of the duplicate warrant and agrees to assume the risk of the original warrant being cashed.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(d), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), ~~or~~ (2)(k), *or (2)(l),* a stop-payment order shall *must* be placed on the original warrant by the state auditor.

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(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), ~~or~~ (2)(k), *or (2)(l),* the application ~~shall~~ *must* include an agreement to indemnify ~~and hold harmless~~ the state ~~or~~ *and* its officers and employees from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant ~~shall~~ *must* be charged against the account from which the payment was derived."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved December 16, 1993.

CHAPTER NO. 6

[SB 14]

AN ACT PROVIDING FOR ELECTRONIC FILING OF THE APPOINTMENT AND TERMINATION OF INSURANCE PRODUCERS; ESTABLISHING ELECTRONIC AND NONELECTRONIC FILING FEES; AMENDING SECTIONS 33-2-708, 33-17-231, 33-17-236, AND 33-17-237, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers . . . . . $ 600.00

(B) foreign insurers 600.00

(ii) annual continuation of certificate of authority 600.00

(iii) reinstatement of certificate of authority 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 25.00

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(c) filing bylaws or amendment to bylaws ~~where~~ *when* required 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) insurance producer's license:

(i) application for original license, including issuance of license, if issued 15.00

(ii) appointment of insurance producer, each insurer, *electronically filed* 10.00

(iii) appointment of insurance producer, each insurer, nonelectronically filed *15.00*

~~(iii)~~*(iv)* temporary license 15.00

~~(iv)~~*(v)* amendment of license (excluding additions to license) or reissuance of master license 15.00

(vi) termination of insurance producer, each insurer, electronically filed *10.00*

(vii) termination of insurance producer, each insurer, nonelectronically filed *15.00*

(f) nonresident insurance producer's license:

(i) application for original license, including issuance of license, if issued 100.00

(ii) appointment of insurance producer, each insurer, *electronically filed* *10.00*

(iii) appointment of insurance producer, each insurer, nonelectronically filed *15.00*

~~(iii)~~*(iv)* annual renewal of license 10.00

~~(iv)~~*(v)* amendment of license (excluding additions to license) or reissuance of master license 15.00

(vi) termination of insurance producer, each insurer, electronically filed *10.00*

(vii) termination of insurance producer, each insurer, nonelectronically filed *15.00*

(g) examination, if administered by the commissioner, for license as insurance producer, each examination 15.00

(h) surplus lines insurance producer license:

(i) application for original license and for issuance of license, if issued 50.00

(ii) annual renewal of license 50.00

(i) adjuster's license:

(i) application for original license and for issuance of license, if issued 15.00

(ii) annual renewal of license 15.00

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(j) insurance vending machine license, each machine, each year 10.00

(k) commissioner's certificate under seal (except when on certificates of authority or licenses) 10.00

(l) copies of documents on file in the commissioner's office, per page 50

(m) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 100.00

(n) applications for approval of prelicensing education courses:

(i) reviewing initial application 150.00

(ii) periodic review 50.00

(2) The commissioner shall establish by rule fees commensurate with costs for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205.

(3) The commissioner shall establish by rule an annual accreditation fee to be paid by each domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority.

(4) (a) Except as provided in subsection (4)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33, except that all fees for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205 must be deposited in the state special revenue fund pursuant to 33-17-1207.

(b) Tho accreditation fee required by subsection (3) must be turned over promptly to the state treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in discharging the administrative and regulatory duties that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money. The commissioner is responsible for the proper expenditure of the accreditation money.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 2. Section 33-17-231, MCA, is amended to read:

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"**33-17-231. Appointment of insurance producers — continuation and termination.** (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer, and pay the fee as stated in 33-2-708. *The appointment may be electronically filed pursuant to rules adopted by the commissioner.*

(2) Each appointment remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or the insurance producer. *The written notice may be electronically filed pursuant to rules adopted by the commissioner.* Termination of the insurer's authority in Montana also terminates the appointment.

(3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer. The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.

(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination."

Section 3. Section 33-17-236, MCA, is amended to read:

"**33-17-236. Appointments of insurance producers by insurers.** (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use another term implying a contractual relationship with a particular insurer and may not accept applications for the insurer unless the insurance producer becomes an appointed insurance producer of that insurer pursuant to this section. The following are the appointing insurer's requirements for making appointment of a licensed insurance producer:

(a) The insurer shall, no later than 15 days from the date the agency contract is executed or the first insurance application is submitted by a licensed insurance producer, whichever is earlier, file with the insurance department a written notice of appointment on a form prescribed by the insurance department. *The notice may be electronically filed pursuant to rules adopted by the commissioner.*

(b) If there is no executed agency contract, the insurer shall mail to the licensed insurance producer, no later than 15 days from the date the first insurance application is submitted by him, a copy of the notice of appointment form filed with the insurance department. If the licensed insurance producer does not receive the acknowledgment of appointment from the insurer within 30 days from the date the first insurance application is submitted to the insurer, the insurance producer shall immediately discontinue acting as an insurance producer on behalf of that insurer until the acknowledgment is received or the agency contract is executed.

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(2) Upon receipt of the notice of appointment, the insurance department shall verify within 5 working days that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer within 5 days of the determination.

(3) An appointment is effective on the date of the executed contract and is perpetual until canceled by the insurer."

Section 4. Section 33-17-237, MCA, is amended to read:

"33-17-237. Notification of violation or appointment termination. (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department, *which may include electronic filing*.

(2) If the reason for the termination is any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall immediately notify the insurance department of the reason.

(3) Whenever an insurance company or an employee or representative of the company has reasonable cause to believe that a person has violated 33-17-1001 or 33-25-301, it is the duty of that entity, upon acquiring the knowledge, to notify the insurance department and provide the insurance department with a complete statement of all relevant facts and circumstances.

(4) The insurer, employee, or representative shall, upon request of the insurance department, provide information, documents and records, or other data pertaining to the alleged violation or termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 17, part 10.

(5) Any information, documents, records, or other data provided pursuant to this section is privileged, and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith."

Section 5. **Effective date.** [This act] is effective July 1, 1994.

Approved December 16, 1993.

CHAPTER NO. 7

[HB 74]

AN ACT PROVIDING CONSENT TO THE NORTHERN CHEYENNE INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1992 AND CERTAIN SPECIFIED AMENDMENTS TO THAT ACT; CONFORMING THE NORTHERN CHEYENNE-MONTANA WATER RIGHTS COMPACT TO THAT ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in accordance with section 85-2-702, MCA, the 52nd Montana Legislature ratified the Northern Cheyenne-Montana Compact as Chapter 812, Laws of 1991; and

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WHEREAS, by its terms, the Compact required the participation of the United States in the project to repair and rehabilitate the Tongue River Dam in southeastern Montana, which required certain authorizations and appropriations by the Congress of the United States; and

WHEREAS, in the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992, referred to in this preamble as the federal act (Public Law 102-374, 106 Stat. 1186), Congress approved the Compact and obligated, under certain terms and conditions, the federal government and the state to provide funding for the project; and

WHEREAS, because of a clerical error in the federal act Montana may lose some of the federal funding for the project, and accordingly, Congress, in S. 1654 (103d Cong. 1st Sess.), is considering an amendment to correct that error; and

WHEREAS, some of the terms of the federal act and the pending amendment vary from the Compact, thereby creating uncertainty in efforts to obtain federal funding for the project and secure judicial approval of the Compact; and

WHEREAS, the Northern Cheyenne Tribe, the Montana Reserved Water Rights Compact Commission, and the Montana Department of Natural Resources and Conservation have given their consent to, adopted, and ratified the terms of the federal act and the pending amendment; and

WHEREAS, the judicial confirmation of the Compact and timely completion of the project is of high priority to the State of Montana, the Northern Cheyenne Tribe, and the United States.

THEREFORE, the 53rd Legislature of the State of Montana, meeting in special session, finds it appropriate to give its consent to, adopt, and ratify the terms and conditions of the federal act and the pending amendment and to modify the Compact to the extent necessary to conform therewith.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Consent to federal act and modification of compact.** (1) Pursuant to Article V, section A.1., of the Northern Cheyenne-Montana Compact, section 85-20-301, MCA, the Legislature hereby gives its consent to, ratifies, and adopts the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374, 106 Stat. 1186). This consent includes:

(a) any amendment to the act that clarifies that environmental compliance costs for the Tongue River Dam Project are the responsibility of the federal government; or

(b) any amendment to section 4(c) of the act that provides that, except for the authorizations contained in subsections 7(b)(1)(A), 7(b)(1)(B), and 7(e), the authorization of appropriations in the act are not effective until such time as the Montana water court enters and approves a decree as provided in subsection 4(d) of the act.

(2) The provisions of the compact that are inconsistent with the federal act or with the amendments specified in subsections (1)(a) and (1)(b) of this section shall be deemed to be modified to the extent necessary to conform therewith.

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Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, part 3, and the provisions of Title 85, chapter 20, part 3, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved December 17, 1993.

CHAPTER NO. 8

[SB 4]

AN ACT REVISING THE ALLOCATION OF COAL SEVERANCE TAXES WITHIN THE TRUST ESTABLISHED UNDER ARTICLE IX, SECTION 5, OF THE MONTANA CONSTITUTION; REDUCING DEPOSITS TO THE TREASURE STATE ENDOWMENT FUND; TRANSFERRING MONEY FROM THE COAL SEVERANCE TAX BOND FUND TO THE COAL SEVERANCE TAX PERMANENT FUND; AMENDING SECTION 17-5-703, MCA; REPEALING SECTION 11, CHAPTER 722, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-703, MCA, is amended to read:

"**17-5-703. Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution ~~shall be~~ *is* composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax ~~shall~~ *must* be deposited;

(b) a treasure state endowment fund;

(c) a clean coal technology demonstration fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) *(a)* The state treasurer shall determine, *on July 1 of each year,* the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund ~~on the next two ensuing semiannual payment dates~~ *during the next 12 months* and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (6).

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency

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loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) Beginning July 1, 1991, and ending June 30, 1997, from any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of any amount that is required to be transferred by subsection (3), the department of revenue shall, upon request from the department of natural resources and conservation, transfer an amount up to $5 million per fiscal year to the clean coal technology demonstration fund.

(5) *(a)* Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall *quarterly* transfer to the treasure state endowment fund ~~any~~ *50% of the* amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsections (3) and (4).

~~(6) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall from time to time transfer to the coal severance tax permanent fund 50% of the principal transferred from the coal severance tax bond fund to the treasure state endowment fund in the preceding year.~~

(b) The state treasurer shall ~~annually~~ *monthly* transfer *from the treasure state endowment fund* to the treasure state endowment special revenue account the amount of ~~interest~~ earnings required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. ~~Interest~~ ~~earnings~~ *Earnings* not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

Section 2. **Fund transfer.** The state treasurer shall on [the effective date of this act] transfer from the coal severance tax bond fund to the coal severance tax permanent fund the cash balance of the bond fund as of July 1, 1993, that is in excess of the amount required by 17-5-703(2)(a), including the amount either held in the fund for the clean coal technology demonstration fund or required to be transferred to the clean coal technology demonstration fund. The provisions of this section do not affect the authorizations contained in section 10, Chapter 722, Laws of 1991.

Section 3. **Repealer.** Section 11, Chapter 722, Laws of 1991, is repealed.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved December 17, 1993.

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CHAPTER NO. 9

[SB 18]

AN ACT PROVIDING REDUCED NET PROCEEDS TAX RATES AND REDUCED SEVERANCE TAX RATES ON THE INCREMENTAL PRODUCTION OF OIL FROM ENHANCED RECOVERY PROJECTS THAT BEGIN AFTER DECEMBER 31, 1993, AND BEFORE JANUARY 1, 2002; PROVIDING THAT INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS IS TAXED AT EXISTING HIGHER RATES IN CALENDAR QUARTERS IN WHICH THE PRICE PER BARREL OF OIL IS EQUAL TO OR GREATER THAN $30; EXEMPTING FROM NET PROCEEDS TAXATION FOR A PERIOD OF 18 MONTHS THE PRODUCTION OF OIL FROM HORIZONTALLY COMPLETED WELLS; REQUIRING THAT THE BOARD OF OIL AND GAS CONSERVATION APPROVE ENHANCED RECOVERY PROJECTS IN ORDER FOR THE PROJECTS TO QUALIFY FOR THE REDUCED TAX RATES; REQUIRING THAT THE BOARD ESTABLISH A FEE SCHEDULE TO DEFRAY THE EXPENSES FOR REVIEWING PROPOSED ENHANCED RECOVERY PROJECTS; AMENDING SECTIONS 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-6-208, 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, 15-23-613, 15-36-101, 20-9-141, 20-9-331, 20-9-333, AND 20-10-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the board of oil and gas conservation is authorized to approve and certify production decline rates for the purpose of determining incremental production from enhanced recovery projects as provided in this bill.

The department of revenue has adopted rules for determining incremental production from tertiary production based on production decline rates. It is the intent of this legislation that the determination of incremental production is more appropriately a function of the board of oil and gas conservation because the board already has comprehensive statutory authority over oil and gas exploration and development activities in Montana.

The legislature intends that the board of oil and gas conservation shall, in consultation with the department of revenue, adopt rules setting forth the methodology by which the board may approve new or expanded secondary and tertiary recovery projects. The rules must include the method for establishing the rate of decline in production in the existing level of development in a project area. For a secondary or tertiary recovery project for which initial approval is sought, the rules must include the method for establishing the rate of decline in production from existing primary or secondary recovery operations in a proposed project area. In addition, the rules must include the method for determining the level of production from existing wells in a project area in order to establish the level of incremental production that qualifies for the tax incentive rates provided in this bill.

The board of oil and gas conservation is required to establish by rule a fee schedule to defray the expenses associated with reviewing applications for

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enhanced recovery projects. The fee schedule adopted by the board must take into account the complexity of processing the application.

A statement of intent is also required for this bill because the department of revenue is granted rulemaking authority for determining the allocation of incremental production from enhanced recovery projects to production that is subject to net proceeds taxation and to production that is subject to the local government severance tax. The allocation must be based on the ratio of production from wells drilled before July 1, 1985, in a project area that qualifies for a reduced tax rate on incremental production to production from wells drilled after June 30, 1985, in the project area that qualifies for a reduced tax rate on incremental production.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-208, MCA, is amended to read:

"**15-6-208. Mineral exemptions.** (1) One-half of the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal in a calendar year is exempt from taxation.

(2) Metal mines producing less than 20,000 tons of ore in a taxable year are exempt from property taxation on one-half of the merchantable value.

(3) *(a)* New production, as defined in 15-23-601, is exempt from taxation for the first 12 months of production as provided in 15-23-612.

(b) Production from horizontally completed wells, as defined in 15-23-601, is exempt from taxation for the first 18 months of production as provided in 15-23-612.

(4) The first 1,000 tons of travertine and building stone extracted from a mine in a tax year are exempt from property taxation."

Section 2. Section 15-23-601, MCA, is amended to read:

"**15-23-601. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation.

(2) "Enhanced recovery project" means the use of any process, other than primary recovery, for the displacement of oil from the earth and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

~~(1)~~*(3)* "Excise tax" means the windfall profit tax on domestic crude oil imposed by Title I of the federal Crude Oil Windfall Profit Tax Act of 1980, as enacted or as amended.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that results in the

recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993, and before January 1, 2002.

(6) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(7) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; and

(b) any other well classified by the board as a horizontally completed well.

(8) "Incremental production" means the volume of petroleum or mineral or crude oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project in excess of the production decline rate established before:

(a) the expansion of an existing enhanced recovery project;

(b) the commencement of a new enhanced recovery project. In the case of a project that had no taxable production prior to the commencement of an enhanced recovery project, incremental production means all production of petroleum or mineral or crude oil from the enhanced recovery project.

(c) the commencement of the recompletion of a well as a horizontally completed well.

(9) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

~~(2)~~*(10)* ~~The term "new production"~~ *"New production"* means the production of natural gas, petroleum, or other crude or mineral oil from any well *that was* drilled after June 30, 1985, or that has not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of qualified new production.

~~(3)~~*(11)* ~~The terms "operator"~~ *"Operator"* and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

(12) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(13) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area before the commencement of a new enhanced recovery project, of a recompletion of a well as a horizontally completed well, or of an expanded enhanced recovery project. The approved production decline rate must be certified in writing to the department of revenue by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used by the

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department to determine the volume of incremental production that qualifies for the tax rate imposed under 15-23-607(2)(c).

(14) "Production from horizontally completed wells" means petroleum or other crude or mineral oil produced from a horizontally completed well that is drilled or recompleted after December 31, 1993, and before January 1, 2002.

(15) "Secondary recovery project" means an enhanced recovery project that is not a tertiary recovery project. A secondary recovery project must be approved by the board as provided in 15-36-101(1)(c).

(16) "Tertiary recovery project" means an enhanced recovery project that meets each of the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; or

(x) any other method approved by the board as a tertiary recovery method.

~~(4)~~*(17)* ~~The term "well" includes~~ *"Well" means* each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer."

Section 3. Section 15-23-602, MCA, is amended to read:

"15-23-602. Statement of sales proceeds on new *production, production from horizontally completed wells, or incremental* production. (1) As provided in subsection (2), each operator or producer of new production, *production from horizontally completed wells, or incremental*

production of ~~natural gas,~~ petroleum~~,~~ or other crude or mineral oil *and each operator or producer of new production of natural gas* shall ~~make out~~ *complete* and deliver to the department of revenue a statement of the gross sales proceeds of new production of natural gas, petroleum, or other crude or mineral oil, *production from horizontally completed wells, and the incremental production of petroleum or other crude or mineral oil* from each well owned or worked by the person. The gross sales proceeds must be determined by multiplying the units of production sold from the well times the royalty unit value of that production at the well. The statement must be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership. The statement must show the following:

(a) the name and address of the operator, together with a list in duplicate of the names and addresses of any persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale of the production, and the amount paid or yielded as royalty to each of those persons during the period covered by the statement;

(b) the description and location of the well;

(c) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil sold from the well during the period covered by the statement; and

(d) the gross sales proceeds in dollars and cents or, in the case of sales between parties not acting at arm's length, the greater of the gross sales proceeds from or the fair market value of the products sold.

(2) Each operator having new production, *production from horizontally completed wells, or incremental production* as *those terms are* defined in 15-23-601 shall, on or before the last day of the months of October, January, April, and July, ~~make out~~ *complete* and deliver to the department of revenue a statement of the gross sales proceeds of the new production, *production from horizontally completed wells, or incremental production* from each well owned or worked by the person during the preceding calendar quarter. The statement must be in the form prescribed by the department and verified as provided in subsection (1). The statement must show the information required in subsections (1)(a) through (1)(d)."

Section 4. Section 15-23-603, MCA, is amended to read:

"15-23-603. Net proceeds — how computed. (1) As provided in subsection (2), the department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from the well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds are determined by subtracting from the gross sales proceeds of the well all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid.

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(2) For new production, *for production from horizontally completed wells, or for incremental production,* net proceeds are the equivalent of the gross sales proceeds, without deduction for excise taxes, of the product yielded from the well for the quarter covered hy the statement, except that in computing the total number of barrels of petroleum and other mineral or crude oil or cubic feet of natural gas produced, there must he deducted so much of the product as is used in the operation of the well from which the petroleum or other mineral or crude oil or natural gas is produced for pumping the petroleum or other mineral or crude oil or natural gas from the well te a tank or pipeline.

(3) In the statement of sales proceeds required under 15-23-602 for lease or unitized areas from which new production, *production from horizontally completed wells, or incremental production* and other production have been sold, the number of barrels of new production, *production from horizontally completed wells, or incremental production* of oil or cubic feet of new production of gas must be segregated from and stated separately from the number of barrels of other production of oil or cubic feet of other production of gas."

Section 5. Section 15-23-607, MCA, is amended to read:

"**15-23-607. County assessors to compute taxes.** (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the county assessor shall, subject to the provisions of 15-23-612, compute the taxes on net proceeds, as provided in ~~subsection~~ *subsections* (2) *and (3)* of this section, and royalty assessments and shall deliver the book to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice of the assessments to the operator and shall collect the taxes as provided by law.

(2) For new production, *production from horizontally completed wells, and incremental production,* as *those terms are* defined in 15-23-601, the county assessor may not levy or assess any mills against the value of the new production, *production from horizontally completed wells, or incremental production,* but shall instead levy a tax as follows:

(a) for new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(2); ~~or~~

(b) for new production of natural gas, 12% of net proceeds, as described in 15-23-603(2)*; or*

(c) (i) except as provided in subsection (4), for incremental production that is classified as secondary recovery from new enhanced recovery projects, as defined in 15-23-601, and for incremental production that is classified as secondary recovery from expanded enhanced recovery projects, as defined in 15-23-601, 5% of net proceeds, as described in 15-23-603(2); or

(ii) for incremental production that is classified as tertiary recovery from new enhanced recovery projects, as defined in 15-23-601, and for incremental production that is classified as tertiary recovery from expanded enhanced recovery projects, as defined in 15-23-601, 3.3% of net proceeds, as described in 15-23-603(2).

(3) For purposes of this section:

(a) incremental production from a new enhanced recovery project qualifies for the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if, before the project begins development, the board approves the project and designates the area to be affected by the project.

(b) the incremental production from an expanded enhanced recovery project qualifies for the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if, before the expansion begins, the board approves the expansion and designates the area to be affected by the expansion.

(4) (a) Incremental production from a new enhanced recovery project is subject to the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a new enhanced recovery project is taxed as provided in subsection (2)(a) for production occurring in that quarter.

(b) Incremental production from an expanded enhanced recovery project is subject to the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from an expanded enhanced recovery project is taxed as provided in subsection (2)(a) for production occurring in that quarter.

(5) For the purposes of subsections (4)(a) and (4)(b), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

~~(3)~~*(6)* The amount of tax levied in subsections (2)(a), ~~and~~ (2)(b), *and (2)(c)*, divided by the appropriate tax rate and multiplied by 60%, must be treated as taxable value for county bonding purposes.

~~(4)~~*(7)* The operator or producer is liable for the payment of the taxes that, except as provided in 15-16-121, are payable hy and must be collected from the operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines. However, the operator may at ~~his~~ *the operator's* option withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by ~~him~~ *the operator* upon the royalty or royalty interest. After the withholding, any deviation hetween the estimated tax and the actual tax may he accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 6. Section 15-23-612, MCA, is amended to read:

"15-23-612. Certain natural gas, petroleum, or other crude or mineral oil exempt. (1) New production, as defined in 15-23-601, is exempt from the net proceeds tax imposed by this part for the first 12 months following the last day of the calendar month immediately preceding the month in which:

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(a) natural gas is placed into a natural gas distribution system; or

(b) production for sale from a crude oil or mineral oil well is pumped or flows.

(2) After the expiration of the 12-month exemption period provided *for* in subsection (1), new production of natural gas, petroleum, or other crude or mineral oil is subject to net proceeds tax imposed by this part.

(3) Production from horizontally completed wells, as defined in 15-23-601, and incremental production from wells recompleted as horizontally completed wells are exempt from the net proceeds tax imposed by this part for the first 18 months following the last day of the calendar month immediately preceding the month in which production for sale from a crude oil or mineral oil well is pumped or flows.

(4) After the expiration of the 18-month exemption period provided for in subsection (3), production from horizontally completed wells, as defined in 15-23-601, is subject to net proceeds taxes imposed by this part.

~~(3)~~*(5)* Notwithstanding the provisions of subsections (1) ~~and (2)~~ *through (4)*, all reporting requirements under the net proceeds tax remain in effect."

Section 7. Section 15-23-613, MCA, is amended to read:

"**15-23-613. Disposition of *taxes on* new *production, production from horizontally completed wells, and incremental* production ~~taxes~~.** The county treasurer shall credit all taxes on new production, *production from horizontally completed wells, and incremental production*, as provided for in 15-23-607, in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as property taxes were distributed in the year preceding the budget year."

Section 8. **Rules.** The department of revenue shall adopt rules to ensure that incremental production of oil from enhanced recovery projects is allocated to production that is subject to net proceeds taxation and to production that is subject to the local government severance tax.

Section 9. Section 15-36-101, MCA, is amended to read:

"**15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption.** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for deposit in the general fund of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for replacement of property taxes formerly levied on net proceeds. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

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(a) except as provided in subsections (1)(b)~~, (1)(c), and (1)(d),~~ *through (1)(f),* a 5% state severance tax on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value, as defined in subsection ~~(6)(a)(ii)~~ *(8)(a)(ii),* of all the petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the gross taxable value, as defined in subsection ~~(6)(a)(ii)~~ *(8)(a)(ii),* of all natural gas produced by the person, other than new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) except as provided in subsection (4)(a), a 3% state severance tax on the gross taxable value of the incremental production of petroleum and other mineral or crude oil produced from a secondary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a secondary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002. For purposes of this section, a secondary recovery project must meet each of the following requirements:

(i) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(iii) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of petroleum or mineral or crude oil that may potentially be recovered. For purposes of this section, secondary recovery methods include but are not limited to:

(A) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of petroleum or mineral or crude oil from the producing formation to a producing well bore; or

(B) any other method approved by the board as a secondary recovery method.

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~~(c)~~*(d)* a 2.5% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection ~~(6)(a)(ii)~~ *(8)(a)(ii)*, of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet *each of* the following requirements:

(i) ~~the~~ *The* project must be approved as a tertiary recovery project by the board of oil and gas conservation. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) ~~the~~ *The* property to he affected by the project must be adequately delineated according to the specifications required by the board~~; and~~.

(iii) ~~the~~ *The* project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil ~~which~~ *that* may potentially be recovered. For purposes of tbis section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the ~~department~~ *board* as a tertiary recovery method.

(e) except as provided in subsection (4)(b), a 2% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 3.3% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a tertiary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002. The tertiary recovery project must meet the requirements of subsections (1)(d)(i) through (1)(d)(iii).

~~(d)~~*(f)* a 5% local government severance tax on the gross taxable value, as defined in subsection ~~(6)(a)(ii)~~ *(8)(a)(ii)*, of all petroleum and other mineral or

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crude oil produced by the person other than new production produced by a stripper well, as defined in subsection ~~(7)~~ *(9)*.

~~(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the board, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the board must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.~~

(2) For purposes of this section, the following definitions apply:

(a) "Board" means the board of oil and gas conservation.

(b) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(c) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(d) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the change of injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered.

(e) "Incremental production" means:

(i) the volume of oil produced by either a well in primary recovery recompleted as a horizontally completed well or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(A) the commencement of the recompletion of a well as a horizontally completed well;

(B) expansion of the existing enhanced recovery project; or

(C) commencing a new enhanced recovery project; or

(ii) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of petroleum or mineral or crude oil from the enhanced recovery project.

(f) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

(g) "Operator" or "producer" means the person responsible for the actual physical operation of an enhanced recovery project.

(h) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

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(i) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded secondary recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department of revenue by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under subsection (1)(c) or (1)(e).

(j) "Secondary recovery project" means an enhanced recovery project that is not a tertiary recovery project.

(k) "Tertiary recovery project" means an enhanced recovery project using a tertiary recovery method described in subsection (1)(d)(iii).

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(2) and under subsections (1)(a) through ~~(1)(d)~~ *(1)(f)* of this section.

(4) (a) Incremental production from a secondary recovery project is subject to the tax rate imposed in subsection (1)(c) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a secondary recovery project is taxed as provided in subsection (1)(a) for production occurring in that quarter.

(b) Incremental production from a tertiary recovery project is subject to the tax rate imposed in subsection (1)(e) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a tertiary recovery project is taxed as provided in subsection (1)(d) for production occurring in that quarter.

(5) For the purposes of subsections (4)(a) and (4)(b), the average price per barrel must be computed by dividing the sum of the daily price for west Texas

intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

~~(4)~~*(6)* Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in tbe drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within tbis state within the meaning of this section.

~~(5)~~*(7)* Every person required to pay the state or local government severance tax under this section shall pay the tax in full for the person's own account and for the account of each of the other ~~owner or~~ owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including *an* owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, stato, county, or municipal governments are exempt from taxation under tbis chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

~~(6)~~*(8)* For purposes of this section, the following definitions apply:

(a) (i) "Gross taxable value", for the purpose of computing the state severance tax, means the gross value of the product as determined in 15-36-103.

(ii) "Gross taxable value", for the purpose of computing the local government severance tax, means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit.

~~(7)~~*(9)* For the purposes of this section, "stripper well" means a well that produces less than 10 barrels a day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar

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year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365."

Section 10. Section 7-1-2111, MCA, is amended to read:

"**7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to that percentage of the true and full valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504(2), as follows:

(a) first class—all counties having a taxable valuation of $50 million or over;

(b) second class—all counties having a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having a taxable valuation of more than $10 million and less than $15 million;

(f) sixth class—all counties having a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) the amount of *taxes levied on* ~~interim production and~~ new production, *production from horizontally completed wells, and incremental production* ~~taxes levied~~, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a), ~~or~~ (2)(b), *or (2)(c)* and multiplied by 60%;

(d) the amount of value represented by new production *or production from horizontally completed wells* exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%; and

(e) 6% of the taxable value of the county on January 1 of each tax year."

Section 11. Section 7-7-2101, MCA, is amended to read:

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"**7-7-2101. Limitation on amount of county indebtedness.** (1) ~~No~~ *A* county may *not* become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property ~~therein~~ *in the county* subject to taxation, plus the amount of *taxes levied on* ~~interim production and~~ new production, *production from horizontally completed wells, and incremental production* ~~taxes levied~~ divided by the appropriate tax ratos described in 15-23-607(2)(a), ~~or~~ (2)(b), *or (2)(c)* and multiplied by 60%, plus the amount of value represented by new production *and production from horizontally completed wells* exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness.

(2) No *A* county may *not* incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors ~~thereof~~ *of the county* voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

(3) ~~Nothing in this~~ *This* section ~~shall~~ *does not* apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 12. Section 7-7-2203, MCA, is amended to read:

"**7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), ~~no~~ *a* county may *not* issue general obligation bonds for any purpose ~~which~~ *that*, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property ~~therein~~ *in the county*, plus the amount of *taxes levied on* ~~interim production and~~ new production, *production from horizontally completed wells, and incremental production* ~~taxes levied~~ divided by the appropriate tax rates described in 15-23-607(2)(a), ~~or~~ (2)(b), *or (2)(c)* and multiplied by 60%, plus the amount of value represented by new production *and production from horizontally completed wells* exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds ~~which~~ *that*, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the amount of *taxes levied on* ~~interim production and~~ new production, *production from horizontally completed wells, and incremental production* ~~taxes levied~~ divided by the appropriate tax rates described in 15-23-607(2)(a), ~~or~~ (2)(b), *or (2)(c)* and multiplied by 60%, plus the amount of value represented by new production *and production from horizontally completed wells* exempted from tax as provided in 15-23-612 multiplied by 60%, when necessary to do so, plus the value of any other production occurring after December 31, 1988, multiplied by 60% for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings ~~thereon~~ *on the site* and furnishing and equipping the ~~same~~ *buildings* for county high school purposes.

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(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail ~~which~~ *that* will not exceed 12.5% of the taxable value of the property in the county subject to taxation.

(4) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost hy the county."

Section 13. Section 7-14-2524, MCA, is amended to read:

"7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the amount of *taxes levied on* ~~interim production and~~ new production, *production from horizontally completed wells, and incremental production* ~~taxes levied~~ divided by the appropriate tax rates described in 15-23-607(2)(a), ~~or~~ (2)(b), *or (2)(c)* and multiplied by 60%, plus the amount of value represented by new production *and production from horizontally completed wells* exempted from tax as provided in 15-23-612 multiplied hy 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%. The taxable property and the amount of *taxes levied on* ~~interim production and~~ new production, *production from horizontally completed wells, and incremental production* ~~taxes levied~~ must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(2) A county may issue bonds that, with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of the property, plus the amount of *taxes levied on* ~~interim production and~~ new production, *production from horizontally completed wells, and incremental production* ~~taxes levied~~ divided by the appropriate tax rates described in 15-23-607(2)(a), ~~or~~ (2)(b), *or (2)(c)* and multiplied by 60%, plus the amount of value represented by new production *and production from horizontally completed wells* exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60% when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, may not exceed 22.5% of the total of the taxable value of the property within the county, plus the amount of *taxes levied on* ~~interim production and~~ new production, *production from horizontally completed wells, and incremental production* ~~taxes levied~~ divided hy the appropriate tax rates described in 15-23-607(2)(a), ~~or~~ (2)(b), *or (2)(c)* and multiplied by 60%, plus the amount of value represented by new production *and production from horizontally completed wells* exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring

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after December 31, 1988, multiplied by 60%, as ascertained by the last preceding general assessment."

Section 14. Section 7-14-2525, MCA, is amended to read:

"7-14-2525. Refunding agreements and refunding bonds authorized. (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property therein, plus the amount of *taxes levied on* ~~interim production and~~ new production, *production from horizontally completed wells, and incremental production* ~~taxes levied~~ divided by the appropriate tax rates described in 15-23-607(2)(a), ~~or~~ (2)(b), *or (2)(c)* and multiplied by 60%, plus the amount of value represented by new production *and production from horizontally completed wells* exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than tbe full amount of the bonds and the accrued unpaid interest ~~thereon~~ in satisfaction ~~thereof~~ *of the bonds*;

(b) enter inte ~~such~~ *the* agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders ~~shall~~ *must* be embodied in full in the resolution providing for the ~~issue~~ *issuance* of the bonds."

Section 15. Section 7-16-2327, MCA, is amended to read:

"7-16-2327. Indebtedness for park purposes. (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, has the power and duty to contract an indebtedness in behalf of a county, upon the credit ~~thereof~~ *of the county*, for the purposes of 7-16-2321(1) and (2).

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, ~~must~~ *may* not at any time exceed 13% of the total of the taxable value of the taxable property in the county, plus the amount of *taxes levied on* ~~interim production and~~ new production, *production from horizontally completed wells, and incremental production* ~~taxes levied~~ divided by the appropriate tax rates described in 15-23-607(2)(a), ~~or~~ (2)(b), *or (2)(c)* and multiplied by 60%, plus the amount of value represented by new production *and production from horizontally completed wells* exempted from tax as provided in 15-23-612, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness.

(b) ~~No money~~ *Money* may *not* be borrowed on bonds issued for the purchase of lands and improving ~~same~~ *the land* for any ~~such~~ purpose until the proposition has been submitted to the vote of those qualified under the provisions of the

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state constitution to vote at ~~such~~ *the* election in the *affected* county ~~affected thereby~~ and a majority vote is cast in favor ~~thereof~~ *of the bonds.*"

Section 16. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) general fund balance reappropriated, as established under the provisions of 20-9-104; and

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following sources:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323;

(B) revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(C) net proceeds taxes for new production, *production from horizontally completed wells, and incremental production*, as defined in 15-23-601;

(D) revenue from local government severance taxes as provided in 15-36-112;

(E) revenue from coal gross proceeds under 15-23-703;

(F) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(G) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(H) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount

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adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142."

Section 17. Section 20-9-331, MCA, is amended to read:

"**20-9-331. Basic county tax and other revenues for county equalization of the elementary district BASE funding program.** (1) The county commissioners of each county shall levy an annual basic tax of 33 mills on the dollar of the taxable value of all taxahle property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order te determine the amount of revenue raised by this levy ~~which~~ *that* is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, stato equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed hy this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as

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prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid inte the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) net proceeds taxes for new production, *production from horizontally completed wells, and incremental production*, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204."

Section 18. Section 20-9-333, MCA, is amended to read:

"**20-9-333. Basic special levy and other revenues for county equalization of high school district BASE funding program.** (1) The county commissioners of each county shall levy an annual basic special tax for high schools of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy ~~which~~ *that* is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for

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deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) net proceeds taxes for new production, *production from horizontally completed wells, and incremental production*, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204."

Section 19. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by ~~such~~ *the* district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

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(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must he used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

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(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated net proceeds taxes for new production, *production from horizontally completed wells, and incremental production*, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) any other revenue anticipated by the trustees to he earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(j) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 20. **Fees for processing applications.** (1) The board shall establish a fee schedule to defray the expenses incurred for processing an application from an operator or producer of oil seeking approval of a new or expanded enhanced recovery project, as defined in 15-23-601 or 15-36-101. The fee must be paid by the owner or operator seeking approval of the project.

(2) Tbe board shall, by rule, determine the amount of tbe fee based on the complexity of processing the application.

Section 21. **Reports by board of oil and gas conservation to revenue oversight committee.** The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the

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implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells.

Section 22. **Codification instruction.** (1) [Section 8] is intended to be codified as an integral part of Title 15, chapter 23, part 6, and the provisions of Title 15, chapter 23, part 6, apply to [section 8].

(2) [Section 20] is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 20].

Section 23. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 24. **Effective date — applicability.** [This act] is effective on passage and approval and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993.

Approved December 17, 1993.

CHAPTER NO. 10

[HB 15]

AN ACT GENERALLY REVISING THE LAWS RELATING TO MOTOR FUEL; STATUTORILY APPROPRIATING MOTOR FUEL TAXES TO COUNTIES AND INCORPORATED CITIES AND TOWNS; CLARIFYING THE SPECIAL FUEL LICENSE TAX RATE; EXEMPTING DYED SPECIAL FUEL FROM TAXATION; PROVIDING THAT DYED FUEL MAY BE USED FOR OFF-HIGHWAY USE; PROVIDING A TAX REFUND FOR SPECIAL FUEL USED OFF-HIGHWAY; PROVIDING A REFUND FOR SPECIAL FUEL USED BY GOVERNMENT AGENCIES; REVISING THE ENFORCEMENT OF MOTOR FUEL LAWS; PROVIDING PENALTIES FOR CERTAIN VIOLATIONS OF THE MOTOR FUELS LAWS; AMENDING SECTIONS 15-70-101, 15-70-301, 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306, 15-70-311, 15-70-321, 15-70-324, 15-70-330, 15-70-341, 15-70-343, 15-70-349, 15-70-356, 15-70-361, 15-70-364, 17-7-502, AND 61-12-206, MCA; REPEALING SECTIONS 15-70-309 AND 15-70-315, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-101, MCA, is amended to read:

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"15-70-101. **Disposition of funds.** All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501(6), be placed in the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must, in accordance with the provisions of 15-1-501(6), be paid by the department of transportation from the state special revenue fund to the cities, towns, and counties.

(1) $16,766,000 of the funds collected under this chapter, except those collected by a justice's court, *is statutorily appropriated, as provided in 17-7-502, to the department of transportation and* must be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) $54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;

(b) $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(c) $10,389,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population witbin the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds allocated by this section to counties, cities, and towns must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the federal-aid primary or secondary highway system or urban extensions to those systems, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class

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city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(3) All funds allocatod by this section to counties, cities, and towns must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(4) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined by the last preceding official federal census.

(5) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, and counties to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(6) Except by a town or third-class city as provided in subsection (2), the funds authorized hy this section may not he used for the purchase of capital equipment.

(7) Funds authorized by this section must be used for construction and maintenance programs only."

Section 2. Section 15-70-301, MCA, is amended to read:

"15-70-301. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person whose major endeavor is and primary source of earned income is from the business of farming or ranching.

~~(2) "Authorization" means an uncanceled special fuel tax prepaid authorization issued by the department.~~

~~(3)~~ "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

~~(4)~~*(3)* "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

~~(5)~~*(4)* "Cardtrol" or "keylock" means any unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

~~(6)~~*(5)* "Department" means the department of transportation.

~~(7)~~*(6)* (a) "Distributed" means, at the time special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

~~(8)~~*(7)* "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter as defined in this section.

~~(9)~~*(8)* "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

~~(10)~~*(9)* "Exportor" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

~~(11)~~*(10)* "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

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~~(12)~~*(11)* "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

~~(13)~~*(12)* "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~(14)~~*(13)* "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-steck companies and corporations, the officers.

~~(15)~~*(14)* "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

~~(16)~~*(15)* "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana.

~~(17)~~*(16)* "Special fuel dealer" means:

(a) any person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) any person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) any person who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(18)~~*(17)* "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

~~(19)~~*(18)* "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

Section 3. Section 15-70-302, MCA, is amended to read:

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"15-70-302. **Special fuel user's permits required — exceptions.** (1) A special fuel user shall obtain *a special fuel user's permit* annually from the department, prior to the use of special fuel for the operation of a motor vehicle or vehicles in this state~~, a special fuel user's permit~~ *in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight.* Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor carrier services division employee, Montana higbway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require ~~the~~ *a* user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit as required by subsection (1) if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement as authorized by 15-70-121 and the vehicle displays a license or decal issued pursuant to the agreement.

~~(4) A person whose use of special fuel is in special fuel vehicles up to 26,000 pounds gross vehicle weight or registered gross vehicle weight shall obtain annually from the department an authorization, as provided in 15-70-309, if the special fuel is not subject to taxation under 15-70-343.~~"

Section 4. Section 15-70-303, MCA, is amended to read:

"15-70-303. **Application for permit ~~or authorization~~.** (1) Application for a special fuel user's permit ~~or authorization~~ must be made to the department unless otberwise provided in this part.

(2) The application must be filed upon a form prepared and furnished by the department. The application must contain information the department considers necessary."

Section 5. Section 15-70-304, MCA, is amended to read:

"15-70-304. **Bonding, release of surety, and additional bond.** (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished *a* bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to *the provisions of* subsection (2)(a) or (2)(b).

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(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) $5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) $500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify tbe special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of tbis section or makes a deposit in lieu of a bond as provided in 15-70-301~~(3)~~*(2)*, the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301~~(3)~~*(2)* if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, tbe department shall cancel the permit."

Section 6. Section 15-70-305, MCA, is amended to read:

"15-70-305. Issuance of permit ~~or authorization~~ — grounds for refusal — hearing. (1) Except as provided in subsection ~~(4)~~ *(3)*, upon receipt of the application and bond in proper form, the department shall issue to the applicant a permit to operate as a special fuel user. Each special fuel user's permit is valid until suspended or revoked for cause or otherwise canceled.

~~(2) Except as provided in subsection (4), upon receipt of the application in proper form, the department shall issue to the applicant an authorization. A holder of an authorization is not required to furnish bond as provided under 15-70-304. The authorization must be issued annually and is valid from the date of its issuance through December 31 of the calendar year, unless a motor vehicle for which the tax is prepaid is sold, or until susponded or revoked for cause or otherwise canceled.~~

~~(3)~~*(2)* If the special fuel user's permit is surrendered or revoked, the special fuel user shall pay a reissuance fee of $100.

~~(4)~~*(3)* The department may refuse to issue a special fuel user's permit ~~or authorization~~ to any person:

(a) who formerly held a permit ~~or authorization~~ that, prior to the time of filing application, has been revoked for cause;

(b) who is not the real party in interest and the permit ~~or authorization~~ of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

(5) Before refusal to issue a permit ~~or authorization~~, the department shall grant the applicant a hearing and shall grant the applicant at least 10 days' written notice of the time and place of hearing.

(6) A special fuel user's permit ~~or authorization~~ is not transferable."

Section 7. Section 15-70-306, MCA, is amended to read:

"**15-70-306. Revocation, suspension, and cancellation.** (1) The department may revoke the permit ~~or authorization~~ of any special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking a permit ~~or authorization~~, the department shall notify the permittee of its intention, by certified mail addressed to the permittee's last-known address shown in the files of the department, requiring the permittee to appear before the department on a day and hour specified in the notice, not more than 30 days or less than 10 days from date of notice, and show cause, if any, why the permit ~~or authorization~~ should not be revoked~~; provided, however, that~~. *However,* at any time prior to and pending the hearing, the department may in the exercise of reasonable discretion suspend the permit ~~or authorization~~.

(2) Upon revocation *of a permit* by the department ~~of any permit or authorization~~, the holder shall immediately surrender the permit ~~or authorization~~ to the department for cancellation."

Section 8. Section 15-70-311, MCA, is amended to read:

"**15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit.** (1) Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a special fuel user's temporary trip permit. The permits must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment

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a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

~~(3) A resident or nonresident operating a special fuel-powered vehicle up to 26,000 pounds gross vehicle weight or registered gross vehicle weight in this state is exempt from obtaining an authorization under 15-70-309 if the special fuel tax is paid at the time of purchase.~~"

Section 9. Section 15-70-321, MCA, is amended to read:

"**15-70-321. Tax on diesel fuel and volatile liquids.** (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2)~~,~~*:*

(a) for each gallon of *undyed* diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public highways or streets within the state*; and*

(b) for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the intornal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions.

(2) The tax imposed in subsection (1) is:

(a) 24 cents per gallon beginning July 1, 1993;

(b) 24 3/4 cents per gallon beginning January 1, 1994; and

(c) 27 3/4 cents per gallon beginning July 1, 1994."

Section 10. Section 15-70-324, MCA, is amended to read:

"**15-70-324. Examination of records — enforcement of part.** (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and ~~to~~ *may* investigate the character of the disposition ~~which~~ *that* any person makes of special fuel in order to ascertain and determine whether all excise taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in tbe offices of the department or at the business location of the taxpayer and must be, if requested by the department, accompanied by the special fuel user.

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(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie evidence that all of the special fuel has been delivered by the special fuel user into the fuel supply tanks of motor vehicles and consumed in the operation of motor vehicles upon the highways unless the contrary is established by satisfactory evidence.

(4) The department may establish vehicle inspection sites and may stop, detain, and inspect vehicles. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction. Each refusal is a separate offense.

~~(4)~~*(5)* The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of Canada, forward to the officials any information ~~which~~ *that* it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel user, provided the other state or states furnish like information to this state."

Section 11. Section 15-70-330, MCA, is amended to read:

"15-70-330. ~~Penalties for refusal or failure to file return or pay tax when due~~ *Special fuel penalties.* (1) In *the* case of ~~any~~ *a* special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues; provided, however, that if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, there must be added to the amount due and unpaid interest at the rate of 1% per month or fraction of a month from the date the tax was due to the date of payment in full.

(3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public highways or streets within the state unless the fuel is subject to taxation under 15-70-321(1)(b) or the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public highways or streets within the state in violation of this subsection is a misdemeanor punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction. Each use is a separate offense.

(b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on public highways, public roads, or streets when using dyed fuel or nontaxed fuel."

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Section 12. Section 15-70-341, MCA, is amended to read:

"15-70-341. *(Effective January 1, 1994)* **License, fee, and security of special fuel distributors.** (1) All special fuel distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of doing business, shall file an application for a license with the department ~~of transportation~~, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department. Each distributor shall at the same time file security with the department in an amount to be determined by the department. However, the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license that continues in force until surrendered or revoked.

(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301~~(8)(c)~~*(7)(c)* and not already licensed under 15-70-202 shall pay an annual license fee of $200.

(3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

(4) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation."

Section 13. Section 15-70-343, MCA, is amended to read:

"15-70-343. *(Effective January 1, 1994)* **Special fuel license tax — rate.** (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount ~~of 20 cents~~ [*imposed under 15-70-321*] for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor.

(2) Special fuel may not be included in the measure of the distributor's license tax if sold *it is*:

(a) ~~to the United States government, state of Montana, any other state, and any county, incorporated city, town, and school district of this state~~ *dyed at a refinery or terminal for off-highway use*; *or*

(b) ~~in bulk delivery quantities of 200 gallons or more; or~~

~~(c)~~ *sold* for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined."

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Section 14. Section 15-70-349, MCA, is amended to read:

"15-70-349. *(Effective January 1, 1994)* **Examination of records.** (1) The department ~~of transportation~~ or its authorized representative may examine the books, papers, records, and equipment of any special fuel distributor or any person dealing in, transporting, or storing special fuel, as defined in this part, and may investigate the character of the disposition that any person makes of the special fuel in order to ascertain and determine whether all license taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of each distributor or any person dealing in, transporting, or storing special fuel must be open and subject to inspection by the department or its authorized representative during business hours in order to ascertain the amount of license tax due.

(3) The department may physically inspect terminals, dyes, dyeing equipment, storage facilities, and downstream storage facilities. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction. Each refusal is a separate offense."

Section 15. Section 15-70-356, MCA, is amended to read:

"15-70-356. *(Effective January 1, 1994)* **Refund or credit authorized.** (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines, tractors used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel so used. The refund may not exceed the tax paid or to be paid to the state.

(2) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

~~(2)~~*(3)* A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

~~(3) A distributor who sells special fuel that is not subject to taxation under 15-70-343 shall complete an exemption certificate for each sale and submit the certificate with the distributor's monthly report.~~

(4) (a) A distributor is entitled to a credit for the tax paid to the department ~~of transportation~~ on those sales of special fuel with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser

worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund."

Section 16. Section 15-70-361, MCA, is amended to read:

"15-70-361. *(Effective January 1, 1994)* **Required records.** (1) ~~Special~~ *Except as provided in subsection (5), special* fuel purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which it was used. Special fuel on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.

(2) Service stations, bulk dealers, and marinas shall prepare a separate and complete invoice for each withdrawal of special fuel for ~~own use upon~~ which a refund is to be claimed.

(3) When a highway use of special fuel is not deducted from the claim, the applicant shall substantiate purchases of special fuel and miles traveled for licensed motor vehicles upon request of the department of transportation.

(4) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the special fuel used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) the total number of gallons of special fuel used in each vehicle; and

(c) purchase invoices supporting all special fuel handled through bulk storage.

(5) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is not required to keep dispersal records in order to claim a refund of special fuel taxes.

~~(5)~~*(6)* An exporter or any other person who transports special fuel out of Montana for sale, use, or consumption outside Montana shall maintain detailed

and current records of withdrawal, transportation, ownership, and delivery of the special fuel to destinations outside Montana as required by the department."

Section 17. Section 15-70-364, MCA, is amended to read:

"**15-70-364.** *(Effective January 1, 1994)* **Application for refund or credit — filing — correction by department.** (1) The application for a refund must be a signed statement on a form furnished by the department ~~of transportation~~. Except for a claim for a credit for taxes paid on unpaid accounts *or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state*, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of special fuel purchased, the total amount of special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 14 months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement."

Section 18. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; *15-70-101;* 16-1-404; 16-1-410;

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16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-2-707; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all honds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"*

Section 19. Section 61-12-206, MCA, is amended to read:

"61-12-206. Offenses for which arrest authorized. (1) Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions only:

(a) part 1, chapter 10, of this title;

(b) part 3, chapter 4, of this title;

(c) sections 15-24-201 through 15-24-205;

(d) ~~sections 15-70-302 through 15-70-307;~~

~~(e) sections 15-70-311 through 15-70-314~~ *Title 15, chapter 70, parts 2 and 3*;

~~(f)~~*(e)* sections 15-71-101 through 15-71-105;

~~(g)~~*(f)* section 61-3-502(1);

~~(h)~~*(g)* sections 61-10-201, 61-10-203, 61-10-206, 61-10-209, and 61-10-211 through 61-10-215;

~~(i)~~*(h)* sections 61-10-222 through 61-10-224;

~~(j)~~*(i)* sections 61-10-231 through 61-10-233.

(2) These employees may not arrest for violations other than specified in this section."

Section 20. **Repealer.** Sections 15-70-309 and 15-70-315, MCA, are repealed.

Section 21. **Effective dates — retroactive applicability.** (1) [Sections 1, 18, and 22 and this section] are effective on passage and approval.

(2) [Sections 2 through 17, 19, and 20] are effective January 1, 1994.

Section 22. **Retroactive applicability.** [Sections 1 and 18] apply retroactively, within the meaning of 1-2-109, to July 1, 1993.

Approved December 20, 1993.

CHAPTER NO. 11

[HB 43]

AN ACT EXPANDING THE CONDITIONS UNDER WHICH A STATE AGENCY MAY PURCHASE OFFICE SUPPLIES DIRECTLY FROM A SUPPLIER; AND AMENDING SECTION 18-4-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-302, MCA, is amended to read:

"18-4-302. **Methods of source selection.** (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to 18-4-303, except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of this title, and subsections (2) and (3) *of this section*. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) At the time *that* the department or a purchasing agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time *that* the bids or proposals are opened and is less than the hid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or purchasing agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program through bulk purchase or procured under a term contract may be purchased by a purchasing agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised ~~or~~ *price,* established catalog price*, or discount price offered to the purchasing agency* is less than the price offered by the central stores program or under the term contract ~~and~~ *if the office supply* conforms in all material respects to the terms, conditions, and quality offered by the central stores program or under the term contract. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection."

Approved December 20, 1993.

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CHAPTER NO. 12

[HB 7]

AN ACT REVISING THE DEFINITIONS OF TERMINOLOGY USED IN STATE BUDGETING; REQUIRING THAT THE EXECUTIVE BUDGET AND THE BUDGET ANALYSIS OF THE LEGISLATIVE FISCAL ANALYST BE BASED ON THE LEVEL OF FUNDING TO MAINTAIN OPERATIONS AND SERVICES AUTHORIZED BY THE PREVIOUS LEGISLATURE; AMENDING SECTIONS 5-12-303 AND 17-7-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-12-303, MCA, is amended to read:

"**5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst ~~has the authority to~~ *may* investigate and examine the costs and revenues of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.

(4) The budget director shall furnish the legislative fiscal analyst with copies of all budget requests, *in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst,* at the time of submission to the budget director as provided by law and, if requested, all underlying and supporting documentation. *In preparing the executive budget for the next biennium for submission to the legislature, the budget director shall use the base budget, the present law base, and new proposals as defined in 17-7-102.*

(5) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst, on a confidential basis *and in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst*:

(a) by ~~December 1,~~ *October 10, a preliminary budget reflecting the base budget and, by November 1, a present law base for each agency and* a copy of the documents that reflect the anticipated receipts and other means of financing the *base* budget *and present law base* for each fiscal year of the ensuing biennium;

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(b) by ~~December 1~~ *November 15*, a preliminary budget that must meet the statutory requirements for submission of the budget to the legislature;

(c) by ~~December 3~~ *November 12*, a paper copy and an electronic copy of the documents that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity; and

(d) by December 15, all amendments to the preliminary budget.

(6) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. *In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.*

(7) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure."

Section 2. Section 17-7-102, MCA, is amended to read:

"**17-7-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government, except for purposes of capital projects administered by the department of administration, for which institutions are treated as one department and university units as one system.

(3) "Approved long-range building program budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within an agency to increase the appropriation of another capital project within that agency or to obtain financing to expand a project with funds tbat were not available for consideration by the legislature.

(4) "Approving authority" means:

(a) the governor or ~~his~~ *the governor's* designated representative for executive branch agencies;

(b) the chief justice of the supreme court or ~~his~~ *the chief justice's* designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

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(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(5) "Base budget" means that level of funding authorized by the previous legislature.

~~(5)~~*(6)* "Budget amendment" means a legislative appropriation to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund, contingent on total compliance with all budget amendment procedures.

~~(6) "Current funding level" means that level of funding required to maintain operations and services at the level authorized by the previous legislature, after adjustment for inflation.~~

(7) "Present law base" means that additional level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally manadated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

~~(7)~~*(8)* "Effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained.

~~(8)~~*(9)* "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

~~(9) "Modified funding level" means the current funding level as adjusted to reflect workload increases, the provision of new services, or changes in authorized funding.~~

(10) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(11) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

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~~(11)~~*(12)* "Priority listing" means a ranking of proposed expenditures in order of importance.

~~(12)~~*(13)* "Program" means a combination of resources and activities designed to achieve an objective or objectives.

~~(13)~~*(14)* "Program size" means the magnitude of a program, such as the size of clientele served~~,~~ *or* the volume of service in relation to the population or area~~, etc.~~

~~(14)~~*(15)* "Program size indicator" means a measure to indicate the magnitude of a program.

~~(15)~~*(16)* "Requesting agency" means the agency of state government that has requested a specific budget amendment.

~~(16)~~*(17)* "University system unit" means the board of regents of higher education, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices at Butte, the fire services training school at Great Falls, the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula, or the community colleges at Miles City, Glendive, and Kalispell."

Section 3. **Code commissioner instruction.** Wherever the term "current funding level" or a phrase meaning "current funding level" appears in Title 17, chapter 7, the code commissioner shall change the term or phrase to "base budget" and make the necessary grammatical changes to reflect the change in terminology. Wherever the term "modified funding level" or a phrase meaning "modified funding level" appears in Title 17, chapter 7, the code commissioner shall change the term or phrase to "present law base plus new proposals" and make necessary grammatical changes to reflect the change in terminology.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved December 23, 1993.

CHAPTER NO. 13

[HB 30]

AN ACT PROVIDING THAT AGENCY BUDGET SUBMISSIONS INCLUDE A REFERENCE SPECIFYING WHETHER AN AGENCY PROGRAM IS DISCRETIONARY OR MANDATED BY FEDERAL OR STATE LAW; AMENDING SECTIONS 17-7-111 AND 17-7-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 17-7-111, MCA, is amended to read:

"17-7-111. **Agency program budgets — form distribution and contents.** (1) In the preparation of a state budget, the budget director shall, not later than July 1 in the year preceding the convening of the legislature, distribute to all state offices and departments, including the judicial branch and the legislative branch, the proper forms necessary for the preparation of budget estimates. These forms must be prescribed by the budget director to procure the information required by subsection (2).

(2) The agency budget requests, when completed by the budget office, must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary for current level expenditures and for each modification request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained in the summary by fund and, when applicable, organizational unit.

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;

(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented must include the following:

(i) a statement of agency goals and objectives and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives. The goals and objectives must contain a list of duties prioritized by the department director to reflect the director's opinion concerning the importance of the duties assigned to the agency by law. ~~Any discretionary programs established by the agency that are not required by law must also be enumerated.~~

(ii) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; and

(iii) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category; ~~and~~

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(e) *a reference, for each program included in the agency budget request, identifying whether the program may be operated at the discretion of the agency or whether the agency is required by federal or state law to operate, administer, or manage the program.*

(f) other information the budget director feels is necessary for the preparation of a budget.

(3) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by department, institution, agency, or branch by funding source, with a description of each proposed project; and

(b) the proposed pay plan schedule for all executive branch employees, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(4) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (4). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(5) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns."

Section 2. Section 17-7-123, MCA, is amended to read:

"17-7-123. Form of executive budget. The budget submitted must set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, which plan must consist of:

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(1) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with tbe other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. Tbe consolidated budget summary must be supported by explanatory schedules or statements, classifying receipts and disbursements contained therein by fund and, when applicable, organizational unit;

(2) an analysis of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(3) a detailed analysis of receipts by accounting entity within fund indicating classification and source of funds;

(4) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information presented must include tbe following:

(a) a summary of departmental goals and objectives and a statement of goals and objectives for each program of the department;

(b) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for tbe current fiscal year, and the current funding level and the modified funding level, if any, for each department and each program of the department; and

(c) *a reference for each program as required under 17-7-111(2)(e); and*

(d) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category and other matters considered necessary; and

(5) detailed recommendations for the state long-range building program. Each recommendation must be presented by department, institution, agency, or branch by funding source, with a description of each proposed project. An appropriation measure must be presented by project, source of funding, and department, agency, institution, or branch for which the project is primarily intended."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved December 23, 1993.

CHAPTER NO. 14

[HB 34]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE MONTANA MEDICAID PROGRAM; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO SUBMIT ESTIMATES OF MEDICAID EXPENDITURES TO THE LEGISLATIVE FINANCE COMMITTEE; REVISING ELIGIBILITY AND THE MEDICAL SERVICES THAT MAY

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BE COVERED; AMENDING SECTIONS 53-6-101 AND 53-6-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Submission of estimate to legislative finance committee.** Whenever the department of social and rehabilitation services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting.

Section 2. Section 53-6-101, MCA, is amended to read:

"**53-6-101.** *(Temporary)* **Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient bospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diaguosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for preguant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services *that are* provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

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(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill ~~but limited to services provided in crisis intervention programs~~;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

~~(4)~~*(5)* The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

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~~(5)~~*(6)* The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

~~(6)~~*(7)* The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

~~(7)~~*(8)* The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

~~(8)~~*(9)* Services, procedures, and items of an experimental or cosmetic nature may not be provided.

~~(9)~~*(10)* If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

~~(10)~~*(11)* Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted ~~thereunder~~ *under this chapter*.

53-6-101. *(Effective July 1, 1994)* **Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

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(j) services *that are* provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill ~~but limited to services provided in crisis intervention programs~~;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance

under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

~~(4)~~*(5)* The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

~~(5)~~*(6)* The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

~~(6)~~*(7)* The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

~~(7)~~*(8)* The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

~~(8)~~*(9)* Services, procedures, and items of an experimental or cosmetic nature may not be provided.

~~(9)~~*(10)* If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

~~(10)~~*(11)* Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted ~~thereunder~~ *under this chapter*.

~~(11)~~*(12)* Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 3. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services, *in its discretion,* to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.) or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for ~~such~~ *that* assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

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(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the ~~medically needy~~ income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

~~(2)~~*(3)* The Montana medicaid program shall pay ~~for~~, *as required by federal law,* the premiums necessary for ~~participation~~ *medicaid-eligible persons participating* in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare *premiums,* deductibles, and coinsurance for a *qualified* medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

~~(3)~~*(4)* The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

~~(4)~~*(5)* The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act (42 U.S.C.

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1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

~~(5)~~*(6)* Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

~~(6)~~*(7)* A person described in subsection ~~(5)~~ *(6)* must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7)."

Section 4. **Effective date.** [Tbis act] is effective on passage and approval.

Approved December 23, 1993.

CHAPTER NO. 15

[HB 36]

AN ACT REQUIRING A PERSON TO APPEAR BEFORE THE COUNTY TAX APPEAL BOARD, UNLESS THE REQUIREMENT TO APPEAR IS WAIVED BY THE BOARD, BEFORE AN APPEAL MAY BE MADE TO THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 15-2-301, 15-15-103, AND 15-15-104, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2-301, MCA, is amended to read:

"**15-2-301. Appeal of county tax appeal board decisions.** (1) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of tbe department of revenue. ~~Any~~ *If the appearance provisions of 15-15-103 have been complied with, a* person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint. Notice of acceptance of an appeal must be given to tbe county tax appeal board by the state tax appeal board. The state board sball set the appeal for hearing either in its office in the capital or the county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.

(2) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit

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additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearing officer. The board member or hearing officer may exercise all the powers of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the board. The state board shall determine the appeal on the record.

(3) On all hearings at county seats throughout the state, the state board or the member or hearing officer designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received. The cost of taking and transcribing testimony may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303."

Section 2. Section 15-15-103, MCA, is amended to read:

"15-15-103. Examination of applicant — failure to hear application. (1) Before the county tax appeal board grants any application or makes any reduction applied for, it ~~must~~ *shall* examine on oath the person or agent making the application, touching the value of the property of each person. ~~No~~ *A* reduction ~~must~~ *may not* be made unless sueh *the* person or agent makes an application, as provided in 15-15-102, and attends ~~and answers all questions pertinent to the inquiry~~ *the county tax appeal board hearing. An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing.* The testimony of all witnesses ~~upon such~~ *at the* hearing must be taken in shorthand, ~~or~~ *taken* by stenotype, or electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded, together with all exhibits, to the state tax appeal board. The date of *the* bearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail witbin 3 days ~~thereafter~~. A copy of the minutes of tbe county tax appeal board must be transmitted to the state tax

appeal board no later than 3 days after the board holds its final hearing of the year.

(2) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The county treasurer shall enter the appraisal or classification sought in the application in the assessment book. An application is not automatically granted for the following appeals:

(a) those listed in 15-2-302; and

(b) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current 60-day session."

Section 3. Section 15-15-104, MCA, is amended to read:

"**15-15-104. Appeal to state tax appeal board.** ~~Any~~ *If the appearance provisions of 15-15-103 have been complied with, a* person or the department of revenue ~~in~~ *on* behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301."

Section 4. **Applicability.** [This act] applies to all property tax appeals on or after January 1, 1994.

Section 5. **Effective date.** [This act] is effective January 1, 1994.

Approved December 23, 1993.

CHAPTER NO. 16

[HB 40]

AN ACT ELIMINATING STATUTORY REFERENCES TO THE DIVISION OF HEALTH AND ENVIRONMENTAL SCIENCES WITHIN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 2-15-2105 AND 75-10-621, MCA; REPEALING SECTION 2-15-2103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2105, MCA, is amended to read:

"**2-15-2105. Water and wastewater operators' advisory council.** (1) There is a water and wastewater operators' advisory council.

(2) The council consists of seven members. Except as provided in subsection (2)(e) ~~of this section~~, the members ~~shall~~ *must* be appointed by the governor. The members are:

(a) two members who are employed water supply system or water treatment plant operators holding valid certificates. One of these members ~~shall~~ *must* hold a certificate by examination of the highest class issued by the

department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator.

(b) two members who are employed wastewater treatment plant operators holding valid certificates. One of these members ~~shall~~ *must* hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator.

(c) one member serving on the faculty of a university or college whose major field is related to water supply systems, wastewater treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) one member who is a representative of a municipality required to employ a certified operator and who holds a position of ~~either~~ city manager, city engineer, director of public works, works manager, or ~~their~~ *an* equivalent *position*;

(e) ~~the administrator of the division of environmental sciences of the department of health and environmental sciences or~~ a qualified member of ~~his~~ *the* staff *of the department of health and environmental sciences,* appointed by the ~~administrator~~ *department's director.*

(3) Members, except the ex officio voting member from the department of health and environmental sciences, shall serve for a term of 6 years."

Section 2. Section 75-10-621, MCA, is amended to read:

"75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the bazardous waste/CERCLA account:

(a) ~~revenues~~ *revenue* obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on ~~those revenues~~ *that revenue*;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds ~~thereof~~ *of the bonds or notes*; and

(c) ~~revenues~~ *revenue* from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) funds are statutorily appropriated, as provided in 17-7-502(4), te the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;

(b) not more than one-half of the interest income received for any hiennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

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(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the ~~administration of the environmental sciences division of the~~ department in administering and overseeing tbe implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) stato expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(c) to the extent funds are available after the appropriations in subsections (3)(a) and (3)(b), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(c), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipatod circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match ~~such~~ *the* federal funds as ~~may~~ *the funds* become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Unused balances remain in the account until ~~such time as~~ appropriated by the legislature for the purposes specified in this section."

Section 3. **Repealer.** Section 2-15-2103, MCA, is repealed.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved December 23, 1993.

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CHAPTER NO. 17

[HB 68]

AN ACT REMOVING STATE RESTRICTIONS ON LOANS TO DIRECTORS OF BANKS; AMENDING SECTION 32-1-467, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-467, MCA, is amended to read:

"**32-1-467. Loans to managing officer ~~or director~~.** (1) A bank may extend credit to a managing officer ~~or director~~ of the bank:

(a) in any amount to finance the education of the managing officer's ~~or director's~~ children;

(b) in any amount to finance the purchase, construction, maintenance, or improvement of a residence of the managing officer ~~or director~~ if the extension of credit is secured by a first lien on the residence and the residence is:

(i) owned by the managing officer ~~or director~~; or

(ii) expected to be owned by the managing officer ~~or director~~ after the extension of credit; and

(c) for any other purpose not specified in subsections (1)(a) and (1)(b) if the aggregate amount of loans to that individual under this subsection (1) does not exceed at any one time the greater of 2.5% of the bank's capital and unimpaired surplus or $25,000. However, in no event may the aggregate amount of loans to the individual exceed $100,000.

(2) The department may adopt rules to address loans made before October 1, 1993, and to define capital and unimpaired surplus for purposes of 32-1-465 and this section."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved December 23, 1993.

CHAPTER NO. 18

[SB 5]

AN ACT INCREASING THE LICENSE FEE FOR LOBBYISTS; PROVIDING FOR WAIVER OF THE FEE; AMENDING SECTION 5-7-103, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of legislative intent is necessary for this bill because 5-7-103 authorizes the commissioner of political practices to adopt rules implementing the waiver provisions of subsection (1) of that section.

The legislature intends that rules adopted by the commissioner specify the procedures to be used by a lobbyist when applying for a hardship waiver and

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the standards to be used hy the commissioner in determining whether a hardship exists. The commissioner may specify categories of licenses or lobhyists for which hardship waivers will be granted.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-103, MCA, is amended to read:

"**5-7-103. Licenses — fees — eligibility —** ***waiver.*** (1) Any adult of good moral character who is otherwise qualified under this chapter may he licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained *from and must be filed* in the office of the commissioner ~~and filed therein~~. Upon approval of the application and receipt of the license fee ~~of $10~~ by the commissioner, a license ~~shall~~ *must* be issued ~~which~~ *that* entitles the licensee to practice lobbying on hehalf of one or more enumerated principals. *The license fee is $50 for each lobbyist.* Each license ~~shall expire~~ *expires* on December 31 of each even-numbered year or may be terminated at the request of the lohbyist. *A lobbyist who believes that payment of the license fee may constitute a hardship may apply to the commissioncr for a waiver of the fee required by this section. The commissioner may waive the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.*

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording tbe applicant a hearing. Tho hearing must he held and the decision entered within 10 days of the date of the filing of the application.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines and license fees collected under this chapter ~~shall~~ *must* be deposited in the state treasury.

(4) The commissioner may adopt rules to implement the waiver provisions of subsection (1)."

Section 2. **Effective dates.** (1) [Section 1(4) and this section] are effective on passage and approval.

(2) [Section 1(1) through (3)] is effective January 1, 1994.

Approved December 23, 1993.

CHAPTER NO. 19

[SB 23]

AN ACT PROVIDING THAT THE YEARLY CLOTHING ALLOWANCE FOR FOSTER CHILDREN MAY NOT EXCEED AN APPROPRIATION FOR THAT PURPOSE; AMENDING SECTION 41-3-1103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-1103, MCA, is amended to read:

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"41-3-1103. **Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth, as defined in 41-5-103;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require ~~such~~ treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care, youth in need of supervision, and delinquent youth in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in ~~such~~ *the* facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. ~~However, payments for clothing~~ *Payments under this subsection* may not exceed ~~$300 a year per child~~ *appropriations for the purposes of this subsection.*"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved December 23, 1993.

CHAPTER NO. 20

[SB 28]

AN ACT REQUIRING THE LEGISLATIVE AUDITOR TO ESTABLISH A TOLL-FREE NUMBER FOR THE REPORTING OF WASTE, FRAUD, AND ABUSE IN STATE GOVERNMENT; PROVIDING FOR THE REVIEW, VERIFICATION, AND REFERRAL OF INFORMATION RECEIVED THROUGH THE TOLL-FREE NUMBER; PROVIDING FOR CORRECTIVE ACTION; PROVIDING THAT ANY MONEY RECOVERED BE DEPOSITED IN THE GENERAL FUND; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative auditor to establish and maintain toll-free number for reporting fraud, waste, and abuse — procedures.** (1) The legislative auditor shall establish and maintain a toll-free telephone numher for use by Montana residents for the reporting of fraud, waste, and abuse in state government. The legislative auditor shall review all telephone calls received at the toll-free number and shall maintain a record of each call. The legislative auditor shall:

(a) analyze and verify the information received from each telephone call; or

(b) refer the information for appropriate action to the agency that is or appears to be the subject of the call.

(2) A state agency that receives information referred to it hy the legislative auditor pursuant to this section shall take adequate and appropriate action to investigate and remedy any fraud, waste, or ahuse discovered as a result of the referral. The agency shall report in writing to the legislative auditor concerning the results of its investigation and those measures taken to correct any fraud, waste, or abuse discovered as a result of the referral.

(3) Information received at the toll-free number is confidential until the time tbat the legislative auditor or other appropriate agency determines the validity of tbe information and takes corrective action. After the legislative auditor or other appropriate agency takes action to verify the fraud, waste, or abuse complained of and takes any corrective action, information concerning the subject of the complaint and the remedy, if any, is public information unless precluded by law.

(4) The legislative auditor shall, as directed by the legislative audit committee, periodically report to the committee on:

(a) the use of the toll-free number;

(b) the results of the reviews, verifications, and referrals; and

(c) any corrective actions taken by the appropriate agencies.

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(5) Information received at the toll-free number concerning a governmental entity other than state government may be referred by the legislative auditor to an appropriate federal, state, or local government agency.

(6) If the legislative auditor determines that as a result of a review and verification or referral pursuant to this section, a waste of state resources has occurred, the legislative auditor shall report the matter in writing to the legislative fiscal analyst.

(7) The legislative auditor shall advertise the existence and purpose of the toll-free number in an appropriate manner.

Section 2. **Deposit of money recovered.** Unless otherwise provided by law, money recovered as a result of an action taken pursuant to [section 1] must be deposited in the state general fund.

Section 3. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 5, chapter 13, and the provisions of Title 5, chapter 13, apply to [sections 1 and 2].

Section 5. **Effective date.** [This act] is effective July 1, 1994.

Section 6. **Termination.** [This act] terminates July 1, 1995.

Approved Decemher 22, 1993.

CHAPTER NO. 21

[SB 29]

AN ACT REVISING THE LOCAL CITIZEN REVIEW BOARD PILOT PROGRAM; CLARIFYING THE DUTIES OF THE SUPREME COURT ADMINISTRATOR TO OVERSEE THE PROGRAM AND PREPARE REQUIRED REPORTS; AMENDING SECTION 41-3-1004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-1004, MCA, is amended to read:

"41-3-1004. **Administration — training — *oversight* — procedures.** (1) Suhject to the availability of funds, the youth court of a judicial district designated pursuant to 41-3-1002 shall:

(a) establish and approve policies and procedures that have the force of law for the operation of the local citizen review board;

(b) approve and provide training programs for local citizen review board members;

(c) provide consultation services on request to the local citizen review board; and

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(d) employ staff and provide for support services for the local citizen review board.

(2) The ~~youth court of a judicial district designated pursuant to 41-3-1002~~ *office of the supreme court administrator* shall, ~~at the time prescribed by 5-11-210~~ *in accordance with the direction of the supreme court, oversee the program established in this part and, at the time prescribed by 5-11-210,* prepare a report to the governor, the legislature, and the public regarding:

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department of family services and other agencies; and

(b) the effectiveness of the local citizen review board in bringing about permanence and appropriate care for children in the custody of the department of family services and other agencies.

(3) The youth court of a judicial district designated pursuant to 41-3-1002 shall adopt procedures that have the force of law for the administration of the local citizen review board pilot program regarding:

(a) the removal of members of the local citizen review board;

(b) the time, content, and manner in which case plans for and case progress reports on a child assigned to foster care must be provided to the local citizen review board by the department of family services, other agencies, or individuals directly responsible for the care of the child;

(c) the provision of written notice of the review to the department of family services, any other agency directly responsible for the care or placement of a child, the parents or their attorneys, foster parents, surrogate parents, mature children or their attorneys, a court-appointed attorney or special advocate of any child, any county attorney or attorney general actively involved in the case, and other interested persons. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(d) securing or excusing the presence at the review of caseworkers and other employees of the department of family services or other agencies directly responsible for the care of the child; and

(e) the manner in which the local citizen review board may remove cases from review when review is not required under federal law."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved December 23, 1993.

CHAPTER NO. 22

[SB 31]

AN ACT GENERALLY REVISING THE LAWS GOVERNING LEGISLATIVE PUBLICATIONS; ELIMINATING THE REQUIREMENT THAT LEGISLA-

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TIVE JOURNALS BE PUBLISHED AND DISTRIBUTED IN A PRINTED FORMAT; REVISING THE CONTENT OF ANCILLARY PUBLICATIONS; REVISING THE DISTRIBUTION OF SESSION LAWS; AMENDING SECTIONS 1-11-303, 5-11-201, 5-11-202, AND 5-11-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-303, MCA, is amended to read:

"**1-11-303. Authority to issue ancillary publications.** The legislative council may issue ~~such~~ supplementary and ancillary publications as it considers necessary or desirable in aid of the general use and purposes of the Montana Code Annotated and the supplements or replacements ~~thereto~~ *to the Montana Code Annotated. The legislative council shall publish a legislative review containing a summary of enactments of each session of the legislature. The legislative council shall publish a history and final status of all bills and resolutions of each session of the legislature that contains corrected voting records for bills and resolutions.*"

Section 2. Section 5-11-201, MCA, is amended to read:

"**5-11-201. Journals — how authenticated — *filing*.** The journal of the senate must be authenticated by the signature of the president and the journal of the house of representatives by the signature of the speaker. *Each authenticated journal must be filed with the secretary of state. A copy of each authenticated journal must be filed with the legislative council.*"

Section 3. Section 5-11-202, MCA, is amended to read:

"**5-11-202. Printing of ~~the house and senate journals and~~ session laws.** The legislative council shall deliver to the *appropriate* printer ~~entitled to them~~, at the earliest practicable day after the final adjournment of each session of the legislature, copies of all laws~~,~~ *and* resolutions~~, and journals~~ passed~~;~~ *or* adopted~~, or kept at~~ *during* the session~~, with proper indexes to the same~~. *The session laws must be delivered to the appropriate printer in the form provided for in 5-11-205 and 5-11-206.*"

Section 4. Section 5-11-203, MCA, is amended to read:

"**5-11-203. Distribution of ~~senate and house journals and~~ session laws — *inspection of journals*.** (1) Immediately after ~~the senate and house journals and~~ the session laws are ~~bound~~ *published*, the legislative council shall distribute them.

(2) The council shall ~~distribute~~ *make* the house and senate journals ~~as follows:~~

~~(a) to each county clerk, one copy of each for the use of the county;~~

~~(b) to the Montana state library, 20 copies of each for the use of the library and distribution to depository libraries, of which two copies will be deposited with the state historical library for security purposes;~~

~~(c) to the state law librarian, two copies of each for the use of the library and such additional copies as may be necessary for the purposes of exchange;~~

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~~(d) to the library of congress and each public officer as defined in 2-2-102, two copies of each; and~~

~~(e) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the journals were adopted, one copy of each~~ *available for inspection or copying by the public as provided in Title 2, chapter 6, part 1. The council may publish the journals in an electronic format.*

(3) The ~~council shall distribute the session laws as follows~~ *following entities may receive the number of copies of session laws listed at no cost:*

~~(a) to each cabinet level department of the executive branch of the United States, one copy each; to any agency, commission, conference, or corporation established by the United States government or any other subdivision thereof upon request and approval by the legislative council, one copy;~~

~~(b)~~*(a)* to the library of congress, eight copies;

~~(c)~~*(b)* to the state library, two copies;

~~(d)~~*(c)* to the state historical library, two copies;

~~(e)~~*(d)* to the state law librarian, four copies for the use of the library and ~~such~~ additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;

~~(f)~~*(e)* to the library of each custodial institution, one copy;

~~(g)~~*(f)* to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102(8), one copy;

~~(h)~~*(g)* to any agency, board, commission, or office of the state, other than a state officer, and to any other subdivision of the state upon request and approval by the legislative council, one copy;

~~(i)~~*(h)* to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;

~~(j)~~*(i)* to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;

~~(k)~~*(j)* to each county clerk, ~~three copies~~ *one copy* for the use of the county; and

~~(l)~~*(k)* to each county attorney and to each clerk of a district court, one copy."

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved December 23, 1993.

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CHAPTER NO. 23

[SB 32]

AN ACT PROVIDING FINANCIAL INCENTIVES TO STATE AGENCIES AND EMPLOYEES, EXCEPT DIRECTORS AND LEGISLATORS, AND TO NONEMPLOYEES WHO SAVE COSTS IN AND IMPROVE THE EFFECTIVENESS OF STATE GOVERNMENT; AMENDING SECTIONS 2-15-112, 2-18-1101, 2-18-1102, 2-18-1103, 2-18-1105, 2-18-1106, AND 17-7-304, MCA; REPEALING SECTION 2-18-1104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-1101, MCA, is amended to read:

"**2-18-1101. Definitions.** As used in this part, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system. *The term includes the president or other person in charge of a unit of the Montana university system.*

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

(4) "Group or team of employees" means a group, team, or work unit of employees working cooperatively."

Section 2. Section 2-18-1102, MCA, is amended to read:

"**2-18-1102. Creation of program.** The department shall develop and administer a statewide employee incentive award program to appropriately recognize and monetarily reward *individual* state employees ~~in a timely manner~~ *and groups or teams of employees* for ~~suggestions or inventions~~ *documented achievements and outcomes* that contribute to the efficiency, economy, or other improvement of state government by reducing the costs *or improving the effectiveness* of governmental operations."

Section 3. Section 2-18-1103, MCA, is amended to read:

"**2-18-1103. Powers and duties of the department.** The department shall:

(1) adopt rules to ~~equitably administer the employee incentive award program~~ *implement this part*;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under ~~the program~~ *this part*; *and*

~~(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first-year monetary savings;~~

~~(5) hear appeals from employees on the operation of the program;~~

~~(6)~~ prepare and submit, ~~as a part of the information required by 17-7-111~~ *in the manner provided in 5-11-210*, a list of incentive awards and the corresponding savings to the state ~~resulting from each employee's suggestion or invention~~ *and improvements in the effectiveness of state government* and ~~providing~~ *shall provide* a general review of and recommendations for improving the ~~program~~ *operation of this part*; ~~and~~

~~(7) send a copy of all suggestions or inventions submitted under this program to the office of the legislative fiscal analyst.~~"

Section 4. Section 2-18-1105, MCA, is amended to read:

"**2-18-1105. Eligibility for award.** (1) Except as provided in subsection (2), an employee, *a group or team of employees, or a nonemployee* ~~may be~~ *is* eligible for an incentive award ~~if his suggestion or invention results in~~:

(a) *for efforts that significantly contribute to documented achievements or outcomes* eliminating or reducing an agency's expenditures; or

(b) *for improving the effectiveness of state government or* improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations.

(2) (a) An employee ~~may~~ *or nonemployee is* ~~not be~~ eligible for an *individual* incentive award ~~if his suggestion or invention directly relates to his assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the department.~~

~~(b) Suggestions or inventions relating to the following matters may not be considered for awards:~~

~~(i) personnel grievances;~~

~~(ii) classification and pay of positions;~~

~~(iii) matters recommended for study or review; and~~

~~(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research~~ *unless the employee's or nonemployee's documented achievement or outcome was accomplished without significant contributions from others.*

(b) A director, as defined in 2-15-102, or a legislator is not eligible for the incentive award provided for under this part.

(3) Suggestions relating to an agency are eligible for an award from that agency's agency head even if the employee or group or team of employees, or one or more members of the group or team, do not work for that agency."

Section 5. Section 2-18-1106, MCA, is amended to read:

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"2-18-1106. Agency head to grant award — amount and source of award. (1) ~~After an agency implements an employee's suggestion or invention and the monetary savings to the state is estimated, an~~ *An* agency head~~, upon written application to and approval from the department and the incentive awards advisory council,~~ may grant an incentive award to an employee ~~whose proposal meets the requirements~~, *a group or team of employees, or a nonemployee who has made a significant contribution to achievements or outcomes in the agency, as* enumerated in 2-18-1105. *An employee or a member of a group or team of employees need not be employed by the agency that benefits from the achievement or outcome and whose agency head grants the award in order to be granted an award.*

(2) The incentive award ~~shall be 10% of the savings resulting from implementing~~ *for an achievement or outcome that does not result in cost savings that can be specifically determined a year after the achievement or outcome is implemented and the cost savings are actually incurred is the agency head's estimated dollar value of* the ~~employee's proposal for 1 year~~ *achievement or outcome*, up to a maximum of ~~$3,000~~ *$500 per employee or nonemployee or, in the discretion of the agency head, not more than 40 hours of paid leave time for an employee.* Larger awards may be proposed and submitted to the legislature for consideration.

(3) The amount of an award for an achievement or outcome producing cost savings that can be measured after the savings are actually incurred must be determined by the agency head but may not exceed:

(a) 10% of the first $100,000 of cost savings actually incurred during the 12 months following implementation of the suggestion; plus

(b) 5% of the next $100,000 of cost savings actually incurred during that 12-month period; plus

(c) 2% of the next $100,000 of cost savings aetually incurred during that 12-month period.

(4) (a) If the award is to be divided between two or more persons, the agency head shall determine the amount each person is to receive.

(b) Each person must be paid in one lump sum no later than 90 days after the end of the 12-month period following implementation of the suggestion. However, an agency head may pay an award at any time that savings can be determined.

~~(3)~~ The agency head shall pay the ~~employee~~ *award* from the agency's budget ~~in a single, lump-sum award~~. This award is in addition to the recipient's regular compensation *or leave time.*

(5) The number of awards granted by an agency in a state government fiscal year may not exceed the number equal to 20% of the average number of full-time equivalent employees in that agency during that fiscal year. The office of budget and program planning may grant an agency with less that 50 full-time equivalent employees an exemption from this limitation, but the exemption may not allow more awards than the number equal to 50% of the average number of full-time equivalent employees in the agency during the fiscal year.

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(6) Within 30 days after the end of each fiscal year, each agency shall submit to the department a list of the number of incentive awards granted, to whom each award was granted, the estimated value of each achievement or outcome, and the amount of each award."

Section 6. **Salary increase based on elimination of position.** An agency head, as defined in 2-18-1101, may, with the approval of the approving authority, as defined in 17-7-102, increase the salary for one or more positions in the agency by the amount of the salary for a position that was permanently eliminated by the agency within the last 30 days. However, an increased salary may not exceed the market salary for that position determined under Title 2, chapter 18, part 3. If an eliminated position's salary is redistributed under this section, the agency may not he given an increased appropriation in regard to the eliminated position under 2-15-112(2)(e). An increase for an employee who is in a collective bargaining unit is a negotiable subject under 39-31-305.

Section 7. Section 2-15-112, MCA, is amended to read:

"**2-15-112. Duties and powers of department heads.** (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that the governor requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department must be established in accordance with 2-15-104(2).

(h) subject to law, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

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(i) maintain a central office in Helena for the department and maintain other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's functions; and

(e) eliminate positions within the department. ~~The~~ *If the salary for an eliminated position is not redistributed as provided for under [section 6], the* office of budget and program planning shall increase the department's appropriation in the second year of the biennium by an amount equal to one-half of the savings resulting from the elimination of a position. The increased appropriation in the second year of the biennium may be expended at the discretion of the department head, provided that the expenditure is consistent with the goals and objectives of the department. The remaining one-half must revert to the original funding source. This subsection (e) does not apply to an agency allocated to a department in either year of the 2 years of the biennium for administrative purposes, as provided in 2-15-121. Section 17-7-138 does not apply to this subsection (e)."

Section 8. Section 17-7-304, MCA, is amended to read:

"**17-7-304.** *(Temporary)* **Disposal of unexpended appropriations.** (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) *and except as provided in subsection (4)* must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices in Butte, and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board

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of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) For the 2 years following the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning. (Terminates June 30, 1996—sec. 23, Ch. 787, L. 1991; sec. 5, Ch. 5, Sp. L. July 1992.)

17-7-304. *(Effective July 1, 1996)* **Disposal of unexpended appropriations.** ~~All~~ *(1) Except as provided in subsection (2), all* money appropriated for any specific purpose must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) For the 2 years following the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning."

Section 9. **Repealer.** Section 2-18-1104, MCA, is repealed.

Section 10. **Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [section 6].

Section 11. **Applicability.** [Sections 1 through 5] apply to achievements and outcomes occurring after [the effective date of this act].

Section 12. **Effective date.** [This act] is effective on passage and approval.

Section 13. **Termination.** [This act] terminates July 1, 1997.

Approved December 23, 1993.

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CHAPTER NO. 24

[SB 51]

AN ACT REVISING THE STATE EMPLOYEE PROTECTION ACT; AMENDING SECTION 2-18-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, under Mead v. McKittrick, 223 Mont. 428, 727 P.2d 517 (1986), it appears that the judicial branch of state government is immune from the provisions of the State Employee Protection Act; and

WHEREAS, the reasoning of the court in Mead v. McKittrick, that "public policy is best served when newly-elected officials are free to select their own key staff members", should apply equally to the several positions, exempt from state classification statutes, of certain elected officials as it does to newly elected judges; and

WHEREAS, the state personnel classification system does not apply to a number of other exempt positions, thereby complicating the ability to determine whether or not a person meets the minimum qualifications for a position.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-1203, MCA, is amended to read:

"2-18-1203. *(Temporary)* **General protection — job register — seniority preference.** (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, or closure of or a reduction in force at an agency is entitled to:

(a) notice of announcements for jobs for which the employee may qualify that arise within the terminating agency or within state government. Notices must be provided by the state for a period of 1 year from the date of separation.

(b) access to any job retraining and career development programs provided by the state through the Job Training Partnership Act service delivery areas dislocated worker programs, provided that the employee begins participating in a program within 1 year after the elimination of the employee's position; and

(c) inclusion in a special job register from which all agencies, *except an agency attempting to hire for a position exempt under 2-18-103 or 2-18-104,* shall attempt to hire employees prior to seeking applications from the general public. The employee must be listed in the job register according to the occupational categories in which the employee is qualified for employment.

(2) (a) An agency attempting to hire from the job register shall consider the employee's qualifications and length of state service. If two or more employees listed in the job register are equally qualified for a vacant position, the agency shall select the employee with the longest continuous state service.

(b) If there is not an employee listed on the job register who meets the job qualifications for the vacant position, the agency may hire a qualified external applicant or establish a training assignment, according to state policy. *(Terminates July 1, 1995—sec. 11, Ch. 477, L. 1993.)*"

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Section 2. **Effeetive date.** [This act] is effective on passage and approval.

Approved December 23, 1993.

CHAPTER NO. 25

[SB 27]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 3, OF THE MONTANA CONSTITUTION TO ALLOW EQUALIZATION OF PROPERTY VALUES FOR PROPERTY TAX PURPOSES TO BE BASED ON CLASSIFICATION AND ON ACQUISITION VALUES AND TO LIMIT INCREASES IN VALUATION OF PROPERTY AS PROVIDED BY LAW.

Be it enacted by the Legislature of thc State of Montana:

Section 1. Article VIII, section 3, of The Constitution of the State of Montanais amended to read:

"Section 3. Property tax administration — *valuation limitations.* *(1) (a)* ~~The~~ *Subject to the provisions of subsection (1)(b), the* state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

(b) Equalized valuation of residential and commercial property may be achieved through the classification of property and may be based on acquisition value.

(2) For property tax purposes, increases in the value of any class of property may be limited by law."

Section 2. **Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1994 by printing on the ballot the full title of this act and the following:

☐ FOR allowing property taxes to be based on acquisition value and allowing limits on annual increases in valuation of property.

☐ AGAINST allowing property taxes to be based on acquisition value and allowing limits on annual increases in valuation of property.

CHAPTER NO. 26

[HB 66]

AN ACT REVISING DRIVER'S LICENSE RENEWALS; REQUIRING THE DEPARTMENT OF JUSTICE TO NOTIFY A PERSON BY MAIL WHEN THE PERSON'S DRIVER'S LICENSE IS UP FOR RENEWAL; ALLOWING A PERSON TO RENEW A DRIVER'S LICENSE BY MAIL; AMENDING SECTION 61-5-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 61-5-111, MCA, is amended to read:

"61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In those areas where the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may not appoint an agent. The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to every qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department, except as provided in subsection (4); a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's signature in pen and ink immediately upon receipt of the license. A license is not valid until it is signed by the licensee.

(2) (a) The department shall, when any person applies *in person* for renewal of a driver's license, test the applicant's eyesight and may also in the department's discretion have the applicant demonstrate the applicant's physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle.

(b) In the case of a commercial driver's license, the department may also require that the applicant successfully complete a written examination as required hy federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 3 months of the expiration of the person's license.

(d) The department shall mail a driver's license renewal notice to a person no earlier than 60 days and no later than 30 days prior to the expiration date of the person's license.

(e) (i) A person may renew a driver's license by mail, without the tests provided for in subsection (2)(a), for a 4-year period, provided that the person:

(A) has not accumulated five or more points on the person's driving record for the 4 years immediately preceding the expiration date; and

(B) submits a sworn affidavit on a form prescribed by the department, attesting to the person's physical and mental ability to safely operate a motor vehicle.

(ii) The department may not renew a driver's license by mail for more than one renewal period. At the expiration of the mail renewal period, a person shall apply in person for a renewal.

(iii) A person who holds a probationary or restricted license may not renew the license by mail.

(3) A license expires on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

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(4) A license issued to a person under the age of 21 years must contain a photograph of the licensee's profile.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving. Upon renewal the department may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form must be issued subject to other provisions of the laws of Montana.

(6) It is unlawful for any person to have in the person's possession or under the person's control more than one Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle until the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle until the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial driver's license".

(7) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — $4 per year or fraction of a year;

(b) motorcycle endorsement — 50 cents per year or fraction of a year;

(c) commercial driver's license:

(i) interstate — $5 per year or fraction of a year;

(ii) intrastate — $3.50 per year or fraction of a year.

~~(8) A license designated as a chauffeur's license as of January 1, 1988, is valid as a commercial driver's license until the expiration of the license.~~

~~(9)~~*(8)* The holder of a chauffeur's license may convert the chauffeur's license to a commercial driver's license by paying the appropriate fee covering the remainder of the life of the license and complying with the requirements established by the department.

~~(10)~~*(9)* The holder of a valid chauffeur's license who is renewing and wishes to obtain a commercial driver's license may do so upon paying the appropriate fees and complying with the requirements established by the department.

(10) A person may not renew a driver's license by mail until the person has reeeived a digital license issued by the department. As used in this subsection, the term "digital license" means a lieense having a computer-imaged photograph and signature."

Section 2. **Effective date.** [This act] is effective July 1, 1994.

Approved December 27, 1993.

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CHAPTER NO. 27

[HB 50]

AN ACT RESTRUCTURING THE PROPERTY VALUATION AND ASSESSMENT FUNCTIONS OF THE DEPARTMENT OF REVENUE; GENERALLY REVISING PROPERTY TAX ASSESSMENT AND LEVY PROCEDURES TO CONFORM WITH PRACTICE AND ADVANCED TECHNOLOGY FOR ASSESSMENT, COMPUTATION, AND LEVY OF PROPERTY TAXES; MAKING THE DEPARTMENT OF REVENUE RESPONSIBLE FOR ASSESSMENT, COMPUTATION, AND LEVY OF CERTAIN TAXES; ELIMINATING THE STATUTORY DUTIES OF COUNTY ASSESSORS; ESTABLISHING A SPECIAL PROPERTY VALUATION IMPROVEMENT FUND; ASSESSING LIVESTOCK AS OF FEBRUARY 1; CLARIFYING THE ELIGIBILITY OF COUNTY ASSESSORS AND DEPUTY ASSESSORS FOR THE RETIREMENT INCENTIVE PROGRAM; REQUIRING THE DEPARTMENT OF REVENUE TO PAY RETIREMENT INCENTIVE COSTS FOR COUNTY ASSESSORS AND DEPUTY ASSESSORS; PERMITTING COUNTY ASSESSORS TO BECOME EMPLOYEES OF THE DEPARTMENT OF REVENUE; CREATING AN ADVISORY COMMITTEE ON THE VALUATION AND TAXATION OF MOTOR VEHICLES AND MOBILE HOMES; REDUCING THE FISCAL 1995 GENERAL FUND APPROPRIATION TO THE DEPARTMENT OF REVENUE; APPROPRIATING FUNDS FROM THE PROPERTY VALUATION IMPROVEMENT FUND TO THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 2-6-110, 5-18-115, 7-3-1301, 7-3-1309, 7-3-4252, 7-4-2401, 7-4-2505, 7-4-3007, 7-6-4409, 7-6-4410, 7-6-4412, 7-6-4413, 7-8-2513, 7-12-4181, 7-12-4184, 7-13-233, 7-13-2304, 7-13-2306, 7-13-2527, 7-13-2528, 7-13-4309, 7-13-4507, 7-14-2735, 7-14-2738, 7-14-2739, 7-14-2740, 7-14-2742, 7-14-2743, 7-14-2744, 7-14-2745, 7-14-2755, 15-1-101, 15-1-111, 15-1-201, 15-1-202, 15-1-205, 15-1-303, 15-6-207, 15-7-102, 15-7-106, 15-7-107, 15-7-208, 15-7-209, 15-7-304, 15-7-308, 15-7-402, 15-7-403, 15-8-102, 15-8-104, 15-8-111, 15-8-112, 15-8-113, 15-8-115, 15-8-201, 15-8-202, 15-8-205, 15-8-301, 15-8-303, 15-8-304, 15-8-307, 15-8-402, 15-8-601, 15-8-701, 15-8-702, 15-8-704, 15-8-707, 15-8-709, 15-8-710, 15-9-101, 15-9-103, 15-10-202, 15-10-203, 15-10-205, 15-10-206, 15-10-305, 15-15-101, 15-15-102, 15-15-103, 15-16-101, 15-16-104, 15-16-105, 15-16-115, 15-16-117, 15-16-203, 15-16-302, 15-16-305, 15-16-402, 15-16-504, 15-16-611, 15-17-124, 15-17-317, 15-17-911, 15-18-412, 15-23-104, 15-23-106, 15-23-107, 15-23-115, 15-23-507, 15-23-607, 15-23-702, 15-23-703, 15-23-704, 15-23-803, 15-23-804, 15-24-104, 15-24-302, 15-24-801, 15-24-901, 15-24-902, 15-24-903, 15-24-904, 15-24-905, 15-24-906, 15-24-920, 15-24-921, 15-24-1402, 15-24-1501, 15-24-1802, 15-24-1902, 15-24-2002, 15-24-2302, 15-36-104, 15-37-203, 15-51-104, 15-59-104, 15-59-203, 19-3-908, 20-9-122, 50-61-112, 61-3-207, 61-3-303, 61-3-345, 61-3-503, 61-12-402, 70-23-304, 70-23-305, 76-2-102, 76-13-207, 76-15-518, 77-1-501, 77-1-503, 77-1-504, 77-2-313, 80-2-203, 80-2-204, 80-2-206, 80-2-207, 80-2-225, 81-2-302, 81-4-511, 81-4-513, 81-4-516, 81-7-303, 85-7-2136, 85-8-601, AND 85-9-603, MCA; AND SECTION 15, CHAPTER 623, LAWS OF 1993; REPEALING SECTIONS 7-2-2753, 7-6-2540, 15-1-403, 15-1-506, 15-7-213, 15-8-103, 15-8-105, 15-8-106, 15-8-114, 15-8-302, 15-8-705, 15-8-706, 15-9-102, 15-10-301, 15-10-302, 15-10-303, 15-10-304, 15-10-306, 15-10-307, 15-10-308, 15-16-111, 15-16-112, 15-16-113, 15-16-114, AND 15-30-228, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

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STATEMENT OF INTENT

With the adoption of the 1972 Montana constitution, the state assumed responsibility for the appraisal, assessment, and valuation of property for property tax administration. Although the state was granted this new responsibility and authority by the constitution, county assessors were retained by local governments to assist the state in the assessment function, acting as agents of the department of revenue. Through the implementation and use of electronic data processing and other technological advances, many of the assessment functions previously performed by county assessors have changed dramatically.

Recognizing the need to make state and local government more responsive and efficient, it is the intent of the legislature that all appraisal and assessment duties relating to property taxation be assigned to the department of revenue. This action transfers from county assessors to the department the responsibility and authority to perform any assessment functions.

Acknowledging the talents and skills of county assessors, it is the intent of the legislature that current county assessors may choose to become employees of the department of revenue and that their respective counties may consolidate the office of county assessor with another county office.

If the current county assessor does not choose to become a state employee and the county chooses to retain the separate office of county assessor, the department of revenue shall, with the consent of the county assessor, contract with the county for the county assessor to perform specific duties as assigned by the department. If under this agreement the county assessor produces satisfactory work quality and output for the department, the department may continue the contract as long as the person currently serving as county assessor retains the position. The department may also contract for any successor county assessor in counties that retain the separate office of county assessor to perform duties assigned by the department.

It is further the intent of the legislature that all present deputy county assessors become employees of the department of revenue, with the same preferences and benefits as other state employees.

To allow for the efficient administration of the property tax appraisal and assessment, it is the intent of the legislature that the department of revenue use other efficiency measures, such as creating regional county appraisal and assessment offices, adjusting office hours of department field offices, and restructuring the organizational structure of the property assessment division.

The legislature grants to the department of revenue general rulemaking authority for the accomplishment of these administrative changes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-110, MCA, is amended to read:

"2-6-110. Electronic information — public access. (1) Except as provided by law, each person is entitled to a copy of information compiled, created, or otherwise in the custody of public agencies that is in electronic format, subject to the same restrictions applicable to the information in printed

form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic information.

(2) Except as provided by law *and subject to subsection (4)*, an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media; or

(b) expenses incurred by the agency as a result of mainframe processing charges or other out-of-pocket expenses directly associated with the request for information.

(3) An agency may also charge an hourly fee for each hour, or fraction of an hour, after one-half hour of copying service has been provided. The hourly fee may not exceed the hourly rate for the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312.

(4) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the computer-assisted mass appraisal system. The fee must be charged to persons requesting the data base or any part of the data base from the mass appraisal system. The department may not charge a fee for information provided from this data base to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property. All fees received by the department under this subsection must be deposited in a state special revenue fund as provided in [section 2].

~~(4)~~*(5)* For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

~~(5)~~*(6)* This section does not authorize the release of electronic security codes giving access to private information."

Section 2. **Property valuation improvement fund.** There is an account in the state special revenue fund to be used by the department for increasing the efficiency of the property appraisal, assessment, and taxation process through improvements in technology and administration. The department shall deposit fees collected pursuant to 2-6-110(4) in the account.

Section 3. Section 5-18-115, MCA, is amended to read:

"**5-18-115. Report to revenue oversight committee.** The department of revenue shall *at the request of the revenue oversight committee* report to the revenue oversight committee ~~at every revenue oversight committee meeting as to its~~ *on the department's* progress in completing the revaluation cycle."

Section 4. Section 7-3-1301, MCA, is amended to read:

"**7-3-1301. Department of finance.** (1) The director of finance ~~shall have~~ *has* charge of the administration of the financial affairs of the municipality, including the keeping and supervision of all accounts; the custody and disbursement of municipal funds and money; the making of special assessments

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~~and the assessment of property for taxation~~; the issuance of licenses; the collection of license fees; the control over expenditures; the purchase, storage, and distribution of supplies needed by the municipality; and ~~such~~ other duties as the commission may by ordinance require.

(2) ~~He shall also have all~~ *The director of finance has all* powers and *shall* perform all duties imposed upon county clerk and recorders and auditors by general law.

(3) All of the provisions of the general laws of the state ~~in~~ *with* respect to budgets for cities and counties ~~shall~~ apply to ~~such~~ *the* municipality."

Section 5. Section 7-3-1309, MCA, is amended to read:

"**7-3-1309. Division of assessment.** (1) There ~~shall~~ *may* be in the department of finance a division of assessment, the head of which ~~shall~~ *may* be the assessor. The ~~assessor and his deputies shall have~~ *division of assessment has* the powers~~, qualify in the manner~~, *of* and *shall* perform the duties prescribed for county assessors ~~and deputy assessors~~ by general law.

(2) The ~~assessor shall also be~~ *division of assessment is* in charge of the preparation of all special assessments for public improvements, the giving of notice of ~~such~~ *the* assessments to property owners and purchasers of property under contracts for deed, and the certification of all unpaid assessments to the director of finance."

Section 6. Section 7-3-4252, MCA, is amended to read:

"**7-3-4252. Powers of council.** The council ~~shall have and possess~~ *has* and ~~the council and its members~~ shall exercise all executive, legislative, and judicial powers and duties ~~now had~~, possessed, and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, board of library trustees, attorney, ~~assessor~~, treasurer, auditor, city engineer, and other executive and administrative offices in cities organized under the general municipal incorporation laws."

Section 7. Section 7-4-2401, MCA, is amended to read:

"**7-4-2401. Deputy officers.** (1) ~~Every~~ *Each* county and township officer, except *a* justice of the peace *and the county assessor*, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his *the* office. All compensation or salary of any deputy or assistant ~~shall~~ *must* be as provided in this code.

(2) The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing and filed in the office of the county clerk *and recorder*."

Section 8. Section 7-4-2505, MCA, is amended to read:

"**7-4-2505. Amount of compensation for deputies and assistants.** (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall ~~have the power to~~ fix the compensation allowed any deputy or assistant of the following officers:

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(a) clerk and recorder;

(b) clerk of the district court;

(c) treasurer;

~~(d) assessor;~~

~~(e)~~*(d)* county attorney;

~~(f)~~*(e)* auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1), other than a deputy county attorney, may not be more than 90% of the salary of the officer under whom ~~such~~ *the* deputy or assistant is serving. The salary of a deputy county attorney, including longevity payments provided in 7-4-2503(3)(d), may not exceed the salary of the county attorney under whom ~~he~~ *the deputy* is serving.

(b) ~~Where any~~ *If a* deputy or assistant is employed for a period of less than 1 year, the compensation of ~~such~~ *the* deputy or assistant ~~shall~~ *must* be for the time ~~so~~ employed, provided the rate of ~~such~~ compensation ~~shall~~ *may* not be in excess of the rates ~~now~~ provided by law for similar deputies and assistants ~~except as provided herein~~.

~~(c) Deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.~~"

Section 9. Section 7-6-4409, MCA, is amended to read:

"**7-6-4409. Determination of assessments.** (1) The assessment made by the department of revenue ~~or its~~ agent for state and county purposes is the basis of taxation for cities and towns for the property situated ~~therein~~ *in the city or town*.

(2) It is the duty of the department ~~or its agent~~, in making the ~~assessment book~~ *property tax record*, to *separately and distinctly* designate ~~therein~~ the real and personal property~~, stating each separately and distinctly,~~ situated in cities and towns within each county in the state."

Section 10. Section 7-6-4410, MCA, is amended to read:

"**7-6-4410. ~~Assessment book~~ *Property tax record* to be furnished to certain municipalities.** ~~(1)~~ On or before the second Monday in July of each year, the department ~~or its agent must~~ *of revenue shall* furnish *a certified copy of the property tax record* to all cities of the third class and towns within each county ~~which shall~~ *that* make written request for the ~~same~~ *record* on or before the first Monday in April of each year. ~~a complete certified copy of the assessment book, so far as such assessment book pertains~~ *The property tax record must pertain* to property within the limits of ~~said~~ *the requesting* cities and towns.

~~(2) The department may charge such cities and towns 5 cents per folio of 100 words for each copy of the assessment book furnished such cities and towns as provided in subsection (1).~~"

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Section 11. Section 7-6-4412, MCA, is amended to read:

"**7-6-4412. Preparation of municipal ~~assessment book~~ *property tax record*.** (1) ~~It is the duty of the~~ *The* county clerk, on or before the first Monday in October in each year, ~~to make a duplicate of the corrected assessment book for~~ *shall provide a copy of the property tax record to* each city in the county~~,~~ *if* the *city* treasurer ~~of which~~ is required by *an* ordinance of ~~such~~ *the* city to collect its taxes. ~~Such book shall be styled "The Duplicate Assessment Book for the City of ...." and must contain~~ *The record must be* a copy of the corrected ~~assessment book~~ *property tax record* of the county, as far as ~~the same~~ *it* refers to city property.

(2) ~~Such duplicate~~ *The copy* must be ~~made~~ in a ~~book furnished by the city clerk of each city in the county and ruled in columns specifying~~ *form that itemizes* the different funds~~,~~ so that the city treasurer may extend the ~~same~~ *funds* and collect the taxes.

~~(3) The county clerk must deliver such duplicate assessment book to each city treasurer and take his receipt therefor, having attached thereto the affidavit similar to the one set out in 15-10-306.~~"

Section 12. Section 7-6-4413, MCA, is amended to read:

"**7-6-4413. Collection of taxes.** (1) Except in *the* case of ~~such~~ cities of the first, second, and third classes ~~as may~~ *that* provide by ordinance for the city treasurer to collect the taxes from ~~such~~ *the* corrected ~~assessment book~~ *property tax record*, the county treasurer of each county ~~must~~ *shall* collect the tax levied by all cities and towns in ~~his~~ *the* respective county.

(2) The county treasurer ~~must~~ *shall* collect ~~such~~ *the* city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes and with the same penalties and interest in case of delinquency."

Section 13. Section 7-8-2513, MCA, is amended to read:

"**7-8-2513. Appraisal of land required — exception.** (1) The county commissioners shall, before they sell, exchange, or lease lands under the provisions of this part, cause ~~such~~ *the* lands to be appraised by a qualified, independent person, who may be but is not required to be an ~~agent~~ *employee* of the department of revenue, to determine the value of ~~such~~ *the* lands for the purpose of ~~such~~ *the* sale, exchange, or lease.

(2) For the purposes of this section, a renewal of the lease ~~shall be~~ *is* considered an initial lease if the renewal is for a term exceeding 5 years.

(3) The board of county commissioners may lease mineral interests in land, whether ~~such~~ *the* interests are severed or not, without an appraisal as required by subsection (1)."

Section 14. Section 7-12-4181, MCA, is amended to read:

"**7-12-4181. Collection of district assessments by county clerk — certification.** (1) Except as provided in 7-12-4183, in ~~every~~ *each* city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4407 immediately after the second Monday of August of each year, it ~~shall~~

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~~be~~ *is* the duty of the city treasurer or town clerk to certify, at the same time *that* the copy of the resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk as required by 7-6-4407, to the ~~county assessor of the county in which such city or town is situated~~ *department of revenue* all special assessments and taxes levied and assessed in accordance with any of the provisions of ~~this part and~~ part 42 *and this part*.

(2) The ~~county assessor~~ *department of revenue* shall ~~thereupon~~ enter ~~same~~ *the special assessments and taxes* upon the ~~assessment roll of~~ *property tax record for* the county. The county treasurer ~~must~~ *shall* collect all ~~such~~ taxes and assessments in the same manner and at the same time as ~~said~~ taxes for general, municipal, and administrative purposes are collected ~~by him~~."

Section 15. Section 7-12-4184, MCA, is amended to read:

"**7-12-4184. Reinstatement of delinquent assessment.** (1) Whenever any special assessment or installment is delinquent, is declared to be delinquent by appropriate resolution of the city or town council, and is certified to the county clerk and county treasurer for collection as ~~herein~~ provided *in this part*, the city or town council may, nevertheless, at its option, by appropriate resolution, order the delinquent assessment to be withdrawn from the county treasurer, canceled from ~~his~~ *the county treasurer's* records and proceedings, and reinstated in the office of the city treasurer and on the ~~assessment book thereof~~ *property tax record* upon the payment to the city treasurer of the assessment or the installment and interest up to date.

(2) The certified copy of the resolution of the council with reference to ~~such~~ *the* payment, withdrawal, and reinstatement, filed with the county treasurer, is authority for the county treasurer to cancel and withdraw the delinquent special assessment or installment.

(3) The withdrawal and reinstatement may be made at any time before or after sale of the property for delinquent taxes and before a tax deed ~~therefor~~ is executed."

Section 16. Section 7-13-233, MCA, is amended to read:

"**7-13-233. Procedure to collect service charge.** (1) The service charge may be imposed for:

(a) any fiscal year for which the district establishes a budget or incurs costs related to planning or constructing a solid waste management facility; or

(b) services to begin within 12 months.

(2) The board shall certify to the county commissioners of the county served by the solid waste management district the service charge needed for the current fiscal year, the due but unpaid service charges, and a description of the property against which the service charges are to be levied.

(3) The department of revenue ~~or its agent~~ shall ensure that the amount of the service charge is placed on property tax notices and that the service charge is collected with property taxes.

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(4) The board may establish a system for collecting service charges other than by tax notices to property owners issued by the department of revenue. The board may collect the service charge more often than property taxes are collected.

(5) If not paid, the service charge becomes delinquent and becomes a lien on the property, subject to the same penalties and the same rate of interest as property taxes."

Section 17. Section 7-13-2304, MCA, is amended to read:

"7-13-2304. **Notice of intention to levy tax.** (1) When the written estimate of the amount of money required has been delivered te the board of county commissioners, said *the* board shall give notice of its intention to levy and collect a tax sufficient for the payment ~~thereof~~ *of bond obligations and other expenses.*

(2) ~~Such~~ *The* notice shall *must* be given:

(a) by posting ~~notice thereof~~ in five public places within the county and within the boundaries of the lands upon which the tax is to be levied;

(b) by publishing a copy of the notice as provided in 7-1-2121; and

(c) by forwarding, by mail as provided in 7-1-2122 at least 10 days prior to the hearing provided for in 7-13-2306(4), a copy of the notice addressed to the owners and the purchasers under contracts for deed of taxable real property within the district as shown by the current ~~assessment book on file in the office of the assessor of~~ *property tax record maintained by the department of revenue for* the county or counties the boundaries of which include taxable real property of the district."

Section 18. Section 7-13-2306, MCA, is amended to read:

"7-13-2306. **Contents of notice — hearing and protest.** The notice required by 7-13-2304 ~~shall~~ *must* state:

(1) the amount of money required;

(2) the method of assessment ~~which~~ *that* the board or boards of county commissioners intend to employ;

(3) the boundaries or description of the lands to be assessed, which ~~boundaries or description~~ may be recited in full or may be given by reference to any instrument on file or of record in the office of the clerk and recorder~~,~~ *or* treasurer~~, or assessor~~ of the county or counties in which the district or part ~~thereof~~ *of the district* is situated *or with the department of revenue*; and

(4) the time when and the place where the board or boards of county commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining ~~thereto~~ *to the tax.*"

Section 19. Section 7-13-2527, MCA, is amended to read:

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"7-13-2527. List of property owners. (1) A copy of the order creating the district must be delivered to the ~~county assessor of each county within the district~~ *department of revenue*.

(2) The ~~assessor~~ *department* shall, on or before August 1 of each year, prepare and certify a list of all persons owning class four property within the district and deliver a copy of the list to the board of trustees of the district."

Section 20. Section 7-13-2528, MCA, is amended to read:

"7-13-2528. Financial administration of district. (1) The board of trustees shall, from any list prepared by the ~~county assessor~~ *department of revenue* as required by 7-13-2527, remove the names of any persons who have claimed exemption under this part prior to September 1 and shall prepare a budget for the expenses for the next year.

(2) The budget, together with the list of ~~such~~ persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this part, ~~shall~~ *must* be presented by September 1 to the board of county commissioners, who shall levy the tax requested by ~~said~~ *the* trustees. The board shall levy ~~such~~ *the* tax in accordance with the *trustees'* request ~~herein mentioned~~. In preparing the budget, the board of trustees shall maintain separate budgets for television services and for FM translator services and shall specify the tax to be levied on property owners for these services. The tax ~~shall~~ *must* be certified to the county clerk and recorder, *who shall notify the department of revenue for entry of the tax* ~~and entered~~ on the ~~assessment books~~ *property tax record* as against ~~such~~ *those* persons and collected by the county treasurer as all other taxes are collected.

(3) The county treasurer ~~shall be~~ *is* the treasurer for ~~said~~ *the* district and *shall* hold ~~said~~ *the* taxes, as collected, in a separate fund to be disbursed ~~by him~~ upon warrants drawn by the trustees, at least two of whom shall sign any warrant for the disbursement of ~~such~~ *the* funds by the county treasurer."

Section 21. Section 7-13-4309, MCA, is amended to read:

"7-13-4309. Procedure to collect sewer charges. (1) The sewer charges ~~shall~~ *must* be collected by the treasurer.

(2) On or before July 15 of ~~each~~ year, notice ~~shall~~ *must* be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to July 1 by the city or town. ~~Said~~ *The* notice ~~shall~~ *must* specify the assessment owing and in arrears at the time of giving ~~such~~ notice. ~~Such~~ *The* notice ~~shall~~ *must* be in writing and ~~shall~~ *must* state the amount of ~~such~~ arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance, and that unless the ~~same~~ *amount* is paid by August 15 ~~thereafter~~, the ~~same~~ *amount* will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent ~~as above specified~~. The notice ~~shall~~ *must* also state that the city or town may by suit collect past-due assessments, interest, and penalties, as a debt owing the city or town, in any court of competent jurisdiction, including ~~the~~ city court. ~~Such~~ *The* notice may be delivered to ~~such~~ *the* owner personally or by letter addressed to ~~such~~ *the* owner at the post-office address of ~~such~~ *the* owner as ~~recorded in the office of~~

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~~the county assessor~~ *shown in property tax records maintained by the department of revenue.*

(3) (a) Except as provided in subsection (3)(b), on September 1, the city treasurer or town clerk shall certify and file with the ~~county assessor~~ *department of revenue* a list of all lots or parcels of real estate, giving the legal description ~~thereof~~ *of the lot or parcel,* to the owners of which notices of arrearage in payments were given ~~as above specified~~ and which arrearage ~~still~~ remains unpaid and stating the amount of ~~such~~ *the* arrearage, including any penalty and interest. The ~~county assessor~~ *department of revenue* shall insert the ~~same~~ *amount* as a tax against ~~such~~ *the* lot or parcel of real estate.

(b) In cities where the council ~~has~~ provided by ordinance for the collection of taxes, the city treasurer shall ~~insert such~~ *collect the* delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

(4) A city or town may, in addition to pursuing the collection of assessments in the same manner as a tax, bring suit in any court of competent jurisdiction, including city court, to collect the amount due and owing, including penalties and interest, as a debt owing the city or town."

Section 22. Section 7-13-4507, MCA, is amended to read:

"**7-13-4507. Notice of resolutions of intention and concurrence.** (1) The commissioners shall give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and publish a notice that:

(a) describes the local water quality program that would be implemented in the local water quality district;

(b) specifies the initial proposed fees to be charged;

(c) designates the time and place where the commissioners will hear and decide upon protests made against the operation of the proposed district; and

(d) states that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice must be published as provided in 7-1-2121 and must also be posted in three public places within the boundaries of the proposed district.

(3) The commissioners shall mail to all owners of proposed fee-assessed units, as listed in the ~~county assessor's office~~ *property tax record maintained by the department of revenue,* a postcard that identifies the location where the resolution of intention, resolution of concurrence, and protest forms may be obtained."

Section 23. Section 7-14-2735, MCA, is amended to read:

"**7-14-2735. Lien arising from assessments.** (1) All of the lands in each part ~~shall be~~ *are* subject to a lien for all of the assessments of that part until they have been paid.

(2) The assessment ~~so made shall be~~ *is* a first lien on the land described in the assessment roll *register.*"

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Section 24. Section 7-14-2738, MCA, is amended to read:

"**7-14-2738. Preparation of assessment ~~roll~~ *register*.** (1) When the order for improvement and construction has been made by the board, the committee and the ~~county assessor~~ *department of revenue* shall apportion the estimated cost and expenses to the land in the district.

(2) Within 30 days before the letting of the contract, the ~~assessor~~ *department* shall report to and file with the board and the treasurer an assessment ~~roll~~ *register* in duplicate. It ~~shall~~ *must* contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known."

Section 25. Section 7-14-2739, MCA, is amended to read:

"**7-14-2739. Notice of preparation of assessment ~~roll~~ *register*.** As soon as the assessment ~~roll~~ *register* is reported and filed, the board shall publish notice as provided in 7-1-2121. The notice ~~shall~~ *must* notify all persons interested that the assessment ~~roll~~ *register* has been filed and require them to appear at the office of the board at the county seat at a time not less than 15 days from the date of the last publication of the notice to make objections."

Section 26. Section 7-14-2740, MCA, is amended to read:

"**7-14-2740. Hearing on assessment ~~roll~~ *register*.** At the time fixed, the board ~~and the assessor~~ shall meet. If no objections have been filed, the board shall make an order confirming the assessment ~~roll~~ *register*. If written objections, properly verified, have been filed, the board shall hear the objections, receiving ~~any~~ testimony from any party involved."

Section 27. Section 7-14-2742, MCA, is amended to read:

"**7-14-2742. Correction of errors — approval of assessment ~~roll~~ *register*.** (1) After the hearing, the board shall make ~~such~~ *any* corrections as appear just to apportion the assessment to the benefit to be received.

(2) ~~It~~ *The board* shall then make and enter an order approving and certifying the assessment ~~roll~~ *register*."

Section 28. Section 7-14-2743, MCA, is amended to read:

"**7-14-2743. Levy of assessments.** With the aid of the ~~assessor~~ *department of revenue*, the board shall levy and assess the amounts on the assessment ~~roll~~ *register* against the parcels of land or parts ~~thereof~~ *of parcels. The department shall enter in the property tax record the amounts levied and assessed.*"

Section 29. Section 7-14-2744, MCA, is amended to read:

"**7-14-2744. Mode of payment of assessment — immediate payment.** (1) If immediate payment is chosen, the board shall deliver the assessment ~~roll~~ *register* to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in his *the clerk's* office and immediately deliver the other to the treasurer.

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(2) The treasurer shall publish a notice for 2 consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(3) Failure to mail notice ~~shall~~ *is* not ~~be~~ fatal to the assessment when it has been published.

(4) The notice ~~shall~~ *must* state the following:

(a) The assessment ~~roll~~ *register* has been certified to the treasurer for collection.

(b) Unless payment is made within 30 days from the date of the notice, the payment will become delinquent and ~~shall bear~~ *bears* interest at the rate of 10% per annum.

(c) If the assessment is not paid before it becomes delinquent, a penalty of 5% ~~shall~~ *must* be added, as well as the interest on the annual tax roll for the current year.

(d) The interest and penalty ~~shall~~ *must* be collected together with ~~such~~ *the* additional charges as are authorized to be charged and collected on other delinquent taxes.

(e) The land assessed ~~shall~~ *must* be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes."

Section 30. Section 7-14-2745, MCA, is amended to read:

"7-14-2745. Mode of payment of assessment — installment payments. (1) Installment payments ~~shall~~ *must* be made in six equal portions, in 1, 2, 3, 4, 5, and 6 years.

(2) Payments ~~shall~~ *must* be in the form of bonds ~~which shall~~ *that* draw interest, not to exceed the limitations of 17-5-102, per annum from the date they are issued until they are paid.

(3) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment ~~roll~~ *register*.

(4) The board ~~and the assessor~~ shall, at the time of levying the assessment and in ~~their~~ *the* order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order ~~shall~~ *must* specify the number of installments ~~that shall~~, *which must* be equal to the number of years for which the bonds may run.

(5) Each year ~~thereafter~~, the treasurer shall collect one of the installments, together with the interest due ~~thereon~~ *on that installment* and the interest due on the *future* installments ~~thereafter to become due~~.

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(6) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment ~~shall be likewise~~ *are* applicable to installment payments."

Section 31. Section 7-14-2755, MCA, is amended to read:

"7-14-2755. Notice of use of bonds. (1) If the board provides that payment of costs ~~shall~~ *must* be made by the issuance of bonds, the treasurer shall publish notice for 2 consecutive weeks and mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice ~~shall~~ *must* state that:

(a) the assessment ~~roll~~ *register* has been certified to the treasurer for collection;

(b) unless payment of the whole amount of the assessment is made within 30 days from the date of the notice, special bonds ~~shall~~ *must* be issued against the lands in the district for the payment of the assessment;

(c) if the bonds are issued, they will be payable in annual installments with interest ~~thereon~~ *on the bonds* at the rate provided in the bonds."

Section 32. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and *the* profit margin shown in national appraisal guides and manuals or the valuation schedules of the department ~~of revenue~~.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except ~~that~~ property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and~~, beginning January 1, 1994,~~ forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as ~~his~~ stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) "Department" means the department of revenue provided for in 2-15-1301.

~~(g)~~*(h)* The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

~~(h)~~*(i)* The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department ~~of revenue or its agent~~ determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation ~~which~~ *that* cannot feasibly be relocated and only when the wheels are removed.

~~(i)~~*(j)* The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on ~~such~~ leasehold improvements are a lien only on sueh *the* leasehold improvements.

~~(j)~~*(k)* The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, and domestic ungulates.

~~(k)~~*(l)* The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

~~(l)~~*(m)* The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

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~~(m)~~*(n)* The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

~~(n)~~*(o)* The term "property" includes ~~moneys~~ *money*, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition ~~must~~ *may* not be construed to authorize the taxation of the stocks of any company or corporation when the property of ~~such~~ *the* company or corporation represented by the stocks is within the state and has been taxed.

~~(o)~~*(p)* The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining ~~thereto~~ *to the mines, minerals, quarries, and timber.*

~~(p)~~*(q)* "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

~~(q)~~*(r)* The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" ~~shall be deemed to include~~ *includes* a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification ~~shall mean~~ *means* the state tax appeal board."

Section 33. Section 15-1-111, MCA, is amended to read:

"15-1-111. Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation. (1) Prior to September 1, 1990, the department's agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:

(a) the number of mills levied in the jurisdiction for ~~taxable~~ *tax* year 1989;

(b) the number of mills levied in the jurisdiction for ~~taxable~~ *tax* year 1990;

(c) the total taxable valuation for ~~taxable~~ *tax* years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and

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(d) the total taxable valuation for ~~taxable~~ *tax* years 1989 and 1990, reported separately for each year, of all personal property secured by real property.

(2) After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145. The department shall total the amounts for all taxing jurisdictions within the county.

(3) (a) The department shall remit to the county treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31.

(b) For tax year 1993 and for each tax year thereafter, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(4) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(5) For the purposes of this section and subject to subsection (7), "taxing jurisdiction" means a jurisdiction levying mills against personal property and includes but is not limited to a county, city, school district, tax increment financing district, *and* miscellaneous taxing district~~,~~ and the state of Montana.

(6) The amounts necessary for the administration of this section are statuterily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on personal property.

(7) The following apply to taxing jurisdictions that were altered after tax year 1989:

(a) A taxing jurisdiction that existed in tax year 1989 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1989 and that is split into two or more taxing jurisdictions is entitled to reimbursement based on the portion of 1989 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1989 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 1989 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (7)(b)."

Section 34. Section 15-1-201, MCA, is amended to read:

"**15-1-201. Administration of revenue laws.** (1) (a) The department ~~of revenue shall have and exercise~~ *has* general supervision over the

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administration of the assessment and tax laws of the state, except Title 15, chapter 70, and over ~~its agents and~~ any officers of municipal corporations having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) The department ~~of revenue~~ shall adopt rules specifying which types of property within the several classes are considered "comparable property" as described in 15-1-101.

(c) The department shall also adopt rules ~~specifying the methodology to be used in conducting sales assessment ratio studies and in~~ *for* determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations ~~as to~~ *concerning* their duties, with respect to taxation, under the ~~statutes~~ *laws* of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information about the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and other information as may be needful and helpful in the work of the department in a form prescribed by the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and *to* aid the department in its work. The department shall examine the records of all municipal corporations for purposes considered needful or helpful."

Section 35. Section 15-1-202, MCA, is amended to read:

"**15-1-202. Enforcement of revenue laws.** (1) The department ~~of revenue~~ may direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents for failure or neglect to comply with the provisions of the statutes, except Title 15, chapter 70, governing the revenue of the state or municipal corporations. The department shall cause complaints to be made against ~~assessors and other~~ public officers to tbe proper district court for their removal from office for official misconduct~~,~~ *or* neglect of duty~~, or failure of an assessor to comply with the certification or continuing education requirements of 15-8-106~~.

(2) The department may require county attorneys to assist in the commencement and prosecution of actions and proceedings in their respective counties for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws ~~or for failure of an assessor to comply with the certification or continuing education requirements of 15-8-106~~.

~~(3) Nothing in this section affects the authority of any other person, public officer, or public body to pursue any other legal process for the removal from~~

~~office of an assessor who forfeits office for failure to comply with certification and continuing education requirements.~~"

Section 36. Section 15-1-205, MCA, is amended to read:

"**15-1-205. Biennial report — contents.** (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value, in tabulated form, with recommendations for improvements in the system of taxation, together with alternative measures as may be formulated for the consideration of the legislature. The department shall follow the provisions of 5-11-210 in preparing the report.

(2) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department ~~or its agent~~ is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(3) The data described in subsection (2), if reported, must be related to the income and age of the taxpayer whenever the information is available.

(4) (a) When reporting the data described in subsection (2)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(5) In reporting the data described in subsection (2), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(6) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

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(7) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(8) The department shall include the inheritance tax information required by 72-16-202 in a separate section of the report."

Section 37. Section 15-1-303, MCA, is amended to read:

"**15-1-303. Penalty for refusal to furnish information.** (1) If a person refuses to allow inspection of any books or records when requested by the department ~~or its authorized agent~~ or refuses or neglects to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property, the department shall make a determination and assessment of the property as in its judgment appears to be just and equitable and may add to the assessment an amount not to exceed 20% of the assessment as a penalty for the refusal or neglect. The department shall immediately notify the person assessed of its action, either by certified mail or by personal service of the notice.

(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 15 days after receipt of the assessment, the taxpayer may request an informal conference with ~~the agent of~~ the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of the failure to supply the information requested by the department. Within 10 days after the conference, ~~the agent of~~ the department shall notify the taxpayer by certified mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of the failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, the taxpayer may appeal to the county tax appeal board within 20 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of the failure to supply the information that the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty to less than 20% of the assessment, or, if the assessment is modified pursuant to subsection (2)(b)(i), to less than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 30 calendar days after receipt of the county tax appeal board's decision. When deciding an appeal

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brought under this subsection, the state tax appeal board shall follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303."

Section 38. Section 15-6-207, MCA, is amended to read:

"15-6-207. Agricultural exemptions. (1) The following agricultural products are exempt from taxation:

(a) all unprocessed agricultural products on the farm or in storage and owned by the producer;

(b) all producer-held grain in storage;

(c) all unprocessed agricultural products, except livestock;

(d) except as provided in subsection (1)(e), livestock ~~which~~ *that* have not attained the age of 24 months as of ~~March~~ *February* 1;

(e) swine ~~which~~ *that* have not attained the age of 6 months as of January 1;

(f) poultry and the unprocessed products of poultry; and

(g) bees and the unprocessed product of bees.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if such implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area."

Section 39. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) The department ~~of revenue~~ shall~~, through its agent as specified in subsection (2),~~ mail to ~~each~~ owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) (a) The ~~county assessor~~ *department* shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully

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inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 15 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the true and correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department ~~or its agent~~ may not adjust an appraisal or classification upon *the* taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department ~~or its agent~~ has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 15 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

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Section 40. Section 15-7-106, MCA, is amended to read:

"**15-7-106. Courses of instruction, examination, and certification — *additional courses.*** (1) The department ~~of revenue~~ shall offer courses in the principles, methods, and techniques of appraising for property tax purposes property in three fields:

(a) residential property;

(b) agricultural land; and

(c) commercial and industrial property.

(2) ~~Twice each year the~~ *The* department sball conduct an examination for those who have completed a course of instruction in any of the three fields listed in subsection (1).

~~(3) The department shall issue a certificate to each appraiser successfully completing a course of instruction and passing an examination in any of these fields.~~

~~(4)~~*(3)* ~~No~~ *A* person may *not* take the examination for appraising commercial and industrial property unless ~~he~~ *the person* holds a certificate in appraising residential property.

(4) The department may schedule and conduct other courses within the state for appraisers, assessors, and department personnel for training in the following subjects:

(a) personal property assessment;

(b) property tax administration; and

(c) personnel management, fiscal management, public relations, professional ethics, and related management principles.

(5) The department shall issue a certificate to each appraiser, assessor, or other person successfully completing a course of instruction and passing an examination in any of the fields provided for in subsection (1) or any subject provided for in subsection (4)."

Section 41. Section 15-7-107, MCA, is amended to read:

"**15-7-107. Certification required.** (1) ~~Within 1 year after his employment by the department or by July 1, 1980, whichever occurs later, any~~ *An* appraiser employed by the department to appraise:

(a) residential property ~~must~~ *shall* obtain a certificate in appraising residential property;

(b) agricultural land ~~must~~ *shall* obtain a certificate in appraising agricultural land; and

(c) commercial and industrial property ~~must~~ *shall* obtain a certificate in appraising commercial and industrial property.

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(2) The department may promulgate rules requiring appraisers to complete continuing education courses in laws, rules, and methods relating to appraisal."

Section 42. Section 15-7-208, MCA, is amended to read:

"15-7-208. **Reclassification by department.** The department ~~of revenue or its agent~~ may reclassify land as nonagricultural upon giving due notice to the property owner or any purchaser under contract for deed under the provisions of 15-7-102. Upon notice of a change in classification of land from agricultural to another use, the property owner may petition the department to reclassify the land as agricultural by completing a form prescribed by the department and by producing whatever information is necessary to prove that the subject land meets the definition of agricultural land embodied in 15-7-202."

Section 43. Section 15-7-209, MCA, is amended to read:

"15-7-209. **Reclassification by owner — lien.** (1) Whenever land ~~which~~ *that* is or has been in agricultural use and is or has been valued, assessed, and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the ~~county assessor~~ *department*.

(2) The ~~county assessor~~ *department* shall ~~execute~~ *provide*, in a form eligible for recording, releases of lien, for those liens attributable to the former rollback tax, and the ~~assessor~~ *department* shall ~~record~~ *present* the releases ~~in the office of~~ *to* the *county* clerk and recorder *for recording*."

Section 44. Section 15-7-304, MCA, is amended to read:

"15-7-304. **Report of transfers — change of ownership records.** (1) All transfers of real property ~~which~~ *that* are not evidenced by a recorded document, except those transfers otherwise provided for in this part, ~~shall~~ *must* be reported to the department ~~of revenue or its agent~~ on the form prescribed.

(2) ~~No agent of the~~ *The* department ~~may change or be~~ *is not* required to change any ownership records used for the assessment or taxation of real property unless ~~he~~ *the department* has received a transfer certificate from the clerk and recorder or a transfer has been reported to ~~him~~ *the department as provided by rule*."

Section 45. Section 15-7-308, MCA, is amended to read:

"15-7-308. **Disclosure of information restricted.** The certificate required by this part and the information ~~therein shall~~ *contained in the certificate is* not ~~be~~ a public record and shall *must* be held confidential by the county clerk and recorder~~, county assessor,~~ and *the* department ~~of revenue~~. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The ~~foregoing~~ *confidentiality* provisions ~~shall~~ *do* not apply to compilations from ~~such~~ *the* certificates or to summaries, analyses, and evaluations based upon ~~such~~ *the* compilations."

Section 46. Section 15-7-402, MCA, is amended to read:

"15-7-402. **Application for residential appraisal of certain land and improvements.** (1) Any person wishing to ~~insure~~ *ensure* that ~~his~~ *the person's*

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residential land and improvements are appraised as residential may file a signed application with the department ~~of revenue or its agents~~.

(2) In the application, the owner ~~must~~ *shall*:

(a) assert that the property is used only for human habitation and is the principal residence of the owner;

(b) sign a statement pledging that the property will continue to be used as residential property; and

(c) show that the statement has been filed with the county clerk and recorder of the county in which the property is located.

(3) When the department has approved an application for residential use, the department and its agents shall consider only those indicia of value that the property has for residential use.

(4) Failure to file an application under this section ~~shall~~ *may* not result in reclassification on real property unless there has been an actual change in use."

Section 47. Section 15-7-403, MCA, is amended to read:

"15-7-403. Rollback tax — computation. (1) (a) If land and improvements appraised as residential as a result of an application filed under 15-7-402 are changed to industrial or commercial use, the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable hy the owner of the property at the time of the change in use.

(b) As used in this section, "rollback" means the period preceding the change in use, not to exceed 5 years, during which the property was appraised as residential.

(2) The ~~department's agent~~ *department* shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property as industrial or commercial property;

(b) multiplying this value by the sum of the annual mill levies applied in the taxing jurisdiction in which the land is located during the rollback period; and

(c) subtracting from this figure the actual property tax paid on the property during this period."

Section 48. Section 15-8-102, MCA, is amended to read:

"15-8-102. County ~~assessor as agent of department — counties~~ to furnish office space. ~~(1) The county assessors of the various counties of the state are agents of the department of revenue for the purpose of locating and providing the department a description of all taxable property within the county, together with other pertinent information, and for the purpose of performing such other administrative duties as are required for placing taxable property~~

~~on the assessment rolls. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection.~~

~~(2)~~ The county commissioners of ~~the various counties~~ *each county* shall provide existing office space in the county courthouse for use by the ~~county assessor, his deputies and staff, and the state appraiser and~~ *department's assessment and appraisal* staff, if ~~such~~ space is reasonably available. If ~~such~~ space is not reasonably available in the courthouse ~~and the same must be contracted for~~, the department ~~shall pay the cost thereof~~ *may contract for the procurement of suitable space.* ~~Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department.~~

~~(3) The department must provide maps for the use of its agents, showing the private lands owned or claimed in the county and, if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a state charge and must be paid from the state general fund.~~"

Section 49. Section 15-8-104, MCA, is amended to read:

"**15-8-104. Department audit *and review* of taxable value — costs of audit paid by department.** (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells and all other types of property subject to ad valorem taxation.

(2) The department ~~of revenue shall~~ *may* conduct ~~audits~~ *reviews* of the assessment of all commercial personal property to ~~assure~~ *ensure* that the value of the property in those classes reflects market value. Because the assessed value of commercial personal property is defined as market value under 15-8-111(2), the ~~audits~~ *review* conducted by the department ~~shall~~ *may* be ~~primarily~~ directed toward ensuring that all taxable personal property is reported to the department.

(3) The cost of any audit *or review* performed under subsection (1) or (2) ~~shall~~ *must* be paid by the department."

Section 50. Section 15-8-111, MCA, is amended to read:

"**15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

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(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds~~, including but not limited to boats and all watercraft,~~ is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department ~~of revenue~~ shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department ~~of revenue or its agents~~ may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual ~~where~~ *in which* the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, or 15-23-517.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

~~(d) Beginning January 1, 1990, and ending December 31, 1993, properties in 15-6-143, under class ten, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.~~

~~(e) Beginning January 1, 1994, properties~~ *Properties* in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

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(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town. ~~*(Subsection (6)(d) terminates January 1, 1994 -- sec. 19, Ch. 783, L. 1991.)*~~"

Section 51. Section 15-8-112, MCA, is amended to read:

"**15-8-112. Assessments to be made on classification and appraisal.** (1) The assessments of all lands, *all* city and tewn lots, and all improvements must be made on the classification and appraisal as made or caused to be made by the department ~~of revenue~~.

(2) The percentage basis of assessed value as provided for in chapter 6, part 1, is determined and assigned by the department when it makes its annual assessment of the property ~~which~~ *that* it is required to assess centrally ~~under the laws of this state~~. The department shall ~~transmit such determination and assignment to its agents in~~ *apportion the assessments to* the various counties ~~with the assessments so made~~, and its determination is final except as to the right of review in the state tax appeal board or the proper court."

Section 52. Section 15-8-113, MCA, is amended to read:

"**15-8-113. Appeal from percentage assignment.** If any taxpayer ~~shall feel aggrieved at~~ *disagrees with* the percentage assignment ~~so~~ made by the department ~~of revenue or its agent, he shall have the right to~~ *the taxpayer may* appeal to the county tax appeal board on the percentage assignment the same as ~~he~~ *a taxpayer may* now ~~has~~ *appeal* on valuations and also ~~the right to~~ *may* appeal from the county tax appeal board to the state tax appeal board, whose findings ~~shall be~~ *are* final except as to the right of review in the proper courts."

Section 53. Section 15-8-115, MCA, is amended to read:

"**15-8-115. Department to defend property tax appeals — costs and judgments.** (1) The department ~~of revenue or its designee~~ is the party defendant in any proceeding before a county tax appeal board, the state tax appeal board, or a court of law that seeks to dispute or adjust an action of the department under 15-8-101 arising from the exercise of the department's duties as prescribed hy law or administrative rule. For the purposes of proceedings before county tax appeal boards, service on the department may be obtained by serving the ~~local county assessor~~ *person designated to receive service for the department.*

(2) Costs, if any, ~~shall~~ *must* be assessed against the department and not against a local taxing unit.

(3) In any suit brought in the courts of this state for the refund of taxes paid under protest and those funds are held by the treasurer of a unit of local government in a protest fund, the court shall enter judgment, exclusive of costs, against the treasurer if the court finds the taxes should be refunded."

Section 54. Section 15-8-201, MCA, is amended to read:

"**15-8-201. General assessment day.** (1) The department ~~of revenue or its agent must~~ *shall*, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property

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subject to taxation in each county. The department ~~or its agent must~~ *shall* assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of *the preceding* January 1 ~~next preceding. It must~~ *The department shall* also ascertain and assess all mobile homes arriving in the county after midnight of *the preceding* January 1 ~~next preceding. No~~ *A* mistake in the name of the owner or supposed owner of real property~~, however, renders~~ *does not invalidate* the assessment ~~invalid~~.

(2) The procedure provided by this section ~~may~~ *does* not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(f) mobile homes held by a distributor or dealer of mobile homes as ~~a part of his~~ stock in trade; and

(g) property subject to the provisions of 15-16-203.

(3) Credits must be assessed as provided in 15-1-101(1)(f)."

Section 55. Section 15-8-202, MCA, is amended to read:

"15-8-202. **Motor vehicle assessment.** (1) The department ~~or its agent~~ must *shall*, in each year, ascertain and assess all motor vehicles, other than motor homes, travel trailers, and campers or mobile homes, in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles as provided by law, subject to 61-3-313 through 61-3-316 and 61-3-501. The assessment for all motor vehicles must be made in accordance with 61-3-503. The motor vehicles ~~shall~~ *must* be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date ~~thereof~~, whichever is applicable.

(2) ~~No tax~~ *A tax* may *not* be assessed against motor vehicles subject to taxation that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation brought into the state subsequent to January 1 as motor vehicle dealers' inventories ~~shall~~ *must* be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, ~~shall~~ *must* be assessed at market value as of January 1."

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Section 56. Section 15-8-205, MCA, is amended to read:

"15-8-205. Initial assessment of class four trailer and mobile home property — when. The ~~county assessor~~ *department* shall assess all class four trailer and mobile home property immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana."

Section 57. Section 15-8-301, MCA, is amended to read:

"15-8-301. Statement — what to contain. (1) The department ~~of revenue or its agent must~~ *may* require from ~~each~~ *a* person a statement under oath setting forth specifically all the real and personal property owned by, ~~such person or~~ in ~~his~~ possession *of*, or under ~~his~~ *the* control *of the person* at midnight on January 1. ~~Such~~ *The* statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of ~~such~~ *the* person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which ~~such~~ *the* person is a member;

(c) all property belonging to, claimed by, or in the possession or under the control or management of any corporation of which ~~such~~ *the* person is president, secretary, cashier, or managing agent;

(d) the county in which ~~such~~ *the* property is situated or in which ~~it~~ *the property* is liable to taxation and, ~~(~~if liable to taxation in the county in which the statement is made~~)~~, also the city, town, school district, road district, or other revenue districts in which ~~it~~ *the property* is situated;

(e) an exact description of all lands, ~~in parcels or subdivisions not exceeding 640 acres each and the sections and fractional sections of all tracts of land containing more than 640 acres which have been sectionized by the United States government;~~ improvements, and personal property; ~~all taxable state, county, city, or other municipal or public bonds and the taxable bonds of any person, firm, or corporation and deposits of money, gold dust, or other valuables and the names of the persons with whom such deposits are made and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured and the property in the county affected thereby;~~

~~(f) all solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member or due or owing to any corporation of which he is president, secretary, cashier, or managing agent;~~

~~(g)~~*(f)* all depots, shops, stations, buildings, and other structures erected on the space covered by the right-of-way and all other property owned by any person owning or operating any railroad within the county.

(2) Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer ~~need~~ *is* not *required to* include ~~such~~ *the* property in ~~the~~ *that person's* statement ~~made by him~~ but ~~this~~ *the* statement must show the name of the person or officer who made the statement in which ~~such~~ *the* property is included.

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(3) The fact that ~~such~~ *a* statement is not required or that a person has not made ~~such~~ *a* statement, under oath or otherwise, does not relieve ~~his~~ *the person's* property from taxation."

Section 58. Section 15-8-303, MCA, is amended to read:

"15-8-303. Statement to be completed and returned to ~~department's agent~~ *department*. The ~~agent of the~~ department ~~of revenue may fill out the statement at the time he presents it, or he~~ may deliver ~~it~~ *the statement specified in 15-8-301* to the person *owning taxable property* and require ~~him~~ *the person*, within an appointed time, to return the ~~same to him~~ *statement*, properly filled out. The ~~agent must either in person or by mail deliver to~~ *department shall notify* the person making the statement ~~a copy of the same, showing~~ *of* any corrections made ~~thereto~~ by the ~~agent~~ *department*."

Section 59. Section 15-8-304, MCA, is amended to read:

"15-8-304. Enforcement powers of department. (1) The department ~~of revenue has power to~~ *may*:

(a) require any person in the state to make and subscribe an affidavit, giving ~~his~~ *the person's* name, and place of residence, and post-office address;

(b) subpoena and examine any person in relation to any statement furnished to ~~it~~ *the department* or ~~which~~ *any statement that* discloses property ~~which~~ *that* is assessable in the state.

(2) The department may exercise this power in any county where the person whom it desires to examine may be found but ~~has no power to~~ *may not* require ~~such~~ *the* person to appear before it in any ~~other~~ county *other* than that in which the subpoena is served.

~~(3) In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken or the statement discloses property in any county other than that in which it is made, the department must, in the respective case, file the affidavit or statement in its office and transmit a copy of the same, certified by it, to its agent in the county in which such residence or property is therein shown to be.~~"

Section 60. Section 15-8-307, MCA, is amended to read:

"15-8-307. Land assessment. (1) ~~Land~~ *Except as provided in subsection (2), land* must be assessed in parcels or subdivisions not exceeding 640 acres, and tracts of land containing more than 640 acres ~~which~~ *that* have been sectionized by the United States government must be assessed by sections or fractions of sections.

(2) If the department receives the written consent of all persons with an ownership interest, the department may assess multiple parcels or tracts of land with common ownership collectively as a single tract of land.

~~(2)~~*(3)* The department ~~of revenue or its agent must set aside one line in the assessment book for~~ *shall itemize in the property tax record* the description of each 640 acres of land or less, the number of acres ~~to be entered in one column~~, the description ~~in another column~~, *the* value ~~in another column~~ *of the land, the*

value of improvements ~~in another column~~, and the total ~~in the total column~~ *value*. ~~It must also set aside a line in the assessment book for~~ *The property tax record must itemize* the description of each town or city lot~~, the description to be entered in one column~~ and the value of the lot and any improvements ~~thereon in another column~~ *on the lot*, except that a lot and improvements ~~thereon shall~~ *must* be separately assessed when required under 15-8-111.~~; provided that~~ *If* all of the unimproved lots of the same value~~, situate~~ *are located* in one block or ~~belonging to~~ *are owned by* the same party, *the lots* may be described and assessed in ~~one line~~ *a single unit* in the manner ~~above provided~~ *prescribed* for each lot. ~~It is the intention hereby that each~~ *Each* parcel and lot ~~show in its own line and opposite~~ *must be segregated in the property tax record to correlate* the description ~~thereof~~ *of the parcel or lot to* the total value of the ~~same~~ *parcel or lot* and any improvements ~~thereon~~ *on the parcel or lot*."

Section 61. Section 15-8-402, MCA, is amended to read:

"**15-8-402. Property of ~~a firm or corporation~~ *person*.** The property of every ~~firm and corporation~~ *person* must be assessed in the county where the property is ~~situate~~ *located* and must be assessed in the name of ~~the firm or corporation~~ *that person*."

Section 62. Section 15-8-601, MCA, is amended to read:

"**15-8-601. Assessment revision — conference for review.** (1) (a) Except as provided in subsection (1)(b), whenever the department ~~of revenue~~ discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the ~~same~~ *property* provided *that* the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All ~~such~~ revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(b) Within the time limits set by 15-23-116, whenever the department discovers property subject to assessment under Title 15, chapter 23, that has escaped assessment, been erroneously assessed, or been omitted from taxation, the department may issue a revised assessment to the person, firm, or corporation who owned the property at the time it escaped assessment, was erroneously assessed, or was omitted from taxation, regardless of the ownership of the property at the time of the department's revised assessment.

(2) ~~Whenever~~ *When* the department ~~or its agent~~ proposes to ~~increase the valuation of locally assessed property above the value~~ *revise the statement* reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section. Revised assessments of centrally assessed property are subject to review pursuant to 15-1-211.

(3) (a) Notice of revised assessment pursuant to this section ~~shall~~ *must* be made by the department ~~or its agent~~ by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. If the property is locally assessed, the notice shall *must* include *the* opportunity for a conference on the matter, at the request of the person interested, ~~not less than~~ *within* 15 ~~or more than 30~~ days after notice is given.

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(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment *revision* review conference, ~~which~~ *and the minutes* are public records.

(c) Following an assessment *revision* review conference or expiration of *the* opportunity ~~therefor~~ *for a conference*, the department shall order ~~such~~ *an* assessment as it considers proper. Any party to the conference aggrieved by the action of the department may appeal to the county tax appeal board at its next meeting.

(4) The department ~~must record in a book to be kept for that purpose all changes, corrections, and orders made by it and must direct its agent to~~ *shall* enter ~~upon the assessment book~~ *in the property tax record* all changes and corrections made by it.

~~(5) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department.~~"

Section 63. Section 15-8-701, MCA, is amended to read:

"**15-8-701. ~~Assessment book~~ *Property tax record* — definition — listing property in.** (1) Unless the context clearly indicates otherwise, the term "~~assessment book~~" *"property tax record"* means the record *that is* kept in each county by ~~the agent of~~ the department ~~of revenue~~ and ~~which~~ *that* contains the information described in subsection ~~(3)~~ *(2)*. The term includes~~,~~ *records referred to as an "assessment book" or "assessment roll" and,* in a county ~~wherein the assessment book~~ *in which the property tax record* is kept on a computer system, the information on the system analogous to the information described in subsection ~~(3)~~ *(2)*.

~~(2) The form of the assessment book must be as directed by the department.~~

~~(3)~~*(2)* The department ~~must~~ *shall* prepare ~~an assessment book~~ *a property tax record* with appropriate headings, ~~alphabetically arranged,~~ in which must be listed all property within the state and in which must be specified, ~~in separate columns under the~~ *by an* appropriate head *heading*:

(a) the name of the person to whom the property is assessed;

(b) land~~,~~ by ~~township, range, section or fractional section, and when such land is not a United States land division or subdivision, by metes and bounds or other~~ description sufficient to identify it, ~~giving an estimate of the number of acres, not exceeding in each and every tract 640 acres,~~ *the* locality, and the improvements ~~thereon~~ *on the land*;

~~(c) city and town lots, naming the city or town and the number of the lot and block, according to the system of numbering in such city or town, and the value of same with improvements thereon;~~

~~(d)~~*(c)* all taxable personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail ~~such~~ *the* personal property does not invalidate the assessment;

~~(e)~~*(d)* the assessed value of real estate ~~other than city or town lots~~;

~~(f)~~*(e)* the assessed value of ~~city and town lots with~~ improvements ~~thereon~~ *on land*, except that ~~a lot~~ *land* and improvements ~~thereon shall~~ *must* be separately listed when required under 15-8-111;

~~(g)~~*(f)* the assessed value of improvements on real estate assessed to persons other than the owners of the real estate. Taxable improvements owned by a person, located upon land exempt from taxation, ~~shall~~ *must*, as to the manner of assessment, be assessed as other real estate ~~upon the assessment roll. No~~ *A* value~~, however,~~ may *not* be assessed against the exempt land, ~~nor under any circumstances may~~ *and* the land *may not* be charged with ~~or become~~ *and is not* responsible for the assessment made against any taxable improvements located ~~thereon~~ *on the land.*

~~(h)~~*(g)* the assessed value of all taxable personal property;

~~(i)~~*(h)* the school, road, and other revenue districts in which each piece of property assessed is situated;

~~(j)~~*(i)* the total assessed value of all property;

(j) the taxable value of all property;

(k) the taxes and fees assessed against the property; and

(l) the total of each type of tax, levy, and fee."

Section 64. Section 15-8-702, MCA, is amended to read:

"15-8-702. Persons desiring to be listed. Lands ~~once~~ described on the ~~assessment book~~ *property tax record do not* need ~~not~~ *to* be described a second time, but any person claiming the ~~same~~ *land* and desiring to be assessed ~~therefor~~ *for the land* may have the person's name inserted with that of the person to whom ~~such~~ *the* land is assessed."

Section 65. Section 15-8-704, MCA, is amended to read:

"15-8-704. Map book. The department ~~of revenue must~~ *shall* make ~~a plat of the various blocks within any incorporated city or town in a map book and mark thereon in each subdivision the name of~~ *maps showing public and private land for each county and shall designate* the person to whom ~~it~~ *the land* is assessed."

Section 66. Section 15-8-707, MCA, is amended to read:

"15-8-707. Correction of defects in ~~form of assessment book~~ *property tax record.* (1) At any time after the original assessment is made and prior to a sale for delinquent taxes, omissions, errors, or defects in ~~form in~~ the ~~assessment book~~ *property tax record* may *only* be corrected by the:

~~(a)~~ department ~~of revenue or its agent; or~~

~~(b) county assessor or county treasurer with verification from the~~ department.

(2) If the correction involves an assessment of property that is the subject of pending litigation *with a taxing jurisdiction within the county*, the ~~consent of~~ the county attorney must be ~~obtained before any~~ *notified of the* correction ~~may be~~ made."

Section 67. Section 15-8-709, MCA, is amended to read:

"15-8-709. Statement of changes to be sent to county clerk *and recorder*. The department ~~of revenue~~ shall ~~transmit to~~ *notify* each county clerk *and recorder* ~~a statement~~ of the changes made by the department in the ~~assessment book~~ *property tax record* of the county or any assessment contained ~~therein~~ *in the property tax record*, which ~~shall be~~ *changes are* prima facie evidence of the regularity of all proceedings of the department resulting in the action ~~which~~ *that* is the subject matter of the statement."

Section 68. Section 15-8-710, MCA, is amended to read:

"15-8-710. ~~Assessment and delinquent books~~ *Property tax record* prima facie evidence. The ~~assessment book~~ *property tax record* or delinquent list or a copy ~~thereof~~ *of either* certified by the county ~~clerk and recorder~~ *treasurer* showing unpaid taxes against any person or property is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of the law in relation to the assessment and levy of ~~such~~ *the* taxes have been complied with."

Section 69. Section 15-9-101, MCA, is amended to read:

"15-9-101. Department to equalize valuations — hearing. (1) The department ~~of revenue~~ shall adjust and equalize the valuation of taxable property among the several counties, ~~and~~ *between* the different classes of taxable property in any county and in the several counties, and between individual taxpayers~~; supervise and review the acts of agents of the department; change, increase, or decrease valuations made by its agents;~~ and ~~exercise such authority~~ and *shall* do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers.

(2) The department may hold a public hearing to determine the value of any class of property in any county and ~~shall have authority to~~ *may* raise or lower the value of any class of property on the basis of testimony adduced at ~~such~~ *the* hearing.

(3) ~~Upon~~ *At* the hearing ~~of the application~~, the department may subpoena ~~such~~ witnesses~~,~~ *and* hear and take ~~such~~ evidence ~~in relation to the subject pending~~ as in its discretion it ~~may deem~~ *considers* proper."

Section 70. Section 15-9-103, MCA, is amended to read:

"15-9-103. Department to use records in equalizing. The department ~~of revenue must~~ *shall* use the abstract and all other information it may gain from the records of the county clerk *and recorder* or elsewhere in equalizing the assessment of the property of each county and ~~may require entry upon the assessment book of~~ *shall enter in the property tax record* any property ~~which~~ *that* has not been assessed. ~~Any assessment made as prescribed in this section has~~

~~the same force and effect as if made before the delivery of the assessment book to the county clerk.~~"

Section 71. Section 15-10-202, MCA, is amended to read:

"**15-10-202. Certification of taxable values and millage rates.** ~~At the time that the assessment roll is prepared and published~~ *By the second Monday in July*, the department ~~of revenue or its agent~~ shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department ~~or its agent~~ shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous ~~assessment roll~~ *property tax record* and the value of deletions from the previous ~~assessment roll~~ *property tax record*. Exclusive of new construction, improvements, and deletions, the department ~~or its agent~~ shall certify to each taxing authority a millage rate ~~which~~ *that* will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department ~~or its agent~~ shall use 95% of the taxable value appearing on the ~~roll~~ *property tax record*, exclusive of properties appearing for the first time ~~on the assessment roll~~ *in the property tax record*."

Section 72. Section 15-10-203, MCA, is amended to read:

"**15-10-203. Increase of tax revenue — advertisement of intention and public hearing required.** (1) ~~No~~ *A* local taxing authority may *not* budget an increased amount of ad valorem tax revenue in excess of the property tax revenue it received the previous fiscal year exclusive of revenue from ad valorem taxation on properties appearing for the first time on the ~~assessment roll~~ *property tax record* unless it adopts a resolution to budget additional property tax revenue. Prior to adoption of the resolution, the taxing authority shall hold a public hearing for the purpose of receiving comments on its intention to budget increased property tax revenue. The taxing authority shall advertise notice of the public hearing as specified in subsection (2). The public hearing may be held in conjunction with the tentative budget hearing or any other budget hearing that may be required by law.

(2) The taxing authority shall advertise its intent to budget an increase in property tax revenue in a newspaper meeting the requirements of 7-1-4127, except *that* the newspaper may not be primarily in the business of publishing legal advertisements. If there is no newspaper in the county, in addition to being posted as required in 7-1-4127, the advertisement must be published in one or more newspapers of general circulation widely subscribed to by the residents of the county. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must meet the notice requirements of 7-1-4128. The advertisement must be published with at least the following information:

NOTICE OF BUDGET INCREASE FROM PROPERTY TAXES

The (name of the taxing authority) intends to budget an increase in revenue from property taxation by (percentage of increase in property tax revenue from previous fiscal year) percent.

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All concerned persons are invited to attend a public hearing on budgeting the increased property tax revenue to be held on (date and time) at (meeting place).

A decision on budgeting the increased property tax revenue will be made after considering comments made at this hearing.

For further information please contact: (name, address, and phone number of person who can be contacted for further information)."

Section 73. Section 15-10-205, MCA, is amended to read:

"**15-10-205. Approval and copies of resolution or ordinance.** The resolution or ordinance approved in the manner provided for in this part ~~shall~~ *must* be forwarded to the ~~assessor,~~ *county* treasurer~~,~~ and the department ~~of~~ revenue. ~~No~~ millage *Millage* in excess of the department's certified millage ~~can~~ *may not* be levied until the resolution or ordinance to levy required in subsections ~~(1)~~ and ~~(2)~~ of 15-10-204 is approved by the governing board of the taxing authority and submitted to the ~~assessor and the~~ department."

Section 74. Section 15-10-206, MCA, is amended to read:

"**15-10-206. Exceptions for decisions of tax appeal boards.** The department ~~or its agent~~ shall notify each taxing authority of any change in the ~~assessment roll which~~ *property tax record that* results from actions by the state or county tax appeal boards. An increase in the taxing authority's millage above ~~that~~ *the millage* certified by the department ~~or its agent~~ or adopted by resolution or ordinance of the governing body of the taxing authority which *that* is required solely by a reduction of the ~~assessment roll~~ *property tax record* by the state or county tax appeal board may be adopted without further notice."

Section 75. Section 15-10-305, MCA, is amended to read:

"**15-10-305. ~~Department~~ *Clerk and recorder to report mill levy — department* to compute and enter taxes —affidavit.** *(1) The county clerk and recorder shall by the third Monday in August notify the department of the number of mills needed to be levied for each taxing jurisdiction in the county.* The department ~~of revenue or its agent must then~~ *shall* compute *the taxes by multiplying the number of mills times the taxable value of the property to be taxed and shall add any fees or assessments required to be levied against a person owning property. All taxes, fees, and assessments must be itemized for the property listed in the property tax record.* ~~and enter in a separate money column in the assessment book the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated and foot up the columns showing the total amount of such taxes and the columns of total value of property in the county and shall attach thereto his affidavit, by him subscribed as follows and shall on or before the second Monday of October deliver the completed assessment book to the county clerk and recorder:~~

~~"I, ..., an agent of the department of revenue, do swear that I have reckoned the respective sums due as taxes and have added up the columns of valuations, taxes, and acreage as required by law, and the assessment book to which this affidavit is affixed is full, true, and correct and made in the manner prescribed by law.".~~

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(2) The department shall complete the computation of the amount of taxes, fees, and assessments to be levied against the property and shall notify the county clerk and recorder and the county treasurer by the second Monday in October."

Section 76. Section 15-15-101, MCA, is amended to read:

"15-15-101. **County tax appeal board — meetings and compensation.** (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board ~~shall~~ *must* be residents of the county in which they serve. ~~They shall~~ *The members* receive compensation of $45 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled bearing, immediately before conducting the business for which the hearing was otberwise scheduled. It ~~must~~ *shall* continue in session from time to time to hear protests concerning assessments made by the department ~~of revenue~~ until the business of hearing protests is disposed of, but, except as provided in 15-2-201, not later than 60 days after the department ~~of revenue or its agent~~:

(a) bas mailed notice of classification and appraisal to all property owners and purchasers under contracts for deed as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners and purchasers under contracts for deed.

(3) In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk *and recorder* shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. The notice must be published in a newspaper if any is printed in the county or, if none, then in the manner that the county tax appeal board directs. The notice must be published at least 7 days prior to the first meeting of the county tax appeal board.

(4) Challenges to a department ~~of revenue~~ rule governing the assessment of property or to an assessment procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-1-406."

Section 77. Section 15-15-102, MCA, is amended to read:

"15-15-102. **Application for reduction in valuation.** The valuation of property may not be reduced by the county tax appeal board unless either the

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taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board. The application must be filed on or before the first Monday in June or 15 days after receiving either a notice of classification and appraisal or determination after review under 15-7-102(3) from the department ~~of revenue or its agent~~, whichever is later. If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the applicant, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made."

Section 78. Section 15-15-103, MCA, is amended to read:

"15-15-103. Examination of applicant — failure to hear application. (1) Before the county tax appeal board grants any application or makes any reduction applied for, it ~~must~~ *shall* examine on oath the person or agent making the application, touching the value of the property of each person. ~~No~~ *A* reduction ~~must~~ *may not* be made unless ~~such person or agent~~ *the applicant* makes an application, as provided in 15-15-102, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses ~~upon such~~ *at the* hearing must be taken in shorthand or by stenotype or electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded, together with all exhibits, to the state tax appeal board. The date of hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The ~~county treasurer~~ *department* shall enter the appraisal or classification sought in the application in the ~~assessment book~~ *property tax record*. An application is not automatically granted for the following appeals:

(a) those listed in 15-2-302; and

(b) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current 60-day session."

Section 79. Section 15-16-101, MCA, is amended to read:

"15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the ~~assessment book~~ *property tax record*, the county treasurer ~~must~~ *shall* publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on *the next* November 30 ~~next thereafter~~ or within 30 days after

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the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from ~~and after such~~ *the time of* delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on *the next* May 31 ~~next thereafter~~ and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from ~~and after such~~ *the time of* delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) ~~He must~~ *The county treasurer shall* send to the last-known address of each taxpayer *a* written notice, postage prepaid, showing the amount of taxes and assessments due *for* the current year and the amount due and delinquent for other years. The written notice ~~shall~~ *must* include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) itemized city services and special improvement district assessments collected by the county;

(e) the number of the school district in which the property is located; and

(f) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(d) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any ~~of his liabilities~~ *tax liability*. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax."

Section 80. Section 15-16-104, MCA, is amended to read:

"**15-16-104. Entry of payment — receipt.** (1) The county treasurer ~~must~~ *shall* note the date and the amount of the payment of any tax in the ~~assessment book~~ *property tax record* opposite the name of the person paying.

(2) (a) Except as provided in subsection (2)(b), ~~he must~~ *the county treasurer shall* give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

(b) If the payment is received through the mail or by any electronic means, the county treasurer ~~must~~ *shall* issue a receipt only on request of the person paying the tax. If the county treasurer issues a receipt, it must contain the information specified in subsection (2)(a)."

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Section 81. Section 15-16-105, MCA, is amended to read:

"**15-16-105. When property assessed more than once.** When the *county* treasurer discovers that any property has been assessed more than once for the same year, ~~he must~~ *the county treasurer shall* collect only the tax ~~justly~~ due and ~~make return of the facts under affidavit to the county clerk and recorder~~ *report that fact to the department.*"

Section 82. Section 15-16-115, MCA, is amended to read:

"**15-16-115. Treasurer's record of personal property taxes paid.** (1) On or before December 1 of each year, the *county* treasurer shall note on the ~~assessment book~~ *property tax record*, opposite the name of each person from whom taxes have been collected ~~by him in pursuance of the report of the assessor~~, the amount of taxes received and the date of receipt.

(2) If the taxes have not been collected, the treasurer shall note in the ~~assessment book~~ *property tax record* the reason why collection was not made."

Section 83. Section 15-16-117, MCA, is amended to read:

"**15-16-117. Personal property — treasurer's duty to collect certain taxes.** (1) The county treasurer shall demand payment of poor fund taxes, authorized by 53-2-322, and road taxes, authorized by 7-14-2206 or 7-14-2501 through 7-14-2504, of every person liable for the taxes whose name does not appear on the ~~assessment lists~~ *property tax record*. On the neglect or refusal of a person to pay the taxes, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) These taxes must be added ~~upon the assessment lists~~ *in the property tax record* to other property taxes of persons paying taxes upon real and personal property and *must be* paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of property by the county treasurer for the taxes ~~must be~~ *is* regulated by ~~15-16-113~~ *[section 157]* and 15-17-911.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 84. Section 15-16-203, MCA, is amended to read:

"**15-16-203. Assessment of property previously exempt.** (1) Real property or improvements exempt from taxation under Title 15, chapter 6, that during a ~~taxable~~ *tax* year become the property of a person subject to taxation must be assessed and taxed from the date of change from a nontaxable status to a taxable status.

(2) As provided in subsection (3), the county treasurer shall adjust the tax that would have been due and payable for the current year on the property under 15-16-102 had *if* the property *was* not been exempt.

(3) To determine the amount of tax due for previously exempt property, the county treasurer shall multiply the amount of tax levied and assessed on the

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original taxable value of the property for the year by the ratio that the number of days in the year that the property will be in taxable status bears to 365.

(4) If the property has not been assessed and taxed during the taxable year because of exemption, the department ~~of revenue or its agent~~ shall prepare a special assessment for the property and the county treasurer shall determine the amount of taxes that would have been due under subsection (2).

(5) Upon determining the amount of tax due, the county treasurer shall notify the person to whom the tax is assessed, in the same manner as notification is provided under 15-16-101(2), of the amount due and the date or dates on which the taxes due are payable as provided in 15-16-102."

Section 85. Section 15-16-302, MCA, is amended to read:

"**15-16-302. Tabulation and transmittal of real property delinquent list.** (1) The county treasurer ~~must~~ *shall*, at the time specified in 15-16-301, deliver to the county clerk and recorder a complete delinquent list of all persons ~~and property then~~ owing taxes *and the property on which the taxes are owed.*

(2) In the list ~~so delivered~~, all matters and things contained in the ~~assessment book and~~ *property tax record* relating to delinquent persons or property must be set down in numerical or alphabetical order.

(3) The county clerk and recorder ~~must~~ *shall* carefully compare the list with the ~~assessment book~~ *property tax record*, and if satisfied that ~~it~~ *the list* contains a full and true statement of all taxes due and unpaid, ~~he must~~ *the county clerk and recorder shall* total the amount of taxes remaining unpaid, credit the county treasurer ~~therewith~~ *with that amount*, make a final settlement with the treasurer of all taxes charged against the treasurer on the ~~assessment book~~ *property tax record*, and require from the treasurer an immediate account for any existing deficiency."

Section 86. Section 15-16-305, MCA, is amended to read:

"**15-16-305. Disposition of delinquent list.** (1) On the third Tuesday of February, the county clerk and recorder ~~must~~ *shall* compare the lists with the assessments of persons and property not ~~marked~~ *shown as* "paid" on the ~~assessment book~~ *property tax record*. If the taxes have been paid, the county clerk and recorder must *shall* note the fact in the appropriate ~~column in the assessment book~~ *section of the property tax record*.

(2) The county clerk and recorder ~~must~~ *shall* then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid have been credited in the list with ~~such~~ *the* payment.

(3) The county clerk and recorder ~~must~~ *shall* then total the amount of taxes remaining unpaid and credit the treasurer with the amount and have a final settlement with the treasurer. The delinquent list must remain in the county clerk and recorder's office.

(4) At the time mentioned in subsection (1) ~~of this section~~, the treasurer must *shall* make an affidavit, endorsed on the list, that the taxes not marked "paid" have not been paid and that he *the treasurer* has not been able to discover

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any property belonging to or in possession of the persons liable to pay the ~~sum whereof~~ *taxes* to collect them."

Section 87. Section 15-16-402, MCA, is amended to read:

"15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction. (1) The tax due ~~upon~~ *on* personal property is a prior lien upon ~~any or all of~~ the personal property. The lien has precedence over any other lien, claim, or demand upon the personal property. Except as provided in subsection (2), the tax ~~upon~~ *on* personal property is also a lien upon the real property of the owner ~~thereof~~ *of the personal property* on and after January 1 of each year.

(2) The taxes ~~upon~~ *on* personal property based ~~upon~~ *on* a taxable value up to and including $10,000 are a first and prior lien upon the real property of the owner of the personal property. Taxes ~~upon~~ *on* personal property based ~~upon the~~ *on a* taxable value ~~thereof~~ in excess of $10,000 are a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon the real property appearing of record in the office of the clerk and recorder of the county where the real property is situated, at or before the time the personal property tax attached ~~thereto~~ *to the real property*, has filed a notice as provided in subsection (3). If the notice is filed, the personal property taxes ~~upon~~ *on* the taxable value in excess of $10,000 are not a lien ~~on~~ *upon* the owner's real property. The county treasurer shall, at the request of a mortgagee or lienholder, issue a statement of the personal property tax due ~~upon~~ *on* the taxable value up to and including $10,000. Personal property taxes ~~upon~~ *on* a taxable value up to $10,000 may be paid, redeemed from a tax sale as ~~by law~~ provided *by law*, or discharged separately from any personal property taxes in excess of ~~such~~ *that* amount. Payment of the taxes ~~upon~~ *on* a taxable value up to $10,000, as provided in this subsection, ~~shall operate to~~ discharge the tax lien upon the personal property of the owner to the extent of ~~such~~ *the* payment in the order that the person paying ~~such~~ *the* tax ~~shall direct~~ *directs*.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file each year in the office of the county treasurer of ~~said~~ *the* county *and with the department* a notice giving:

(a) the name and address of the mortgagee and holder of the mortgage or lien;

(b) the name of the reputed owner of the land;

(c) the description of the land;

(d) the date of record and expiration of the mortgage or lien;

(e) the amount ~~thereof~~ *of the mortgage or lien*; and

(f) a statement that he *the holder* claims the benefit of the provisions of this section.

(4) ~~Such~~ *The* notice ~~shall be~~ *is* ineffectual as to any taxes ~~which shall have become~~ *that are* a lien ~~on~~ *upon* real property prior to the filing of ~~such~~ *the* notice as provided in subsection (3).

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(5) ~~Any owner~~ *A holder* of a mortgage on real property upon which personal property taxes are ~~by~~ *a lien under* this section ~~made a lien~~, ~~where~~ *when* the owner of ~~such~~ *the* real property and personal property has failed to pay taxes due ~~upon such~~ *on the* real property and personal property for 1 or more years, may file with the department ~~of revenue or its agent in the county in which such property is located~~ a written request to have the personal property and real property of the owner separately assessed. ~~Such~~ *The* request must be made by ~~registered or~~ certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department ~~or its agent~~ of ~~such~~ *the* request, ~~it is the duty of~~ the department ~~or its agent to~~ *shall* make a separate assessment of real and personal property of the owner ~~thereof~~ *of the property*, and ~~such~~ *the* personal *property* taxes ~~shall~~ *may* not be a lien upon the *mortgaged* real property ~~so mortgaged of the owner thereof, and the~~. *The* personal property taxes ~~shall~~ *must* be collected in the manner provided by law for other personal property.

(6) The holder of a mortgage or lien upon real property who files a certificate of satisfaction and the proof and acknowledgment ~~thereof~~ *of filing the certificate*, as provided for in 71-1-211, shall file a copy of the certificate and the proof and acknowledgment with:

(a) the county treasurer if the holder has filed a notice under subsection (3); and

(b) the department ~~of revenue or its agent in the county in which the real property is located~~ if the holder has filed a written request under subsection (5).

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 88. Section 15-16-504, MCA, is amended to read:

"15-16-504. **Evidence at trial.** On ~~the~~ trial, a certified copy of the assessment signed by the county clerk and recorder of the county where the assessment was made, with the affidavit of the *county* treasurer ~~thereto attached~~ that the tax has not been paid *attached to the copy*, describing ~~it~~ *the assessment* as on the ~~assessment book~~ *property tax record* or delinquent list, is prima facie evidence that the taxes, plus interest, penalties, and costs, are due and entitles ~~him~~ *the county* to judgment unless the defendant proves that the tax was paid."

Section 89. Section 15-16-611, MCA, is amended to read:

"15-16-611. **Reduction of property tax for property destroyed by natural disaster — proration of taxes on replaced property.** (1) The department ~~of revenue~~ shall, upon showing by a taxpayer that some or all of the improvements on ~~his~~ *the taxpayer's* real property, ~~or~~ *that* a trailer or mobile home, or that personal property taxed under Title 15, chapter 6, part 1, has been destroyed to such an extent that the improvements or personal property has been rendered unsuitable for its previous use by natural disaster, adjust the taxable value on the property, accounting for the ~~destruction~~.

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(2) The county treasurer shall adjust the tax due and payable for the current year on the property under 15-16-102 or on personal property under ~~15-16-113~~ *[section 157]* or 15-24-202 as provided in subsection (3) of this section.

(3) To determine the amount of tax due for destroyed property, the county treasurer shall:

(a) multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property existed before destruction bears to 365; and

(b) multiply the amount of tax levied and assessed on the adjusted taxable value of the property for tbe remainder of the year by the ratio that the number of days remaining in the year after the destruction of the property bears to 365.

(4) Tbis section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(5) A taxpayer receiving a reduction in taxes on personal property under this section shall notify the department if ~~he~~ *the taxpayer* replaces the destroyed personal property in the same tax year that the personal property was destroyed. The tax on the personal property replacing the destroyed personal property must be prorated according to the ratio tbat the number of days remaining in the year after the property was replaced bears to 365. A taxpayer who fails to notify the department within 30 days from the date of the replacement of the personal property is subject to the penalty prescribed in 15-1-303.

(6) For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind. A fire is considered a natural disaster regardless of the origin of the fire. However, if the taxpayer is convicted of arson for burning tbe property, property taxes may not be adjusted. If ~~they~~ *the taxes* had already been adjusted prior to the conviction, the original amount must he collected."

Section 90. Section 15-17-124, MCA, is amended to read:

"**15-17-124. Irregular assessment.** If the county treasurer discovers, prior to the tax sale, that property on which the taxes are delinquent has been irregularly assessed, he *the county treasurer* may not offer tbe property or a property tax lien for sale. ~~In such event, the~~ *The* taxes on the property must be listed on the ~~assessment book~~ *property tax record* as uncollected for the year in which tbey were due, and they must be assessed and collected during the succeeding year as taxes are regularly assessed and collected."

Section 91. Section 15-17-317, MCA, is amended to read:

"**15-17-317. Municipality as purchaser.** Whenever property *that* has been struck off to the county at a tax sale under 15-17-214~~,~~ is subject to the lien of delinquent special assessments~~,~~ and has not been assigned under 15-17-214 or 15-17-323~~,~~ at the request of the municipality, the county treasurer shall assign all of the rights of the county acquired ~~therein~~ *in the property* at the sale to the municipality upon payment of any delinquent taxes (excluding assessments) and costs, without penalty or interest. The duplicate certificate of sale must be delivered to the treasurer of the municipality ~~and filed by him in~~

his ~~office~~, *who shall file it.* ~~No~~ *A* charge may *not* be made for the duplicate certificate when the municipality is the purchaser, and ~~in such case~~ the county treasurer shall make an entry "sold to the municipality" on the ~~assessment book~~ *property tax record* opposite the tax~~, and he~~. *The county treasurer* must be credited with the delinquent amount ~~thereof~~ in the settlement. Property sold to the municipality must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable."

Section 92. Section 15-17-911, MCA, is amended to read:

"15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property. (1) The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to one method does not bar the right to resort to any other method. Any of the methods provided may be used until the full amount of the tax is collected.

(2) The provisions of ~~15-16-113~~ *[section 157]* and this section apply to a seizure and sale under subsection (1).

(3) A sale under subsection (1) must be at public auction.

(4) For seizing and selling personal property, the *county* treasurer shall charge $25, plus the mileage allowance provided by law to the sheriff, plus reasonable expenses for seizing, handling, keeping, or caring for any property seized. The charge and other costs may be charged only when property is actually seized and offered for sale or sold.

(5) On payment of the price bid for any property sold as provided in this section, delivery of the property, with a bill of sale, vests the title of the property in the purchaser.

(6) (a) After sale of the property, the proceeds of the sale must be used first to reimburse the county for all costs and charges incurred in seizing the property and conducting the sale. Any excess, up to the total amount of the taxes owed, must be distributed proportionally to the funds that would have received the taxes if they had been paid before becoming delinquent. Any remaining excess, up to the amount of the penalty and interest owed, must then be distributed proportionally to the fund that would have received the penalty and interest if they had been paid in full.

(b) Any money collected in excess of the delinquent tax, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the person does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the person has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the person has no claim to it.

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(7) Any property seized for the purpose of liquidating a delinquency by a tax sale that remains unsold following a sale may be left at the place of sale at the risk of the owner.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

(9) The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed had been seized and sold. If the taxes are canceled, one copy of the order of cancellation must be filed with the county clerk *and recorder* and one copy with the county treasurer."

Section 93. Section 15-18-412, MCA, is amended to read:

"15-18-412. Procedure in tax deed quiet title action. (1) Upon the hearing of the order to show cause, the court has jurisdiction to determine the amount to be deposited and to make an order that the same be paid to the court within a period not exceeding 30 days after the order is made.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), if the amount is not paid within the time fixed by the court, the true owner is considered to have waived any defects in the tax proceedings and any right of redemption. In the event of waiver, the true owner has no claim of any kind against the state or purchaser and a decree must be entered in the action quieting the title of the purchaser as against the true owner.

(b) The proceedings are void if the taxes were not delinquent or have been paid.

(c) A deposit is not required if the true owner is found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(3) If payment is made to the court and the true owner is successful in the action and the tax proceedings are declared void, the amount deposited with the court must be paid to the purchaser.

(4) If the purported true owner is not successful in the action and the title of the purchaser is sustained, the money must be returned to the purported true owner.

(5) In any action brought by a purchaser to quiet title, several tracts of land, whether contiguous or noncontiguous or owned by different defendants, may be set forth in one complaint. All persons claiming any title to, interest in, or lien upon any of the premises or any part ~~thereof~~ *of the premises* may be joined as defendants, even though their claims are independent, are not in common, and do not cover the same tracts. The procedure in ~~such an~~ *the* action must follow, as nearly as practicable, the procedure specified in 70-28-101 through 70-28-109.

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(6) In the final judgment, the court shall also determine the rights resulting from any additional taxes on the property accruing or heing paid by either party during the pendency of the suit.

(7) In the quiet title action, the court has complete jurisdiction to fix the amount of taxes that should have been paid, including penalties, interest, and costs, and to determine all questions necessary in granting full relief, including the power to order ~~any assessor~~ *the department* or *any* ~~other~~ tax officer to make and certify to the court a corrected or new assessment or to do any other act necessary to enable the court to do complete justice. Errors may be reviewed on appeal from the final judgment."

Section 94. Section 15-23-104, MCA, is amended to read:

"15-23-104. Failure to file — estimate by department — penalty. (1) If any person fails to file a report or return within the time established in 15-23-103 or by ~~such~~ *a* later date *approved by* as the department ~~may approve~~, the department shall estimate the value of the property ~~to~~ *that should* have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303. In estimating value under this section, the department may subpoena a person or ~~his~~ *the person's* agent as specified in 15-1-302. An assessment pursuant to parts 5 through 8 of this chapter based on estimated value or imputed value is subject to review under 15-1-211. ~~Each~~ *For each* month or part of a month *that* a report is delinquent, the department shall impose and collect a $25 penalty, *with* ~~the~~ total not to exceed $200, and ~~shall~~ deposit ~~such~~ *the* penalty to the credit of the general fund. The department ~~will also inform its agents in the counties of the delinquency, and, except as provided in subsection (2), the agents~~ shall assess a penalty of 1% of the tax due for each month or part of a month *that* the report is delinquent. *The department shall notify the county treasurer of each affected county of the amount of the penalty, and the treasurer shall collect the penalty in the same manner as the taxes to which the penalty applies.*

(2) For a delinquency in reporting under 15-23-212, the department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent."

Section 95. Section 15-23-106, MCA, is amended to read:

"15-23-106. ~~Transmission~~ *Report* to the counties. (1) On or before July 1, the department shall ~~transmit to its agent in~~ *prepare for* each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of the property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to ~~the~~ county, including the length or other description of the property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county must be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 15-23-503, 15-23-505, 15-23-515, 15-23-516, 15-23-517, 15-23-603, and 15-23-605; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The ~~agent of the~~ department shall enter the *reported* assessed values ~~transmitted~~ in the ~~assessment book in a manner prescribed by the department~~ *property tax record for the county*."

Section 96. Section 15-23-107, MCA, is amended to read:

"15-23-107. **Amended assessment ~~—transmission to counties.~~** Whenever the valuation of centrally assessed property is revised under 15-8-601 or 15-23-102(2), the department shall, within 15 days following the final decision or order, ~~transmit a statement of the revised assessment to its agent or the county officer then having custody of the assessment book in the~~ *enter the revision in the property tax record for each applicable* county ~~where the property is located. The revision shall be immediately entered in the assessment book.~~"

Section 97. Section 15-23-115, MCA, is amended to read:

"15-23-115. **Interest.** If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, 15-23-515, 15-23-516, 15-23-517, 15-23-602, 15-23-701, or 15-23-802~~, the department shall inform its agents at the county level of the determination~~, and if ~~any~~ *an* additional tax is due, there must be added to the tax until paid in full interest at the rate of 1% a month or fraction of a month from the date the original tax was due and payable. A taxpayer subject to imposition of interest pursuant to this section is not subject to the penalty and interest provisions contained in 15-16-102."

Section 98. Section 15-23-507, MCA, is amended to read:

"15-23-507. **Taxation and payment on royalty interests.** At the time of ~~transmitting~~ *computing* net proceeds assessments, the department ~~of revenue~~ shall also ~~transmit~~ *determine* the royalty lists or schedules ~~to the county assessor of~~ *for* each county in which ~~such~~ *the* mines and mining claims are located. ~~Thereupon the county assessor~~ *The department* shall prepare from ~~such~~ *the* net proceeds and royalty assessments a tax roll ~~which shall~~ *that must* be ~~by him~~ furnished to the county treasurer on or before *the following* September 15 ~~following, as specified in this section. Said~~ *Upon furnishing the tax roll, the* taxes ~~shall be~~ *are* due and payable. Assessments of royalty on production of metals and minerals other than petroleum and natural gas ~~shall~~ *must* be entered by the ~~county assessor~~ *department* in the ~~personal~~ property ~~assessment book~~ *tax record* in the name of the recipient or owner of ~~such~~ *the* royalty. The county treasurer shall ~~proceed to~~ give full notice ~~thereof~~ *of the assessment* to ~~such~~ *the* recipient or royalty owner and to *shall* collect the taxes ~~thereon~~ in the same

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manner as taxes on net proceeds of mines. Taxes on ~~such~~ *the* royalty assessments and taxes on net proceeds of mines ~~shall be~~ *are* payable at the times specified in 15-16-102, and any delinquencies in the payment ~~of same shall be~~ *are* subject to the interest and penalties provided in 15-16-102."

Section 99. Section 15-23-607, MCA, is amended to read:

"15-23-607. ~~County assessors~~ *Department* to compute taxes. (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the ~~county assessor~~ *department* shall, subject to the provisions of 15-23-612, compute the taxes on net proceeds, as provided in subsection (2) of this section, and royalty assessments and shall ~~deliver the book~~ *transmit the computed taxes* to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice of the assessments to the operator and shall collect the taxes as provided by law.

(2) For new production, as defined in 15-23-601, the ~~county assessor~~ *department* may not levy or assess any mills against the value of the new production, but shall instead levy a tax as follows:

(a) for new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(2); or

(b) for new production of natural gas, 12% of net proceeds, as described in 15-23-603(2).

(3) The amount of tax levied in subsections (2)(a) and (2)(b), divided by the appropriate tax rate and multiplied by 60%, must be treated as taxable value for county bonding purposes.

(4) The operator or producer is liable for the payment of the taxes that, except as provided in 15-16-121, are payable by and must be collected from the operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines. However, the operator may ~~at his option~~ withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by ~~him~~ *the operator* upon the royalty or royalty interest. After the withholding, any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 100. Section 15-23-702, MCA, is amended to read:

"15-23-702. ~~Transmission~~ *Entry* of gross proceeds ~~to county assessor~~ *in property tax record.* On or before July 1 each year, the department shall ~~transmit to the county assessor of each county in which coal mines are situated~~ *enter* the valuation of the gross proceeds of ~~such~~ *coal* mines ~~for the purpose of taxation, as the same have been determined by the~~ department *in the property tax record for each county in which the mines are located.* ~~The county assessor shall immediately enter the same upon a suitable assessment roll, the form of which shall be prescribed by the department.~~"

Section 101. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools. (1) The ~~county assessor~~

department shall compute from the reported gross proceeds from coal a tax roll that ~~he shall transmit~~ *must be transmitted* to the county treasurer on or before September 15 each year. The ~~county assessor~~ *department* may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102(5).

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax ~~revenues~~ *revenue*, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

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(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year."

Section 102. Section 15-23-704, MCA, is amended to read:

"**15-23-704. Lien of tax — enforcement of payment.** The tax on gross proceeds from coal ~~shall~~ *must* be levied as taxes on other forms of property, and this tax and the severance tax on coal production are each a lien upon the coal mine and a prior lien upon all personal property and improvements used to produce the coal. These taxes may be collected by the seizure and sale of the personal property on which the tax is a lien as provided under ~~15-16-113~~ *[section 157]* and 15-17-911."

Section 103. Section 15-23-803, MCA, is amended to read:

"**15-23-803. Valuation — gross proceeds.** On or before July 1 each year, the department shall determine the merchantable value of all metal production from the previous calendar year. The department shall ~~transmit to its agent in each county where metals are produced~~ *record* the merchantable value ~~as has been determined by the department for placement on the assessment roll~~ *in the property tax record* after subtracting ~~such~~ *the* portion of the proceeds ~~as may be~~ exempt from property taxation."

Section 104. Section 15-23-804, MCA, is amended to read:

"**15-23-804. Taxation of merchantable value.** The ~~department's agent~~ *department* shall prepare from the reported valuation a tax roll ~~which shall~~ *that must* be transmitted to the county treasurer on or before September 15 each year. The county treasurer shall proceed to give full notice ~~thereof~~ to each metal producer and to collect the taxes due at the times provided for in 15-16-102, and any delinquencies in the payment of ~~same shall be~~ *the taxes are* subject to the interest and penalties provided for in 15-16-102."

Section 105. Section 15-24-104, MCA, is amended to read:

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"15-24-104. Situs in state of proportionally registered fleets — collection of taxes and fees. (1) For the purposes of this part, any vehicle previously registered or ~~which~~ *that* has had application for registration made under the provisions of 61-3-711 through 61-3-733 ~~is hereby declared to have~~ *has* a situs in ~~the~~ state for the purposes of taxation.

(2) The department or its designated agent shall collect the personal property taxes~~,~~ or license fees, or both, prescribed in this part."

Section 106. Section 15-24-302, MCA, is amended to read:

"15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408, ~~15-16-111 through~~ *[section 157]*, 15-16-115, 15-16-404, 15-17-911, and 15-24-202, as amended, except:

(1) taxation of motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited ~~above~~ *in this section*; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2."

Section 107. Section 15-24-801, MCA, is amended to read:

"15-24-801. Savings and loan associations — taxation. Every savings and loan association subject to regulation under Title 32, chapter 2, ~~shall~~ *must* be assessed for and pay taxes upon all real and personal property owned by the association. The secretary of an association shall furnish to the department ~~of revenue or its agent in the county in which the principal office of the association is located~~, within 5 days after demand, a condensed statement, verified by ~~his~~ oath, of the resources and liabilities of the association as disclosed by its books at noon on January 1 in each year. If the secretary fails to make the statement ~~hereby required~~, the department ~~or its agent~~ shall immediately obtain the information from any other available source, and for this purpose it shall have access to the books of the association. The department ~~or its agent~~ shall ~~thereupon~~ make an assessment of the real estate and personal property owned by the association~~, which assessment shall be~~ *in a manner that is* as fair and equitable as it may be able to make from the best information available, or the ~~assessor~~ *department* may, for the purpose of the assessment, adopt the figures disclosed by any prior report made by the association to any state or federal officer under a state or federal law. A person required by this section to make the statement provided for in this section who fails to furnish it is guilty of a misdemeanor."

Section 108. Section 15-24-901, MCA, is amended to read:

"15-24-901. Definition. As used in this part, "livestock" includes those animals ~~specified in~~ *defined as livestock in* 15-1-101~~(1)(i)~~."

Section 109. Section 15-24-902, MCA, is amended to read:

"15-24-902. Assessment of livestock. The department of ~~revenue or its agent~~ shall assess all nonexempt livestock in each county where they are located on ~~March~~ *February* 1 of each year. The livestock must be assessed to ~~the~~ person

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by whom they were owned or claimed or in whose possession or control they were at midnight of ~~March~~ *February* 1 in that year."

Section 110. Section 15-24-903, MCA, is amended to read:

"**15-24-903. Duty of owner to assist in assessment.** (1) The owner of livestock, as defined in 15-24-901, or ~~his~~ *the owner's* agent, *shall* at the time of assessment ~~shall~~ make and deliver to the department ~~of revenue or its agent in~~ *for* the county or counties where ~~his~~ *the owner's* livestock were located on ~~March~~ *February* 1, a written statement, under oath, ~~showing the~~ *listing the owner's* different kinds of ~~his~~ livestock within the county or counties ~~belonging to him or under his charge~~, *together* with *a listing of* their marks and brands.

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on the assessment date."

Section 111. Section 15-24-904, MCA, is amended to read:

"**15-24-904. Penalty for violation of law.** If any person, persons, company, or corporation who is the owner or ~~has~~ *is* in charge *of* any livestock within this state fails to make the statement or statements as provided in 15-24-903, the ~~county assessor~~ *department* may, after 10 days' notice to the person who failed to file the report, increase the assessment by 10% as a penalty."

Section 112. Section 15-24-905, MCA, is amended to read:

"**15-24-905. Livestock brought into state — notice to department ~~of revenue or its agent~~.** The owner or the agent, manager, or ~~foreman~~ *supervisor* of any person, corporation, or association bringing livestock into this state after ~~March~~ *February* 1 shall immediately after ~~said~~ *the* livestock cross the state line forward to the department ~~of revenue or its agent in the county into which the livestock are moved~~ a ~~registered or~~ certified letter, ~~which letter shall contain~~ *containing* the name of the owner of ~~such~~ *the* livestock, the number ~~thereof~~ *of livestock*, the hrand ~~thereon~~ *on the livestock*, ~~and~~ the ages of the ~~same~~ *livestock*, ~~together with~~ the time and place at which ~~said~~ *the* livestock were brought across the state line, *and the county or counties into which the livestock are moved.* ~~provided that the~~ *The* department of livestock *shall* at least once each month furnish from its own records to the department ~~of revenue or its agent in the county into which such livestock are moved~~ a list of the number and kind of livesteck so moved *into each county*, together with the name of the owner ~~thereof~~ *of the livestock*."

Section 113. Section 15-24-906, MCA, is amended to read:

"**15-24-906. Collection of tax on livestock.** The department ~~of revenue or its agent~~, upon receipt of ~~such~~ *the* letter *provided for in 15-24-905* or other information that livestock has been brought into ~~his~~ *a* county from outside of the state after ~~January~~ *February* 1 in any year, shall immediately proceed under the provisions of this part."

Section 114. Section 15-24-920, MCA, is amended to read:

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"**15-24-920. Election for proration of tax on livestock — refunds — additional assessment.** (1) An owner of livestock who moves the livestock interstate may elect to have the nonexempt livestock taxed on a prorated basis.

(2) The owner shall file an election with the ~~county assessor~~ *department*:

~~(a)~~ on the statement required in 15-24-903~~; or~~

~~(b) if the livestock have taxable situs in the state before March 1, on a form prescribed by the department~~. The statement must indicate the number of months the owner's livestock will be in the state.

(3) If a livestock owner elects to be taxed on a prorated basis, the tax on livestock that are moved interstate must be prorated according to the ratio of the number of months the livestock have taxable situs in the county to the total number of months in the taxable year. Livestock must be prorated as provided in this section regardless of when the livestock gain taxable situs in the county during the taxable year.

(4) Subject to the provisions of 15-16-603 through 15-16-605, a taxpayer whose nonexempt livestock are assessed under subsection (3) for a period longer than the actual number of months that the livestock have taxable situs in the state is entitled to a refund. The amount of the refund is equal to the difference between tbe original prorated amount paid and the subsequent amount owed after the actual number of tax situs months are determined at the end of the tax year. A taxpayer shall apply for a refund allowed under this subsection by January 31 following the year of assessment. The application must include a statement sbowing the date when the livestock were moved out of the state.

(5) A taxpayer whose nonexempt livestock are assessed under subsection (3) for a period shorter than the actual number of months that the livestock have taxable situs is subject to additional taxes for the number of additional months that the livestock has taxable situs in the state."

Section 115. Section 15-24-921, MCA, is amended to read:

"**15-24-921. Per capita tax levy to pay expenses of enforcing livestock laws.** (1) In addition to appropriations made for ~~such~~ *those* purposes, a per capita tax is authorized and directed to be levied by the ~~county assessor~~ *department* on all poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as ~~hereinafter specified~~ *provided in 81-7-104*.

(2) As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, and domestic ungulates."

Section 116. Section 15-24-1402, MCA, is amended to read:

"**15-24-1402. New or expanding industry — assessment — notification.** (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution,

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must he taxed at 50% of their taxable value. Each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in suhsection (1), the governing body of the affected county or the incorporated city or town must have approved hy separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in tbe taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(3) The taxpayer shall apply to the ~~county assessor on a form provided by the~~ department ~~of revenue~~ for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved hy the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the ~~assessor~~ *department* shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. ~~In no case may the~~ *The* benefit described in subsection (1) *may not* apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, *or* 20-9-360~~,~~ or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit."

Section 117. Section 15-24-1501, MCA, is amended to read:

"15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations. (1) Subject to the authority contained in subsection (4), remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 ½% as determined by the department ~~of revenue or its agents~~, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2) through (4) and the following schedule. The percentages ~~shall~~ *must* be applied as provided in subsections (3) and (4) and

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are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town must approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) or a schedule adopted pursuant to subsection (4).

(3) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. ~~In no case may the~~ *The* benefit described in subsection (1) *may not* apply to statewide levies.

(4) A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body."

Section 118. Section 15-24-1802, MCA, is amended to read:

"**15-24-1802. Business incubator tax exemption — procedure.** (1) A business incubator owned or leased and operated by a local economic development organization is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

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(a) is a private nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or leases and operates or will operate the business incuhator.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the ~~assessor~~ *department* shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law."

Section 119. Section 15-24-1902, MCA, is amended to read:

"15-24-1902. Industrial park tax exemption — procedure — termination. (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each industrial park in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the ~~assessor~~ *department* shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(5) If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203."

Section 120. Section 15-24-2002, MCA, is amended to read:

"**15-24-2002. Building and land tax exemption — procedure — termination.** (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or lease to a profit-oriented, employment-stimulating business are eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the ~~assessor~~ *department* shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county,

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consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 and other levies required under state law.

(5) When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203."

Section 121. Section 15-24-2302, MCA, is amended to read:

"15-24-2302. Clean coal technology tax exemption — procedure — termination. (1) The buildings, facilities, or equipment installed under a clean coal technology project is eligible for an exemption from property taxes as provided in this section. A project must be designated as a clean coal technology project by the department under criteria contained in 90-4-905.

(2) In order to qualify for the tax exemption described in this section, the legislature must have approved the project and the governing body of each affected local government must have approved the tax exemption by resolution, after notice and hearing. The governing body of each affected local government must be notified in writing of the buildings, facilities, and equipment proposed to be exempt from taxation and the value of the buildings, facilities, and equipment. A tax exemption may not be granted under this section unless it is approved by every local government that would be affected by the project.

(3) If the governing body of each affected local government approves a resolution granting the tax exemption for a clean coal technology project, the buildings, facilities, or equipment installed under the project is exempt from the specified percentage of state and local property taxes as approved by the governing bodies. The percentage amount may be any amount up to 100%, but it must be the same for all state and local property taxes.

(4) Funds made available to a clean coal technology project as a result of the tax exemption under this section must be used for project development, construction, or operation or for payment of debt service on instruments used to fund project development, construction, or operation.

(5) The department shall, in writing, notify the ~~department of revenue's agent in the~~ county or counties in which the project is located of the date the final approval for the tax exemption of the property was granted under this section and shall specifically identify each piece of real or personal property subject to the tax exemption. A tax exemption granted under this section is effective for the life of the project or 25 years, whichever occurs first. The tax exemption begins on January 1 of the year after the department ~~of revenue receives~~ *gives* notification of the final approval under this section. The department shall, in writing, notify the ~~department of revenue's agent in the~~ county or counties in which the project is located when the exemption has expired. The termination of the exemption applies on January 1 of tbo taxable year following the expiration of the exemption."

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Section 122. Section 15-36-104, MCA, is amended to read:

"15-36-104. **Record of product — carriers to furnish data.** ~~Every such~~ *Each* person *subject to 15-36-102* shall keep a record in ~~such~~ *the* form ~~as~~ *that* the department ~~of revenue may require~~ *requires* of all petroleum and other mineral or crude oil or natural gas extracted or produced by ~~such~~ *the* person in this state, and ~~such~~ *the* records ~~shall~~ *must* at all times during ~~the~~ business hours ~~of the day~~ be subject to inspection by the department ~~or its agents or employees. It shall be the duty of railroad~~ *Railroad*, pipeline, and transportation companies carrying *petroleum and other* crude or mineral oil or natural gas ~~to~~ *shall* furnish to the department, whenever requested to do so, all data relative to the shipment of ~~such~~ *those* products that may be required to properly enforce the provisions of this part. The failure of any railroad, pipeline, or transportation company to comply with the provisions of this section ~~shall make such~~ *subjects the* company ~~liable~~ to a penalty of $100 for each day it fails to furnish ~~such~~ *the* statement."

Section 123. Section 15-37-203, MCA, is amended to read:

"15-37-203. **Records.** ~~Every such~~ *Each* person *subject to 15-37-201* shall keep a record in ~~such~~ *the* form *required* ~~as~~ *by* the department ~~of revenue may require~~ of all ~~such~~ products mined or produced by ~~him~~ *the person* in this state. ~~Such~~ *The* records ~~shall~~ *must* at all times during the business hours ~~of the day~~ be subject to inspection by the department~~, its agents or employees~~."

Section 124. Section 15-51-104, MCA, is amended to read:

"15-51-104. **Inspection of hooks of producer.** The books and records of ~~such~~ *an electrical energy* producer ~~shall~~ *must* be subject to inspection by the department ~~of revenue, its agents or employees,~~ during reasonable hours."

Section 125. Section 15-59-104, MCA, is amended to read:

"15-59-104. **Manufacturers to keep records.** ~~Every such~~ *Each* person *subject to 15-59-102* shall keep a record in ~~such~~ *the* form ~~as~~ *required by* the department ~~of revenue may require~~ of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum manufactured or produced by ~~such~~ *the* person in this state. ~~Such~~ *The* records ~~shall~~ *must* at all times during ~~the~~ business hours ~~of the day~~ be subject to inspection by the department~~, its agents or employees~~."

Section 126. Section 15-59-203, MCA, is amended to read:

"15-59-203. **Record of cement received.** *(1)* Each ~~and every~~ person ~~engaging in or carrying on such occupation in this state~~ *subject to 15-59-201* shall keep a record showing all cement, cement plaster, gypsum plaster, and other byproducts of cement:

(a) purchased or received by or delivered to ~~such~~ *the* person for sale by ~~such~~ *the* person at retail in this state for the manufacturing or production of ~~which cement, cement plaster, gypsum plaster, or other byproducts of cement no person has paid or assumed liability~~ *those items; and*

(b) for ~~the payment of any~~ *which the* license tax ~~to the state of Montana under any law of this state~~ *has not been paid.*~~, which~~

(2) The record ~~shall~~ *must* show the date of each purchase or delivery, the number of barrels or tons contained ~~therein~~, and the name of the person from whom the ~~same was~~ *items were* purchased or received.~~, which~~ *The* records ~~shall~~ *must* at all times during ~~the~~ business hours ~~of the day~~ be subject to inspection by the department ~~of revenue, its agents or employees~~."

Section 127. Section 19-3-908, MCA, is amended to read:

"19-3-908. Retirement incentive program — window of eligibility. (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or whose service is involuntarily terminated because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) *(a)* The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified te receive all or part of the additional service provided in this section.

(3) An active member who is involuntarily terminated because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member bad not been terminated, would have been eligible under subsection (1) for the retirement incentive is entitled te the retirement incentive under subsection (2) if the member was, at the time of termination, eligible for normal service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) A *Subject to subsection (2)(b), a* contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection ~~(5)~~ *(6)*.

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

~~(5)~~*(6)* The board may allow an employer to pay the contributions required under subsection (2)*(a)* in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

~~(6)~~*(7)* A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year shall forfeit the additional service. The employer's contributions

to purchase that member's additional service, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions."

Section 128. Section 20-9-122, MCA, is amended to read:

"**20-9-122. Statement of district, city, and town valuations.** (1) By the second Monday of July, the department of revenue ~~or its agent in each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of 15-8-705, also~~ deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in ~~his~~ *the* county the total assessed value and the total taxable value of all property in ~~such~~ *the* districts, cities, or towns, as these valuations appear in ~~such completed assessment book~~ *the property tax record.*

~~(2) The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the department of revenue or its agent under the provisions of 15-10-306, prepare a statement showing separately for each district and each city or town in his county the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county tax appeal boards and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk.~~

~~(3)~~*(2)* In the case of a joint school district, the department of revenue ~~or its agent and the county clerk~~ shall, at the time of delivering ~~their respective statements~~ *the statement* to the county superintendent, send a statement of the assessed value and taxable value of tbe portion of the joint school district situated in ~~their~~ *the appropriate* county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated."

Section 129. Section 50-61-112, MCA, is amended to read:

"**50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies.** (1) Within an incorporated municipality, an educational or institutional occupancy, whether public or private, may not be constructed or have alterations made costing $1,500 or more until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to and approved by the state fire prevention and investigation program of the department of justice.

(2) Outside an incorporated municipality, an assembly, educational, or institutional occupancy may not be constructed or have alterations made costing $1,500 or more until a permit has been issued for the construction or alteration by the county commissioners. A fee of $10 ~~shall~~ *must* be paid to the county treasurer for each permit. A copy of the permit ~~shall~~ *must* be furnished to the ~~county assessor~~ *department of revenue.* ~~No~~ *A* permit may *not* be issued until sketches or architectural plans for the construction or alteration, whichever are

available, are submitted to and approved by the state fire prevention and investigation program of the department of justice. The state fire prevention and investigation program of the department of justice and county sheriffs are responsible for enforcing the provisions of this subsection."

Section 130. Section 61-3-207, MCA, is amended to read:

"**61-3-207. Mobile home or housetrailer — transfer of interest.** (1) Upon a transfer of any interest in a mobile home or housetrailer under the provisions of this chapter, the application for the transfer ~~shall~~ *must* be made through the county treasurer's office in the county in which the mobile home or housetrailer is located at the time of the transfer.

(2) When a mobile home or housetrailer is sold under contract or under such conditions that title is not immediately conveyed, the parties to the transaction shall immediately file with the county clerk and recorder a notice of intention to transfer title. The notice must indicate the name of the party who is ~~thereafter~~ responsible for payment of taxes upon the mobile home or housetrailer *after the transfer*. The clerk and recorder shall immediately notify the ~~county assessor~~ *department of revenue* of the information in the notice. The penalty provisions of 61-3-201(2) do not apply if the notice of intent to transfer is filed with the county clerk and recorder within 20 days after the transfer."

Section 131. Section 61-3-303, MCA, is amended to read:

"**61-3-303. Application for registration.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as ~~herein~~ otherwise ~~expressly~~ provided *in this section*, file or cause to be filed in the office of the county treasurer where the owner ~~makes his permanent residence~~ *permanently resides* at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned, an application for registration or reregistration upon a blank form to be prepared and furnished by the department. The application ~~shall~~ *must* contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, *and* type of body~~,~~ and, if *a* truck, ~~the~~ rated capacity; and

(d) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

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(b) unless it has been previously paid:

(i) the personal property taxes assessed against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department ~~or its agent~~ *of revenue* may not assess and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year~~,~~ if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department ~~or its agent~~ *of revenue* may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration ~~must~~ *shall* submit proof from the tax or other appropriate records of the proper county at the request of the department ~~or its agent~~ *of revenue*."

Section 132. Section 61-3-345, MCA, is amended to read:

"**61-3-345. County motor vehicle computer system.** (1) The department shall maintain a statewide ~~on-line~~ *online* computer system to be used to register and reregister motor vehicles, boats, snowmobiles, and off-highway vehicles.

(2) The department shall establish the user advisory group to assist in the development of policies governing the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles. The user advisory group must he appointed by the attorney general and must include:

(a) an employee of the department of administration, data processing division, selected by the division administrator;

(h) two county treasurers, selected by the Montana county treasurers association;

(c) one county motor vehicle section supervisor, selected by the Montana county treasurers association;

(d) ~~a county assessor~~ *an employee of the department of revenue who is engaged in property assessment*, selected by the director of the department of revenue;

(e) an employee of the department of justice, data processing division, selected by the division administrator;

(f) an employee of the department of justice, motor vehicle division, registrar's bureau, selected by the division administrator;

(g) an employee of the department of justice, motor vehicle division, driver services bureau, selected by the division administrator;

(h) a member of the Montana bankers' association, selected by the association director;

(i) a member of the Montana automobile dealers association, selected by the association director; and

(j) a member or employee of the Montana American automobile association, selected by the association director.

(3) Committee members who are not employees of the state of Montana shall serve a term of 2 years, and state employee members shall serve at the pleasure of the attorney general.

(4) Travel and per diem expenses for the committee must be charged to the motor vehicle division.

(5) Secretarial and support services for the committee must be provided by the motor vehicle division.

(6) The committee shall meet no more than four times a year unless specifically called by the attorney general."

Section 133. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment. (1) Except as provided in 61-3-520 and subsection (2) of this section, the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing the application with the county treasurer submit the application to the ~~county assessor~~ *department of revenue*. The ~~county assessor~~ *department of revenue* shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. A motor vehicle is not subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 must be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or another nationally published used vehicle or appraisal guide approved by the department of revenue or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the ~~county assessor~~ *department of revenue*, and thereafter depreciated 10% per year

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until a value of $500 is reached, not including additions or deductions for options and mileage but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines; and a lien for taxes and fees due on the vehicle ~~shall occur~~ *occurs* on the anniversary date of the registration and ~~shall continue~~ *continues* until the fees and taxes bave been paid. If the value sbown in any of the appraisal guides listed in this section is less than $500, the department shall value the vehicle at $500.

(d) Motorcycles and quadricycles must be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide or another nationally published used vehicle or appraisal guide approved by the department of revenue, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue ~~or its agent~~ shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage ~~shall be~~ *is* 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides or other approved guides referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value ~~shall~~ *must* remain at that minimum ~~so~~ *as* long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide or other approved guide, the department ~~or its agent~~ *of revenue* shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value ~~shall~~ *must* remain at that amount ~~so~~ *as* long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1)."

Section 134. Section 61-12-402, MCA, is amended to read:

"**61-12-402. Notice to owner.** (1) Within 72 hours after any vehicle is removed and ~~held~~ by or at the direction of the Montana ~~highway~~ patrol, the ~~highway~~ patrol shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is

being held. In addition, the Montana highway patrol shall furnish the sheriff a complete description of the vehicle, ~~to include~~ *including* year, make, model, serial number, and license number if available,; any costs incurred to that date in the removal, storage, and custody of the vehicle,; and any available information concerning its ownership.

(2) The sheriff or the city police shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If ~~such~~ *a* name and address are ascertained, the sheriff or the city police shall notify ~~such~~ *the* owner and lienholder or person of the location of the vehicle.

(3) If the vehicle is registered in the office of the department, notice ~~shall be deemed~~ *is considered to have been* given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid ~~thereon~~, is mailed at least 30 days before the vehicle is sold ~~as hereinafter provided~~.

(4) If the identity of the ~~last registered~~ *last-registered* owner cannot be determined, ~~or~~ if the registration ~~contains no~~ *does not contain an* address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned ~~shall be~~ *is* sufficient to meet all requirements of notice pursuant to this part. ~~Such~~ *The* notice by publication can contain multiple listings of abandoned vehicles. ~~Any such~~ *The* notice ~~shall~~ *must* be provided in the same manner as prescribed in 25-13-701(1)(b).

(5) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (2) through (4). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(6) A vehicle found by law enforcement officials to be a "junk vehicle" as defined by 75-10-501 and certified as having an appraised value of $100 or less as determined by the ~~county assessor in accordance with the rules of the~~ department of revenue may be directly submitted for disposal in accordance with the provisions of part 5 of chapter 10, Title 75, upon a release given by the sheriff or the city police. In the release, the sheriff or the city police shall include a description of the vehicle, including year, make, model, serial number, and license number if available. A release provided by the sheriff or the city police under this section ~~shall~~ *must* be transmitted to the motor vehicle wrecking facility and ~~shall~~ *must* be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted without notice and without a required holding period."

Section 135. Section 70-23-304, MCA, is amended to read:

"70-23-304. Declaration to be approved by department of revenue before recording. Before a declaration may be recorded *in the county in which the property is located*, it must be approved by ~~the agent of~~ the department of revenue ~~in the county in which the property is located. No~~ *A* declaration ~~shall~~ *must* be approved unless:

(1) the name is proper so as to comply with 70-23-303; and

(2) all taxes and assessments due and payable have been paid."

Section 136. Section 70-23-305, MCA, is amended to read:

"70-23-305. Recording of declaration. (1) When a declaration is made and approved as required, it must, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date of recording must be entered on the declaration.

(2) At the time of recording a declaration, the person offering it for record shall also file a copy, certified by the recording officer to be a true copy, with the department of revenue ~~or its agent in the county in which the property is located~~.

(3) If the property is located in a city or town, a copy of the declaration only must also be filed with the city or town clerk at the time of recording."

Section 137. Section 76-2-102, MCA, is amended to read:

"76-2-102. Organization and operation of commission. (1) The commission is to consist of the three county commissioners, the county surveyor, and ~~the county assessor~~ *a county official appointed by the county commissioners.* Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses and shall *must* be residents of the county in which they serve.

(2) The commission ~~hereby is authorized to~~ *may* appoint necessary employees and fix their compensation with the approval of the board of county commissioners, ~~to~~ select a ~~chairman~~ *presiding officer* to serve for 1 year, ~~to~~ appoint a secretary ~~who shall~~ *to* keep permanent and complete records of its proceedings, and ~~to~~ adopt rules governing the transaction of its business.

(3) The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board shall *must* be paid from a levy of not to exceed 1 mill on the taxable valuation of the real property within ~~such~~ *the* district."

Section 138. Section 76-13-207, MCA, is amended to read:

"76-13-207. Determination and collection of costs of fire protection. (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in 76-13-201, sufficient to bring the total amount received from ~~such~~ *the* landowners to no greater than one-third of the amount specified in the appropriation.

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(2) On or before the second Tuesday in August of each year, the department shall certify in writing to the ~~county assessor of each county~~ *department of revenue* the names of these owners of forest lands in ~~his~~ *each* county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the ~~county assessor~~ *department of revenue* shall extend the amounts upon the county tax rolls covering the lands, and the sums ~~shall~~ become obligations of the owner, to be paid and collected in the same manner and at the same time and ~~with like~~ *subject to the same* penalties as general state and county taxes upon the same property are collected."

Section 139. Section 76-15-518, MCA, is amended to read:

"**76-15-518. Certification of assessment to ~~assessor~~ *department of revenue* — entry on ~~assessment roll~~ *property tax record*.** The board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in this part or part 6. The assessment ~~shall~~ *must* be certified to the ~~county assessor of each of the respective counties~~ *department of revenue* and entered on the ~~assessment roll~~ *property tax record of each county*."

Section 140. Section 77-1-501, MCA, is amended to read:

"**77-1-501. List of state lands by county.** The department shall, before the first Monday of April of every year, prepare and transmit a statement to the department of revenue ~~or its agent in~~ *that designates* each county in which the state has real property in excess of 6% of the total land area of the county and from which the state derives grazing, agricultural, or forest income. The statement shall *must* contain the total number of acres owned by the state in that county and list the acres separately as grazing, agricultural, or forest land."

Section 141. Section 77-1-503, MCA, is amended to read:

"**77-1-503. Form to be completed by ~~county agent of the~~ department of revenue.** The department shall provide a form *for each county* to be followed and completed by ~~the agent of~~ the department of revenue ~~in each county~~. The ~~agent~~ *department of revenue* shall, before October 1, make the computations required and submit to the department the completed ~~form~~ *forms,* which shall *must* show the computations and method used in arriving at the state land equalization payment."

Section 142. Section 77-1-504, MCA, is amended to read:

"**77-1-504. Processing of ~~county~~ statements.** The department shall examine *for accuracy* the statement returned by the ~~agent of the~~ department of revenue ~~for accuracy~~, and ~~in no case~~ shall the state land equalization payment *may not* be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties ~~who~~ *that* are eligible for state land equalization payments, and this claim shall *must* show the amount of money each eligible county will receive."

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Section 143. Section 77-2-313, MCA, is amended to read:

"77-2-313. Land subject to taxation. (1) State lands purchased from the state are subject to taxation ~~to the full value thereof~~. The department of revenue shall assess the purchaser for the full value of the land on January 1 following the date of purchase. The holder of certificates of purchase to lands within *an* irrigation ~~districts~~ *district* is liable for the entire *irrigation district* tax levied against the land ~~thereunder on account of such irrigation district~~.

(2) The improvements on the land ~~shall~~ *must* be assessed and taxed as other improvements on farm lands.

(3) On or before January 15 of each year, the department shall furnish the department of revenue ~~or its agent in each county~~ with a complete list of all state lands sold in ~~his~~ *each* county during the *previous calendar* year ~~ending on the previous December 31~~. This list ~~shall~~ *must* show the name and address of the purchaser, the legal description of the land, and the acreage contained ~~therein~~ *in the purchase*."

Section 144. Section 80-2-203, MCA, is amended to read:

"80-2-203. Participation in program — tax. (1) A taxpayer or an association of taxpayers engaged in the growing of crops other than *those* specified in this part or other agricultural or horticultural products subject to injury or destruction by hail may, by individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject to this part. The risks may be classified by the board, and suitable levies may be imposed as agreed upon by the board and the taxpayers. The taxpayers are entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) ~~Every~~ *Each* farmer taxpayer who signifies a desire to become subject to the provisions of this part shall file ~~in the office of the county assessor~~ *with the department of revenue* the properly filled out form not later than August 15. ~~and~~ *The taxpayer* is chargeable with the tax provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. The application for hail insurance is in full force and effect at 12:01 a.m. the day immediately following the acceptance of the application by the ~~county assessor~~ *department of revenue*.

(3) This part may not be construed to empower anyone except the actual owner of the land to make the land subject to the hail tax provided in this part."

Section 145. Section 80-2-204, MCA, is amended to read:

"80-2-204. Duty of agent of the department of revenue — election of benefits of law. ~~It shall be the duty of the agent of the~~ *The* department of revenue ~~in each county in the state~~ *shall* upon request to explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail the provisions of this part. ~~and the protection afforded thereby and to~~ *The department of revenue shall* issue *hail* insurance policies~~, on the forms provided for such purpose, if such~~ *to each* taxpayer *who* desires to become subject to this part, ~~and~~ *to become* liable for the tax levies provided ~~hereby~~ *in this part,* and ~~thereby~~ *to be* eligible to *for* the benefits and protection of this part. ~~Each such~~ *A*

taxpayer who elects to become subject to this part ~~shall be~~ *is* liable for the taxes levied for hail insurance and shall participate in the benefits and protection afforded by this part. ~~, provided that~~ *Either* the owners of lands worked by others under lease or contract ~~shall elect if such lands shall be subject to the tax levies herein provided for and the crops grown thereon protected~~ *may make the election* for hail insurance~~,~~ or the lessee of ~~such~~ *the* land may tender payment of the tax levied for hail insurance to protect ~~his~~ *the lessee's* crops, in cash, to the officer authorized to receive *payment* ~~same, whereupon such crops shall become eligible to the benefits and protection afforded by this part for hail insurance~~."

Section 146. Section 80-2-206, MCA, is amended to read:

"**80-2-206. Cash payment.** When an applicant for hail insurance tenders cash for the ~~same~~ *insurance* to the ~~county assessor~~ *department of revenue*, ~~he shall be~~ *the applicant is* allowed a discount of 4%. ~~His~~ *The* hail insurance ~~shall~~ *must* be issued upon ~~said~~ *the* cash payment less the 4% ~~mentioned~~. The charge for the insurance ~~shall~~ *must* be based on the maximum rates shown on the application for hail insurance. If the current rates are reduced later, the board of hail insurance shall arrange for the proper refund to the insured. All cash received by the ~~assessor shall~~ *department of revenue must* be promptly turned over to the county treasurer, who ~~will~~ *shall* furnish the insured with a current receipt and place the money in the hail insurance fund."

Section 147. Section 80-2-207, MCA, is amended to read:

"**80-2-207. Delinquent taxes — application by delinquent — crop lien.** (1) ~~No~~ *An* owner of land who has more than 1 year's delinquent taxes on ~~his~~ *the* land ~~shall~~ *may not* be allowed hail insurance under the provisions of this part, unless ~~his~~ *the owner's* application is accompanied by a cash payment for the amount that would be due on ~~said~~ *the* application in the event of a maximum levy for that year.

(2) Any grain grower unable to secure state hail insurance under the provisions of this part ~~on account~~ *because* of delinquent taxes or for other reasons may make application to the ~~county assessor of his respective county~~ *department of revenue*, and ~~said county assessor is hereby authorized to~~ *the department of revenue may* receive and accept ~~such~~ *the* applications ~~where~~ *when* the applicant furnishes a sufficient crop lien *that is* subject only to a seed lien. ~~, provided that~~ ~~such~~ *The* crop lien shall *may* be accepted only under ~~such~~ rules and requirements ~~as~~ *that* may be prescribed by the board of hail insurance and ~~provided~~ *under the provision* that the board may cancel any hail insurance accepted in violation of ~~said~~ *the* rules and requirements. Upon receipt of ~~said~~ *the* application, the ~~county assessor~~ *department of revenue* shall make *a* record ~~thereof~~ *of the application* and shall file the original in the office of the clerk and recorder of ~~said~~ *the* county. ~~He~~ *The department of revenue* shall also cause an assessment for the proper amount to be made on the ~~assessment rolls~~ *property tax record* in the same manner provided for in the case of other special levies or assessments.

(3) ~~No~~ *A* tenant who has delinquent hail insurance ~~which~~ *that* was secured by a crop lien only and not secured by real estate ~~shall~~ *may not* be allowed another policy in any succeeding year until ~~he pays his~~ *the* delinquent account or accounts *are paid* or until he *the tenant* pays cash for the current hail insurance.

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(4) If ~~any~~ *a* tenant becomes delinquent for ~~his~~ hail insurance after having failed to apply for relief as provided by the board under 80-2-229, he *the tenant* may apply to the board for a reduction. If ~~his~~ *the* reasons for requesting a reduction are approved by the board, the board may reduce ~~his~~ *the* charge to not less than one-half the original amount charged."

Section 148. Section 80-2-225, MCA, is amended to read:

"**80-2-225. Real estate lien — creation.** ~~Such~~ *The* tax levies are chargeable to the lands of each taxpayer~~, respectively,~~ who elects to become subject to this part and ~~shall~~ *must* be ~~extended on~~ *entered in* the *property* tax ~~roll~~ *record* and collectod by the officers charged with such duties in the manner and form as are other property taxes. ~~and if~~ *If the levies are* not paid, ~~shall be~~ *they are* a lien on the lands against which ~~the same~~ *they* are levied *in the same manner* as are other property taxes. ~~The lien may in no way affect mortgages that are of record on March 14, 1917. The lien of any mortgage filed subsequent to March 14, 1917, shall be subsequent to any lien for hail insurance hereafter levied thereon.~~"

Section 149. Section 81-2-302, MCA, is amended to read:

"**81-2-302. Duty of ~~county assessor~~ *department of revenue.*** The ~~assessment roll~~ *property tax record* of the county in which the disease control area is to be established is the basis for computing the required percentage of livestock owners and livestock. The ~~county assessor~~ *department of revenue* shall certify to the department when the necessary 75% of the owners of livestock representing not less than 50% of the species of livestock to be inspected, tested, treated, or vaccinated have signed the required petition."

Section 150. Section 81-4-511, MCA, is amended to read:

"**81-4-511. Assessment of horses taken in roundup.** ~~It shall be the duty of the county assessor~~ *Following a roundup held pursuant to this part, the department of revenue shall* immediately ~~to~~ assess all horses *that have been* taken up in ~~such~~ *a* roundup ~~which shall~~ *and that may* be sold or reclaimed before sale and not already assessed for the current year. ~~and forthwith~~ *The department of revenue shall* transmit to the county treasurer a copy of each assessment made. Any ~~such~~ horses ~~which~~ *that* have escaped the assessment mentioned in 81-4-501 ~~shall~~ *must* be assessed as provided for in 15-8-306."

Section 151. Section 81-4-513, MCA, is amended to read:

"**81-4-513. Report of roundup foreman — disposition of copies.** The roundup foreman in charge of ~~any such~~ *the* roundup shall keep an accurate record of all proceedings ~~had~~ under the order for ~~such~~ *the* roundup.~~, and within~~ *Within* 30 days after ~~such~~ *the* roundup ~~shall be~~ *is* completed, ~~he must~~ *the foreman shall* prepare in triplicate and verify by ~~his~~ oath a full, true, and accurate report of all the proceedings ~~taken or had~~ under the order for the roundup.~~, among other things, particularly including~~ *The report must include* a complete financial statement, the number and description of horses impounded, and ~~how disposed~~ of *the manner of disposition of the horses.* ~~Within said 30 days one of such triplicates of such~~ *One copy of the* report ~~shall~~ *must* be filed with the clerk of the board of county commissioners, and ~~such~~ *the* filing ~~shall be~~ *is* notice ~~to the world~~ of all the contents of ~~such~~ *the* report and prima facie proof of the facts ~~therein~~

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stated *in the report.* ~~Within said 30 days one of such triplicate shall also~~ *One copy of the report must* be filed with the ~~county assessor~~ *department of revenue,* and one *copy must be filed* with the county treasurer, for their information and appropriate action."

Section 152. Section 81-4-516, MCA, is amended to read:

"**81-4-516. Limitation of powers or duties of officers.** Except as ~~herein~~ provided *in this part,* ~~nothing herein contained shall~~ *this part may not* be construed as limiting the powers or duties of ~~assessors~~ *the department of revenue,* county treasurers, or other boards or officers."

Section 153. Section 81-7-303, MCA, is amended to read:

"**81-7-303. County commissioners permitted to require per capita license fee on sheep.** (1) To defray the expense of ~~such~~ protection, the board of county commissioners of any county ~~shall have the power to~~ *may* require all owners or persons in possession of any sheep ~~coming~~ 1 year old or ~~over~~ *older* in the county on the regular assessment date of each year to pay a *per capita* license fee in an amount to be determined by the board ~~on a per head basis for sheep so owned or possessed by him in the county~~. All owners or persons in possession of any sheep ~~coming~~ 1 year old or ~~over~~ *older* coming into the county after the regular assessment date and subject to taxation under the provisions of 15-24-301 ~~shall also be~~ *are* subject to payment of the license fee ~~herein~~ ~~prescribed~~.

(2) Upon the order of the board of county commissioners, ~~such~~ *the* license fees may be imposed by ~~the entry thereof in~~ *entering* the name of the licensee upon the property tax ~~rolls~~ *record* of the county by the ~~county assessor~~ *department of revenue.* ~~Said~~ *The* license fees ~~shall be~~ *are* payable to and *must be* collected by the county treasurer.~~, and when so~~ *When* levied, ~~shall be~~ *the fees are* a lien upon the property, both real and personal, of the licensee. ~~In case~~ *If* the person against whom ~~said~~ *the* license fee is levied ~~owns no~~ *does not own* real estate against which ~~said~~ *the* license fee is or may become a lien, then ~~said~~ *the* license fee ~~shall be~~ *is* payable immediately upon its levy and the treasurer shall collect the ~~same~~ *fee* in the manner provided by law for the collection of personal property taxes ~~which~~ *that* are not a lien upon real estate.

(3) When collected, ~~said~~ *the* fees ~~shall~~ *must* be placed ~~by the treasurer~~ in the predatory animal control fund and the ~~moneys in said~~ fund ~~shall~~ *may* be expended on order of the board of county commissioners of the county for predatory animal control only."

Section 154. Section 85-7-2136, MCA, is amended to read:

"**85-7-2136. Collection of taxes or assessment.** (1) On or before the third Monday in August of each year, the board of commissioners shall furnish ~~the agent of~~ *to* the department of revenue ~~in each county in which any of the lands of the district are situated~~ a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The ~~agent of the~~ department of revenue ~~in each county~~ shall immediately upon receipt of the list~~, and prior to the delivery of the assessment book to the county treasurer, cause~~ *enter* the assessment roll ~~to be entered~~ in the ~~assessment book~~ *property tax record* of the county for each year.

(2) ~~It is the duty of the~~ *The* county treasurer of each county in which any irrigation district is located, in whole or in part, ~~to~~ *shall* collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on ~~such~~ *the* installment. However, the payment may not be considered a redemption of the property from the tax sale but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must issue, showing exactly what assessments have been paid, and must show that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, ~~or~~ receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is paid as permitted in this section and the receipt for the payment presented to the county treasurer at the time the taxes are paid, or paid at the same time."

Section 155. Section 85-8-601, MCA, is amended to read:

"85-8-601. **Certification and collection of district taxes.** (1) On or before the third Monday in August of each year, the commissioners shall certify to ~~the agent of~~ the department of revenue ~~in each county wherein the lands of the district are situate~~ a correct list of all the district lands in ~~such~~ *each* county and the owners ~~thereof~~ *of the lands*, together with a statement of the amount of the total tax or assessment against ~~said~~ *the* lands for district purposes for that year. The ~~agent of the~~ department of revenue ~~in each county~~ shall immediately ~~thereupon cause said~~ *enter the* assessment roll ~~to be entered~~ in the ~~assessment book~~ *property tax record* of ~~said~~ *the* county for each year ~~and prior to the delivery of the assessment book to the county treasurer~~.

(2) ~~It shall be the duty of the~~ *The* county treasurer of each county in which ~~any~~ *a* drainage district is located, in whole or in part, ~~to~~ *shall* collect and receipt for all taxes and assessments levied by ~~any such~~ *the* district, in the same manner and at the same time as is required in the collection of taxes upon real estate

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for county purposes as provided in 15-16-102~~;~~. ~~provided~~ *However,* the treasurer ~~shall~~ *must* receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which ~~such~~ *the* district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of ~~such~~ *the* district tax or assessment, together with the penalty and interest to date of payment on ~~such~~ *the* installment~~;~~ ~~provided that such~~ *However, the* payment ~~shall~~ *may* not be ~~deemed~~ *considered* a redemption of ~~said~~ *the* property from ~~such~~ *the* tax sale, but ~~shall~~ *must* be credited on account of any redemption that may ~~thereafter~~ *later* be made. In case of any payment pursuant to this subsection, a separate tax receipt ~~shall issue~~ *must be issued* showing exactly what assessments have been paid and ~~shall show~~ *showing* that no other tax on ~~said~~ *the* real estate has been received by said *the* treasurer~~;~~ ~~provided such~~ *However, the* county treasurer ~~shall~~ *may* not collect, ~~or~~ receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any drainage district upon which an assessment for the purposes of ~~such~~ *the* drainage district has been levied unless the assessment levied for ~~such~~ *the* drainage district purposes ~~be~~ *is either* paid as ~~herein permitted~~ *provided in this section* and the receipt ~~therefor~~ *is* presented to the county treasurer at the time ~~such~~ *the real estate* taxes are paid~~;~~ or paid at the same time *the drainage district taxes are paid.*"

Section 156. Section 85-9-603, MCA, is amended to read:

"**85-9-603. Directors to provide ~~county officials with~~ financial information.** (1) Before the second Monday in July of each year, the directors shall provide the ~~county assessor~~ *department of revenue* and *the county* treasurer with:

(a) the budget for the current fiscal year;

(b) a statement of the amount of special assessments to be collected for the districts; *and*

(c) a listing of all real property within the district.

(2) If the district is located in more than one county, the directors shall provide this information to *the department of revenue and* each of the *affected* county ~~assessors and~~ treasurers."

Section 157. **Taxation of personal property — duty of department.** (1) If the taxes on personal property are not a lien upon real property in the same county in an amount sufficient to secure the payment of the taxes, the department shall assess the property and compute the tax for the assessment. The department shall notify the county treasurer of the assessment and the amount of taxes due. To compute the taxes due on the personal property, the department shall use the appropriate mills levied during the previous year.

(2) The county treasurer shall notify the person against whom the tax is assessed and any other person having a properly perfected security interest of record of the amount and due date of the tax. The tax is due and payable 30 days from the date the treasurer mails the notice. Taxes not paid within 30 days

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become delinquent, and the penalty and interest provisions of 15-16-101 must be applied.

(3) The county treasurer shall, after the tax becomes delinquent, levy upon and take into possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer. The county treasurer may proceed to sell the property in the same manner as property is sold on execution by the sheriff.

(4) The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for sale purposes and may receive payment of the taxes, penalty, and interest. The sheriff may receive the same fees as for making a seizure and sale as provided in 15-17-911.

(5) The county treasurer and the treasurer's sureties are liable on the treasurer's official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell the personal property for the taxes levied upon the property, including penalty and interest.

(6) Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax, including penalty and interest.

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

Section 158. **Assessors qualifying as employees.** (1) A person serving as a county assessor on January 1, 1994, may qualify to become an employee of the department of revenue upon satisfying the following conditions:

(a) The assessor shall notify the department in a written statement received by January 4, 1994, of the assessor's intention to become an employee.

(b) The assessor shall resign from that office effective no later than January 24, 1994.

(2) This section does not apply to a person who is an assessor because the office of assessor was consolidated with another county office prior to [the effective date of this section].

Section 159. **Classification and salary for qualifying assessor.** (1) The position for which a qualifying county assessor is employed as provided in [section 158] must be classified in accordance with the classification standards for state employees.

(2) The initial salary for qualifying assessors is determined as follows:

(a) If an assessor's salary as established by resolution of the board of county commissioners for fiscal year 1994 is greater than the market salary under

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2-18-312 for the grade of the new position, the initial salary is the same as the amount set hy the resolution of the board of county commissioners.

(b) If an assessor's salary as established by the board of county commissioners for fiscal year 1994 is less than the applicable entry-level salary under 2-18-312, the initial salary is the entry-level salary for the grade of the new position.

(3) If, after initial employment, a qualifying assessor is transferred to a different position because of a disciplinary action against the assessor, the assessor's salary must be determined according to the rules and policies governing employee disciplinary actions.

(4) If, after initial employment, a qualifying assessor voluntarily seeks and obtains a transfer to a different employment position, the person's salary must be based upon the grade classification of that new position without regard to this section.

Section 160. **Benefits for qualifying assessors.** (1) In addition to other benefits provided by law, county assessors qualifying for employment with the department of revenue under [section 158] are entitled to the following benefits:

(a) credit for time served as an assessor for completing new employee probationary requirements and for determining years of service for annual vacation leave entitlements;

(b) an initial allowance of annual leave of 40 hours. Annual leave taken must first be credited against this initial allowance. Cash compensation is not allowed under 2-18-617 for any portion of this initial allowance that is unused at termination of employment.

(c) an initial allowance of sick leave of 40 hours. Sick leave taken must first be credited against this initial allowance. A lump-sum payment is not allowed under 2-18-618 for any portion of this initial allowance that remains at termination of employment.

(2) All uninterrupted time served as an assessor is considered as state service for the purposes of 2-18-304.

Section 161. **Required employment — department excused from hiring practices.** (1) The department of revenue shall employ:

(a) any assessor who qualifies under [section 158] to become an employee of the department; and

(b) deputy assessors appointed before November 12, 1993, with continuous service through January 4, 1994, who by that date make a written request for employment.

(2) The department is exempt from compliance with any statute, rule, or policy that requires competitive, formal hiring practices in employing qualifying assessors. Hiring preferences and the provisions of Title 2, chapter 18, part 12, do not apply to the hiring of eligible former assessors.

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(3) Deputy assessors who become employees of the department are considered employees transferring between agencies of the same jurisdiction for the purposes of 2-18-617 and 2-18-618.

Section 162. **Department contract for county assessor.** (1) The department of revenue may, with the consent of the assessor, contract with the county for the assessor to perform assessment work as assigned by the department. Under this contract, the department shall reimburse the county for one-half of the wages and benefits of the assessor. An assessor performing work under this contract is not considered to be an employee of the department for any purpose. However, the department may pay the assessor's salary and benefits and be reimbursed by the county for the county's share of the salary and benefits.

(2) As a condition for the continuation of a contract under this section, the contract must provide that the assessor meet the qualification and certification standards required for department assessment personnel who perform comparable duties.

Section 163. **Consolidation of office of county assessor — special procedure — transfer of records.** (1) The board of county commissioners may consolidate the office of county assessor with another county office. For a consolidation under this section, the notice of hearing need only be published once, notwithstanding the provisions of 7-1-2121. The publication may not be less than 3 days prior to the date of the hearing. In all other respects, the notice must be published in accordance with 7-4-2307.

(2) If the assessor becomes an employee of the department of revenue as provided in [section 161], the order of the county commissioners combining the offices under this section must be made and entered no later than January 14, 1994. After January 14, 1994, the office of the county assessor may be consolidated pursuant to Title 7, chapter 4, part 23.

(3) Notwithstanding the provisions of 7-4-2311, when an order is made under subsection (2) to consolidate the office of assessor with another office, the outgoing assessor shall deliver and transfer to the department all of the books, files, papers, documents, maps, plats, and records of the office. The department shall maintain necessary records and documents within the county for public access during normal business hours, unless the department needs the records and documents for appraisal purposes. The records and documents may be made available from county officials.

Section 164. **State not obliged to reimburse county for assessor salary.** Except for contracts under [section 162] between the department of revenue and a county regarding its county assessor, the department may not pay or reimburse a county for any part of the salary or benefits earned by an assessor or deputy assessor after January 14, 1994.

Section 165. **Advisory committee — study of taxation of motor vehicles and mobile homes.** (1) The governor shall appoint an advisory committee to study the valuation and taxation of motor vehicles and mobile homes. The membership of the committee must include:

(a) a county treasurer;

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(b) a county assessor (or former county assessor);

(c) an employee of the department of justice, motor vehicle division, selected by the division administrator;

(d) an employee of the department of transportation, selected by the director of the department of transportation; and

(e) an employee of the department of revenue, property assessment division, selected by the division administrator.

(2) The committee shall meet when requested by the director of revenue.

(3) The committee shall study methods and processes for valuation and taxation of motor vehicles and mobile homes. The committee shall submit its recommendations to the director of revenue.

(4) All administrative and secretarial support for the committee is provided by the department of revenue.

(5) All reimbursable expenses, including travel and per diem expenses, must be charged to the department of revenue.

Section 166. **Office hours.** Notwithstanding the provisions of 2-16-117, the department of revenue may determine by rule the office hours for property appraisal and assessment field offices located in the various counties. This section does not apply to any other offices of the department.

Section 167. Section 7-4-3007, MCA, is amended to read:

"7-4-3007. Qualifications for office of county assessor — forfeiture of office. (1) In addition to the qualifications set forth in 7-4-2201, each assessor, before entering the duties of ~~his~~ office, ~~must~~ *shall*:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) ~~he~~ *the assessor* has satisfactorily completed the assessor certification training as provided in ~~15-8-106(2)~~ *15-7-106(4)*; or

(ii) he *the assessor* intends to take the assessor certification training at the next offering.

(2) An assessor forfeits ~~his~~ office for failure to take and satisfactorily complete the assessor certification training within 36 months after taking office by election or appointment or for failure to satisfactorily complete ~~annual~~ continuing education ~~as provided in 15-8-106~~ *when conducted by the department of revenue*, unless the board of county commissioners finds that:

(a) the assessor is excused for reasons beyond ~~his~~ *the assessor's* control, including illness, a death in the family, or other good cause; or

(b) there is no other qualified person available for appointment as assessor.

(3) Subsections (1)(b) and (2) do not apply to county officers who are county assessors because their county office has been consolidated with the office of

county assessor and who are not contractually required to perform property assessment duties for the department."

Section 168. **Appropriations.** (1) The fiscal 1995 general fund appropriation for the property valuation division, department of revenue, as specified under item 7, page 2607, section 15, Chapter 623, Laws of 1993, including any amendments by the special session convening November 29, 1993, is reduced by $1,200,000.

(2) There is appropriated to the department of revenue from the account provided for in [section 2] an amount not to exceed $1 million for each year of the biennium.

Section 169. **Repealer.** Sections 7-2-2753, 7-6-2540, 15-1-403, 15-1-506, 15-7-213, 15-8-103, 15-8-105, 15-8-106, 15-8-114, 15-8-302, 15-8-705, 15-8-706, 15-9-102, 15-10-301, 15-10-302, 15-10-303, 15-10-304, 15-10-306, 15-10-307, 15-10-308, 15-16-111, 15-16-112, 15-16-113, 15-16-114, and 15-30-228, MCA, are repealed.

Section 170. **Codification instructions.** (1) [Section 2] is intended to he codified as an integral part ef Title 15, chapter 1, part 5, and the provisions of Title 15, chapter 1, part 5, apply to [section 2].

(2) [Section 157] is intended to be codified as an integral part of Title 15, chapter 16, part 1, and the provisions of Title 15, chapter 16, part 1, apply to [section 157].

Section 171. **Applicability.** (1) [Section 127] applies retroactively, within the meaning of 1-2-109, to terminations on or after June 25, 1993.

(2) [Sections 1 through 37, 39 through 107, 111, 115 through 167, and 169] apply to tax years after December 31, 1993.

(3) [Sections 38, 108 through 110, and 112 through 114] apply to tax years after December 31, 1994.

Section 172. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 173. **Effective dates.** (1) [Sections 1 through 126, 128 through 157, and 165 through 167] are effective January 1, 1994.

(2) [Sections 127, 158 through 164, and 168 through 172 and this section] are effective on passage and approval.

Approved December 27, 1993.

CHAPTER NO. 28

[HB 4]

AN ACT ALLOWING THE USE OF INMATE LABOR FOR CONSTRUCTION OF THE DAIRY DORMITORY AT THE MONTANA STATE PRISON AS

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AUTHORIZED IN SECTIONS 2 AND 18, CHAPTER 624, LAWS OF 1993; UNDER CERTAIN CIRCUMSTANCES, ALLOWING THE PROJECT TO BE EXEMPT FROM PUBLIC BIDDING, BONDING, CONTRACTS, WORKERS' COMPENSATION COVERAGE, OR LABOR AND WAGE REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Department of Corrections and Human Services is trying to expand the numher and variety of productive work experiences for inmates at the Montana State Prison; and

WHEREAS, the prison ranch is recognized as a productive work site; and

WHEREAS, the Department wishes to contribute to statewide efforts to balance the budget but is unable to absorb further operating budget reductions; and

WHEREAS, construction of the low-security facility using inmate labor as authorized by the 51st Legislature was both an effective work experience and cost-reduction measure.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authorization of inmate labor for designated construction project — exemptions.** (1) The department of corrections and human services is authorized to use inmate labor for the purpose of constructing the dairy dormitory at the Montana state prison authorized in sections 2 and 18, Chapter 624, Laws of 1993.

(2) The department of administration may exempt the project autborized in this section from the provisions of any applicable Montana law relating to public bidding, bonding, contracts, workers' compensation coverage, or labor and wage requirements.

(3) The department of administration is directed to provide for construction of the project authorized in this section, which is to be built by the lowest responsible bidder, with contract specifications to allow the use of inmate labor. The percentage of inmate labor must be determined prior to the advertising for bid of the project through negotiations among the department of corrections and human services, the department of administration, representatives of construction industry employers, and representatives of the building trades. Inmate labor shall work in a training or apprenticeship program. If the department rejects all bids, it is authorized to build the project using inmate labor.

Section 2. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, and the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Effective date.** [Tbis act] is effective on passage and approval.

Approved December 27, 1993.

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CHAPTER NO. 29

[HB 8]

AN ACT ALLOWING THE USE OF MONTANA STATE PRISON STAFF FOR INSTALLATION AND MAINTENANCE OF THE MONTANA STATE PRISON SECURITY FENCE REAUTHORIZED IN SECTION 18, CHAPTER 624, LAWS OF 1993; EXEMPTING THE PROJECT FROM PUBLIC BIDDING REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Department of Corrections and Human Services Montana State Prison staff is knowledgeable concerning the installation and maintenance of the authorized security fence; and

WHEREAS, security of the institution is best preserved through the use of prison staff to install and maintain the security fence project.

THEREFORE, the Legislature of the State of Montana finds it appropriate to authorize the use of Montana State Prison staff for the purpose of the installation and maintenance of the security fence at Montana State Prison.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authorization of Montana state prison staff for designated construction project — exception.** (1) The department of corrections and human services may use prison staff for the purpose of installation and maintenance of the Montana state prison security fence reauthorized in section 18, Chapter 624, Laws of 1993.

(2) The department of administration may exempt the project referred to in subsection (1) from the provisions of any applicable Montana law relating to public bidding and construction contracts.

(3) Prison staff engaged in the security fence project is governed by the staff's existing employment agreements and is not eligible for additional compensation or benefits not currently provided by the existing employment agreements.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Termination.** [This act] terminates June 30, 1995.

Approved December 27, 1993.

CHAPTER NO. 30

[HB 2]

AN ACT GENERALLY REVISING APPROPRIATIONS AND APPROPRIATION LAWS FOR THE BIENNIUM ENDING JUNE 30, 1995; PROHIBITING THE PASS-THROUGH OF GENERAL FUND REDUCTIONS TO LOCAL GOVERNMENTS; AMENDING SECTIONS 11 AND 15, CHAPTER 623, LAWS OF 1993, CITED AS THE GENERAL APPROPRIATIONS ACT OF 1993; AMENDING SECTION 2, CHAPTER 624, LAWS OF 1993, AND SECTION 1,

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CHAPTER 550, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15, Chapter 623, Laws of 1993, is amended to read:

"Section 15. **Appropriations.** The following money is appropriated for the respective fiscal years:

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
A. GENERAL GOVERNMENT AND HIGHWAYS												
LEGISLATIVE AUDITOR (1101)												
1. Audit and Examination Program (01)	~~1,354,483~~	~~1,416,333~~				~~2,770,816~~	~~1,338,960~~	~~1,398,833~~				~~2,737,793~~
	1,301,386	*1,415,583*				*2,716,969*	*1,351,011*	*1,397,966*				*2,748,977*
a. SJR 28 — Legislative Audit Request — Hard-Rock Bureau (Biennial)	1,200					1,200						
b. State Fund Cost Allocation	*835*					*835*		*1,676*				*1,676*
2. Vacancy Savings	52,958					52,958	53,221					53,221
3. Personal Services Contingencies (Restricted/Biennial)	5,296					5,296	5,322					5,322
4. Budget Balancing Reduction	6,534					6,534	6,455					6,455
Total	~~1,300,287~~	~~1,417,533~~				~~2,717,820~~	~~1,204,606~~	~~1,398,833~~				~~2,603,439~~
	1,247,190	*1,417,618*				*2,664,808*	*1,296,657*	*1,399,642*				*2,696,299*

If Senate Bill No. 28 is not passed and approved, the general fund appropriation in item 1 is reduced by $2,620 in fiscal 1994 and by $25,380 in fiscal 1995.

~~Item 1a is contingent on passage of Senate Joint Resolution No. 28.~~

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

LEGISLATIVE FISCAL ANALYST (1102)

1. Analysis and Review (01)	~~821,376~~					~~821,376~~	~~851,562~~					~~851,562~~
	820,800					*820,800*	*843,037*					*843,037*
a. Legislative Requests (Restricted/Biennial)	4,000					4,000						
2. Budget Balancing Reduction	4,127					4,127	4,258					4,258

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	Fiscal 1994					Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
~~821,249~~					~~821,249~~	~~847,304~~					~~847,304~~
820,673					*820,673*	*838,779*					*838,779*

Of the amount appropriated as item 1a, legislative contingencies, to the office of the legislative fiscal analyst in section 1, Chapter 17, Special Laws of July 1992, amending section 1, Chapter 13, Special Laws of January 1992, amending section 1, Chapter 815, Laws of 1991, any unexpended funds up to $16,000 are reappropriated to the analysis and review program (program 01) within the office of the legislative fiscal analyst. The funds reappropriated to the analysis and review program are appropriated for the 1995 biennium for expenses associated with the review required in Senate Bill No. 378.

LEGISLATIVE COUNCIL (1104)

1. Interim Studies and Conferences (05)											
a. Interim Studies (Biennial)											
~~146,250~~					~~146,250~~						
116,341					*116,341*						
2. Legislative Council Operations (10)											
~~1,633,279~~	~~917,104~~				~~2,550,383~~	~~1,915,606~~	~~442,751~~				~~2,358,357~~
1,630,885	*915,457*				*2,546,342*	*1,911,880*	*440,286*				*2,352,166*
a. Legislative Branch Computer Network (Restricted)											
208,130					208,130	230,870					230,870
3. Budget Balancing Reduction											
9,938					9,938	10,732					10,732
Total											
~~1,777,721~~	~~917,104~~				~~2,694,825~~	~~2,135,744~~	~~442,751~~				~~2,578,495~~
1,945,418	*915,457*				*2,860,875*	*2,132,018*	*440,286*				*2,572,304*

Individual activities in the interim studies program are budgeted as follows:

Joint Interim Committees	$ 44,762
Revenue Oversight Committee	21,479
Administrative Code Committee	7,232
Select Committee on Indian Affairs	7,193

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Commission on Uniform State Laws						35,000						
Northwest Economic Region Conference						30,584						
						675						
Statewide Issues						0						
National Conference of State Legislatures						0						

Of the amount appropriated as item 1, interim studies and conferences (program 5), to the legislative council in section 1, Chapter 17, Special Laws of July 1992, amending section 1, Chapter 13, Special Laws of January 1992, amending section 1, Chapter 815, Laws of 1991, $125,000 *$66,875* is reappropriated to item 1a, the interim studies and conferences program (program 5), within the legislative council. The funds reappropriated to the interim studies and conferences program are appropriated for the 1995 biennium.

The legislative council may allocate money appropriated in item 1a among the individual activities listed above in order to complete work assigned by the legislature.

ENVIRONMENTAL QUALITY COUNCIL (1111)

1.	Environmental Quality Program (01)											
	277,908					277,908	~~279,226~~					~~279,226~~
							274,226					*274,226*
2.	Water Policy Committee (02)											
	a. Water Policy Committee (Biennial)											
		27,256				27,256						
3.	Budget Balancing Reduction											
	1,390					1,390	1,396					1,396
Total												
	276,518	27,256				303,774	~~277,830~~					~~277,830~~
							272,830					*272,830*

CONSUMER COUNSEL (1112)

1.	Administration Program (01)											
		847,855				847,855		848,798				848,798
	a. Consultant Contingency (Restricted)											
		100,000				100,000		100,000				100,000
	b. Utility Economist											
		54,270				54,270		54,113				54,113

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total		1,002,125				1,002,125		1,002,911				1,002,911

Item 1a is for expert witness fees for unanticipated cases.

JUDICIARY (2110)

1.	Supreme Court Operations (01)											
	~~1,497,465~~					~~1,497,465~~	~~1,506,673~~					~~1,506,673~~
	1,495,996					*1,495,996*	*1,504,100*					*1,504,100*
	a. Legislative Audit (Restricted/Biennial)											
	17,321					17,321						
	b. SB 271 — Pilot Program for Local Citizen Review Boards (Restricted/Biennial)											
	~~113,232~~					~~113,232~~						
	75,000		*75,000*			*150,000*			*75,000*			*75,000*
2.	Boards and Commissions (02)											
	250,408					250,408	258,458					258,458
3.	Law Library (03)											
	~~592,196~~					~~592,196~~	~~603,166~~					~~603,166~~
	591,085					*591,085*	*601,167*					*601,167*
4.	District Court Operations (04)											
	2,908,966					2,908,966	2,920,214					2,920,214
5.	Water Courts Supervision (05)											
		524,836				524,836		520,823				520,823
	a. Legislative Audit (Restricted/Biennial)											
		1,053				1,053						
6.	Clerk of Court (06)											
	181,421					181,421	181,531					181,531
7.	Vacancy Savings											
	23,626	8,115				31,741	23,626	8,119				31,745
8.	Personal Services Contingencies (Restricted/Biennial)											
	2,362	1,623				3,985	2,362	1,623				3,985
9.	Budget Balancing Reduction											
	27,133					27,133	27,244					27,244

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total												
	~~5,512,612~~	519,397				~~6,032,009~~	~~5,421,534~~	514,327				~~5,935,861~~
	5,471,800		*75,000*			*6,066,197*	*5,416,962*		*75,000*			*6,006,289*

~~Contingent on passage and approval of Senate Bill No. 271, the appropriation in item 1b is appropriated to the office of the supreme court administrator for allocation to the youth court of the judicial districts designated, pursuant to Senate Bill No. 271, for a pilot program for local citizen review boards for foster care placements.~~

GOVERNOR'S OFFICE (3101)

1.	Executive Office Program (01)											
	~~918,867~~	125,455				~~1,044,322~~	~~923,278~~	125,627				~~1,048,905~~
	918,268					*1,043,723*	*922,199*					*1,047,826*
	a. Legislative Audit (Restricted/Biennial)											
	22,764					22,764						
	b. Montana Community Service Act (Biennial)											
		500,000				500,000						
2.	Mansion Maintenance Program (02)											
	49,561					49,561	49,999					49,999
3.	Air Transportation Program (03)											
	135,328	10,000				145,328	152,770	10,000				162,770
	a. Expand Aircraft Usage											
		32,000				32,000		32,000				32,000
4.	Office of Budget and Program Planning (04)											
	~~816,616~~					~~816,616~~	~~811,590~~					~~811,590~~
	815,877					*815,877*	*810,276*					*810,276*
	a. Legislative Audit (Restricted/Biennial)											
	14,309					14,309						
~~5.~~	~~Northwest Regional Power Act (09)~~											
			~~419,969~~			~~419,969~~			~~422,838~~			~~422,838~~
6 5.	Lieutenant Governor (12)											
	182,499	15,000				197,499	184,624	15,000				199,624
	a. Office of Public Policy Dispute Resolution											
		65,000				65,000		65,000				65,000
~~7~~ 6.	Citizens' Advocate Office (16)											
	60,889		15,000			75,889	58,943		15,000			73,943

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	Fiscal 1994						Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
8 7. Mental Disabilities Board of Visitors (20)											
144,765		54,437			199,202	147,063		54,656			201,719
9 8. Vacancy Savings											
88,999	8,158				97,157	89,086	3,000				92,086
10 9. Budget Balancing Reduction											
10,934					10,934	10,836					10,836
Total											
~~2,245,665~~	739,297	~~489,406~~			~~3,474,368~~	~~2,228,345~~	244,627	~~492,494~~			~~2,965,466~~
2,244,327		*69,437*			*3,053,061*	*2,225,952*		*69,656*			*2,540,235*

The governor is encouraged to work with executive branch agencies and other elected officials toward cost savings during the 1995 biennium by implementing improved efficiencies, economies of scale, streamlined supervision, and bettor coordination of services among agencies. In particular, the governor is encouraged to identify duplicative services and FTE within executive branch agencies to promote consolidation and cost savings. This should include but not be limited to attorneys, environmental specialists, statisticians, grant writers, economists, and biologists.

The governor is further encouraged to foster development of a mission-driven budget system, including the development of flexible, unified budgets and the development of an incentive system to encouragO agencies to generate cost savings and reduced expenditures. This initiative should include working toward the development of a results-oriented system for budgeting, including budgeting by performance and outcome measures and seeking flexibility and improvement in the quality of decisionmaking information available to the legislature in the 1995 session. The departments of administration, revenue, military affairs, and transportation should be used for pilot projects in developing an innovative budget system.

The pacific northwest electric power and conservation planning council is required to submit to the legislative finance committee an annual expenditure report on all costs, including salaries and benefits paid to council members and staff, related to Montana participation on the council.

It is the intent of the legislature that salaries for the Montana members of the pacific northwest electric power and conservation planning council be consistent with the salary levels of the directors of the Montana executive branch ngencies.

OFFICE OF THE SECRETARY OF STATE (3201)

1. Business and Government Services (01)											
~~52,361~~		~~1,006,005~~			~~1,058,365~~	~~69,646~~			~~927,577~~		~~997,223~~
41,511		*1,003,119*			*1,044,630*	*69,495*			*924,671*		*994,166*
a. Legislative Audit (Restricted/Biennial)											
683		12,975			13,658						
b. Fireproof Storage											
~~2,500~~		47,500			~~50,000~~						
0					*47,500*						
c. *State Fund Cost Allocation*											
		376			*376*				*756*		*756*

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	Fiscal 1994						Fiscal 1995				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2. Administrative Code Program (03)												
				~~210,760~~		~~210,760~~				~~200,170~~		~~200,170~~
				210,689		*210,689*				*200,050*		*200,050*
a. Legislative Audit (Restricted/Biennial)				2,927		2,927						
b. State Fund Cost Allocation				*49*		*49*				*97*		*97*
3. Records Management (04)												
				~~362,180~~		~~362,180~~				~~366,053~~		~~366,053~~
				361,998		*361,998*				*365,726*		*365,726*
a. Legislative Audit (Restricted/Biennial)				2,927		2,927						
b. State Fund Cost Allocation				*130*		*130*				*264*		*264*
4. Vacancy Savings												
1,380				42,385		43,765	1,384			42,485		43,869
5. Budget Balancing Reduction												
271						271	341					341
Total												
~~53,093~~				~~1,602,889~~		~~1,656,782~~	~~67,921~~			~~1,451,323~~		~~1,519,244~~
40,543				*1,600,305*		*1,640,848*	*67,770*			*1,449,079*		*1,516,849*

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

COMMISSIONER OF POLITICAL PRACTICES (3202)

1. Administration (01)												
~~126,562~~						~~126,562~~	~~126,931~~					~~126,931~~
126,510						*126,510*	*126,837*					*126,837*
a. Legislative Audit (Restricted/Biennial)												
3,252						3,252						
2. Vacancy Savings												
4,879						4,879	4,895					4,895
3. Budget Balancing Reduction												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	625					625	610					610
Total	~~124,310~~					~~124,310~~	~~121,426~~					~~121,426~~
	124,258					*124,258*	*121,332*					*121,332*
OFFICE OF THE STATE AUDITOR (3401)												
1. Central Management (01)	~~323,190~~	3,650		7,100		~~334,140~~	~~323,509~~	3,656		7,311		~~334,476~~
	323,130					*330,080*	*305,901*					*316,868*
a. Legislative Audit (Restricted/Biennial)	2,497					2,497						
b. Glacier General Liquidation		10,000				10,000	*10,000*					10,000
2. Insurance Program (03)	~~1,110,616~~	~~41,850~~				~~1,160,466~~	~~1,115,801~~	~~41,850~~				~~1,157,651~~
	1,118,193	*41,698*				*1,159,891*	*1,307,688*	*41,668*				*1,149,356*
a. Legislative Audit (Restricted/Biennial)	10,614					10,614						
b. Insurance Examination Costs		91,800				91,800		38,000				38,000
c. SB 354 — Insurance Industry Continuing Education Program		115,848				115,848		99,782				99,782
d. HB 273 — Auto Glass Insurance Practices	10,000					10,000	10,000					10,000
e. SB 430 — Insurance Regulatory Program Accreditation		287,452				287,452		269,052				269,052
3. Securities (04)	~~332,661~~					~~332,661~~	~~333,385~~					~~333,385~~
	332,513					*332,513*	*333,185*					*333,185*
a. Legislative Audit (Restricted/Biennial)	3,122					3,122						
b. SB 314 — Securities Portfolio Registration Program		75,500				75,500		63,732				63,732

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
4. Fiscal Control and Management Program (10)												
	~~219,701~~	~~510,461~~		~~156,124~~		~~886,286~~	~~213,848~~	~~536,786~~		~~156,563~~		~~907,197~~
	218,407	*507,443*		*156,044*		*881,894*	*211,565*	*533,792*		*156,458*		*901,815*
a. Legislative Audit (Restricted/Biennial)												
		23,753		1,563		25,316						
b. Bad Debts Expansion												
				~~37,494~~		~~37,494~~				~~37,494~~		~~37,494~~
				37,370		*37,370*				*37,370*		*37,370*
5. Vacancy Savings												
	76,301	9,017		8,043		93,361	76,430	9,059		8,066		93,555
6. Budget Balancing Reduction												
	9,671					9,671	9,551					9,551
Total												
	~~1,934,429~~	~~1,151,297~~		~~194,438~~		~~3,280,164~~	~~1,910,562~~	~~1,053,799~~		~~193,402~~		~~3,157,663~~
	1,932,504	*1,148,127*		*194,234*		*3,274,865*	*1,882,358*	*1,050,623*		*193,073*		*3,126,054*

The state auditor shall deposit into a state special revenue account funds received from examination of insurance companies, liquidation of the glacier general assurance company, and licensing of out-of-state insurance agents.

The department shall develop and submit a cost recovery plan for the warrant writing system to the office of budget and program planning and the legislative fiscal analyst by June 1, 1994. The total program cost estimate used to allocate the fees must be reduced by the estimated amount of the state special revenue fund balance for the program that will carry over from the 1995 biennium.

The fixed cost rates charged to state agencies by the state auditor for warrant writing services (object code 2113) may not be higher than the amount necessary to fund the expenses of the agency for providing those services, as appropriated in the state pay plan and [this act], and to fund any unforeseen costs that would require supplemental funding.

~~Item 2c is contingent on passage and approval of Senate Bill No. 354.~~

~~Item 2d is contingent on passage and approval of House Bill No. 273.~~

~~Item 2e is contingent on passage and approval of Senate Bill No. 430.~~

~~Item 3b is contingent on passage and approval of Senate Bill No. 314.~~

CRIME CONTROL DIVISION (4107)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Justice System Support Service (01)												
	~~463,524~~	~~100,324~~	~~204,054~~			~~767,902~~	~~467,863~~	~~100,325~~	~~204,053~~			~~772,241~~

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	460,333	*100,264*	*207,054*			*767,651*	*464,519*	*100,216*	*207,053*			*771,788*
a.	D.A.R.E. Program Pass-Through Grants (Biennial)	20,000				20,000		20,000				20,000
b.	Juvenile Justice Pass-Through Grants (Biennial)		410,000			410,000			410,000			410,000
c.	Victims' Assistance Pass-Through Grants (Biennial)		381,000			381,000			381,000			381,000
d.	Drug Education Pass-Through Grants (Biennial)		466,588			466,588			466,588			466,588
e.	Drug Enforcement Pass-Through Grants (Biennial)		2,132,386			2,132,386			2,132,386			2,132,386
f.	Crime Victims' Compensation Pass-Through Benefits (Biennial)	455,000	135,000			590,000		455,000	135,000			590,000
g.	Indian Victim Assistance Pass-Through Grants (Biennial)		70,000			70,000			70,000			70,000
h.	Improved Victim Services	2,020				2,020		1,960				1,960
i.	SB 292 — Youth Detention Services Grant Administration	48,937				48,937		49,170				49,170
2.	Vacancy Savings	2,556	3,173			5,729	2,586	3,181				5,767
3.	Budget Balancing Reduction	2,305				2,305	2,326					2,326
Total		~~458,663~~	~~623,188~~	~~3,799,028~~		~~4,880,799~~	~~462,951~~	~~623,274~~	~~3,799,027~~			~~4,885,252~~
		455,472	*623,048*	*3,802,028*		*4,880,548*	*459,607*	*623,165*	*3,802,027*			*4,884,799*

All remaining federal pass-through grant appropriation authority for the 1993 biennium is authorized to continue into fiscal 1994 and fiscal 1995.

The board of crime control shall charge tuition and fees sufficient to reimburse the general fund for costs associated with the juvenile justice training program and for technical assistance provided to local law enforcement agencies. The tuition and fees collected must be deposited in the general fund.

HIGHWAY TRAFFIC SAFETY (4108)

1.	Highway Traffic Safety Division (36)	183,080	~~385,039~~	1,308,397		~~1,876,516~~	183,080	~~386,104~~	1,306,686			~~1,875,870~~

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		85,039				*1,576,516*		*86,104*				*1,575,870*
2.	Vacancy Savings											
	1,471	3,093				4,564	1,476	3,113				4,589
3.	Budget Balancing Reduction											
	908					908	908					908
Total												
	180,701	~~381,946~~	1,308,397			~~1,871,044~~	180,696	~~302,991~~	1,306,686			~~1,870,373~~
		81,946				*1,571,044*		*82,991*				*1,570,373*
DEPARTMENT OF JUSTICE (4110)												
1.	Legal Services Division (01)											
	~~1,305,861~~					~~1,305,861~~	~~1,319,121~~					~~1,319,121~~
	1,305,399					*1,305,399*	*1,318,289*					*1,318,289*
	a. Case-Related Travel (Restricted)											
	9,500					9,500	9,500					9,500
	b. Other Litigation Costs (Restricted/Biennial)											
	100,000					100,000						
	c. Major Litigation Costs (Restricted/Biennial)											
	400,000					400,000						
	d. Additional Attorney											
	51,000					51,000	51,000					51,000
2.	Agency Legal Services (06)											
				~~607,138~~		~~607,138~~				~~614,435~~		~~614,435~~
				606,995		*606,995*				*614,178*		*614,178*
	a. *State Fund Cost Allocation*											
				508		*508*				*1,024*		*1,024*
3.	Gambling Control Division (07)											
		1,433,173				1,433,173		1,443,725				1,443,725
	a. Retain Gambling Expansion Staff											
		207,331				207,331		207,478				207,478
	b. HB 609 — Transfer Liquor Investigation Function											
				314,770		314,770				318,973		318,973
	c. *State Fund Cost Allocation*											

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		1,375		*367*		*1,742*		*2,772*		*740*		*3,512*
4.	Motor Vehicle Division (12)											
	~~4,999,155~~	~~1,122,103~~	~~14,500~~			~~6,135,758~~	~~1,890,364~~	~~4,244,207~~	12,500			~~6,147,071~~
	4,932,649	*1,121,376*	*22,000*			*6,076,025*	*1,756,753*	*4,239,491*				*6,008,744*
	a. Reinstate Administrative Officer											
	43,500					43,500	43,500					43,500
	b. ADP Transfer to State Mainframe											
	~~344,741~~					~~344,741~~	~~657,819~~					~~657,819~~
	332,675					*332,675*	*634,795*					*634,795*
	c. *State Fund Cost Allocation*											
		979				*979*		*1,974*				*1,974*
5.	Highway Patrol Division (13)											
		~~12,710,659~~	604,120			~~13,314,779~~		~~12,662,962~~	611,652			~~13,274,614~~
		12,710,163				*13,314,283*		*12,662,069*				*13,273,721*
	a. *Highway Patrol Recruit School 1995*							*170,000*				*170,000*
	b. *State Fund Cost Allocation*											
		10,661				*10,661*		*21,491*				*21,491*
6.	Law Enforcement Services Division (18)											
	~~1,680,170~~	53,000	~~306,144~~			~~2,127,314~~	~~1,687,016~~	43,000	379,182			~~2,109,198~~
	1,637,830		*436,144*			*2,126,974*	*1,686,403*					*2,108,585*
	a. Automated Fingerprint Identification (AFIS)											
		360,000				360,000			360,000			360,000
	h. WC Investigator/Support Staff											
		65,132				65,132		90,204				90,204
	c. SB 164 — WC Investigation Unit											
		276,100				276,100		183,500				183,500
	d. HB 222 — Fire Protection Equipment Licensing Program											
		88,200				88,200		82,300				82,300
	e. HB 609 — Transfer Public Assistance Investigation Function											
			113,747	56,983		170,730			112,427	45,580		158,007
	f. Criminal History Record Backlog											
			47,000			*47,000*						

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
g. State Fund Cost Allocation		*412*		*131*		*543*		*831*		*264*		*1,095*
7. County Attorney Payroll (19)	1,314,476					1,314,476	1,350,492					1,350,492
8. Law Enforcement Academy Division (22)	630,467					630,467	640,878					640,878
a. MLEA Facility Enhancement	~~97,640~~					~~97,640~~	104,500					104,500
	38,140					*38,140*						
9. Central Services Division (28)	~~187,335~~	~~235,391~~		~~9,236~~		~~431,962~~	~~178,140~~	~~266,052~~		~~9,872~~		~~454,064~~
	187,253	*235,279*		*9,232*		*431,764*	*177,992*	*265,850*		*9,864*		*453,706*
a. Legislative Audit (Restricted/Biennial)	18,758	23,570		924		43,252						
b. Drug Prevention Coordinator	45,000					45,000	45,000					45,000
c. State Fund Cost Allocation		*199*		*8*		*207*		*401*		*16*		*417*
10. Data Processing Division (29)	~~927,417~~	318,000				~~1,245,417~~	~~930,228~~	330,000				~~1,260,228~~
	927,080					*1,245,080*	*937,621*					*1,267,621*
a. State Fund Cost Allocation		*272*				*272*		*549*				*549*
11. Extradition and Transportation of Prisoners (30)	144,945					144,945	151,720					151,720
12. Forensic Science Division (32)	962,796	270,000				1,232,796	951,090	270,000				1,221,090
a. Firearms and Toolmarks Examiner	52,839					52,839	52,839					52,839
b. State Fund Cost Allocation		*230*				*230*		*463*				*463*
13. Vacancy Savings	384,962	572,183		38,980		996,125	385,050	569,837		39,075		993,962
14. Budget Balancing Reduction												

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	Fiscal 1994					Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
61,020					61,020	54,832					54,832
Total											
~~12,877,618~~	~~16,230,476~~	~~1,476,511~~	~~950,071~~		~~31,536,676~~	~~9,631,325~~	~~19,253,591~~	1,475,761	~~949,705~~		~~31,310,462~~
12,688,325	*16,243,269*	*1,583,011*	*950,938*		*31,465,543*	*9,472,490*	*19,446,261*		*951,564*		*31,346,076*

The legislature recognizes that costs associated with litigation in which the legal services division must provide representation to the state of Montana may exceed the appropriation provided in item 1c. In that event, the department will need to request a supplemental appropriation from the 1995 legislature to adequately represent the state.

The department is authorized to request a budget amendment for the rural statewide intelligence network if federal grant funds become available during the 1995 biennium.

The department is directed to prepare a plan to privatize all state driver's license examination stations and to present this plan to the legislative audit committee by July 1, 1994. The department shall also prepare a plan by July 1, 1994, in consultation with the superintendent of public instruction, to have driver's license examinations of students conducted, under the supervision and direction of the department, by local school district staff of traffic education programs administered by the superintendent of public instruction.

The department is directed to negotiate with communities, alternative vendors, and/or other governmental agencies to achieve greater cost reductions and improved access to driver's license examination services for the 1997 biennium.

The department is to develop a plan for streamlining operations, improving efficiencies, and better coordination of services for the gambling control division. The plan is to be submitted to the legislative finance committee before June 1, 1994.

The department shall work with the department of transportation to develop a plan for coordination of truck inspection and safety. The plan is to be submitted to the legislative finance committee before June 1, 1994.

The department is authorized to transfer the retirement contributions provided under 19-6-404 and 61-5-121(1)(a) in fiscal 1994 and fiscal 1995 from the highway patrol retirement clearing account in the state special revenue fund to the Montana highway patrol officers' retirement pension trust fund. An appropriation must be established each year in the amount required to be transferred.

The department shall, in consultation with the department of administration, review the cost-effectiveness, along with other relevant considerations, of operating its in-house duplicating facilities compared to department of administration services. The department shall report its conclusions, along with department of administration comments, to the office of budget and program planning and the office of the legislative fiscal analyst by June 1, 1994, and to the respective appropriations subcommittee of the 1995 legislature.

The legislature recognizes that the Montana supreme court decision in Woith v. Cascade County may require payment from the state general fund to the property taxpayers in Cascade County. In that event, the department shall request a supplemental appropriation from the 1995 legislature for those payments.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF TRANSPORTATION (5401)

1.	General Operations Program (01)									
	~~7,153,081~~	1,577,324			~~8,736,405~~	~~7,192,357~~	1,503,533			~~8,695,890~~
	7,147,027				*8,724,351*	*7,181,681*				*8,685,214*
	a. Legislative Audit (Restricted/Biennial)									

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		Fiscal 1994					Fiscal 1995				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		77,398				77,398						
b.	Compliance Review Staff (Restricted)	211,847				211,847		201,259				201,259
c.	Federal Motor Fuel Compliance Act (Restricted)		50,000			50,000			50,000			50,000
d.	Highway Information System (Restricted)	20,000	80,000			100,000		140,000	560,000			700,000
e.	Information Service Staff (Restricted)	13,228	52,914			66,142		13,248	52,990			66,238
f.	Project Financial Management System (Restricted)	13,228	52,914			66,142		21,248	84,990			106,238
g.	FHWA Grant Administration	24,274				24,274		24,309				24,309
h.	Multi-Modal Planning		374,010			374,010			124,189			124,189
i.	Highway Performance Monitoring System (Restricted)		191,638			191,638			91,770			91,770
j.	Transportation Improvement Plan (Restricted)		142,374			142,374			142,531			142,531
k.	Scenic Byways Program (Restricted)	34,878	139,514			174,392		12,236	48,944			61,180
l.	HB 539 — Tax Special Fuel at Distributor Level (Restricted)	104,000				104,000						
m.	*State Fund Cost Allocation*	*78,089*				*78,089*		*157,149*				*157,149*
2.	Construction Program (02)	56,059,870	158,008,538			214,068,408		56,255,070	159,625,210			215,880,280
a.	Analytic Stero Plotter	225,000				225,000						
3.	Maintenance Program (03)	50,141,898	88,914			50,230,812		50,396,784	88,914			50,485,698
a.	Roadway Striping	1,000,000				1,000,000		1,000,000				1,000,000
b.	Ice Control Material											

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		1,285,091				1,285,091		1,373,391				1,373,391
c.	Hazardous Waste (Restricted)	1,000,000				1,000,000		1,000,000				1,000,000
d.	Pavement Preservation	6,500,000				6,500,000		6,500,000				6,500,000
e.	Rest Areas Maintenance	165,000				165,000		165,000				165,000
4.	State Motor Pool (07)			~~892,944~~		~~892,944~~				~~766,708~~		~~766,708~~
				892,883		*892,883*				*766,597*		*766,597*
a.	*State Fund Cost Allocation*			*424*		*424*				*854*		*854*
5.	Equipment Program (08)			15,066,844		15,066,844				15,575,944		15,575,944
a.	Equipment — Sweepers			1,000,000		1,000,000						
b.	*State Fund Cost Allocation*			*7,632*		*7,632*				*15,359*		*15,359*
6.	Interfund Transfers Program (11)	14,625,413				14,625,413		15,691,130				15,691,130
7.	Stores Inventory (12)	14,474,899				14,474,899		14,645,376				14,645,376
a.	Roadway Striping — Stores	1,000,000				1,000,000		1,000,000				1,000,000
b.	Ice Control Material — Stores	1,285,091				1,285,091		1,373,391				1,373,391
c.	Pavement Preservation — Stores	6,500,000				6,500,000		6,500,000				6,500,000
8.	Gross Vehicle Weight Division (22)	4,165,437	16,000			4,181,437		4,193,816				4,193,816
9.	Aeronautics Program (40)	538,845	91,800	72,618		703,263		554,684	91,800	73,402		719,886
a.	*State Fund Cost Allocation*	*256*		*34*		*290*		*515*		*69*		*584*

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	Fiscal 1995						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
10. Rail and Transit Program (50)	32,288	315,224	1,564,790			1,912,302	32,416	314,742	1,544,739			1,891,897
a. FTA Section 3 Grant			449,609			449,609						
b. FTA Section 8 Grant			107,022			107,022			107,022			107,022
c. FTA Section 18 Grant			261,870			261,870			261,870			261,870
d. FTA Section 26(A)(2) Grant			44,806			44,806			44,806			44,806
e. FTA Section 16(B)(2) Grant			67,398			67,398			67,398			67,398
f. Urban Planning Program		36,658	245,328			281,986		36,663	245,360			282,023
g. McCarty Farms Litigation (Restricted/Biennial)	100,000					100,000						
h. FTA Grant Pass-Through Authority		174,013				174,013		108,513				108,513
11. Vacancy Savings	557	1,985,761		229,598		2,215,916	568	2,005,602		232,879		2,239,049
12. Budget Balancing Reduction	659					659	159					159
Totel	131,072	~~165,164,612~~ *165,230,903*	163,606,763	~~16,802,808~~ *16,810,837*		~~345,705,255~~ *345,779,575*	31,689	~~166,707,615~~ *166,854,603*	164,736,066	~~16,103,175~~ *16,199,346*		~~347,650,545~~ *347,821,704*

Of the amount appropriated in item 1, $41,154 must be repaid to the state compensation mutual insurance fund to reimburse the fund for compensation benefits improperly paid to department of transportation employees who were receiving sick or annual leave benefits. The money received by the stste compensation mutual insurance fund must be deposited in the fund from which the benefits were paid.

~~Item 11 is contingent on passage and approval of House Bill No. 539.~~

The department is directed to submit to the 1995 legislature a construction work plan for the years 1995 through 1999 that is detailed by year and project. This work plan must specify, by road system or project area, proposed projects on which $1 million or more would be spent during the 1997 biennium and an aggregate cost for projects with anticipated expenditures of less than $1 million. Costs must be detailed by year and project.

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	Fiscal 1994					Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department may adjust appropriations and FTE in the construction, interfund transfers, and maintenance programs between fiscal years to reflect actual expenditures related to the construction work plan and maintenance activities.

The department may adjust appropriations in the construction and rail and transit programs between fund types, provided that the adjustment does not exceed 10% of the total appropriation established by the legislature for the construction or rail and transit program and provided that the general fund appropriation in the rail and transit program does not increase over the amount established by the legislature. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning, and all fund transfers of over $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

The legislature recognizes that costs associated with the McCarty farms litigation may exceed the appropriation in item 10g, and in that event, the department will need to request a supplemental appropriation from the 1995 legislature to adequately represent the state.

The legislature urges the department to review the highway leading must directly between Billings and Great Falls. This corridor is important to the economic well-being of the state of Montana and instrumental in economic development of international trade. The department shall prepare a written report encompassing the condition of the highway and the improvements made and planned to be made. The report must include cost estimates, a tentative schedule, the types of improvements, and a means of financing the construction or reconstruction. This report must be made available to the legislature on or before December 1, 1994.

The legislature eliminates a $100,000 allocation per year included in item 3 from the noxious weed control budget for the purchase of biological agents and designates those funds for general operation of the maintenance program.

The department shall, in consultation with the department of administration, review the cost-effectiveness, along with other relevant considerations, of operating its in-house duplicating facilities compared to department of administration services. The department shall report its conclusions, along with department of administration comments, to the office of budget and program planning and the office of the legislative fiscal analyst by June 1, 1994, and to the respective appropriations subcommittee of the 1995 legislature.

Item 8 includes authority for the department to assess equity ratios upon highway users in order to determine if the GVW fees revised by the 1993 legislature are equitable. If inequities are revealed, the department shall prepare an amended fee schedule for presentation to the 1995 legislature. If any inequity is greater than the imbalance identified in the original cost responsibility study, the department shall prepare legislation correcting the inequity.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF REVENUE (5801)

1. Director's Office (01)										
~~849,860~~	2,274	4,147	~~180,178~~		~~1,036,459~~	~~861,821~~		~~180,268~~		~~1,042,689~~
849,395			*180,127*		*1,035,943*	*861,210*		*180,179*		*1,041,389*
a. Legislative Audit (Restricted/Biennial)										
87,446	2,274	1,269	27,710		118,699					
b. State Fund Cost Allocation			*312*		*312*			*622*		*622*
2. Centralized Services Division (02)										
~~797,682~~					~~797,682~~	~~798,404~~				~~798,404~~
796,856					*796,856*	*797,385*				*797,385*

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. Data Processing Division (03)	~~966,393~~	~~86,032~~		~~545,189~~		~~1,598,414~~	~~966,120~~	~~86,018~~		~~545,099~~		~~1,598,045~~
	965,841	*86,783*		*544,877*		*1,597,501*	*965,412*	*86,754*		*544,695*		*1,596,861*
a. *State Fund Cost Allocation*		*146*		*924*		*1,070*		*292*		*1,845*		*2,137*
4. Liquor Division (05)				259,457		259,457				260,222		260,222
5. Income Tax (06)	~~4,188,878~~	~~512,679~~				~~4,701,557~~	~~4,134,281~~	~~512,474~~				~~4,646,755~~
	4,173,421	*510,461*				*4,683,882*	*4,119,631*	*510,329*				*4,629,960*
a. Cigarette Tax Funding/Stamps		15,000				15,000		30,000				30,000
b. *State Fund Cost Allocation*		*907*				*907*		*1,808*				*1,808*
6. Corporation Tax (07)	~~1,330,321~~	62,413	154,868			~~1,547,602~~	~~1,334,840~~	62,675	156,151			~~1,553,666~~
	1,329,317					*1,546,598*	*1,333,627*					*1,552,453*
a. Royalty Audit FTE			37,670			37,670			37,714			37,714
b. *State Fund Cost Allocation*		*446*				*446*		*892*				*892*
7. Property Valuation Division (08)	~~13,042,450~~					~~13,042,450~~	~~13,060,772~~					~~13,060,772~~
	13,041,671					*13,041,671*	*11,868,082*					*11,868,082*
a. BEVS Computer Processing	~~45,000~~					~~45,000~~	~~30,000~~					~~90,000~~
	43,425					*43,425*	*86,850*					*86,850*
b. SB 168 — Agricultural Land Valuations (Restricted)	261,432					261,432	4,968					4,968
8. Vacancy Savings	796,153	22,930		43,340		862,423	798,283	23,018		43,845		865,146
9. Budget Balancing Reduction	102,559					102,559	102,280					102,280

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	Fiscal 1994					Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total											
~~20,670,750~~	~~650,542~~	197,954	~~969,194~~		~~22,496,440~~	~~20,358,651~~	~~668,949~~	193,865	~~941,744~~		~~22,163,209~~
20,650,092	*657,774*		*970,067*		*22,475,887*	*19,136,602*	*669,732*		*943,718*		*20,943,917*

Liquor division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated in amounts not to exceed $50,662,000 in fiscal 1994 and $52,765,000 in fiscal 1995. During the 1995 biennium, the division shall attempt to return at least 10% of net sales. Net sales are gross sales less discounts and all taxes collected. The division shall limit operational expenses of the liquor merchandising system to not more than 15% of the net sales. Operational expenses may not include product costs, freight charges, expenses allocable to other divisions, or licensing bureau expenses.

It is the intent of the legislature that the department vigorously pursue collection of the dangerous drug tax pursuant to Title 15, chapter 25, part 1.

~~If the referendum to enact a general sales tax and to provide tax reform in Senate Bill No. 235 is approved by the electorate in the special election provided for by [section 184 of Senate Bill No. 235], there is appropriated from the state special revenue account created in Senate Bill No. 235 to the department of revenue up to $4,511,707 in fiscal 1994 and up to $5,684,952 in fiscal 1995 for the purpose of administering the provisions of Senate Bill No. 235. In accordance with 17-2-107(2)(c), the legislature authorizes the department of administration to provide an interentity loan to the department of revenue for these amounts during the 1995 biennium. These loans must be repaid from proceeds of the sales tax deposited in the state special revenue account.~~

~~If the referendum to enact a general sales tax and to provide tax reform as provided in Senate Bill No. 235 is approved by the electorate at the June 8, 1993, special election provided for by [section 184 of Senate Bill No. 235], there is appropriated from the sales tax and use tax account established in [section 71 of Senate Bill No. 235] to the department of revenue the amounts necessary to provide the property tax replacement revenue for taxing jurisdictions as provided for in 15-1-111(5) through (13), as amended by Senate Bill No. 235, and in [section 125 of Senate Bill No. 235], regarding reimbursement to local governments and schools, in fiscal 1994 and fiscal 1995.~~

If House Bill No. 50 is not passed and approved, the general fund appropriation in item 7 is increased by $1,200,000 in fiscal 1995. If House Bill No. 50 is passed and approved, the $1,200,000 reduction that is reflected in item 7, which is a result of the House Bill No. 50 proposal to streamline the property valuation division, is not intended to be in addition to any reduction to the general appropriations act that is also contained in House Bill No. 50.

The department shall provide 1993 income taxpayers with an informational form and appropriate instructions that will permit the taxpayers to determine what their individual tax liability would be under the provisions of House Bill No. 671 enacted as Chapter 634, Laws of 1993, by the 1993 regular session of the legislature. The form must be clearly marked "for informational purposes only". If possible, the forms must be included with the mailing of the 1993 income tax forms. If not, the informational forms must be mailed to taxpayers together with any forms necessary for the implementation of the provisions of House Bill No. 29 if that act is passed and approved.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF ADMINISTRATION (6101)

1. Director's Office (01)						
~~243,923~~	~~91,647~~		~~335,570~~	~~242,618~~	~~92,178~~	~~334,796~~
243,825	*91,612*		*335,437*	*242,442*	*92,116*	*334,558*
a. State Fund Cost Allocation						
	74		*74*		*148*	*148*
2. Accounting and Management Support (03)						

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	~~952,308~~			~~68,140~~		~~1,020,536~~	~~944,972~~			~~67,926~~		~~1,012,898~~
	949,130			*68,121*		*1,017,251*	*941,836*			*67,879*		*1,009,715*
a. Legislative Audit (Restricted/Biennial)	42,227					42,227						
b. CMIA Implementation			30,057			30,057			30,058			30,058
c. *State Fund Cost Allocation*				*42*		*42*				*84*		*84*
d. *State Fund Cost Allocation Plan Administration*	*10,918*					*10,918*	*18,692*					*18,692*
3. Architecture and Engineering (04)		~~719,451~~				~~719,451~~		~~722,648~~				~~722,648~~
		719,100				*719,100*		*722,016*				*722,016*
a. Legislative Audit (Restricted/Biennial)		1,499				1,499						
b. *State Fund Cost Allocation*		*1,731*				*1,731*		*3,447*				*3,447*
4. Procurement and Printing (06)	~~422,617~~			~~10,441,990~~		~~10,864,607~~	~~424,770~~			~~10,974,818~~		~~11,399,588~~
	422,421			*10,441,131*		*10,863,552*	*424,417*			*10,973,314*		*11,397,731*
a. Legislative Audit (Restricted/Biennial)				19,273		19,273						
b. Montana Fueling Program				~~117,083~~		~~117,083~~				~~117,045~~		~~117,045~~
				116,103		*116,103*				*116,065*		*116,065*
c. Natural Gas Procurement				114,000		114,000				125,000		125,000
d. Excess Property Program				200,000		200,000				200,000		200,000
e. *State Fund Cost Allocation*				*4,839*		*4,839*				*9,654*		*9,654*
5. Information Services Division (07)				~~19,691,426~~		~~19,691,426~~				~~19,105,081~~		~~19,105,081~~

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				19,689,787		*19,689,787*				*19,102,133*		*19,102,133*
a.	Legislative Audit (Restricted/Biennial)			60,022		60,022						
b.	Backup Network Control Center			250,000		250,000				250,000		250,000
c.	Interactive Voice Response			183,049		183,049				48,092		48,092
d.	HB 99 Implementation			130,800		130,800				130,800		130,800
e.	HB 520 — Electronic Bulletin Board			43,191		43,191				41,691		41,691
f.	*State Fund Cost Allocation*			*9,424*		*9,424*				*18,828*		*18,828*
6.	General Services Division (08)											
	~~374,216~~			3,450,082	58,801	~~3,883,099~~	~~383,997~~			3,536,709	58,801	~~3,979,507~~
	369,046					*3,877,929*	*374,704*					*3,970,214*
a.	Legislative Audit (Restricted/Biennial)			6,811		6,811						
b.	Major Maintenance Projects			100,000		100,000				100,000		100,000
c.	Major Maintenance Contingency Fund (Biennial)			100,000		100,000						
d.	*State Fund Cost Allocation*			*1,953*		*1,953*				*3,907*		*3,907*
7.	Central Mail (13)											
				~~1,941,212~~		~~1,941,212~~				~~1,911,566~~		~~1,911,566~~
				1,941,059		*1,941,059*				*1,911,293*		*1,911,293*
a.	Legislative Audit (Restricted/Biennial)			3,643		3,643						
b.	Central Mail Bar Encoding			119,600		*119,600*				162,000		162,000
c.	Central Mail Expansion			504,323		504,323				504,387		504,387
d.	*State Fund Cost Allocation*											

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				956		*956*				*1,910*		*1,910*
8.	State Personnel Division (23)											
	~~899,444~~			~~694,335~~		~~1,593,779~~	~~902,684~~			~~671,524~~		~~1,574,208~~
	898,959			*693,493*		*1,592,452*	*901,891*			*670,602*		*1,572,493*
	a. Legislative Audit (Restricted/Biennial)			1,140		1,140						
	b. Benefits Computer System (Biennial)			~~305,000~~		~~305,000~~						
				304,825		*304,825*						
	c. Personal Services Contingency (Restricted/Biennial)											
	528,633	1,023,914		329,756	12,067	1,894,370	453,498	1,035,235		335,695	11,633	1,836,061
	d. HB 428 — Statewide Benefits Program			19,600		19,600				19,600		19,600
	e. State Payroll											
	~~204,615~~	~~210,239~~				~~414,854~~	~~178,035~~	~~222,043~~				~~400,078~~
	202,930	*208,138*				*411,068*	*176,480*	*220,104*				*396,584*
	f. Legislative Audit — State Payroll (Restricted/Biennial)											
		44,955				44,955						
	g. *State Fund Cost Allocation*			*770*		*770*				*1,543*		*1,543*
9.	Risk Management and Tort Defense (24)											
				~~2,780,824~~		~~2,780,824~~				~~2,807,191~~		~~2,807,191~~
				2,780,698		*2,780,698*				*2,806,965*		*2,806,965*
	a. Legislative Audit (Restricted/Biennial)			5,223		5,223						
	b. Contracted Legal Services			150,000		150,000				150,000		150,000
	c. *State Fund Cost Allocation*			*1,984*		*1,984*				*3,943*		*3,943*
10.	State Tax Appeal Board (37)											
	~~394,294~~					~~394,294~~	~~395,775~~					~~395,775~~
	394,179					*394,179*	*395,568*					*395,568*
11.	Vacancy Savings											

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	121,550	30,703		380,341	496	533,090	121,914	30,765		386,503	489	539,671
12.	Budget Balancing Reduction											
	19,805					19,805	19,022					19,022
Total												
	~~3,921,002~~	~~1,969,355~~	30,057	~~41,541,037~~	70,372	~~47,532,623~~	~~3,785,413~~	~~1,949,161~~	30,058	~~40,964,800~~	69,945	~~46,799,377~~
	3,920,913	*1,968,634*		*41,557,043*		*47,547,019*	*3,788,592*	*1,950,037*		*40,997,855*		*46,836,487*

Item 2d is contingent on passage and approval of House Bill No. 21.

The department may transfer cash from the capital projects fund to the state special revenue fund to fund the appropriation in item 3. The transfer may not exceed the state special revenue fund appropriation for the architecture and engineering division that is included in the state pay plan and [this act].

Funds remaining in the capitel land grant account of the capital projects fund, after the appropriations are met for the general services division of the department and any project provided for in Chapter 774, Laws of 1991, are appropriated to the long-range building debt service fund for the payment of principal and interest on bund issues for public buildings at the capitol for executive, legislative, and judicial purposes, as outlined in section 12 of The Enabling Act. This appropriation is for the biennium ending June 30, 1995, and is not to exceed the annual debt service required on these bends.

The appropriation in item 6 in the "other" column includes $58,801 in fiscal 1994 and $58,801 in fiscal 1995 from the capital projects fund.

In item 6, the department may charge a maximum of ~~$3.47~~ *$3.42* a square foot in fiscal 1994 and ~~$3.57~~ *$3.48* a square foot in fiscal 1995 for office space in state-owned buildings.

The appropriation in item 6 includes $28,050 in fiscal 1994 and $51,425 in fiscal 1995 proprietary funds that must be transferred to the department of natural resources and conservation for the purpose of paying off general obligation bends issued by the department of natural resources and censervation to fund energy savings projects.

The department shall develop and submit a cost recovery plan for the state payroll system to the office of budget and program planning and the legislative fiscal analyst by June 1, 1994. The total program cost estimate used to allocate the fees must be reduced by the estimated amount of the state special revenue fund balance for the program that will carry over from the 1995 biennium.

The fixed cost rates charged to state agencies by the department for payroll services (object code 2114) may not be higher than the amount necessary to fund the expenses of the agency for providing those services, as appropriated in the state pay plan and [this act], and to fund any unforeseen costs that would require supplemental funding.

The fixed cost rates charged to state agencies by the department for network services (object code 2174), messenger services (object codes 2304, 2305, and 2307), and rent (object code 2527) may not be higher then the amount necessary to fund the expenses of the department for providing those services, as appropriated in the state pay plan and [this act].

Item 8c containa biennial appropriations that the department and the office of budget and program planning may allocate to executive branch agencies (except the Montana university system), subject to the process described below, for persoual services if the agencies did not experience normal turnover or early retirements in an amount necessary to provide full funding for personal services or for the portion of the state payroll program that is underfunded. In allocating the persoual service contingency funds, the department and the office of budget and program planning may adjust amounts among fund types, excluding general fund, which may not be adjusted. The appropriation of the agency to which the funds are allocated is increased by the amount of the allocation.

Prior to March 1 of each fiscal year, any agency requesting allocation of these funds shall provide a report ta the governor, documenting:

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	Fiscal 1994					Fiscal 1995				
General Fund	Stato Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

(1) that normal turnover of employees and early retirements has not occurred in an amount necessary to provide full funding for personal services;

(2) its efforts to work toward cost savings by implementing efficiencies, economies of scale, streamlined supervision, and better coordination of services provided by that agency; and

(3) its efforts to identify duplication in services provided by the agency or any other agency.

The governor shall respond to requests for these funds by April 1 of each fiscal year. The department and the office of budget and program planning may not allocate these funds prior to approval of the governor.

The governor shall provide periodic reports to the legislative finance committee, documenting allocation of any personal services contingency funds. These reports must include a copy of the reports submitted by the agencies receiving these funds.

Item 8d is ~~contingent on passage and approval of House Bill No. 428.~~

If House Bill No. 48 does not pass, it is the intent of the legislature that the department implement accounting procedures to eliminate or reduce the need for loan reserves in the general fund.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

STATE COMPENSATION MUTUAL INSURANCE FUND (6103)

1. State Fund (01)

	~~165,605,290~~				~~165,605,290~~					~~180,453,021~~
	0				*0*					*0*

a. Legislative Audit (Restricted/Biennial)

	~~52,032~~				~~52,032~~					
	0				*0*					

b. Imaging System

	~~283,745~~				~~283,745~~					~~730,476~~
	0				*0*					*0*

c. New Positions

	~~143,684~~				~~143,684~~					~~143,058~~
	0				*0*					*0*

d. Fraud Investigstion

	~~65,000~~				~~65,000~~					~~90,000~~
	0				*0*					*0*

e. Contract Audits

	~~295,152~~				~~295,152~~					~~295,152~~

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federel Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
				0		*0*				*0*		*0*
f.	SB 164 — Workers' Compensation Fraud Investigation/Prosecution											
				~~542,202~~		~~542,202~~				~~361,749~~		~~361,749~~
				0		*0*				*0*		*0*
g.	SB 163 — Montana Safety Culture Act											
				~~456,478~~		~~456,478~~				~~364,724~~		~~364,724~~
				0		*0*				*0*		*0*
h.	SB 381 — Underinsured Employers											
				~~86,905~~		~~86,905~~						
				0		*0*						
i.	HB 622 — Revising Workers' Compensation Act											
				~~107,269~~		~~107,269~~				~~92,631~~		~~92,631~~
				0		*0*				*0*		*0*
j.	HB 511 — Workers' Compensation Data Base System											
				~~251,906~~		~~251,906~~				~~152,355~~		~~152,355~~
				0		*0*				*0*		*0*
k.	SB 347 — Workers' Compensation Medical Cost Containment											
				~~749,666~~		~~749,666~~				~~448,044~~		~~448,044~~
				0		*0*				*0*		*0*
2.	Vacancy Savings											
				~~321,248~~		~~321,248~~				~~325,555~~		~~325,555~~
				0		*0*				*0*		*0*
Total				~~168,398,081~~		~~168,398,081~~				~~182,807,255~~		~~182,807,255~~
				0		*0*				*0*		*0*

The legislature is not pleased with the past administration of this fund.

~~Item 1i is contingent on passage and approval of House Bill No. 622.~~

~~Item 1j is contingent on passage and approval of House Bill No. 511.~~

~~Item 1k is contingent on passage and approval of Senate Bill No. 347.~~

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	Fiscal 1994						Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

~~If House Bill No. 13 is passed and approved and if it provides a statutory appropriation for administration and benefit costs of the state compensation mutual insurance fund, all appropriations for the state compensation mutual insurance fund in {this act} are eliminated.~~

The state compensation insurance fund shall, in consultation with the department of administration, review the cost-effectiveness, along with other relevant considerations, of operating its in-house mail facilities compared to department of administration services. The state compensation insurance fund shall report its conclusions, along with department of administration comments, to the office of budget and program planning and the office of the legislative fiscal analyst by June 1, 1994, and to the respective appropriations subcommittee of the 1995 legislature.

PUBLIC EMPLOYEES' RETIREMENT BOARD (6104)

1. Public Employees' Retirement Program (35)										
				~~1,135,392~~	~~1,135,392~~				~~1,140,224~~	~~1,140,224~~
				1,132,973	*1,132,973*				*1,138,081*	*1,138,081*
a. Legislative Audit (Restricted/Biennial)				35,122	35,122					
b. HB 517 — PERS Retirement Incentives (Restricted)				42,500	42,500					
c. *State Fund Cost Allocation*				*3,608*	*3,608*				*7,088*	*7,088*
2. Vacancy Savings				29,744	29,744				29,835	29,835
Total				~~1,183,270~~	~~1,183,270~~				~~1,110,389~~	~~1,110,389~~
				1,184,459	*1,184,459*				*1,115,334*	*1,115,334*

The amounts listed in items 1, 1a, and 1b are appropriated from the pension trust fund.

~~Item 1b is contingent on passage and approval of House Bill No. 517.~~

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

TEACHERS' RETIREMENT BOARD (6105)

1. Teachers' Retirement System (01)										
				~~651,975~~	~~651,975~~				~~643,055~~	~~643,055~~
				651,275	*651,275*				*642,104*	*642,104*
a. Legislative Audit (Restricted/Biennial)				27,805	27,805					
b. HB 244 — Medical Exams										

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
					1,200	1,200					1,200	1,200
c. HB 517 — TRS Retirement Incentives (Restricted)					5,750	5,750						
d. *State Fund Cost Allocation*					2,257	2,257					4,544	4,544
2. Vacancy Savings					16,491	16,491					16,544	16,544
Total					~~670,239~~	~~670,239~~					~~627,711~~	~~627,711~~
					671,796	*671,796*					*631,304*	*631,304*

The amounts listed in items 1, 1a, 1b, and 1c are appropriated from the pension trust fund.

~~Item 1c is contingent on passage and approval of House Bill No. 517 with amendments to include the teachers' retirement system.~~

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF MILITARY AFFAIRS (6701)

1. Operations Support (01)												
	~~323,529~~					~~323,529~~	~~329,547~~					~~329,547~~
	300,727		*12,000*			*312,727*	*282,693*		*12,000*			*294,693*
a. Legislative Audit (Restricted/Biennial)												
	7,561					7,561						
2. Army National Guard Program (12)												
	778,464		1,169,021			1,947,485	791,500		1,178,287			1,969,787
a. Service Agreement Backlog												
	2,974		90,056			93,030			17,439			17,439
b. Training Site Funding												
			74,019			74,019			74,109			74,109
c. Environmental Compliance												
			39,216			39,216			39,242			39,242
d. M-1 Tank Security												
			500,000			500,000			500,000			500,000
e. Utility Data Clerk												
			19,596			19,596			19,613			19,613

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
f. M-Coft Utilities			33,000			33,000			34,000			34,000
g. Land Lease — Ft. Harrison			12,000			12,000			12,000			12,000
h. Hangar for Army Guard C-12			20,000			20,000			20,000			20,000
i. Environmental Division Spending Authority			100,000			100,000			100,000			100,000
3. Air National Guard Program (13)	~~166,691~~		1,429,111			~~1,594,802~~	~~170,092~~		1,443,773			~~1,613,865~~
	150,516					*1,578,627*	*153,509*					*1,597,282*
4. Disaster Coordination and Response (21)	227,147		243,936			471,083	225,333		242,130			467,463
a. Legislative Audit (Restricted/Biennial)	5,444		5,444			10,888						
5. Emergency Management Development (24)			345,025			345,025			331,576			331,576
a. Legislative Audit (Restricted/Biennial)			4,234			4,234						
6. Local Civil Defense Reimbursement (29)			600,000			600,000			600,000			600,000
7. Veterans' Affairs Division (31)	538,321	42,254				580,575	539,922	38,755				578,677
a. Legislative Audit (Restricted/Biennial)	7,561					7,561						
b. Cemetery Sexton (0.25 FTE)		5,682				5,682		5,689				5,689
8. Vacancy Savings	55,157	965				56,122	55,778	948				56,226
9. Budget Balancing Reduction	10,013					10,013	10,006					10,006
Total	~~1,992,522~~	46,971	~~4,683,658~~			~~6,723,151~~	~~1,991,110~~	43,496	~~4,612,169~~			~~6,646,775~~

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		Fiscal 1994					Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1,953,545		4,695,658			6,696,174	1,927,673		4,624,169			6,595,338

In item 3, up to 1.0 firefighter FTE may be added if the current contract is modified or becomes unnecessary.

TOTAL SECTION A											
~~54,439,012~~	~~190,049,019~~	~~175,593,774~~	~~230,459,318~~	~~1,923,001~~	~~653,305,004~~	~~50,737,103~~	~~194,206,325~~	~~176,646,126~~	~~243,491,384~~	~~1,808,045~~	~~666,868,983~~
54,083,351	190,621,822	175,368,305	62,083,427	1,926,627	484,083,529	49,252,007	194,322,701	176,313,288	60,734,635	1,816,583	482,439,214

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
B. HUMAN SERVICES												
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES (5301)												
1. Director's Office (01)												
	~~141,558~~		47,234	~~543,999~~		~~732,791~~	~~142,378~~		47,435	~~541,069~~		~~730,882~~
	141,531			*543,800*		*732,565*	*142,330*			*540,712*		*730,477*
a. Legal Services (Restricted)	15,000					15,000	15,000					15,000
b. Community Outreach				46,812		46,812				46,812		46,812
2. Central Services (02)												
	~~270,696~~	~~1,525,316~~	265,000	~~1,215,698~~		~~3,284,710~~	~~264,685~~	~~1,565,127~~	265,000	~~1,232,507~~		~~3,327,319~~
	278,556	*1,524,373*		*1,215,212*		*3,283,141*	*264,445*	*1,563,448*		*1,231,729*		*3,324,622*
a. Legislative Audit (Restricted/Biennial)				55,284		55,284						
b. Laboratory Contingency (Restricted/Biennial)		100,000				100,000						
c. Medical Technologist		32,498				32,498		34,233				34,233
d. Laboratory Analysis Automation (Biennial)		53,500				53,500						
e. Network Software Upgrades				61,000		61,000				18,000		18,000
f. ICP Replacement (Biennial)		250,000				250,000						
g. SSA Contract			12,000			12,000			12,000			12,000
h. Central Cashier				33,181		33,181				28,788		28,788
i. Data Processing				110,075		110,075				148,310		148,310
j. Departmental Move		108,084	76,916			185,000		92,636	65,925			158,561
k. Accounting												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				191,138		191,138				142,774		142,774
l. Laboratory		23,058				23,058		23,064				23,064
3. Environmental Sciences (03)	~~369,843~~	~~1,925,148~~	1,191,677	~~163,472~~		~~3,650,140~~	~~370,766~~	~~2,034,135~~	1,082,134	~~163,763~~		~~3,650,798~~
	369,744	*1,924,881*		*163,406*		*3,649,708*	370,587	*2,033,707*		*163,644*		*3,650,072*
a. Billings/Laurel Sulfur Dioxide		400,000				400,000		*190,000*				190,000
b. AQB Operating Permit Program		518,236				518,236		745,602				745,602
c. HB 567 — Commercial Medical Hazardous Waste Incinerators		61,620				61,620		57,170				57,170
4. Solid and Hazardous Waste (04)	146,447	3,444,201	4,658,944			8,249,592	147,111	3,492,879	4,728,183			8,368,173
a. Junk Vehicle (Restricted)		30,000				30,000		30,000				30,000
b. LUST — Cost Recovery			200,000			200,000			200,000			200,000
c. Clark Fork Basin Manager		49,880				49,880		49,892				49,892
d. Tank Installer		51,615				51,615		51,616				51,616
e. CECRA Program Expansion		191,576				191,576		182,863				182,863
f. GIS — ARCO		417,728				417,728		417,750				417,750
g. Burlington Northern Cleanup		125,000				125,000		125,000				125,000
h. DSL Abandoned Mines		40,000				40,000		*40,000*				40,000
i. Superfund DOD			100,000			100,000			100,000			*100,000*
j. SB 284 — Underground Tank Installer Permits		11,500				11,500		10,500				10,500

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
k. HB 592 — Hazardous Waste Management Permit Fees		126,240				126,240		121,240				121,240
5. Water Quality (05)		~~1,723,817~~	4,268,772			~~5,992,589~~		~~1,696,767~~	4,251,890			~~5,948,657~~
		1,723,576				*5,992,348*		*1,696,333*				*5,948,223*
a. Clean Lakes/Volunteer Monitoring		72,010	280,000			352,010		57,116	280,000			337,116
b. Public Water Supply/Subdivisions		202,933				202,933		190,933				190,933
c. Water Pollution Control			202,393			202,393			190,390			190,390
d. Nonpoint Source/Wetlands			482,452			482,452			481,180			481,180
e. Construction Sludge			35,626			35,626			33,626			33,626
f. Pollution Prevention			36,626			36,626			33,626			33,626
g. Storm Water Program			107,259			107,259			101,260			101,260
h. HB 388 — Water Quality Fees		769,892		51,248		821,140		777,388		51,529		828,917
i. Operator Training Account — Penalties (Biennial)		*60,000*				*60,000*						
6. Health Services and Medical Facilities (06)	~~893,944~~	~~585,958~~	376,770			~~1,856,672~~	~~892,469~~	~~586,162~~	373,820			~~1,852,451~~
	893,731	*585,837*				*1,856,338*	*892,111*	*585,975*				*1,851,906*
a. Robert Wood Johnson		~~149,626~~				~~149,626~~		~~149,703~~				~~149,703~~
		149,597				*149,597*		*149,651*				*149,651*
b. Trauma Registry			134,561			134,561			134,568			134,568
c. Trauma Care Planning			171,337			171,337			171,337			171,337
d. Primary Care Grant												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
			113,876			113,876			113,879			113,879
e.	Rural Physicians Residency Program *(Restricted)*											
	200,000					200,000	~~200,000~~					~~200,000~~
							110,000					*110,000*
f.	Expand MIAMI Program *(Restricted)*											
	264,590					264,590	264,590					264,590
g.	End-Stage Renal Disease *(Restricted)*											
	125,000					125,000	~~125,000~~					~~125,000~~
							100,000					*160,000*
7.	Family/Maternal and Child Health Bureau (07)											
	243,153		22,780,365			23,023,518	243,153		25,432,387			25,675,540
a.	Children's Special Health											
			23,435			23,435			23,435			23,435
b.	WIC Information Specialist											
			36,693			36,693			36,704			36,704
c.	Health Services Division Support											
			51,753			51,753			51,754			51,754
d.	Enhanced Nuraing Consultation											
			85,000			85,000			85,000			85,000
e.	Data Utilization											
			80,000			80,000			60,000			60,000
8.	Preventive Health Bureau (08)											
	92,878	73,395	1,572,264			1,738,537	92,878	80,891	1,617,110			1,790,879
a.	Tuberculosis											
			148,531			148,531			146,130			146,130
b.	Hepatitis B											
			69,356			69,356			69,373			69,373
c.	Ryan White — Title II											
			122,548			122,548			127,363			127,363
d.	Universal Hepatitis											
			122,528			122,528			122,528			122,528
e.	Preventive Health Block Grant											
			220,350			220,350			223,063			223,063
f.	Perinatal Hepatitis											

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
			44,423			44,423			44,433			44,433
g. Communicable Disease Emergency Fund (Biennial)												
	50,000					*50,000*						
9. Health Facilities Division (09)												
	~~523,192~~		1,956,774			~~2,479,966~~	~~523,820~~		1,943,475			~~2,467,295~~
	523,095					*2,479,869*	*523,645*					*2,467,120*
a. Title 18 CLIA												
			454,909			454,909			454,909			454,909
10. Petroleum Tank Release Compensation Board (11)												
		1,313,077				1,313,077		1,289,225				1,289,225
11. Vacancy Savings												
	271,949	56,069		63,257		391,275	272,231	68,120		63,338		403,689
12. Budget Balancing Reduction												
	16,062					16,062	15,998					15,998
Total												
	~~3,006,290~~	~~14,319,039~~	40,530,372	~~2,408,650~~		~~60,265,151~~	~~2,993,621~~	~~14,023,772~~	43,103,917	~~2,310,214~~		~~62,431,524~~
	3,055,714	*14,378,238*		*2,407,899*		*60,372,223*	*2,877,621*	*14,020,992*		*2,308,960*		*62,311,490*

It is the intent of the legislature that the department contract with local health agencies and other organizations whenever possible in lieu of adding FTE.

Item 1a may only be used to provide legal services to the board of health. Any unused funds must revert to the general fund.

Item 2b is a biennial appropriation that may bo used only if the demand for reimbursable services requires expenditures for supplies, materials, and communications in excess of the appropriated levels of $336,283 in fiscal 1994 and $360,833 in fiscal 1995.

Item 3a contains $400,000 in fiscal 1994 and $190,000 in fiscal 1995 to address sulfur dioxide problems in the Billings/Laurel area. In preparing the 1997 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

~~Item 3b is contingent on passage and approval of House Bill No. 318.~~

~~Item 3c is contingent on passage and approval of House Bill No. 567.~~

Item 4a may only be used for vehicle crushing and freon removal.

~~Item 5h is contingent on passage and approval of House Bill No. 388.~~

It is the intent of the legislature that the department coordinate services provided by items 6a and 6d with the health care commission~~, contingent on passage and approval of Senate Bill No. 285~~.

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

For the fiscal 1995 appropriations, items 6e, 6f, and 6g may be used only for the purpose designated. Reductions from vacancy savings or budget balancing reductions may not be applied to items 6e, 6f, and 6g. Any unused funds must revert to the general fund.

Item 8g is a biennial appropriation to be used for unanticipated expenses related to communicable disease outbreaks, such as hantavirus, e-coli 0157, tuberculosis, and shigella. Item 8g may be used only for the purpose designated. Reductions from vacancy savings or budget balancing reductions may not be applied to item 8g. Any unused funds must revert to the general fund.

Any maternal and child health and preventive health block grant funds received over amounts appropriated must be allocated by the department to maternal and child health and preventive health services necessary to meet federal grant requirements and to the Montana healthy people year 2000 health objectives as determined by the appropriate health advisory councils.

~~Item 10 is contingent on passage and approval of House Bill No. 666.~~

The department shall certify, in writing, by February 1, 1994, to the office of budget and program planning and the office of the legislative fiscal analyst that:

(1) all permit applications submitted to the department are being processed according to time limits specified in statutes and rules; and

(2) the department has implemented a procedure to notify all permit applicants of the date by which their specific application process will be completed.

It is the intent of the legislature that if the department does not meet the timeframes stipulated in statutes and rules for the review of subdivisions and water and air quality permitting, then the department is required to contract with a county or a private contractor to perform the service.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

1.	Job Service Division (01)									
	~~4,064,362~~	9,432,912	~~83,244~~		~~13,580,518~~	~~3,765,975~~	9,711,278	~~83,244~~		~~13,560,497~~
	4,060,525		*83,157*		*13,576,594*	*3,762,577*		*83,167*		*13,557,022*
	a. Classification Review									
	262,439				262,439	262,439				262,439
	b. Maintenance Contracts									
	138,523				138,523	138,523				138,523
	c. Health Industries (Biennial)									
		132,464			132,464					
	d. Asarco/Troy (Biennial)									
		113,637			113,637					
	e. *State Fund Cost Allocation*									
	3,532				*3,532*	*7,112*				*7,112*
2.	Unemployment Insurance (02)									
	~~132,391~~	4,373,033			~~4,505,424~~	~~132,391~~	4,402,387			~~4,534,778~~
	132,210				*4,505,243*	*132,231*				*4,534,618*

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Voice Response Communications			24,000			24,000			24,000			24,000
b. Unemployment Insurance Hearings Officer			36,882			36,882			38,356			38,356
c. *State Fund Cost Allocation*		*139*				*139*		*281*				*281*
3. Commissioner's Office/Centralized Services (03)				~~3,033,862~~		~~3,033,862~~				~~3,071,091~~		~~3,071,091~~
				3,030,543		*3,030,543*				*3,065,566*		*3,065,566*
a. Legislative Audit (Restricted/Biennial)				83,902		83,902						
b. *State Fund Cost Allocation*				*1,476*		*1,476*				*2,974*		*2,974*
4. Employment Relations (04)	~~348,118~~	~~2,314,972~~	42,140	~~472,569~~		~~3,177,799~~	~~319,589~~	~~2,316,528~~	44,286	~~460,629~~		~~3,141,032~~
	348,040	*2,314,121*		*472,456*		*3,176,757*	*319,520*	*2,315,774*		*460,529*		*3,140,109*
a. Uninsured Employers Fund				~~594,200~~		~~594,200~~				~~675,200~~		~~675,200~~
				0		*0*				*0*		*0*
b. Subsequent Injury Benefits				~~697,400~~		~~697,400~~				~~786,200~~		~~786,200~~
				0		*0*				*0*		*0*
c. SIF Actuarial Study				10,000		10,000				12,500		12,500
d. HB 511 — Workers' Compensation Data Base System (Biennial)			583,479			583,479						
e. HB 287 — Revising Workers' Compensation Act			4,800			4,800		1,300				1,300
f. SB 347 — Workers' Compensation Medical Cost Containment			299,545			299,545		246,695				246,695
g. HB 622 — Revising Workers' Compensation Act			165,029			165,029		142,509				142,509
h. SB 381 — Underinsured Employers												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		133,701				133,701		116,991				116,991
i.	SB 223 — Revising Child Labor Laws											
		27,087				27,087		20,927				20,927
j.	*State Fund Cost Allocation*											
		2,046		*867*		*2,913*		*4,122*		*1,748*		*5,870*
5.	Legal Services Division (06)											
		608,651	296,408	83,308		988,367		622,180	284,771	83,308		990,259
a.	SB 347 — Workers' Compensation Medical Cost Containment											
		54,758				54,758		48,900				48,900
b.	*State Fund Cost Allocation*											
		327		*41*		*368*		*659*		*83*		*742*
6.	Research, Safety, and Training (07)											
		~~1,156,317~~	1,731,559			~~2,887,676~~		~~1,162,329~~	1,729,561			~~2,891,890~~
		1,156,104				*2,887,663*		*1,162,140*				*2,891,701*
a.	Health Industries (Biennial)											
			17,454			17,454						
b.	Asarco/Troy (Biennial)											
			17,454			17,454						
c.	SB 163 — Safety Culture Act											
		93,705				93,705		77,935				77,935
7.	Human Rights Commission (08)											
	~~402,632~~		104,600			~~507,232~~	~~402,610~~		104,600			~~507,210~~
	402,523					*507,123*	*402,420*					*507,020*
a.	Additional Caseload FTE											
	90,412		50,000			140,412	88,046		50,000			138,046
8.	Workers' Compensation Judge (09)											
		370,725				370,725		368,020				368,020
a.	Judges' Annual Leave and Sick Leave											
		17,400				17,400						
b.	Law Clerks' Annual Leave and Sick Leave											
		1,954				1,954		1,954				1,954
c.	Overtime											
		800				800		800				800
d.	*State Fund Cost Allocation*											

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		189				*189*		*381*				*381*
9.	Job Training Grants (50)											
		1,682,395	10,457,520			12,139,915		1,682,395	10,457,520			12,139,915
	a. UI Administrative Discretionary Grants (Biennial)											
		1,430,000				1,430,000						
	b. Health Industries (Biennial)											
			546,128			546,128						
	c. Asarco/Troy (Biennial)											
			552,572			552,572						
10.	Vacancy Savings											
	25,977	307,017		121,097		454,091	25,457	297,341		122,401		445,199
11.	Budget Balancing Reduction											
	4,076					4,076	3,924					3,924
Total												
	~~811,109~~	~~13,236,016~~	27,928,763	~~4,937,308~~		~~46,913,276~~	~~780,864~~	~~10,811,450~~	26,846,759	~~5,049,771~~		~~43,488,844~~
	810,922	*13,237,167*		*3,644,653*		*45,621,505*	*780,605*	*10,819,504*		*3,587,474*		*42,034,342*

~~Proprietary funds in item 4a are decreased by $594,200 in fiscal 1994 and by $675,200 in fiscal 1995, contingent on passage and approval of House Bill No. 287.~~

~~Proprietary funds in item 4b are decreased by $697,400 in fiscal 1994 and by $786,200 in fiscal 1995, contingent on passage and approval of House Bill No. 287.~~

~~Item 4d is contingent on passage and approval of House Bill No. 511.~~

~~Item 4e is contingent on passage and approval of House Bill No. 287.~~

~~Items 4f and 5a are contingent on passage and approval of Senate Bill No. 347.~~

~~Item 4g is contingent on passage and approval of House Bill No. 622.~~

State special revenue of $17,400 in fiscal 1994 in item 8a may only be used for payment of accrued balances of annual leave and sick leave payable under stete law te the incumbent judge in the event of resignation or nonreappointment.

State special revenue of $1,954 in fiscal 1994 and $1,954 in fiscal 1995 in item 8b may only be used for payment of accrued bal..nces of annual leave and sick leave payable under state law to law clerks.

State special revenue of $800 in fiscal 1994 and $800 in fiscal 1995 in item 8c may only ba used for payment of overtime.

Item 9a is appropriated as follows:

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	Fiscal 1994					Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) (a) Up to $500,000 is appropriated as a reserve for laid-off state employees for fiscal 1994 for dislocated worker program services. At the end of fiscal 1994, remaining reserves may be used for other dislocated workers.

(b) The appropriation in subsection (1)(a) must be ceduced by the amount expended for state employees in the dislocated worker program from the appropriation provided for in House Bill No. 3.

(2) (a) Up to $230,000 is appropriated to provide for dislocated worker programs.

(b) The appropriation in subsection (2)(a) must be reduced by the amount expended for nonstate workers in the dislocated worker program from the appropriation provided for in House Bill No. 3.

(3) The amount of $350,000 is appropriated to provide for job training for economically disadvanteged individuals. These funds may be used only to provide services to individuals with four or more barriers, as defined by the Job Training Partnership Act (JTPA).

(4) The amount of $350,000 is appropriated to provide for job training for offenders. These funds may be used only to provide for services to offenders, as defined by JTPA.

The funds appropriated in item 9a may not be used to supplant tho level of effort provided by JTPA funding from the federal department of labor. Although the legislature expresses its intent regarding use of the funds, the department has ultimate discretion over the allocation.

The department shall, in consultation with the department of administration, review the cost-effectiveness, along with other relevant considerations, of operating its in-house duplicating facilities compared to department of administration services. The department shall report its conclusions, along with department of administration comments, to the office of budget and program planning and the office of the legislative fiscal analyst by June 1, 1994, and to the respective appropriations subcommittee of the 1995 legislature.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (6901)

1. Family Assistance (01)										
~~16,401,289~~	~~917,750~~	~~55,910,254~~			~~73,229,293~~	~~17,477,095~~	~~967,101~~	~~57,857,819~~		~~76,302,015~~
2,964,500	*0*	*20,745,569*			*23,710,069*	*3,095,892*	*0*	*21,058,948*		*24,154,840*
a. *Community-Based Services (Biennial)*										
35,000		*35,000*			*70,000*					
b. *AFDC and Emergency AFDC Benefits*										
13,397,387	*917,046*	*35,069,512*			*49,383,945*	*14,188,582*	*964,270*	*36,383,977*		*51,536,829*
a c. Local JOBS Match										
		1,100,000			1,100,000			1,650,000		1,650,000
b d. Food Stamps Outreach										
		157,349			157,349			157,349		157,349
e e. AFDC Day Care										
~~13,000~~	170,000	~~1,030,633~~			~~1,221,633~~	~~13,000~~	170,000	~~1,037,042~~		~~1,220,042~~

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	Fiscal 1994					Fiscal 1995				
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	52,123		1,133,806			1,355,929	170,302		1,417,736			1,758,038
d.	JOBS Administration (Restricted)											
	149,500		149,500			299,000	149,500		149,500			299,000
2.	Eligibility Determination Program (03)											
		2,823,290	2,699,583			5,522,873		2,833,132	2,705,738			5,538,870
a.	Nonassumed County BA											
		87,101	83,686			170,787		87,153	83,735			170,888
3.	Administrative and Support Services (04)											
	~~901,341~~	~~370,096~~	~~1,633,402~~			~~2,912,839~~	~~913,379~~	~~382,693~~	1,651,131			~~2,947,203~~
	900,945	377,932	1,633,401			2,912,278	912,823	382,450				2,946,412
a.	Legislative Audit (Restricted/Biennial)											
	75,977	6,950	82,926			165,853						
4.	Child Support Enforcement (05)											
		2,173,795	4,324,398			6,498,193		2,297,754	4,580,593			6,878,347
a.	Increase Communication Costs											
		15,637	30,353			45,990		16,742	32,498			49,240
5.	State-Assumed County Administration (06)											
	~~3,256,550~~		3,128,844			~~6,385,394~~	~~3,262,960~~		3,135,008			~~6,397,968~~
	3,256,462					6,385,306	3,262,890					6,397,898
a.	County Pilot Project (Restricted)											
	100,000					100,000	100,000					100,000
6.	Medical Assistance (07)											
	~~45,469,383~~	6,287,934	~~154,007,932~~			~~205,765,229~~	~~49,690,580~~	6,407,123	~~158,067,125~~			~~214,164,828~~
	43,694,355		150,618,394			200,600,683	43,700,911		149,215,222			193,323,256
a.	Medicaid Hospital Costs (Restricted)											
	~~26,149,157~~		~~68,983,089~~			~~95,132,046~~	~~34,536,762~~		~~82,433,109~~			~~117,039,871~~
	27,303,856		67,028,479			94,332,335	30,678,091		73,211,959			103,891,050
b.	Medicaid Managed Care											
	238,967		390,311			629,278	240,332		417,452			657,784
c.	Psychiatric Utilization Review											
	20,687		62,063			82,750	20,687		62,063			82,750
d.	Medicaid Claims Processing											
	48,300		144,900			193,200	48,300		144,900			193,200

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
e. HB 309 — Medically Needy Cost Savings	31,252		31,253			62,505	11,263		11,263			22,526
f. Waiver Inflation and 40 Cases	267,026		654,389			921,415	361,337		863,535			1,224,872
g. Medicaid-Eligible Education Costs (Restricted/Biennial)			4,866,882			4,866,882						
h. SB 40 Galen Closure (Restricted)	175,167		429,274			604,441	178,310		426,131			604,441
i. Baby Your Baby Medicaid Benefits		482,500	482,500			965,000		482,500	482,500			965,000
j. SB 145 — Traumatic Brain Injury Pilot Project	50,000		122,533			172,533	50,000		119,491			169,491
7. Audit and Program Compliance Division (08)	~~718,162~~	~~3,505~~	1,000,349			~~1,722,016~~	~~720,270~~	~~3,516~~	1,002,704			~~1,726,490~~
	717,934	*3,504*				*1,721,787*	*719,926*	*3,515*				*1,726,145*
8. Management Analysis and Systems (09)	~~2,467,152~~	~~1,570,330~~	4,702,632			~~8,740,114~~	~~2,393,623~~	~~1,703,320~~	4,587,349			~~8,684,292~~
	2,442,283	*1,565,900*				*8,710,815*	*2,371,463*	*1,691,053*				*8,649,865*
a. *State Fund Cost Allocation*		*8,695*				*8,695*		*17,490*				*17,490*
9. Vocational Rehabilitation Program (10)	~~1,704,307~~	~~341,914~~	6,723,936			~~8,770,157~~	~~1,038,565~~	~~200,812~~	6,725,387			~~8,771,964~~
	1,704,085	*341,843*				*8,769,864*	*1,838,343*	*207,940*				*8,771,670*
a. Provider Rate Increase	38,185		111,025			149,210	76,753		223,163			299,916
b. MSED Administration			5,176			5,176			1,310			1,310
c. MSED Benefits			459,614			459,614			116,288			116,288
d. MonTECH Administration			6,098			6,098			6,403			6,403
e. MonTECH Benefits			565,414			565,414			593,683			593,683
f. Independent Living Benefits												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	100,000					100,000	100,000					100,000
10. Disability Determination Program (11)			3,167,237			3,167,237			3,238,286			3,238,286
a. Additional FTE			78,339			78,339			78,414			78,414
11. Visual Services Program (13)	323,749		1,132,625			1,456,374	322,993		1,129,830			1,452,823
a. Provider Rate Increase	2,440		14,630			17,070	4,903		29,410			34,313
12. Developmental Disabilities Program (14)	~~15,352,560~~		22,358,042			~~37,710,622~~	~~16,602,560~~		23,284,924			~~39,887,484~~
	15,352,248					*37,710,290*	*16,602,186*					*39,887,110*
a. DD Benefits (Not for Construction)	100,000					109,000	100,000					100,000
b. Provider Rate Increase	573,528		301,178			874,706	1,156,933		601,225			1,758,158
13. Developmentsl Disabilities Advisory Council (15)			420,475			420,475			429,475			420,475
14. Vacancy Savings	304,757	222,838				527,595	331,621	219,670				551,291
15. Budget Balancing Reduction	127,046					127,046	136,307					136,307
Total	~~116,235,896~~	~~15,043,964~~	~~338,561,604~~			~~469,841,464~~	~~129,892,185~~	~~15,339,376~~	~~350,187,633~~			~~503,419,194~~
	113,684,153	*15,039,289*	*336,251,675*			*464,975,117*	*119,995,792*	*15,341,460*	*333,999,580*			*469,336,832*

For fiscal 1995, the department shall issue a request for proposals for all weatherization training activities presently delivered by Montana state university.

In accordance with 42 U.S.C. 607(B)(2)(c), the department shall implement a payment-after-performance policy for the AFDC-UP program no later than January 1, 1994. In implementing this policy, the department shall:

(1) require that at least one parent in the household participate in approved education, training, or job search activities; and

(2) provide for payment of AFDC benefits, but only after performance of assigned activities under subsection (1) is completed.

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	Fiscal 1995						Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department is authorized to retain 7.5% of the federal community services block grant and pass through the remaining 92.5% to the human resource development councils (HRDCs). If during fiscal 1994 or fiscal 1995 the block grant falls below the federal fiscal year 1990 grant level, the department shall retain only 5% of the grant amount and pass through the remaining 95% to the HRDCs.

The appropriation in item 1 is contingent on a program being in place by July 1, 1994, that requires AFDC recipients whose youngest child is at least 1 year of age to be referred to the JOBS program. The department may waive the requirement for good cause.

Item 1 includes $100,000 of state general fund money in each fiscal year for the department to contract for assistance in obtaining SSI disability benefits for indigent persons, *including AFDC recipients*.

In order to expend funds from item 1, the department shall apply for waivers from federal regulations governing AFDC programs no later than July 1, 1994. If federal approval is received, the department shall implement the waivers as soon as feasible. The department shall apply for waivers to encourage employment by allowing working AFDC recipients to retain a greater portion of their income. The department shall work in cooperation with local welfare task forces in development of waiver applications and in implementation of approved waivers. The waivers may include but are not limited to:

(1) expansion of the earned income disregard above the current $30 and 33% of additional earned income;

(2) exclusion of all earnings of children;

(3) elimination of the 100-hour rule for the AFDC-UP program;

(4) reduction, by increasing percentages, of the amount of AFDC benefits for those recipients who remain on AFDC after each 12 consecutive months unless good cause is established for remaining on assistance; and

(5) changing the definition of household income to include the income, minus child support, of all adults in the household where the AFDC recipient lives.

The department is encouraged to seek waivers that are cost-neutral. The department shall develop and use an appeals process for AFDC recipients if it implements waivers that result in cost savings by decreasing individual benefits.

No later than September 1993, the department shall submit to the legislative finance committee a detailed report of the progress towards implementation of the waivers developed by the department and local welfare task forces. The department may not implement a waiver program unless actual cost savings can be demonstrated. The department is authorized to expend up to 10% of projected savings for administrative costs that are mandated by federal regulations associated with implementation of the federal waivers.

The AFDC payment level for the 1995 biennium must be established at 40.5% of the federal poverty index.

The department may not expend funds from item 1d *if* unless the department certifies to the director of the office of budget and program planning that in-house administration of the JOBS program is more cost-effective than contracting for JOBS program administration.

The department shall extend client followup reporting to 6 months for each participant leaving the JOBS program.

The department shall provide the following information about the Montana AFDC population to the 54th legislature by December 1, 1994:

(1) the average length of time a client receives AFDC (since the inception of TEAMS, the automated eligibility determination system);

(2) the percentage of the caseload that remains on AFDC by selected length of stay;

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	Fiscal 1994					Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(3) reported reasons that applicants are requesting AFDC benefits; and

(4) reperted reasons AFDC recipients no longer require AFDC benefits.

The department may obtain information for items 3 and 4 from periodic surveys of AFDC and former AFDC recipients.

Beginning in fiscal 1995, the department shall competitively award the contract for the food stamp outreach program to an agency or entity that:

(1) can provide the necessary state or local matching funds;

(2) demonstrates that it will reach a broad representation of potentially elig ble persons;

(3) will coordinate efforts with the LIEAP, food banks, and food distribution programs; and

(4) provides for an independent evaluation of the outreach program, which will be made available to the 54th legislature. The department shall develop evaluation criteria to measure the effectiveness of the outreach program, including but not limited to the number of persons contacted, the numbor of persons assisted in making application for food stamps benefits, and any followup information available on the contacts made. If a bid is not awarded (based on the inability to meet all of the above criteria), an outreach program may not be conducted.

The department may require only AFDC and food stamp households with earned income and/or those who have recent work history to report monthly. The department may, however, promulgate administrative rules that require monthly reporting for specific recipient population groups that have been shown to be subject to high eligibility determination errors or fraud.

The department is directed to implement a policy to reduce AFDC grants by $50 for all eligible AFDC clients sharing living arrangements with anyone who is not in the assistance unit or whose income and resources are not considered in the determination of the assistance unit grant. The following AFDC recipients are not subject to this deduction: AFDC recipients living with a separate household that receives supplemental security income; AFDC recipients living in government-subsidized housing; and two or more AFDC assistance units living together. The department shall apply for federal approval of a good cause hardship exception in addition to the exceptions previously listed.

The department is directed to request units of the university system to assist the department, witheut charge, in development of clear and concise AFDC program information for the education of AFDC clients. The program information must include a description of AFDC-earned income provisions, transitional day care, transitional medicaid, and any other benefits that will assist the AFDC client in securing and retaining employment.

The state share of AFDC-related support collections and all AFDC and non-AFDC federal incentive payments and program collected fees must be deposited in a state special revenue account from which the state share of the administrative and operational costs of the child support enforcement program must be paid. ~~The legislature intends that, during the 1995 biennium, the department collect at least $1.15 for each $1 expended for administrative and operational costs from the account.~~ The department shall transfer to the general fund from the child support enforcement account any cash balance remaining in excess of $500,000 at the end of fiscal 1994 and 1995.

The department shall conduct a review of child support privatization projects in other states and report the results of the review to the 54th legislature. The review must address: the impact of privatization ou the efficient utilization of the state IV-D computer system; the granting of quasi-judicial powers to private contractors; the results of federal audits and conformity to federal regulations of privatized operations; the degree of monitoring by state personnel from privately operating programs or aspects of programs; and a summary of advantages and disadvantages from the perspective of state officials involved with privatization.

The department is appropriated funds in item 5a for a pilot project in Deer Lodge County. The pilot project may include work, job training, subsistence payments, and preventive health programs for low-income poople. The use of appropriated funds in item 5a is contingent on Deer Lodge County levying 12 mills for ita poor fund for public assistance, protective services, and other benefits for low-income poople.

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Fiscal 1994						Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

The department is authorized to transfer funds among appropriations for medicaid primary care, medicaid nursing care, medicare buy-in, state medical, and the home- and community-based waiver program.

The legislature intends that expenditures for all provider rate increases approved by the legislature be limited to the dollar amounts appropriated rather than percentage increases on which the original estimates may have been based. The department will be in compliance with this provision if:

(1) it estimates total costs for each medicaid service category in June prior to the beginning of each fiscal year of the 1995 biennium; and

(2) the percentage increases or base adjustments approved by the department are limited to the dollar amount appropriated for each provider rate increase.

It is the intent of the legislature that the department develop a continuum of care designed to limit the growth of state expenditures for long-term care services for the elderly and disabled. The department is directed to present to the 54th legislature a plan that defines and provides a cost-effective range of services for people who are elderly or disabled; provides individuals with a choice of services that best reflects their personal preferences and treatment needs; offers services, including but not limited to in-home care, nursing facility care, long-term hospital care, and alternative community care, such as adult foster homes and personal care facilities. If the department certifies to the director of the office of budget and program planning that cost-effective alternative services for the elderly and disabled can be provided within existing appropriations, the department may implement these services during the 1995 biennium. The legislature intends that these alternative services for the elderly and disabled are within the amount, scope, and duration of the medicaid services supported by appropriations in [this act].

The department and the department of corrections and human services may develop a capitation contract for the delivery of and payment for mental health services in Montana. The departments shall develop the contract in consultation with an advisory group. The advisory group must consist of representatives from the following groups: mental health services clients and their family members, community mental health centers, private mental health services providers, the departments, the Montana state hospital, hospitals, and other appropriate groups. The department may develop a capitation contract for physical health services. The department shall develop the physical care managed care plan in consultation with an advisory group. The advisory group must consist of representatives from health services clients and their family members, private physical care providers, the Montana legislature, the department, the department of corrections and human services, Montana hospitals, and other appropriate groups.

The department shall provide information regarding the specific family planning services covered by medicaid, including birth control pills, norplant, condoms, and sterilization procedures. The information must include the address and phone number of the local family planning clinic.

~~If House Bill No. 333 is not passed and approved, item 6 is increased by $1,261,427 general fund money in fiscal 1994, $1,268,050 general fund money in fiscal 1995, $3,091,323 federal special revenue in fiscal 1994 and $3,030,424 federal special revenue in fiscal 1995.~~

The department and Montana universities and colleges may develop early periodic screening diagnosis and treatment (EPSDT) outreach programs and use appropriate funds to match federal funds for EPSDT outreach activities. The department may contract with universities and colleges to provide EPSDT programs by March 1994.

The department may extend passport to health provider status to outpatient hospitals if the department determines that the status will achieve program savings, improve recipient access, or extend the passport program to currently underserved areas.

The department shall review the feasibility of establishing a voucher system for payment of medicaid personal care services. If the department finds that a voucher system can be implemented within the appropriation in [this act], the system may be implemented during the 1995 biennium. If the department determines that the voucher system is infeasible, it shall report its findings to the house appropriations committee during the 1995 regular session of the legislature.

It is the intent of the legislature that in fiscal 1994 and fiscal 1995, any unexpended general fund money, up to $1 million per year, in items 6 and 6a be used for assisted living, home-based care, or waivers.

The department may transfer funds in and out of item 6a.

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	Fiscal 1994					Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Expanded waiver services funded in item 6f should be used to expand waiver services in eastern Montana if clients and services are available. The expansion may occur in the following counties: Blaine, Big Horn, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Gelden Valley, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Valley, Wheatland, and Wibaux.

Contingent on passage and approval of Senate Bill No. 145, the *The* appropriation in item 6j must be used for a medicaid model waiver for people with traumatic brain injuries.

The department shall direct licensed providers of assisted living services in a facility setting to give notices of available unskilled positions to the department local area jobs program offices.

The department shall implement 53-6-101(9) if medicaid expenditures exceed appropriations in [this act] in either year of the biennium.

It is the intent of the legislature that annualized expenses for operation of SEARCHS not exceed $1,500,000. This amount includes expenses for any facilities management contracting that may be uzed for system operations, computer processing costs directly associated with operation of the system, and other personal services and nonpersonal services costs directly charged to the management and operation of the system.

If the department considers contracting for operation of the TEAMS and/or SEARCHS computer applications on a privately owned and operated mainframa or midrange computer, the department shall submit to the office of budget and program planning and to the legislative finance committee a comparison of the cost of operating the system on the state mainframe computer managed hy the department of administration. The department of administration shall estimate rate changes that would occur due to removal of TEAMS and/or SEARCHS from tha state mainframe. If the office of budget and program planning determines that statewide cost savings are greater than the private contract cost savings to the department, the department shall operate TEAMS and/or SEARCHS on the state mainframe computer if continued operation of TEAMS and/or SEARCHS on the state mainframe does not conflict with federal regulations.

The department is authorized to transfer funds between appropriations for the vocational rehabilitation and visual services programs.

The department may pursue funding of any existing eligible state general funded services under the federal ICF/MR program if the federal government fails te approve adequate medicaid waiver funding under the home- and community-based waiver program.

It is the intent of the legislature that the developmental disabilities division pursue federal funding to enhance and improve services to persons with developmental disabilities. These additional federal funds may be expended by the division for services as long as those actions do not require or commit the state te additional general fund expenditures beyond the amount appropriated during the 1995 biennium hy the legislature for the developmental disabilities community.

The department shall, in consultation with the department of administration, review the cost-effectiveness, along with other relevant considerations, of operating its in-house mail facilities compared to department of administration services. The deportment shall report its conclusions, along with department of administration comments, to the office of budget and program planning and the office of the legislative fiscal analyst by June 1, 1994, and to the respective appropriations subcommittee of the 1995 legislature.

Items entitled "State Fuad Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF FAMILY SERVICES (6911)

1. Management Support (01)								
~~2,393,653~~	~~16,500~~	4,924,477	~~7,334,630~~	~~2,411,129~~	~~16,500~~	4,934,985		~~7,362,614~~
2,392,358	*16,498*		*7,333,333*	*2,409,983*	*16,499*			*7,361,467*
a. Legislative Audit (Restricted/Biennial)								
71,415		45,658	117,073					

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Management Information System (Restricted/Biennial)												
	~~2,500,000~~		800,000			~~3,300,000~~						
	2,496,914					*3,296,914*						
c. Aging Legal Developer												
			36,066			36,066			34,866			34,866
d. Alzheimer's Demonstration Grant												
			155,500			155,500			155,500			155,500
e. Information and Assistance for the Elderly												
			31,802			31,802						
f. Proventive Health Grant												
			84,340			84,340			*84,340*			84,340
2. Regional Staff (02)												
	7,492,737	995,930	4,088,079			12,576,746	6,682,159	995,930	2,845,402			10,523,491
a. State Fund Cost Allocation												
	581					*581*		*1,169*				*1,169*
3. Juvenile Corrections (03)												
	7,033,885	283,895	310,273			7,628,053	7,113,766	*284,490*	310,275			7,708,531
a. Juvenile Community Corrections												
	150,000		66,000			216,000	150,000		66,000			216,000
b. State Fund Cost Allocation												
	144					*144*		*290*				*290*
4. Community and Protective Services (05)												
	14,912,639	1,752,403	7,835,523			24,500,565	15,102,432	1,756,185	7,833,118			24,691,735
a. Youth Psychiatric Care (Biennial)												
	2,000,000					2,000,000						
b. Refinancing Services												
	50,000		2,150,000			2,200,000	50,000		2,150,000			2,200,000
c. Annualize Foster Care Continuum												
	667,162		210,798			877,960	668,918		*209,042*			877,960
d. Foster Care Rate Increase												
	222,030	21,968	70,293			314,291	444,365	46,670	137,975			629,010
e. Foster Family Support Services												
	286,318		148,692			435,010	290,318		147,098			437,416
f. AFDC At-Risk Day Care												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	410,000		1,004,769			1,414,769	410,000		989,831			1,399,831
g.	SB 271 — Pilot Program for Local Citizen Review Boards (Restricted/Biennial)											
	10,513					10,513						
h.	*State Fund Cost Allocation*											
	1,031					*1,031*		*2,075*				*2,075*
5.	Vacancy Savings											
	694,363	53,823				748,186	676,554	53,744				730,298
6.	Budget Balancing Reduction											
	187,477					187,477	163,233					163,233
Total												
	~~37,318,512~~	~~3,016,873~~	21,962,270			~~62,297,655~~	~~32,483,300~~	~~3,046,031~~	19,898,432			~~55,427,763~~
	37,314,131	*3,018,627*				*62,295,028*	*32,482,154*	*3,049,564*				*55,430,150*

The department shall use and develop additional services, within appropriation limitations, that are family-focused, child-centered, sensitive to unique cultures, and community-based. The department shall use the least restrictive, most appropriate services with the goal of preserving families.

The department is directed to develop a child welfare management information system (MIS). The appropriation in item 1b must be expended only for development and operation of the MIS. The department shall develop the most comprehensive MIS possible within the appropriation in item 1b. If the appropriation is not sufficient to fund development of the entire system, system compenents may be prioritized by the department. The MIS should include the following compononts:

(1) foster caro and adoption;

(2) protective services;

(3) juvenile corrections;

(4) licensing;

(5) accounting/fiscal;

(6) utilities; and

(7) case management services for the developmentally disabled.

If the department is selected by the department of social and rehabilitation services to manage the food stamp outreach program, the department is appropriated $157,349 in federal special revenue each fiscal year of the biennium.

The department is appropriated an amount equal to the general fund transfer received from the office of public instruction for education costs of children receiving medicaid-eligible treatment services. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this appropriation in the current level budget.

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Fiscal 1994						Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Funds in item 4a are to serve children in the custody of the department that previously were placed or would have been placed in freestanding inpatient hospitals for youth under 21 years of age. If a balance remains in item 4a after providing for the needs of children in the custody of the department, this balance may be used for related services.

Item 4b is to develop family support services for children at risk of abuse or neglect and for children that have been referred for abuse or neglect and to develop community-based services for children placed in or who are at risk of being placed in juvenile corrections facilities. The development of additional services is contingent on recovery of federal funds through department refinancing initiatives and the collection of contributions from parents of children. The department may add up to 6.0 new FTE to implement the refinancing strategies. The department shall present to the 54th legislature a report that includes the number and types of services developed, the number of children and families served, and the effectiveness of the services delivered. If the department recovers funds from refinancing initiatives and collection of parental contributions in excess of $2,150,000 either year of the 1995 biennium, it is appropriated up to $1 million in federal funds each year for those excess funds. The department may use these excess funds in any manner it considers necessary.

~~The appropriation in item 4g is contingent on passage and approval of Senate Bill No. 271.~~

The department shall develop a plan for the establishment of regional treatment centers for children with severe emotional disturbances to provide for the placement of the children in local regions and to allow children currently placed outside of Montana to be returned to the state.

It is the intent of the legislature that annualized expenses for the operation of the child welfare MIS not exceed $1,500,000 annually. This amount includes expenses for any facilities management contracting that may be used for system operations, computer processing costs directly associated with operation of the system, and other personal services and nonpersonal services costs directly charged to the management and operation of the system. The department may not proceed with the development of the MIS until it has certified to the office of budget and program planning and to the legislative finance committee that the projected annualized operation costs of the system will not exceed the limit imposed in this statement of intent. If the child welfare system will run on the state mainframe computer and if the department elects to contract for operation of the system on a privately owned and operated mainframe or midrange computer, the department shall submit a comparison to the office of budget and program planning and to the legislative finance committee of the cost of operating the system on the state mainframe computer managed by the department of administration. The department of administration shall estimate rate changes that would occur because of operation of the child welfare MIS on the state mainframe. If the office of budget and program planning determines that statewide cost savings are greater than the private contract cost savings, the department shall operate the child welfare system on the state mainframe computer.

The department may pursue medicaid funding for the intermountain deaconess children's home.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

TOTAL SECTION B									
~~157,371,807~~	~~45,616,692~~	~~420,983,009~~	~~7,346,038~~	~~639,317,546~~	~~166,149,970~~	~~43,220,629~~	~~448,036,741~~	~~7,359,985~~	~~664,767,325~~
154,864,920	*45,673,321*	*426,673,080*	*6,052,552*	*633,263,873*	*156,136,172*	*43,231,520*	*423,848,688*	*5,896,434*	*629,112,814*

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	Fiscal 1994					Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
C. NATURAL RESOURCES												
PUBLIC SERVICE REGULATION (4201)												
1. Public Service Regulation (01)												
		~~2,091,664~~	27,227			~~2,118,891~~		~~2,090,014~~	25,668			~~2,115,682~~
		2,091,317				*2,118,544*		*2,089,706*				*2,115,374*
a. Legislative Audit (Restricted/Biennial)		16,260				16,260						
b. Master Meter Operators (Restricted)		2,500	2,500			5,000		2,500	2,500			5,000
c. Consultant Funds (Biennial)		50,000				50,000						
d. Least-Cost Planning (Restricted/Biennial)		50,000				50,000						
e. Local Area Network (Biennial)		200,000				200,000						
f. Data Network Services		2,880				2,880		2,880				2,880
2. Vacancy Savings		71,021				71,021		71,192				71,192
Total		~~2,342,283~~	29,727			~~2,372,010~~		~~2,024,202~~	28,168			~~2,052,370~~
		2,341,936				*2,371,663*		*2,023,894*				*2,052,062*

~~If House Bill No. 413 is not passed and approved or is passed and approved in a form depositing revenue to the general fund, the state special revenue appropriations in items 1, 1a through 1f, and 2 are eliminated and general fund appropriations are increased by like amounts.~~

Item 1b contains appropriations for inspections of natural gas master meter operators. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 1d is a biennial appropriation to be used only for expenditures relating to review of least-cost plans submitted by utilities.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)

1. Administration and Finance Division (01)											
	~~2,886,897~~	490,080	~~1,758,304~~		~~5,135,281~~		~~2,971,763~~	472,682	~~1,802,115~~		~~5,246,560~~

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		Fiscal 1994				Fiscal 1995				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		2,884,436		1,758,252		5,132,768		2,968,700		1,802,069		5,243,451
a.	Legislative Audit (Restricted/Biennial)	56,566				56,566						
b.	Automated License Issuing System (Restricted/Biennial)	60,000				60,000						
c.	Moose/Sheep/Goat Early Drawings	49,480				49,480		49,494				49,494
		49,270				49,270		49,281				49,281
d.	Additional Vehicle Account Funding	60,266				60,266				82,155		82,155
e.	Legislative Contract Authority (Restricted)	65,000				65,000			65,000			65,000
f.	*State Fund Cost Allocation*	25,662				25,662		51,442				51,442
2.	Field Services and Region 8 Division (02)	1,734,980	392,750	155,068		2,282,798		1,768,286	396,323	213,455		2,378,064
		1,734,666		155,034		2,282,450		1,767,720		213,395		2,377,438
a.	Dam Rehabilitation Engineer (Restricted)	46,340				46,340		42,373				42,373
3.	Fisheries Division (03)	2,692,176	2,683,923			5,376,099		2,683,000	2,620,229			5,303,229
a.	Water Rights Leasing (Biennial)	3,750	11,250			15,000						
b.	Water Leasing Studies (Biennial)	60,000				60,000						
c.	Missouri Basin Reservations (Biennial)	11,562	34,688			46,250						
d.	Fish Introductions EIS (Biennial)	13,750	41,250			55,000						
e.	*Lewistown Biologist*	6,667	19,999			26,666		6,667	19,999			26,666
f.	Clark Fork River Investigations (Restricted)	12,729	38,186			50,915		12,736	38,210			50,946
g.	Legislative Contract Authority (Restricted)											

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		715,000	940,000			1,655,000		1,160,000	990,000			2,150,000
4.	Law Enforcement Division (04)											
		4,465,236	187,293			4,652,529		4,484,103	186,481			4,670,584
	a. Law Enforcement Activities											
		100,000				100,000		100,000				100,000
	b. Warden Relocation (Restricted)											
		27,000				27,000		27,000				27,000
	c. Additional Field Warden											
		45,000				45,000		45,000				45,000
	d. Board of Outfitters Grant											
		10,000				10,000		10,000				10,000
	e. HB 338 — Game Farm Licensing											
		45,000				45,000		45,000				45,000
	f. Legislative Contract Authority (Restricted)											
			40,000			40,000			40,000			40,000
5.	Wildlife Division (05)											
		2,928,648	2,421,126			5,349,774		2,904,865	2,437,575			5,342,440
	a. Upland Game Birds (Biennial)											
		1,840,400				1,840,400						
	b. Wildlife Management EIS (Restricted)											
		68,750	206,250			275,000		30,000	90,000			120,000
	c. Trapper Education											
		3,125	9,375			12,500		3,125	9,375			12,500
	d. Legislative Contract Authority (Restricted)											
		855,000	729,000			1,584,000		844,000	687,500			1,531,500
	e. HJR 24 — Landowner, Outfitter, Sportsmen Groups (Biennial)											
		25,000				25,000						
6.	Parks Division (06)											
	~~318,249~~	~~3,484,228~~	524,200	337,319		~~4,663,996~~	~~323,125~~	~~3,514,775~~	524,200	322,583		~~4,684,683~~
	298,249	*3,497,077*				*4,656,845*	*283,125*	*3,527,655*				*4,657,563*
	a. Land and Water Conservation Fund (Biennial)											
			700,000			700,000						
	b. Off-Highway Vehicle EIS (Restricted/Biennial)											
		40,000				40,000						

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Tree and Shrub Replacement (Restricted)				15,030		15,030				15,030		15,030
d. Expanded Fishing Access Sites (Restricted)									60,000			60,000
e. Recreational Trails Act (Biennial)			350,000			350,000						
f. State Parks Deficit		294,083				294,083		303,459				303,459
g. Legislative Contract Authority (Restricted)		140,000	20,000			160,000		140,000	20,000			160,000
h. Off-Highway Vehicle Gas Tax		*19,400*				*19,400*		*33,900*				*33,900*
i. Motorboat Gas Tax		*145,300*				*145,300*		*254,500*				*254,500*
7. Conservation Education Division (08)		1,446,392	194,258			1,640,650		1,454,367	200,086			1,654,453
a. Shooting Ranges (Biennial)		120,133				120,133						
b. Youth Education		71,000	67,500			138,500		71,000	67,500			138,500
c. Legislative Contract Authority (Restricted)		45,000	35,000			80,000		45,000	35,000			80,000
8. Department Management (09)		1,948,292	531,799			2,480,091		1,974,079	520,349			2,494,428
a. Sikes Act (Biennial)		150,000	20,000			170,000						
b. Legal Services and Court Costs (Biennial)		25,000				25,000						
c. Geographic Information System		45,000				45,000		45,000				45,000
d. Attorney General Assistance (Restricted)		36,100				36,100		36,100				36,100
e. Legislative Contract Authority (Restricted)			157,500			157,500			157,500			157,500

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
9. Vacancy Savings	5,221	626,523		17,278		649,022	5,240	654,121		18,517		677,878
10. Budget Balancing Reduction	1,923					1,923	1,948					1,948
Total	~~311,105~~	~~25,921,761~~	10,970,427	~~2,308,709~~		~~39,512,002~~	~~315,937~~	~~24,117,068~~	9,638,009	~~2,416,021~~		~~36,487,035~~
	291,105	*26,121,987*		*2,308,623*		*39,692,142*	*275,937*	*24,465,951*		*2,416,715*		*36,796,612*

~~In [this act], the department is appropriated $123,683 in fiscal 1994 and $94,571 in fiscal 1995 from accounting entity 02213 (off-highway vehicle gas tax), $411,692 in fiscal 1994 and $411,931 in fiscal 1995 from accounting entity 02407 (snowmobile fuel tax), and $615,024 in fiscal 1994 and $613,266 in fiscal 1995 from accounting entity 02412 (motorboat fuel tax). The department may not expend funds from these accounts in excess of the amounts of these appropriations.~~

The fixed cost rates charged to state agencies by the department for capitol grounds maintenance (object code 2770) may not be higher than the amount necessary to fund the expenses of the department for providing those services, as appropriated in the state pay plan and [this act].

The legislature encourages the department to work with property and homeowner groups around the lakes in Montana in managing and restoring fisheries to better ensure that state lake fisheries provide a fishing experience that is appropriate for those residing around the lakes as well as for the overall public.

The department shall review historic fish planting data for Echo Lake and seek to increase fish plants to a number more appropriate to the lake's size.

The department shall expeud reasonable efforts to ensure the continued survival of bull trout at levels sufficient to prevent it from being listed on the endangered species list.

The legislature encourages the department to continue working under the cooperative agreement with the U.S. fish and wildlife service at Creston.

The appropriations for legislative contract authority are subject to the following provisions:

(1) Legislative contract authority applies only to federal and private funds.

(2) The department may transfer appropriation authority between state special revenue and federal special revenue. Transfers may not change the total appropriated to the department for legislative contract authority.

(3) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(4) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

Item 1b contains $60,000 as a biennial appropriation to study the feasibility of implementing an automated license issuing system. The department shall present the results of the study to the 54th legislature. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 2 contains funds for block management. If federal dollars become available, the department may decrease state special revenue and increase federal special revenue by a like amount.

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	Fiscal 1994					Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 2a contains $46,340 in fiscal 1994 and $42,373 in fiscal 1995 appropriated as a grant to the department of natural resources and conservation to fund a dam rehabilitation engineer to work on the department of fish, wildlife, and parks' dams. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 3f funds aquatic resource data collection and litigation support on the upper Clark Fork River in connection with the state's resource damage assessment suit against ARCO. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base. In the litigation, the state shall seek reimbursement for all expenses incurred by the department associated with the assessment and litigation. Reimbursement must include interest on the amount commensurate with rates earned in the short-term investment pool.

Item 4b contains $27,000 in fiscal 1994 and $27,000 in fiscal 1995 appropriated for warden relocation expenses. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 5b contains $275,000 in fiscal 1994 and $120,000 in fiscal 1995 appropriated to complete a wildlife management environmental impact statement. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

It is the intent of the legislature that the department provide a liaison position to coordinate the Montana conservation corps program with the human resource development council and other appropriate entities.

If Senate Bill No. 43 is not passed and approved, the state special revenue appropriations in item 6 are reduced by $12,849 in fiscal 1994 and by $174,811 in fiscal 1995. If Senate Bill No. 43 is not passed and approved, the department is appropriated in [this act] $411,692 in fiscal 1994 and $250,000 in fiscal 1995 from accounting entity 02407 (snowmobile fuel tax).

Item 6b contains $40,000 in fiscal 1994 as a biennial appropriation for an off-highway vehicles environmental impact statement. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 6c contains an appropriation for 0.5 FTE and $15,030 each year of proprietary funds to replace trees and shrubs damaged in the winter of 1988-1989. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 6d contains $60,000 from federal funds in fiscal 1995 appropriated for maintenance and operations of fishing access sites. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office shall consider replacing state special revenue in current level with federal funds based on the department's conversion of fishing access sites with land and water conservation fund restrictions.

~~Item 6f funds st-te parks maintenance and improvements. These appropriations are contingent on passage and approval of House Bill No. 642 or on other sources.~~

Item 8d contains $36,100 in fiscal 1994 and $36,100 in fiscal 1995 from state special revenue appropriated to contract with the department of justice to provide attorney general assistance to the department in prosecuting fish and wildlife cases. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

The department shall, in consultation with the department of administration, review the cost-effectiveness, along with other relevant considerations, of operating its in-house duplicating facilities compared to department of administration services. The department shall report its conclusions, along with department of administration comments, to the office of budget and program planning and the office of the legislative fiscal analyst by June 1, 1994, and to the respective appropriations subcommittee of the 1995 legislature.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF STATE LANDS (5501)												
1. Central Management Program (01)	~~1,368,995~~	~~151,910~~	120,000	332,565		~~1,973,470~~	~~1,324,764~~	~~146,765~~	120,000	339,701		~~1,931,232~~
	1,321,276	*150,867*				*1,924,708*	*1,228,925*	*145,841*				*1,834,467*
a. Legislative Audit (Restricted/Biennial)	46,504					46,504						
b. Helicopter Development (Restricted)	54,705	4,981		59,686		119,372	31,445	9,224		99,229		139,898
c. Maintenance Facility/Air Operations				72,867		72,867				73,102		73,102
2. Reclamation Program (03)		1,383,482	5,768,317			7,151,799		1,365,503	5,786,977			7,152,480
a. Hard-Rock Reclamation (Biennial)		150,000				150,000						
b. Bond Forfeitures (Biennial)		500,000				500,000						
c. Environmental Analysis (Biennial)		3,000,000				3,000,000						
d. Reclamation Attorney — AMRB			39,869			39,869			35,085			35,085
e. Environmental Compliance		41,605				41,605		41,605				41,605
f. State Fund Cost Allocation		*2,164*				*2,164*		*4,360*				*4,360*
3. Land Administration Program (04)	~~1,000,708~~	312,632				~~1,313,340~~	~~999,722~~	313,661				~~1,313,383~~
	983,056					*1,295,688*	*964,230*					*1,277,891*
a. SB 424 — Advisory Council to the Board of Land Commissioners	23,780					23,780	7,612					7,612
b. State Fund Cost Allocation		*495*				*495*		*996*				*996*
4. Forestry Program (25)	~~6,213,351~~	~~3,308,756~~	~~956,701~~			~~10,478,868~~	~~6,308,461~~	~~3,322,690~~	956,701			~~10,587,852~~

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	6,056,449	*3,377,850*	*950,451*			*10,384,750*	*6,174,159*	*3,396,785*				*10,527,645*
a.	Vehicle Replacement											
	12,000	6,000				18,000	12,000	6,000				18,000
b.	HB 652 — Timber Sale Revenue for Program Costs (Restricted)											
		312,000				312,000		312,000				312,000
c.	*State Fund Cost Allocation*											
		3,524				*3,524*		*7,100*				*7,100*
5.	Vacancy Savings											
	302,889	159,494		8,875		471,258	304,187	159,169		10,794		474,150
6.	Budget Balancing Reduction											
	41,967					41,967	41,861					41,861
Total												
	~~8,375,187~~	~~9,011,872~~	~~6,804,087~~	456,243		~~24,728,189~~	~~8,337,958~~	~~5,358,279~~	6,898,763	501,238		~~21,096,238~~
	8,152,914	*9,086,106*	*6,878,637*			*24,573,900*	*8,072,323*	*5,443,906*				*20,916,230*

Item 1b includes $54,705 from general funds, $4,981 from state special revenue funds, and $59,686 from proprietary funds in fiscal 1994. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base. It is the intent of the legislature that the fiscal 1995 appropriation for this item, adjusted for inflation, is the correct ongoing base for this item when considering the 1997 biennium budget.

~~Item 3a is contingent on passage and approval of Senate Bill No. 424.~~

Item 4 contains $7,000 per year to bring Powell County into the state/county cooperative fire protection program.

If House Bill No. 54 is not passed and approved, the general fund appropriation in item 4 is increased by $69,121 in fiscal 1994 and by $74,119 in fiscal 1995 and the state special revenue appropriation for each year is decreased by like amounts.

~~Item 4b is contingent on passage and approval of House Bill No. 652.~~

The legislature recommends that the board of land commissioners amend its cabinsite rules and fee structure to require lessees who apply for sale of their cabinsites to reimburse the department for all expenses it incurs in processing the sale applications.

Federal fire reimbursement funds are those funds received for expenses incurred from loaning department personnel to federal agencies to assist in fire suppression activities. Only those federal funds received as reimbursement of expenses credited against the department's state forestry operational budget are considered federal fire reimbursement funds. All other federal funds received must be deposited into the general fund. The department shall report federal fire reimbursement expenditures on state accounting records, and the records must be separate from current level operations.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF LIVESTOCK (5603)

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Centralized Services Program (01)												
	~~52,090~~	~~460,622~~	34,500			~~554,612~~	~~49,812~~	~~466,317~~	35,500			~~551,629~~
	6,416	*512,958*				*553,874*	*4,571*	*510,229*				*550,300*
a. Legislative Audit (Restricted/Biennial)												
	3,089	17,236				20,325						
b. Position Description Rewrite (Biennial)												
	1,140	6,360				7,500						
c. Data Processing Training (Biennial)												
	182	1,018				1,200						
d. State Fund Cost Allocation												
		4,407				*4,407*		*8,867*				*8,867*
2. Diagnostic Laboratory Program (03)												
	126,927	780,722				907,649	122,923	820,273				943,196
a. Diagnostic Laboratory Workload												
		98,966				98,966		148,522				148,522
3. Disease Control Program (04)												
		574,837				574,837		579,195				579,195
a. Bison and Game Farm Inspections												
		46,500				46,500		46,500				46,500
4. Milk and Egg Program (05)												
		161,802	25,000			186,802		164,191	25,000			189,191
5. Inspection and Control Program (06)												
		~~2,303,854~~				~~2,303,854~~		~~2,317,395~~				~~2,317,395~~
		2,303,508				*2,303,508*		*2,317,088*				*2,317,088*
a. Additional Brand Inspectors												
		47,023				47,023		46,987				46,987
6. Predatory Animal Control Program (08)												
		310,969				310,969		315,844				315,844
7. Meat and Poultry Inspection Program (10)												
	~~262,920~~	~~5,050~~	267,970			~~535,940~~	~~265,213~~	~~5,050~~	270,263			~~540,526~~
	262,890	*5,049*				*535,909*	*265,159*	*5,049*				*540,471*
a. Meat and Poultry Inspection Workload												
	30,478		30,478			60,956	30,512		30,512			61,024
b. DHES Meat Inspection Contract (Restricted)												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		50,000				50,000		50,000				50,000
8.	Vacancy Savings 22,529	161,541				184,070	22,599	164,328				186,927
9.	Budget Balancing Reduction 2,271					2,271	2,229					2,229
Total	~~452,026~~ 406,322	~~4,710,810~~ 4,759,814	357,948			~~5,520,792~~ 5,524,084	~~443,632~~ 398,337	~~4,795,946~~ 4,848,417	361,275			~~5,600,853~~ 5,608,029

~~Item 1 contains an appropriation for $27,500 of state special revenue in fiscal 1994 and $27,500 of state special revenue in fiscal 1995 derived from the per capita levy. If House Bill No. 516 is passed and approved, the funding source for these state special revenue appropriations will be revenue derived from fees enacted by that bill.~~

Item 1 contains an appropriation for $27,500 of state special revenue in fiscal 1994 and $27,500 of state special revenue in fiscal 1995 from fee revenue derived from House Bill No. 516 (now Chapter 566, Laws of 1993).

Item 2 contains $16,376 in fiscal 1994 and $16,375 in fiscal 1995 to pay two payments of the $81,876 owed to Montana state university for the energy retrofit of the Marsh laboratory. It is the legislature's intent that the total amount owed be paid in five consecutive annual payments.

~~Item 2 contains an appropriation for $85,000 of state special revenue in fiscal 1994 and $85,000 of state special revenue in fiscal 1995 derived from the per capita levy. If House Bill No. 516 is passed and approved, the funding source for these state special revenue appropriations will be revenue derived from fees enacted by that bill.~~

~~Item 4 contains an appropriation for $161,802 of state special revenue in fiscal 1994 and $164,191 of state special revenue in fiscal 1995 derived from the per capita levy. If House Bill No. 516 is passed and approved, the funding source for these state special revenue appropriations will be revenue derived from fees enacted by that bill.~~

Item 2 contains an appropriation for $85,000 of state special revenue in fiscal 1994 and $85,000 of state special revenue in fiscal 1995 from fee revenue derived from House Bill No. 516 (now Chapter 566, Laws of 1993).

Item 4 contains an appropriation for $161,802 of state special revenue in fiscal 1994 and $164,191 of state special revenue in fiscal 1995 from fee revenue derived from House Bill No. 516 (now Chapter 566, Laws of 1993).

State special rovenue appropriations in item 7 are to be funded from money derived from annual meat establishment license fees established in 81-9-201.

Appropriations in item 7b are to be used only to contract with the department of health and environmental sciences for meat inspection at the retail level.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

1.	Centralized Services (21) ~~788,403~~ 751,848	~~865,003~~ 863,145	121,922			~~1,775,328~~ 1,736,915	~~857,603~~ 784,634	~~859,574~~ 856,256	77,806			~~1,794,983~~ 1,718,696

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)	43,252					43,252						
b. Missouri River Lawsuit (Biennial)	19,590					19,590						
c. *State Fund Cost Allocation*	*6,233*					*6,233*		*12,517*				*12,517*
2. Oil and Gas Conservation (22)	~~1,212,380~~					~~1,212,380~~		~~1,207,036~~				~~1,207,036~~
	1,211,785					*1,211,785*		*1,206,509*				*1,306,509*
3. Conservation and Resource Development Division (23)	~~1,138,483~~		77,000			~~1,215,483~~		~~1,143,057~~	77,000			~~1,220,057~~
	1,162,584					*1,239,584*		*1,167,158*				*1,244,158*
a. EPA Wetlands Grant (Biennial)			5,000			5,000						
b. River Coordinator			25,272			25,272			12,637			12,637
c. Saline Seep	100,000					100,000		100,000				100,000
d. Treasure State Endowment	36,146					36,146		60,128				60,128
e. Water Reservations Lower Missouri Basin (Biennial)	45,000					45,000						
f. ~~HB 616 — Clean Coal (Biennial)~~	~~50,000~~					~~50,000~~						
4. Water Resources Division (24)	~~2,098,492~~	~~3,459,957~~	52,500			~~5,610,949~~	~~2,107,599~~	~~3,444,583~~	52,500			~~5,604,682~~
	1,992,715	*3,512,895*				*5,558,110*	*2,001,016*	*3,447,575*				*5,501,091*
a. State Water Project Rehabilitation (Biennial)		2,395,000	11,256,000			13,651,000						
b. Transfer of Water Projects		36,800				36,800		36,800				36,800
c. Transfer of Water Projects Operating Expenses (Biennial)		51,488				51,488						
d. Missouri River Reservation												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		68,869				68,869		70,072				70,072
e.	Missouri River Reservation Operating Expenses (Biennial)	181,500				181,500						
f.	Broadwater Fisheries Mitigation (Biennial)	52,100				52,100						
g.	Dam Rehabilitation Engineer (FWP)	46,340				46,340		42,373				42,373
h.	SB 280 — Implement a Portion of the 1992 State Water Plan	35,467				35,467		34,767				34,767
i.	Yellowstone National Park Controlled Ground Water Area (Biennial)	9,708				9,708						
5.	Reserved Water Rights Compact Commission (25)	500,613				500,613		500,475				500,475
6.	Energy Division (26)	~~566,446~~ 540,196	1,203,576	987,850		~~2,757,872~~ 2,731,622	~~545,420~~ 519,178	1,223,560	991,135			~~2,760,123~~ 2,733,873
a.	Rock Creek Mitigation (Biennial)				400,000	400,000						
b.	Lake Broadview (Biennial)	30,280				30,280						
c.	School Energy Retrofit (Biennial)			600,000		600,000						
7.	Vacancy Savings	169,387	214,167		2,431	385,985	171,660	216,841				388,501
8.	Budget Balancing Reduction	16,734				16,734	16,695					16,695
Total		~~3,330,062~~ 3,161,480	~~11,304,543~~ 11,335,362	13,125,544	397,569	~~28,157,718~~ 28,019,955	~~3,322,375~~ 3,116,473	~~8,505,584~~ 8,541,349	1,211,078			~~13,038,937~~ 12,868,900

Included in centralized services division funding is $35,000 of indirect funds from MFSA/MEPA fees. If MFSA/MEPA activities generate more than $35,000 of indirect funds over the biennium, the additional indirect funds must be deposited in the general fund.

The board of oil and gas conservation is appropriated $110,000 per year of federal revenue, contingent upon receiving federal funds from the environmental protection agency for the underground injection control program.

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	Fiscal 1994					Fiscal 1995				
General Fund	Stato Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

If House Bill No. 60 is not passed and approved, item 3 is increased by $3,425 in state special revenue funds (local impact account) in both fiscal 1994 and fiscal 1995 and a new line item for "HB 616 — Clean Coal (Biennial)" is added in the conservation and resource development division (CARD), with $50,000 of RIT reclamation and development funds in fiscal 1994. In addition, item 4 is increased by $53,425 in general fund money in fiscal 1994 and by $3,425 in general fund money in fiscal 1995 and is decreased by $53,425 in state special revenue funds in fiscal 1994 and by $3,425 in state special revenue funds in fiscal 1995.

Item 3c is funded with RIT reclamation and development funds. ~~If this modification is approved,~~ the *The* Montana salinity control association may not receive a RIT reclamation and development grant in the 1995 biennium.

The department is appropriated up to $700,000 from the account established in 76-14-112 for rangeland loans during the 1995 biennium.

All funds deposited in the stato special revenue account established in 76-15-530 are appropriated to the department for distribution as grants to conservation districts.

All funds held in the state special revenue account in accordance with 76-16-106(2) are appropriated to the department for administration of grazing district activities.

The department is appropriated up to $1 million over the biennium from the account established in 85-1-604 for purchase of prior liens on property held as loan security as required by 85-1-618.

~~On passage and approval of House Bill No. 608, operating expenses and RIT tax proceeds state special revenue funds in item 3 are increased by $27,526 per year.~~

During the 1995 biennium, the department shall attempt to:

(1) negotiate elimination of escalator clauses in regional office rent agreements; and

(2) negotiate reductions to current regional office rent charges.

Funds received under the provisions of 85-1-514(4) are appropriated to the department for the purpose of performing duties required under 85-1-514.

Any fines collected under the previsions of Title 85, chapter 2, and deposited in the water right appropriation account in accordance with 85-2-318 are appropriated to the department to carry out the enforcement functions required under 85-2-114.

Funds received from bends required by 37-43-306 are appropriated to the department for the purpose of performing remedial action on water wells, providing compensation for damages caused by water well violations, or paying administration costs incurred by the board of water well contractors.

All interest earned on the Montana pewer company Beaverhead grant is appropriated to the department for use on the Beaverhead ground water study.

All funds currently in or to be deposited in the Broadwater replacement and renewal account are appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility or to service the Broadwater hydropower bond debt if revenue deposited in the debt service account is insufficient for this purpose.

All interest earned on the Broadwater usera account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

Funds received by the department from arbitration, litigation awards, or settlements, including funde from the escrow account currently established in an escrow agreement between voith hydro, inc., the department, and norwest bank, Helena, pursuant to agreement 1189.1 Broadwater power project, are authorized to be spent to pay costs, including bond debt associated with the Broadwater power project.

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 4g is funded with fish, wildlife, and parks (FWP) state special revenue and provides for a 1.0 FTE engineer and related operating expenses to work on FWP dams. The department shall report on the results of this project to the 54th legislature, and expenditures from this item may not be used in constructing the current level base for the 1997 biennium.

The department is appropriated up to $700,000 from the Rock Creek trust account in addition to the $400,000 included in item 6a. The total appropriation for item 6a may not exceed $1,100,000 over the biennium.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF AGRICULTURE (6201)

1.	Central Management Division (15)											
	~~155,084~~	~~238,220~~	39,828	~~26,076~~	9,674	~~468,090~~	~~148,957~~	~~245,308~~	39,978	~~26,195~~	9,714	~~470,152~~
	154,989	*238,094*		*26,056*		*468,641*	*148,786*	*245,066*		*26,158*		*465,702*
	a. Legislative Audit (Restricted/Biennial)											
	30,569					30,569						
	h. CMD — Federal Position											
			23,988			23,988			24,032			24,032
2.	State Grain Laboratory Program (25)											
		461,651				461,651		458,716				458,716
	a. *Special Session Grain Laboratory (Restricted)*											
		321,796				*321,796*		*256,593*				*256,593*
3.	Agricultural and Biological Sciences Division (30)											
	~~57,556~~	~~2,527,918~~	330,500			~~2,915,974~~	~~64,840~~	~~2,531,156~~	330,500			~~2,926,496~~
	4,210	*2,527,866*				*2,862,576*	*17,977*	*2,531,063*				*2,879,540*
	a. Special County Weed District Grants											
		999,937				999,937		129,004				129,004
	b. EPA Special Pesticide Projects											
			110,434			110,434			110,422			110,422
	c. Continue FY 92 Budget Amendment (Restricted)											
			39,999			39,999						
	d. FARM*A*SYST (Restricted)											
			35,000			35,000						
	e. SB 334 — Pesticide Disposal and Recycling Program											
		220,445				220,445		233,045				233,045
	f. State Fund Cost Allocation											
		1,794				*1,794*		*3,063*				*3,063*

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
4. Plant Industry Division (40)												
	~~145,642~~	~~524,969~~	5,615	8,421		~~684,647~~	~~110,367~~	~~561,772~~	5,731	8,566		~~686,436~~
	145,614	*524,887*				*684,537*	*110,316*	561,625				*686,238*
a. Additional Potato Inspections		40,736				40,736		40,736				40,736
b. Liquidation Contingency Fund (Biennial)		20,000				20,000						
c. Ag Inspectors Reclassification	1,794	22,112				23,906	1,794	22,112				23,906
d. Insect Surveys			10,350			10,350			10,350			10,350
e. *State Fund Cost Allocation*		*332*		*4*		*336*		*760*		*9*		*769*
5. Agricultural Development Division (50)												
	~~102,890~~	1,826,234		~~188,941~~	~~67,346~~	~~2,265,411~~	~~175,435~~	1,858,918		~~187,092~~	~~65,487~~	~~2,286,932~~
	182,861			*188,902*	*67,316*	*2,265,313*	*175,383*			*187,021*	*65,433*	*2,286,755*
a. *State Fund Cost Allocation*		*1,050*		*1,104*		*2,154*		*2,316*		*2,432*		*4,748*
6. Vacancy Savings	40,867	84,709			11,174	136,750	40,364	85,051			11,298	136,713
7. Budget Balancing Reduction	2,663					2,663	2,305					2,305
Total												
	~~530,005~~	~~6,797,521~~	595,714	~~223,438~~	~~65,846~~	~~8,212,524~~	~~458,724~~	~~5,995,716~~	521,013	~~221,853~~	~~63,903~~	~~7,261,209~~
	476,507	7,122,225		*224,487*	65,816	*8,484,749*	*411,587*	*6,257,966*		*224,186*	*63,849*	*7,478,601*

If federal indirect assessments received are in excess of $39,828 in fiscal 1994 and $39,978 in fiscal 1995, the general fund appropriation in item 1 is reduced by the excess received up to $232,750 in fiscal 1994 and up to $201,780 in fiscal 1995 and the federal appropriation is increased by like amounts.

~~If House Bill No. 193 is not passed and approved or is passed and approved in a form in which revenue generated by that bill is deposited in the general fund, the general fund appropriation in item 1 is increased by $35,597 in fiscal 1994 and by $35,749 in fiscal 1995 and the state special revenue appropriation is decreased by like amounts.~~

Item 2a is to be used only for expenditures relating to the state grain laboratory program.

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	Fiscal 1994					Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Items 3 and 3a contain a state special revenue appropriation of $1,285,168 in fiscal 1994 and $1,142,523 in fiscal 1995 for grants of vehicle weed fees that must be used according to 80-7-810.

In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include expenditures from item 3c in the current level base.

In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from item 3d in the current level base.

~~Item 3c is contingent on passage and approval of Senate Bill No. 334.~~

~~If House Bill No. 193 is not passed and approved or is passed and approved in a form in which revenue generated by that bill is deposited in the general fund, the general fund appropriation in item 4 is increased by $228,396 in fiscal 1994 and by $222,508 in fiscal 1995 and the state special revenue appropriation is decreased by like amounts.~~

~~If House Bill No. 193 is not passed and approved or is passed and approved in a form in which revenue generated by that bill is deposited in the general fund, the general fund appropriation in item 4a is increased by $40,736 in fiscal 1994 and by $40,736 in fiscal 1995 and the state special revenue appropriation is decreased by like amounts.~~

~~If House Bill No. 193 is not passed and approved or is passed and approved in a form in which revenue generated by that bill is deposited in the general fund, the general fund appropriation in item 4c is increased by $8,969 in fiscal 1994 and by $8,969 in fiscal 1995 and the state special revenue appropriation is decreased by like amounts.~~

The department is authorized to make grants to state agencies from the growth through agriculture account as approved by the Montana agriculture development council in accordance with Title 90, chapter 9. The state agency that receives a grant from the Montana agriculture development council is authorized additional appropriation authority equal to the grant amount.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF COMMERCE (6501)

1.	Public Safety Division (01)					
	70,841	71,279	142,120	70,841	~~71,560~~	~~142,401~~
					24,459	*95,300*
	a. Legislative Audit (Restricted/Biennial)					
		206	206			
2.	Weights and Measures Bureau (02)					
	~~476,769~~		~~476,769~~	~~490,749~~		~~490,749~~
	559,206		*559,206*	*556,339*		*556,339*
	a. Legislative Audit (Restricted/Biennial)					
	1,494		1,494			
	b. *State Fund Cost Allocation*					
	726		*726*	*1,437*		*1,437*
3.	Financial Institutions (36)					

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		~~913,587~~				~~913,587~~		~~931,510~~				~~931,510~~
		913,467				*913,467*		*931,294*				*931,294*
	a. Legislative Audit (Restricted/Biennial)											
		2,668				2,668						
	b. Banking Code Revision											
		258,984				258,984		244,094				244,094
	c. *State Fund Cost Allocation*											
		1,714				*1,714*		*3,444*				*3,444*
4.	Milk Control Bureau (37)											
		~~269,067~~				~~269,067~~		~~270,789~~				~~270,789~~
		268,992				*268,992*		*270,653*				*270,653*
	a. Legislative Audit (Restricted/Biennial)											
		804				804						
	b. *State Fund Cost Allocation*											
		406				*406*		*816*				*816*
5.	Professional and Occupational Licensing Bureau (39)											
		3,149,935		1,115,910		4,265,845		3,028,251		1,114,196		4,142,447
	a. Legislative Audit (Restricted/Biennial)											
				9,889		9,889						
	b. POL Board Requests											
		103,349				103,349		104,349				104,349
	c. POL Pool Workload Increase											
				153,182		153,182				135,172		135,172
	d. Computer Equipment (Biennial)											
				50,000		50,000						
	e. *State Fund Cost Allocation*											
		2,006		*2,121*		*4,127*		*3,949*		*4,186*		*8,135*
6.	Business Development Division (51)											
	~~678,510~~	~~589,495~~	2,475,463			~~3,743,468~~	~~681,264~~	~~519,223~~	2,477,608			~~3,678,095~~
	562,228	*589,466*				*3,627,157*	*546,362*	*519,171*				*3,543,141*
	a. Legislative Audit (Restricted/Biennial)											
	2,192	206	2,192			4,590						
	b. *State Fund Cost Allocation*											
		327				*327*		*592*				*592*

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	Fiscal 1994 General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Fiscal 1995 General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
7. Montana Promotion Division (52)												
	~~7,563,139~~					~~7,563,139~~		~~7,835,992~~				~~7,835,992~~
	7,562,908					*7,562,908*		*7,835,576*				*7,835,576*
a. Legislative Audit (Restricted/Biennial)		17,812				17,812						
b. Montana Promotions FTE		44,064				44,064		44,120				44,120
c. *State Fund Cost Allocation*		*3,496*				*3,496*		*7,200*				*7,200*
8. Community Development Bureau (60)												
	~~242,305~~	372,514	*22,501,768*			~~23,116,587~~	~~241,421~~	374,512	23,017,710			~~23,633,643~~
	242,259					*23,116,541*	*241,338*					*23,633,560*
a. Legislative Audit (Restricted/Biennial)	466	1,352	13,440			15,258						
b. Hard-Rock Revenue (Restricted)		*100,000*				100,000		100,000				100,000
c. Treasure State Endowment		181,000				181,000		203,000				203,000
d. HOME/CHAS Program			5,422,419			5,422,419			5,423,568			5,423,568
e. Section 107 Technical Assistance Grant			73,826			73,826			*27,448*			27,448
f. Coal Board Grants (Biennial)		1,956,558				1,956,558						
g. State Fund Cost Allocation		*382*				*382*		*772*				*772*
9. Office of Research and Information Services (61)												
	~~284,510~~					~~284,510~~	~~285,990~~					~~285,990~~
	284,290					*284,290*	*285,685*					*285,685*
a. Legislative Audit (Restricted/Biennial)	907					907						
b. Decennial Census Work	35,821					35,821	33,903					33,903
10. Local Government Services Audit/Systems (62)												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	150,620			~~1,331,371~~		~~1,481,991~~	151,789			~~1,347,184~~		~~1,498,973~~
				1,331,227		*1,481,847*				*1,346,925*		*1,498,714*
	a. Legislative Audit (Restricted/Biennial)			3,578		3,578						
	b. *State Fund Cost Allocation*			*2,041*		*2,041*				*4,100*		*4,100*
11.	Local Government Assistance — Administration (64)			127,649		127,649				127,898		127,898
	a. Legislative Audit (Restricted/Biennial)			376		376						
12.	Building Codes Bureau (65)	~~1,395,177~~				~~1,395,177~~		~~1,592,424~~				~~1,592,424~~
		1,395,030				*1,395,030*		*1,592,157*				*1,592,157*
	a. Legislative Audit (Restricted/Biennial)	4,614				4,614						
	b. Additional Building Inspectors	187,276				187,276		243,749				243,749
	c. *State Fund Cost Allocation*	*2,374*				*2,374*		*5,001*				*5,001*
13.	Indian Affairs Coordinator (70)	~~104,155~~		91,109		~~195,264~~	~~104,687~~		91,295			~~195,982~~
		104,094				*195,203*	*104,580*					*195,875*
	a. Legislative Audit (Restricted/Biennial)	311		196		507						
14.	Health Facilities Authority (71)			139,541		139,541				143,283		143,283
	a. Legislative Audit (Restricted/Biennial)			4,607		4,607						
	b. HFA Audit and Bond Fees			30,081		30,081				30,081		30,081
	c. *State Fund Cost Allocation*			*127*		*127*				*255*		*255*
15.	Montana Science and Technology Alliance (73)	448,475				448,475		455,960				455,960

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. *Legislative Audit (Restricted/Biennial)*		8,903				8,903						
b. *State Fund Cost Allocation*		*495*				*495*		*995*				*995*
16. Board of Housing (74)				1,444,648		1,444,648				1,452,694		1,452,694
a. Legislative Audit (Restricted/Biennial)				57,093		57,093						
b. *State Fund Cost Allocation*				*1,349*		*1,349*				*2,669*		*2,669*
17. Board of Investments (75)				1,790,178		1,790,178				1,804,804		1,804,804
a. Legislative Audit (Restricted/Biennial)				101,218		101,218						
b. Board of Investments Workload Increase				40,000		40,000				40,000		40,000
c. *State Fund Cost Allocation*				*2,195*		*2,195*				*4,336*		*4,336*
18. Montana Lottery (77)				7,064,303		7,064,303				6,690,421		6,690,421
a. Legislative Audit (Restricted/Biennial)				139,033		139,033						
b. *State Fund Cost Allocation*				*4,959*		*4,959*				*9,521*		*9,521*
19. Board of Horseracing (78)		~~240,191~~				~~240,191~~		~~241,267~~				~~241,267~~
		240,147				*240,147*		*241,188*				*241,188*
a. Legislative Audit (Restricted/Biennial)		581				581						
b. *State Fund Cost Allocation*		*299*				*299*		*600*				*600*
20. Director/Management Services (81)												
	~~103,364~~			~~858,825~~		~~962,189~~	~~104,208~~			~~862,605~~		~~967,013~~
	103,362			*858,487*		*961,849*	*104,206*			*812,475*		*916,681*

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)												
	285					285						
b. Data Processing/Computer Capacity (Biennial)												
				100,000		100,000						
21. Vacancy Savings												
	65,811	181,253		278,262		525,326	65,989	183,311		278,942		528,242
22. Budget Balancing Reduction												
	7,688					7,688	7,686					7,686
Total												
	~~1,529,947~~	~~18,177,602~~	30,580,413	~~14,354,705~~		~~64,642,667~~	~~1,529,587~~	~~16,567,519~~	31,037,629	~~13,541,156~~		~~62,675,891~~
	1,413,336	*18,271,618*		*14,367,015*		*64,632,382*	*1,394,188*	*16,656,749*		*13,468,533*		*62,557,099*

~~On passage and approval of House Bill Nos. 17 and 70, equipment and state special revenue funds in item 2 are increased by $63,000 in fiscal 1994 and $26,661 in fiscal 1995.~~

All funds deposited in accordance with 15-35-108(3)(c) are appropriated to the department for distribution as county land planning grants.

If the federally funded equal employment opportunity (EEO) contract is not renewed, the general fund appropriation in item 13 is increased by $2,035 in fiscal 1994 and by $1,941 in fiscal 1995.

It is the intent of the legislature that the Montana science and technology alliance be funded only with revenue received from loan repayments in the 1995 biennium.

At the beginning of each fiscal year, the board of housing shall deposit all funds appropriated in items 16 and 16a and in the pay plan bill for that fiscal year in the housing authority enterprise fund within the state treasury. These funds must remain in the state treasury until expended.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

TOTAL SECTION C												
	~~14,528,332~~	~~78,266,480~~	~~62,544,660~~	~~17,343,095~~	~~463,415~~	~~173,145,982~~	~~14,408,113~~	~~67,364,314~~	49,695,935	~~16,681,068~~	~~63,903~~	~~148,213,333~~
	13,901,664	*79,039,048*	*62,538,410*	*17,356,368*	*463,385*	*173,298,875*	*13,668,845*	*68,238,232*		*16,610,672*	*63,849*	*148,277,533*

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
D. INSTITUTIONS AND CULTURAL EDUCATION												
MONTANA ARTS COUNCIL (5114)												
1. Promotion of the Arts (01)												
	~~116,079~~	265,504	283,073			~~664,656~~	~~127,742~~	159,127	205,680			~~492,549~~
	103,979					*652,556*	*122,319*					*487,036*
a. Legislative Audit (Restricted/Biennial)												
	14,634					14,634						
b. Federal Grants (Biennial)												
			618,017			618,017						
c. Folklife Program												
		35,820				35,820		35,978				35,978
d. Rural Arts Specialist												
		24,428	24,649			49,077		24,630	24,852			49,482
e. NEA/Tribal College AIE												
			24,610			24,610			21,380			21,380
2. Vacancy Savings												
	1,241	4,579				5,820	3,216	6,068				9,284
3. Budget Balancing Reduction												
	647					647	623					623
Total												
	~~120,025~~	321,173	950,349			~~1,400,347~~	~~123,903~~	213,667	251,912			~~589,482~~
	116,725					*1,388,247*	*118,380*					*583,959*
MONTANA STATE LIBRARY COMMISSION (5115)												
1. State Library Operations (01)												
	~~1,296,405~~	~~161,000~~	1,531,584			~~2,988,989~~	~~1,049,364~~	~~161,000~~	371,584			~~1,581,948~~
	1,275,434	*160,866*				*2,967,884*	*1,007,617*	*160,759*				*1,539,960*
a. Legislative Audit (Restricted/Biennial)												
	14,634					14,634						
b. Donations and Bequests (Biennial)												
		55,000				55,000						
2. Natural Resource Information Services (07)												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		295,539	815,000			1,110,539		245,546	15,000			260,546
a.	State Lands Core Support											
		2,400	7,600			10,000		2,400	7,600			10,000
b.	Highways NRIS Support											
		100,000				100,000		100,000				100,000
3.	Vacancy Savings											
	15,957	3,730				19,687	24,342	10,016				34,358
4.	Budget Balancing Reduction											
	6,475					6,475	5,125					5,125
Total												
	~~1,288,607~~	~~610,209~~	2,354,184			~~4,253,000~~	~~1,019,897~~	~~498,930~~	394,184			~~1,913,011~~
	1,267,636	*610,075*				*4,231,895*	*978,150*	*498,689*				*1,871,023*

Item 1 includes biennial appropriations of $258,621 *$243,621* in general funds and $1,160,000 of federal funde for grants te local libraries.

Item 1b includes a one-time biennial appropriation for an additional bequest of $30,000 for the library for the blind that may not be included in the current level base in the agency budget request for the 1997 biennium.

In the event coal severance tax allocated to the Montana state library under 15-35-108(3)(f) exceeds the amounts appropriated te the Montena stete library for fiscal 1994 and fiscal 1995, the additional funds are appropriated to the Montana state library commission for pass-through to the library federations. The additional appropriation allowed is not to exceed $30,000 each year.

The biennial appropriation for legislative contract authority of $850,000 included in item 2 is subject to the following provisions:

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(3) A repert must be submitted by the Montana state library commission to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

Item 2b prevides spending authority for the expenditure of amounts paid by the department of transportation to the Montana state library for the department's use of the natural resource information services, based on the rates and manner of payment negotiated by the Montana state library and the department. The funde collected from the department must be deposited in a state special revenue account and must be used to support the natural resource information services.

The Montana state library shall, in consultation with the department of administration, review the cost-effectiveness, along with other relevant considerations, of operating its in-house mail facilities compared to department of administration services. The Montana state library shall report its conclusions, along with department of administration comments, to the office of budget and program planning and the office of the legislative fiscal analyst by June 1, 1994, and to the respective appropriations subcommittee of the 1995 legislature.

MONTANA HISTORICAL SOCIETY (5117)

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Administration Program (01)												
	~~572,305~~	~~82,635~~	44,854			~~699,794~~	~~577,940~~	~~82,736~~	45,184			~~705,360~~
	562,771	*82,557*				*690,182*	*559,112*	*82,596*				*686,892*
a. Legislative Audit (Restricted/Biennial)												
	18,341					18,341						
b. *State Fund Cost Allocation*												
		184				*184*		*426*				*426*
2. Library Program (02)												
	456,601	6,942		30,674		494,217	450,315	7,157		33,070		490,542
a. Photo Archives Sterage												
				2,400		2,400				2,400		2,400
b. Photograph Print Washer												
										1,095		1,095
c. Photo Archives Clerk												
				4,449		4,449				4,449		4,449
d. Motion Picture Conservater												
				1,200		*1,200*				1,200		1,200
e. *State Fund Cost Allocation*												
		26		*46*		*72*		*30*		*96*		*126*
3. Museum Program (03)												
	225,307	11,121		4,115		240,543	224,862	11,121		4,122		240,105
a. *Original Governor's Mansion Preservation*												
		3,700				3,700		3,700				3,700
b. *State Fund Cost Allocation*												
		25		*4*		*29*		*50*		*9*		*59*
4. Publication (04)												
	51,465			~~522,005~~		~~573,470~~	51,465			~~525,100~~		~~576,565~~
				521,880		*573,345*				*524,877*		*576,342*
a. Legislative Audit (Restricted/Biennial)												
				781		781						
b. Press Editer												
				12,938		12,938				12,975		12,975
c. Press Book Authority												
				12,000		12,000				12,000		12,000

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	Fiscal 1995						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. State Fund Cost Allocation				*569*		*569*				*1,251*		*1,251*
5. Historical Sites Preservation (06)												
	~~80,181~~		621,391			~~701,572~~	~~81,193~~		615,269			~~696,462~~
	60,181					*681,572*	*41,193*					*656,462*
a. Legislative Audit (Restricted/Biennial)												
	843		4,425			5,268						
b. CRABS Database Managers												
			14,092			14,092			14,092			14,092
c. Field Survey Historian												
			27,930			27,930			27,930			27,930
d. State Fund Cost Allocation												
		75				*75*						
6. Vacancy Savings												
	46,612	3,014		10,763		60,389	46,545	3,075		10,914		60,534
7. Budget Balancing Reduction												
	6,792					6,792	6,696					6,696
Total												
	~~1,351,639~~	~~101,384~~	712,692	~~579,799~~		~~2,745,514~~	~~1,332,534~~	~~101,639~~	702,475	~~585,497~~		~~2,722,145~~
	1,322,105	*101,616*		*580,293*		*2,716,706*	*1,273,706*	*102,005*		*586,630*		*2,664,816*

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES (6401)

1. Central Operations (10)												
	~~2,235,001~~	~~27,082~~		19,368		~~2,281,451~~	~~2,313,902~~	~~30,399~~		22,852		~~2,367,233~~
	2,234,005	*26,929*				*2,280,302*	*2,312,190*	*30,123*				*2,365,165*
a. Legislative Audit (Restricted/Biennial)												
	126,143	7,879	1,556	5,885		141,463						
b. State Fund Cost Allocation												
		3,631		*2,730*		*6,361*		*7,299*		*5,487*		*12,786*
2. Corrections (20)												
	~~27,878,726~~	~~850,362~~	461,443	~~3,687,280~~		~~32,877,811~~	~~27,536,366~~	~~920,513~~	465,879	3,922,784		~~32,845,542~~

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	27,878,666	*850,361*		*4,052,280*		*33,242,750*	*27,536,313*	*920,512*				*32,845,488*
a.	BA 84, 79, 87 Prison Ranch			120,000		120,000				121,951		121,951
b.	HB 617 — Federally Certified Industries Programs									178,524		178,524
c.	*Capital Improvements/Maintenance (Biennial)*			*700,000*		*700,000*						
3.	Mental Health (30)											
	30,931,800	233,127	1,824,423			32,989,350	31,756,478	233,127	1,717,486			33,707,091
a.	Galen Changes											
	303,411					303,411	313,698					313,698
b.	Registered Nurses											
	78,858					78,858	81,480					81,480
4.	Chemical Dependency (40)											
		2,790,123	2,802,162			5,592,285		2,851,732	2,763,298			5,615,030
a.	Galen Changes											
		131,209				131,209		135,439				135,439
5.	Developmental Disabilities (50)											
	16,110,411	39,859	13,000			16,163,270	16,645,801	39,859	13,000			16,698,660
6.	Veterans' Nursing Homes (60)											
		2,220,198	995,440			3,215,638		2,277,350	1,064,902			3,342,252
a.	Eastern Montana Veterans' Nursing Home Startup							325,000				325,000
7.	Vacancy Savings											
	1,446,015	120,596		60,715		1,627,326	1,478,429	122,244		62,438		1,663,111
Total												
	~~76,218,335~~	~~6,179,243~~	6,098,024	~~3,771,810~~		~~92,267,420~~	~~77,169,376~~	~~6,691,175~~	6,024,565	~~4,183,673~~		~~94,068,789~~
	76,217,279	*6,182,720*		*4,839,548*		*93,337,571*	*77,167,531*	*6,698,197*		*4,189,160*		*94,079,453*

The legislaturo directs the department to work toward limiting the number of prisoners at Montana state prison to 850 inmates. Item 2 includes an appropriation sufficient to maintain that number of inmates.

Item 3 includes $82,280 in fiscal 1994 and $130,900 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

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	Fiscal 1994						Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 3 includes $100,000 each year of the biennium for maintenance of the Galen campus.

The legislature directs the department to maintain the Galen campus in good condition during the 1995 biennium while the department seeks potential users of the facilities. If a use can be found that will not have a negative state general fund impact during the 1995 biennium, the department is authorized to make the necessary transfer after review by the legislative finance committee.

~~If House Bill No. 333 is not passed and approved, the general fund appropriation in item 3 is reduced by $35,626 in fiscal 1994 and by $77,966 in fiscal 1995 and the state special revenue appropriation in item 6 is reduced by $52,166 in fiscal 1994 and by $76,986 in fiscal 1995.~~

Item 5 includes $4,675 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

The department shall coordinate the development of programs for children with severe emotional disturbances. The departments of family services, health and environmental sciences, and social and rehabilitation services and the office of public instruction and the board of crime control shall fully cooperate and coordinate resources with the department.

The departments of family services, corrections and human services, health and environmental sciences, and social and rehabilitation services and the office of public instruction and the board of crime control shall collaboratively develop, administer, and fund services for children with severe emotional disturbances and with multiagency service needs. The departments and agencies are directed to develop community-based alternatives to inpatient psychiatric care and to reduce the number of residential care placements.

The departments and agencies may use general fund money, state special revenue, private funds, local government funds, and federal special revenue to design, administer, and provide programs for children with severe emotional disturbances. The departments and agencies may use available state and federal funding, within appropriation limits. The departments and agencies shall maximize the recovery of federal funds for these services, including waivers to the medicaid program to permit children with severe emotional disturbances to be served in their own homes and communities or, when appropriate, in the least-restrictive setting. The departments and agencies may use general fund money to match federal, local government, and private fund sources.

Whenever possible, the departments and agencies shall work with local providers and units of government to develop programs to serve children with severe emotional disturbances. Services may include but are not limited to case management services, day treatment, respite care, emergency services, and crisis intervention and stabilization services. Programs may include a managed care system, when allowable, to control entry into and exit from in-state and out-of-state residential facilities and to control the types and duration of services and reimbursement rates.

The departments and agencies shall encourage families to assist with payment of these services.

Items entitled "State Fund Cost Allocation" are contingent upon passage and approval of House Bill No. 21.

TOTAL SECTION D										
~~78,987,406~~	~~7,212,009~~	~~10,115,240~~	~~4,351,617~~		~~100,666,281~~	~~79,645,710~~	~~7,505,411~~	7,373,136	~~4,769,170~~	~~99,293,427~~
78,923,745	*7,215,584*		*5,419,841*		*101,674,419*	*79,537,767*	*7,512,558*		*4,775,790*	*99,199,251*

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	Fiscal 1994					Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

E. EDUCATION

University system units are defined in 17-7-102(16). For all university system units, except the office of the commissioner of higher education, all funds, other than plant funds appropriated in [the long-range planning bill] *House Bill No. 5 (now Chapter 624, Laws of 1993)*, relating to long-range building, and current unrestricted operating funds, are appropriated contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. All movement of funds between the current unrestricted subfund and the designated subfund account entities must be clearly identified in the state budgeting and accounting system.

Programs for the university system units' budgets, except the office of the commissioner of higher education, include instruction, organized research, public service, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowships.

All university system units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the national center for higher education management systems program classification structure, along with the college and university business administration (CUBA) system, as a minimum standard for achieving consistency.

Included within state special revenue to the six university units and the office of the commissioner of higher education is the sum of $16,956,000 in fiscal 1994 and $13,899,000 in fiscal 1995 from revenue generated under the provisions of 20-25-423. The department of revenue shall levy the full 6 mills as authorized in 20-25-423. Revenue received by the university system under the provisions of 20-25-423 that exceeds $16,956,000 in fiscal 1994 and $13,899,000 in fiscal 1995 is appropriated to the office of the commissioner of higher education and must cause a reversion of a like amount of general fund. If revenue received under the provisions of 20-25-423 is less than $16,956,000 in fiscal 1994 and $13,899,000 in fiscal 1995, the office of the commissioner of higher education may request a supplemental appropriation under the procedures contained in 17-7-301 for distribution to the university system. The supplemental request may total no more than the difference between actual revenue and the appropriation in each fiscal year.

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)

1. Administration (06)

~~3,222,630~~	311,991	~~3,561,565~~	~~1,011,954~~	~~8,108,140~~	~~3,244,798~~	~~315,480~~	~~3,571,306~~	~~1,006,036~~	~~8,138,420~~
3,156,694		*3,425,490*	*1,010,564*	*7,904,739*	*3,410,734*	*204,860*	*3,503,268*	*1,004,334*	*8,123,196*

a. Legislative Audit (Restricted/Biennial)

57,866				57,866					

b. Transfer (Restricted/Biennial)

~~876,532~~				~~876,532~~					
873,996				*873,996*					

c. Advanced Drivers' Education

	11,127			11,127		26,127			26,127

d. School Food Commodities

	55,000			55,000		55,000			55,000

e. Miscellaneous Federal Funds

		914,299		914,299			1,155,728		1,155,728

f. Cooperative Purchase Aid

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	Fiscal 1994					Fiscal 1995				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		8,900				8,900		18,200				18,200
g.	Resource and Publications											
		15,000				15,000		15,000				15,000
h.	Indirect Cost Pool			110,000		110,000				110,000		110,000
i.	Legal Fees (Restricted/Biennial)											
	28,500					28,500						
j.	METNET (Restricted/Biennial)											
	400,000					400,000						
2.	Distribution to Public Schools (09)											
a.	Special Education (Restricted)											
	32,845,797					32,845,797	32,845,797					32,845,797
b.	Special Education Contingency (Restricted/Biennial)											
	2,031,163					2,031,163						
c.	Transportation (Restricted)											
	5,693,558	3,908,166				9,601,724	5,693,558	3,914,457				9,608,015
d.	School Foods (Restricted)											
	599,397					599,397	599,397					599,397
e.	Adult Basic Education (Restricted/Biennial)											
	250,000					250,000	250,000					250,000
f.	Individuals With Disabilities Education Act - B (Biennial)											
	1,823,000					1,823,000						
g.	Job Training Partnership Act (Biennial)											
	1,017,200					1,017,200						
h.	Adult Basic Education (Biennial)											
	1,365,000					1,365,000						
i.	McKinney Homeless Act (Biennial)											
	180,400					180,400						
j.	Preschool Incentive (Biennial)											
	230,000					230,000						
k.	Vocational Education (Biennial)											
	6,022,525					6,022,525						
l.	Individuals With Disabilities Education Act - D (Biennial)											
	12,000					12,000						

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
m. Chapter 1 (Biennial)			540,000			540,000						
n. Foreign Language (Biennial)			99,000			99,000						
o. Even Start Family Literacy (Biennial)			925,000			925,000						
p. Instate Treatment (Restricted/Biennial)	2,273,320					2,273,320						
q. Instate Residential Services (Biennial)	376,471					376,471						
r. School Food Services	29,940					29,940	45,673					45,673
s. Gifted and Talented (Restricted/Biennial)	300,000					300,000						
t. Secondary Vocational Education (Restricted/Biennial)	1,300,000					1,300,000						
3. Vacancy Savings	108,319	7,174		24,597		140,090	100,127	7,212		32,724		140,063
4. Budget Balancing Reduction	248,884					248,884	212,895					212,895
Total	~~49,527,971~~	4,703,010	~~16,689,989~~	~~1,097,357~~		~~72,018,327~~	~~42,366,201~~	~~4,337,052~~	~~4,727,034~~	~~1,084,112~~		~~52,514,399~~
	49,459,499		*16,553,914*	*1,095,967*		*71,812,390*	*42,532,137*	*4,226,432*	*4,658,996*	*1,081,610*		52,499,175

If House Bill No. 89 is not passed and approved, the state special revenue appropriation for item 1 for fiscal 1995 is increased by $110,620 and the traffic safety program FTE that are fanded through a language appropriation are also increased by 2.5.

If House Bill No. 89 is not passed and approved, the general fund appropriation for item 1 for fiscal 1994 is increased by $65,936, current level FTE is increased by 2.5, and the general fund appropriation for item 1 for fiscal 1995 is reduced by $65,936. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the $65,936 in the base.

If House Bill No. 89 is not passed and approved, the general fund appropriation for item 1 for fiscal 1995 is reduced by $100,000. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the $100,000 in the base.

Item 1j must be used to carry out the responsibilities of the superintendent of public instruction as provided in Title 20, chapter 32, part 1.

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	Fiscal 1994					Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The office of public instruction may use up to 1% from the appropriation provided in item 2a to provide the matching funds necessary for medicaid reimbursements paid for medicaid-eligible services provided by public school districts.

The office of public instruction may transfer up to 1% from the appropriation provided in item 2a to the department of family services (DFS) to provide the matching funds necessary for medicaid reimbursements paid for education costs of children with disabilities.

The appropriation in item 2b is for unforeseen expenses that may arise in special education programs in local districts. The office of public instruction may transfer any unused balance in this appropriation into the special education appropriation in item 2a.

The office of public instruction may distribute the amounts required from the appropriation in item 2p to public school districts for the purpose of providing education costs in day-treatment services.

The office of public instruction may transfer up to $700,000 from item 2p to the department of family services to provide the matching funds necessary for medicaid reimbursements paid for education costs of children receiving in-state residential treatment services.

All revenue received in the state traffic education account under the provisions of 20-7-504 is appropriated as provided in Title 20, chapter 7, part 5.

BOARD OF PUBLIC EDUCATION (5101)

1. Administration (01)											
110,949		9,550			120,499	110,031		9,550			119,581
a. Legislative Audit (Restricted/Biennial)											
1,219					1,219						
2. Advisory Council (03)											
		77,336			77,336			76,427			76,427
a. Legislative Audit (Restricted/Biennial)											
		1,220			1,220						
3. Vacancy Savings											
4,068		3,036			7,104	4,063		3,043			7,106
4. Budget Balancing Reduction											
541					541	530					530
Total											
107,559		85,070			192,629	105,438		82,934			188,372

SCHOOL FOR THE DEAF AND BLIND (5113)

1. Administration Program (01)											
222,974					222,974	223,057					223,057
a. Legislative Audit (Restricted/Biennial)											

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	26.016					26.016						
2.	General Services Program (02)											
	293.902					293.902	307.844					307.844
3.	Student Services (03)											
	675.115		34.000			909.115	875.847		34.000			909.847
4.	Education (04)											
	1,099.737	455.797	72.823			1,628.357	1,079.601	463.797	72.823			1,616.221
	a. Copier						18.000					18.000
	b. Out-of-State Tuition											
	72.546					*72.546*						
5.	Vacancy Savings											
	15.890	3.223				19.113	15.917	3.318				19.235
6.	Budget Balancing Reduction											
	12.509					12.509	12.442					12.442
Total	~~2,489,345~~	452.574	106.823			~~3,048,742~~	2,475.990	460.479	106.823			3,043,292
	2,561,891					*3,121,288*						

All revenue received from tha rental use of the MSDB facilities must bo deposited into a state special revenue account. All revenue deposited into this account is appropriated for use by MSDB.

Item 2 contains $4,900 in fiscal 1994 and $4,900 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvementa through the state building energy conservation program.

Item 4b represents out-of-state tuition and is not to be used for the outreach program. This appropriation is not to be included in the base for the 1997 biennium budget request.

Out-of-state tuition received by MSDB and deposited to the general fund in fiscal 1995 is appropriated from the general fund but may not exceed $75,000.

MONTANA COUNCIL ON VOCATIONAL EDUCATION (5116)

1.	Administration Program (01)											
			161.680			161.680			165.781			165.781
	a. Legislative Audit (Restricted/Biennial)											
			3.577			3.577						
Total												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
			165,257			165,257			165,781			165,781
COMMISSIONER OF HIGHER EDUCATION (5102)												
1. Administration Program (01)												
	~~920,664~~					~~920,664~~	~~926,807~~					~~926,807~~
	920,559					*920,559*	*926,702*					*926,702*
a. Legislative Audit (Restricted/Biennial)												
	22,764					22,764						
2. Student Assistance Program (02) (Restricted)												
	5,155,717		305,000			5,460,717	5,059,192		305,000			5,364,192
3. Dwight D. Eisenhower Mathematics and Science Education Act (03)												
			296,803			296,803			296,806			296,806
4. Community College Assistance (04)												
	4,202,132					4,202,132	4,202,132					4,202,132
a. Legislative Audit (Restricted/Biennial)												
	29,890					29,890						
5. Montana University System Group Insurance Program (05)												
				17,976,875		17,976,875				19,844,204		19,844,204
6. Talent Search (06)												
			290,420			290,420			291,266			291,266
a. Talent Search												
			119,014			119,014			158,184			158,184
b. Minority Achievement												
	87,824					87,824	87,824					87,824
7. Carl D. Perkins Administration (08)												
	84,293		5,106,169			5,190,462	80,000		5,101,876			5,181,876
8. Guaranteed Student Loan Program (12)												
			1,877,842			1,877,842			1,888,642			1,888,642
a. Guaranteed Student Loan 1												
			722,567			722,567			797,436			797,436
b. Guaranteed Student Loan 2												
			766,996			766,996			767,080			767,080
c. Legislative Audit (Restricted/Biennial)												
			5,854			5,854						
9. Board of Regents — Administration (13)												

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	33,521					33,521	34,024					34,024
10.	Board of Regents Bond Payments (14) 216,995					216,995	111,483					111,483
11.	Vocational-Technical Center Administration (15) 100,263					100,263	100,517					100,517
12.	Montana Career Information System (16)			99,949		99,949				100,015		100,015
	a. Additional School Services			50,051		50,051				54,985		54,985
13.	Vacancy Savings 42,990			8,881		51,871	42,860			8,905		51,765
14.	Personal Services Contingencies (Restricted/Biennial) 4,299			1,776		6,075	4,286			1,781		6,067
15.	Budget Balancing Reduction 54,077					54,077	52,817					52,817
16.	*General Fund Reduction (Biennial)* *6,000,000*					*6,000,000*						
17.	*6-Mill Levy Offset* *4,438,631*	*4,438,631*					*1,332,000*	*1,332,000*				
Total	~~10,761,295~~		9,490,665	18,119,770		~~38,371,730~~	~~10,510,588~~		9,606,290	19,992,080		~~40,108,958~~
	322,559	*4,438,631*				*32,371,625*	*9,178,483*	*1,332,000*				*40,108,853*

It is the intent of the 53rd legislature thet no funds be transferred in fiscal 1994 or fiscal 1995 from the student assistance program to any other program within the office of the commissioner of higher education.

Any indirect cost reimbursements received in excess of $20,885 in fiscal 1994 and $20,885 in fiscal 1995 as a result of an increase in the federal talent search grant must cause a general fund reversion of a like amount.

~~If House Bill No. 5 is not passed and approved in a form that results in the issuance of general obligation bonds for prepayment of the remaining payment obligations for the Butte vocational technical center, the general fund appropriation in item 10 is increased by $465,115 in fiscal 1994 and by $467,275 in fiscal 1995.~~

In the event that bond payments on the Butte, Great Falls, and/or Billings vocational-technical centers are less than the amounts shown in item 10 in either year of the 1995 biennium, the difference between the appropriated amount and actual payments is appropriated for preplanning purposes to complete the unfinished space at the Great Falls Vocational-Technical Center.

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	Fiscal 1994						Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The general fund appropriation for each community college includes 49% of the total unrestricted budgets for the community colleges in fiscal 1994 and fiscal 1995. The total unrestricted budgets for the community colleges must be approved by the board of regents.

The general fund appropriation for each community college provides 49% of the total audit cost. The remaining 51% of these costs are to be paid from funds other than those appropriated in item 4. Audit costs for the biennium may not exceed $18,000 each for Dawson and Miles community colleges and $25,000 for Flathead Valley community college.

The legislature expects, as a result of the general fund reductions adopted in [this act], that the governor and the board of regents will manage these reductions in the following manner:

(1) Administrative cuts should precede and meet or exceed, on a percentage basis, reductions in any other area of the university system. Management efficiencies, as prescribed by the MGT study, should be implemented to the greatest extent and as soon as possible.

(2) Faculty productivity standards should be negotiated and implemented.

(3) Enrollment limits and tuition increases should be used only as a last resort.

The 53rd legislature does not require that the board of regents' employee reporting system (RERS) be maintained in the 1995 biennium. However, it is the intent of the legislature that accurate, consistent, and accessible position and compensation information be available to the legislature and the governor. The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide the following information electronically to the legislative fiscal analyst and the office of budget and program planning:

(1) On January 1 and at fiscal yearend beginning in fiscal 1994 and each year thereafter, the actual personal services data. This data must tie to the actual expenditures as recorded on SBAS.

(2) Beginning November 1, 1993, and each year thereafter, the budgeted personal services data. The data must tie to the operating plan as approved by the board of regents.

This personal services data must include but not be limited to the following for each position number: program number, responsibility center, salary, benefits, fund type, and FTE position title and position type. The initial submission of this information must be reviewed and approved for accuracy, consistency, and accessibility by the joint committee on postsecondary education policy and budget.

Item 16 reduces the total appropriation to the Montana university system. The board of regents shall determine the proportional share of the reduction to be allocated to each unit of the Montana university system and reduce its general fund appropriation accordingly.

The board of regents may find it necessary to increase tuition at the six university units and the five vocational-technical centers in fiscal year 1995 as a result of the general fund reductions contained in [this act]. Any additional tuition revenue over the appropriated level is appropriated to the board of regents for allocation to the six university units and the five vocational-technical centers. The legislature urges the commissioner of higher education to work with student representatives to consider using a portion of any fiscal year 1995 tuition increase for tuition assistance for needy in-state students. The commissioner shall submit the results of these meetings to the board of regents prior to the adoption of any fiscal year 1995 tuition increases.

Item 17 reduces the general fund appropriation and increases the 6-mill levy state special revenue appropriation to the six university units of the Montana university system. Item 17 is appropriated to the office of the commissioner of higher education for distribution by the board of regents, who shall determine the proportional share of the reduction in general fund money and the increase in state special revenue money to be allocated to each of the six university units. The board of regents shall reduce each unit's general fund appropriation and increase its state special revenue appropriation accordingly. It is the intent of the legislature that the general fund reduction at each of the six university units be offset, on a dollar-for-dollar basis, with the additional 6-mill levy state special revenue appropriation.

BILLINGS VOCATIONAL-TECHNICAL CENTER (3511)

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	Fiscal 1994						Fiscal 1995					
	Genecal Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Combined Operations (01,07,44)	1,188,169	327,741			469,315	1,985,225	1,194,378	333,717			469,315	1,997,410
a. Legislative Audit (Restricted/Biennial)	26,341					26,341						
Total	1,214,510	327,741			469,315	2,011,566	1,194,378	333,717			469,315	1,997,410

Total audit costs are estimated to be $29,268 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

State special appropriations are revenue generated under the provisions of 20-16-202, which requires each county in which a vocational-technical center is located to levy an annual tax of 1.5 mills on all taxable property within the county.

BUTTE VOCATIONAL-TECHNICAL CENTER (3512)

1. Combined Operations (01,07,44)	1,239,674	81,383			346,566	1,667,623	1,243,160	82,733			346,566	1,672,459
a. Legislative Audit (Restricted/Biennial)	32,195					32,195						
Total	1,271,869	81,383			346,566	1,699,818	1,243,160	82,733			346,566	1,672,459

Total audit costs are estimated to be $35,772 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

State special appropriations are generated under the provisions of 20-16-202, which requires each county in which a vocational-technical center is located to levy an annual tax of 1.5 mills on all taxable property within the county.

GREAT FALLS VOCATIONAL-TECHNICAL CENTER (3513)

1. Combined Operations (01,07,44)	1,669,390	156,776			684,163	2,510,329	1,675,801	159,538			684,163	2,519,502
a. Legislative Audit (Restricted/Biennial)	29,268					29,268						
Total	1,698,658	156,776			684,163	2,539,597	1,675,801	159,538			684,163	2,519,502

Total audit costs are estimated to be $32,520 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

State special appropriations are revenue generated under the provisions of 20-16-202, which requires each county in which a vocational-technical center is located to levy an annual tax of 1.5 mills on all taxable property within the county.

HELENA VOCATIONAL-TECHNICAL CENTER (3514)

1.	Combined Operations (01,07,44)											
	1,890,735	114,499			606,615	2,611,849	1,897,449	116,514			606,615	2,620,578
	a. Legislative Audit (Restricted/Biennial)											
	32,195					32,195						
Total												
	1,922,930	114,499			606,615	2,644,044	1,897,449	116,514			606,615	2,620,578

Total audit costs are estimated to be $35,772 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

State special appropriations are revenue generated under the provisions of 20-16-202, which requires each county in which a vocational-technical center is located to levy an annual tax of 1.5 mills on all taxable property within the county.

MISSOULA VOCATIONAL-TECHNICAL CENTER (3515)

1.	Combined Operations (01,07,44)											
	2,003,764	211,601			620,064	2,835,429	2,006,884	215,498			620,064	2,842,446
	a. Legislative Audit (Restricted/Biennial)											
	26,341					26,341						
Total												
	2,030,105	211,601			620,064	2,861,770	2,006,884	215,498			620,064	2,842,446

Total audit costs are estimated to be $29,268 for the hiennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

State special appropriations are revenue generated under the provisions of 20-16-202, which requires each county in which a vocational-technical center is located to levy an annual tax of 1.5 mills on all taxable preperty within the county.

It is the intent of the legislature that the board of regents have additional appropriation flexibility te operate the vocational-technical centers during the 1995 biennium. Therefore, the legislature has approved for each vocatioual-technical center a single appropriation for its general operations. The appropriation for each postsecondary vocatioual-technical center listed above is for the following programs: instruction, academic support, student services, institutional support, and operation and maintenance of plant.

It is further the intent of the legislature that all fiscal matters pertaining to the postsecondary vocationsl-technical centers during the 1995 biennium and the 1997 biennium budget request be recorded, maintained, and submitted using the college and university husiness administration (CUBA) fund structure and functional expenditure classifications.

UNIVERSITY OF MONTANA (5103)

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	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Combined Operations (01, 02, 03, 07, 08, and 44)	25,244,156	4,495,027			22,052,811	51,791,994	25,342,171	4,512,622			22,052,811	51,907,604
a. Legislative Audit (Restricted/Biennial)	61,789					61,789						
Total	25,305,945	4,495,027			22,052,811	51,853,783	25,342,171	4,512,622			22,052,811	51,907,604

Total audit costs are estimated to be $123,577 for the biennium. Fifty percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

Item 1 contains $68,255 *$44,000* in fiscal 1994 and $260,865 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

MONTANA STATE UNIVERSITY (5104)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Combined Operations (01, 02, 03, 07, 08, and 44)	30,920,426	4,499,293			19,922,177	55,341,896	31,075,236	4,516,905			19,922,177	55,514,318
a. Legislative Audit (Restricted/Biennial)	65,041					65,041						
Total	30,985,467	4,499,293			19,922,177	55,406,937	31,075,236	4,516,905			19,922,177	55,514,318

Total audit costs are estimated to be $130,081 for the biennium. Fifty percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY (5105)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Combined Operations (01, 02, 07, 08, and 44)	7,163,802	780,775			3,142,449	11,087,026	7,215,736	783,831			3,142,449	11,142,016
a. Legislative Audit (Restricted/Biennial)	49,512					49,512						
2. Bureau of Mines — Independent Operations (11)	1,303,362				44,000	1,347,362	1,291,542				*44,000*	1,335,542
a. Ground Water Assessment (Restricted)		666,000				666,000		666,000				666,000
Total	8,516,676	1,446,775			3,186,449	13,149,900	8,507,278	1,449,831			3,186,449	13,143,558

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	Fiscal 1994						Fiscal 1995					
General Fund	Stete Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	Stste Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Total audit costs are estimated to be $66,016 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1, 1a, and 2.

Item 2a is for ground water activities in accordance with Title 85, chapter 2, part 9, and equals the total anticipated deposits to the fund each year. The bureau of mines may not expend funds in any year from this appropriation over the amount deposited to the account.

EASTERN MONTANA COLLEGE (5106)

1. Combined Operations (01, 03, 07, 08, and 44)											
9,618,695	1,488,071			5,179,754	16,286,520	9,668,074	1,493,896			5,179,754	16,341,724
a. Legislative Audit (Restricted/Biennial)											
60,488					60,488						
Total											
9,679,183	1,488,071			5,179,754	16,347,008	9,668,074	1,493,896			5,179,754	16,341,724

Total audit costs are estimated te bo $80,650 for the biennium. Twenty-five percent of these costs must bo paid from funds other than those appropriated in items 1 and 1a.

Item 1 contains $3,628 in fiscal 1994 and $17,989 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

NORTHERN MONTANA COLLEGE (5107)

1. Combined Operations (01, 07, 08, and 44)											
5,407,088	793,101			2,650,914	8,851,103	5,425,267	796,205			2,650,914	8,872,386
a. Legislative Audit (Restricted/Biennial)											
45,854					45,854						
Total											
5,452,942	793,101			2,650,914	8,896,957	5,425,267	796,205			2,650,914	8,872,386

Total audit costs are estimated to be $61,138 for the biennium. Twenty-five percent of these costs must bo paid from funds other than those appropriated in items 1 and 1a.

Item 1 contains $38,335 in fiscal 1994 and $38,335 in fiscal 1995 that must be transferred te the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA (5108)

1. Combined Operations (01, 07, 08, and 44)											
3,232,223	461,733			1,522,544	5,216,500	3,260,385	463,541			1,522,544	5,246,470
a. Legislative Audit (Restricted/Biennial)											
50,732					50,732						

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	Fiscal 1994					Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
3,282,955	461,733			1,522,544	5,267,232	3,260,385	463,541			1,522,544	5,246,470

Total audit costs are estimated to be $67,642 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

It is the intent of the legislature that the board of regents have additional appropriation flexibility to operate the six university system units and the vocational-technical centers during the 1995 biennium. Therefore, the legislature has approved for each university system unit a single appropriation for its general oporations. The appropriations for each postsecondary university system unit listed above is for the following programs, as appropriate: instruction, academic support, student services, institutional support, operation and maintenance of plant, scholarships and fellowships, research, and public service.

The board of regents may transfer appropriations between fiscal years within each fund type. The transfer may not exceed 10% of the unit appropriation. Upon approval of a transfer, the board of regents shall inform the legislative fiscal analyst and the office of budget and program planning of the transfer and the justification for the transfer. Funds may not be transferred among units of the university system.

It is further the intent of the legislature that all fiscal matters pertaining to the university system units during the 1995 biennium and the 1997 biennium budget request be recorded, maintained, and submitted using the college and university business administration (CUBA) fund structure and functional expenditure classifications.

~~Included within state special revenue to the six university system units is the sum of $12,518,000 in fiscal 1994 and $12,567,000 in fiscal 1995 from revenue generated under the provisions of 20-25-423. The department of revenue shall levy the full 6 mills as authorized in 20-25-423. Revenue received by the university system under the provisions of 20-25-423 that exceeds $12,518,000 in fiscal 1994 and $12,567,000 in fiscal 1995 is appropriated to the office of the commissioner of higher education for distribution to the university system.~~

AGRICULTURAL EXPERIMENT STATION (5109)

1. Organized Research (02)										
7,226,947		2,300,013	9,526,960		7,263,780				2,300,013	9,563,793
2. United States Range Station (15)										
		490,531	490,531						492,745	492,745
Total										
7,226,947		2,790,544	10,017,491		7,263,780				2,792,758	10,056,538

COOPERATIVE EXTENSION SERVICE (5110)

1. Public Service (03)										
2,786,119		2,161,652	4,947,771		2,788,897				2,161,652	4,950,549
Total										
2,786,119		2,161,652	4,947,771		2,788,897				2,161,652	4,950,549

FORESTRY AND CONSERVATION EXPERIMENT STATION (5111)

1. Research (02)

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	Fiscal 1994						Fiscal 1995				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
702,762					702,762	702,782					702,782
Total											
702,762					702,762	702,782					702,782
FIRE SERVICES TRAINING SCHOOL (5119)											
1. Public Service (03)											
248,214					248,214	230,853					230,853
a. Legislative Audit (Restricted/Biennial)											
3,252					3,252						
Total											
251,466					251,466	230,853					230,853
The fire services training school must be provided office, classroom, and storage space in the Great Falls vocational-technical center at no charge.											
TOTAL SECTION E											
~~165,214,704~~	~~19,316,654~~	~~26,452,734~~	~~19,217,127~~	62,193,568	~~292,394,787~~	~~157,740,612~~	~~19,021,465~~	~~14,605,928~~	~~21,076,192~~	62,195,782	~~274,639,979~~
154,780,042	*23,755,285*	*26,316,659*	*19,215,737*		*286,261,291*	*156,574,443*	*20,242,845*	*14,537,890*	*21,073,690*		*274,624,650*
TOTAL STATE FUNDING											
~~470,581,261~~	~~341,260,774~~	~~703,689,426~~	~~278,717,195~~	~~64,580,864~~	~~1,858,829,520~~	~~468,681,512~~	~~331,398,144~~	~~696,357,866~~	~~293,377,799~~	~~64,067,730~~	~~1,853,883,051~~
456,553,722	*346,305,060*	*701,011,703*	*110,127,922*	*64,583,580*	*1,678,581,987*	*455,169,234*	*333,547,856*	*671,768,937*	*109,091,221*	*64,076,214*	*1,633,653,462*

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Section 2. Section 2, Chapter 624, Laws of 1993, is amended to read:

"Section 2. **Capital projects appropriations.** (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBPF	Other Funding Sources	
DEPARTMENT OF ADMINISTRATION			
Environmental Hazards Fund, Statewide (5)	$850,000		
Demolition Projects, Statewide (10)	187,600		
Handicapped Access, Capitol Complex (11)	230,000		
Construction Litigation, Architecture and Engineering Division (14)	200,000		
Improve Parking Lots, Capitol Complex (17)	120,000		
Historical Society Climate Control, Capitol Complex (19)	85,000		
Energy Conservation Projects, Statewide		$ 800,000	Federal Special Revenue
		1,000,000	Nonstate State Special Revenue
State Fund Building Remodel		*111,000*	*Proprietary*
DEPARTMENT OF CORRECTIONS & HUMAN SERVICES			
Upgrade Fire Safety Systems, Eastmont Human Services Center and Montana State Hospital (1)	150,000		
Replace Roofs, Corrections and Human Services (9)	140,000		
Install Environmental Controls, Center for the Aged (15)	355,180		
Prison Dairy Dormitory		605,212	Proprietary
DEPARTMENT OF EDUCATION			
Maintenance & Improvements, Montana School for the Deaf & Blind (18)	107,192		
DEPARTMENT OF FAMILY SERVICES			
Install Fire Safety Systems, Pine Hills School and Mountain View School (2)	627,000 *517,000*		
Miscellaneous Repairs, Pine Hills School and Mountain View School (4)	143,500		
DEPARTMENT OF FISH, WILDLIFE & PARKS			
Flathead Lake State Park Improvements		172,500	State Special Revenue
		111,215	State Special Revenue-Other
		200,000	State Special Revenue-Motor Fuels Tax
		516,285	Federal Special Revenue
Makoshika State Park Improvements		264,000	State Special Revenue
		716,000	State Special Revenue-Other
		200,000	State Special Revenue-Motor Fuels Tax
		320,000	Federal Special Revenue
Bannack State Park Preservation		168,000	State Special Revenue
		1,732,000	State Special Revenue-Other
		100,000	State Special Revenue-Motor Fuels Tax
Lake Elmo State Park Improvements		150,000	State Special Revenue-Other
		200,000	State Special Revenue-Moter Fuels Tax
Ulm Pishkun State Park Planning		200,000	State Special Revenue-Other
State Parks Road Improvements		1,800,000	State Special Revenue
Warehouse Code Upgrade & Improvements		113,000	Stato Special Revenue
Washoe Park Trout Hatchery Improvements		175,000	State Special Revenue
		525,000	Federal Special Revenue

Fishing Access Site Development, Statewide		315,000	State Special Revenue
		745,000	Federal Special Revenue
Site Protection and Improvements to Thompson Chain of Lakes		150,000	State Special Revenue
		300,000	Federal Special Revenue
Fish Hatchery Maintenance, Statewide		96,750	State Special Revenue
		290,250	Federal Special Revenue
Wildlife Habitat Maintenance, Statewide		630,000	State Special Revenue
Headquarters Repair, Statewide		200,000	State Special Revenue
Design Bluewater Hatchery Replacement		112,500	State Special Revenue
		337,500	Federal Special Revenue
Oxygenate Giant Springs Hatchery Water		171,750	State Special Revenue
		515,250	Federal Special Revenue
Waterfowl Stamp Program, Statewide		87,500	State Special Revenue
		75,000	Federal Special Revenue
Department Property Development, Statewide		210,000	State Special Revenue
Upgrade Wildlife Rehabilitation Center		200,000	State Special Revenue-Donations
DEPARTMENT OF LABOR & INDUSTRY			
Maintain Job Services, Statewide		273,400	Federal Special Revenue
Preliminary Design to Expand and Renovate Job Services, Statewide		50,000	Federal Special Revenue
DEPARTMENT OF LIVESTOCK			
Diagnostic Laboratory Enhancement, Vet Research Lab, MSU		1,198,000	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Repairs & Improvements, Statewide (16)	185,000		
State Veterans' Cemetery, Phase III, Helena		75,000	State Special Revenue
		75,000	Federal Special Revenue
Federal Spending Authority		300,000	Federal Special Revenue
DEPARTMENT OF TRANSPORTATION			
Repair, Maintenance & Minor Construction Projects, Statewide		130,000	Highways State Special Revenue
Equipment Buildings, Statewide		1,370,000	Highways State Special Revenue
Highway Welcome and Farewell Signs		26,000	State Special Revenue
		174,000	Federal Special Revenue
MONTANA UNIVERSITY SYSTEM			
Upgrade Boiler #3, Montana State University (3)	519,000	346,000	Auxiliary
Electrical Upgrades, Montana Tech (6)	130,000		
Improve Steam & Condensate Lines, Montana State University (7)	450,000	300,000	Auxiliary
Replace & Improve Roofs, University System (8)	666,564		
Install Elevator, Liberal Arts Building, University of Montana (12)	280,000		
Install Elevator, Old Main, Western Montana College (13)	242,500		
Authority Only Projects, University of Montana		1,300,000	Federal, Higher Education Funds, Plant, and/or Donations
Gas Bypass at Mount Sentinel-UM		500,000	Higher Education
Campus Storage Building, Montana Tech		65,000	Higher Education Funds and/or Plant
Animal Science Machine Shop-Bozeman Agricultural Research Center		400,000	Higher Education

(2) The projects funded by LRBPF in [section 6] and this section are to be funded in priority order. The priority number is shown after the project name in parentheses. In the event there is insufficient revenue to fund all of the projects, the projects must be funded in priority order.

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(3) For purposes of obtaining cash for the construction litigation appropriation authority in [section 2(1)], the architecture and engineering division of the department of administration may transfer any excess LRBPF money from an agency as long as the transfer does not move funds required to complete any authorized agency project.

(4) (a) The appropriations funded by "state special revenue-other" for the first five park projects under the department of fish, wildlife, and parks are contingent on $2.9 million of new revenue being generated from pending legislation to provide a portion of the state match for the projects. In four of the five projects is $700,000 of funding from state special revenue-motor fuels tax. ~~These four projects are contingent on passage and approval of Senate Bill No. 257 or any other bill that increases revenue sufficient to fund the projects.~~

~~(b) The state parks road improvements project is contingent on passage and approval of Senate Bill No. 257 or any other bill that increases the motor fuels tax sufficient to fund the project.~~

~~(c)~~(b) For the purposes of using in-kind matching values, the amounts listed under state special revenue may be decreased and the amounts listed under federal special revenue may be increased by a like amount for those projects listed under the department of fish, wildlife, and parks.

~~(5) (a) The amount of $1,155,000 for the equipment buildings project for the department of transportation is contingent on passage and approval of Senate Bill No. 257 or any other bill that increases the motor fuels tax sufficient to fund the project.~~

~~(b)~~(5) The amount of state special revenue appropriated for highway welcome and farewell signs may be decreased and the federal special revenue may be increased by a like amount in the event that additional federal revenue is available."

Section 3. Section 1, Chapter 550, Laws of 1993, is amended to read:

"Section 1. **Appropriations.** (1) ~~If Senate Bill No. 285 is passed and approved, the~~ The department of health and environmental sciences is appropriated ~~$750,000~~ $700,000 of general fund money in fiscal year 1994 and ~~$750,000~~ $650,000 of general fund money in fiscal year 1995 for the health care authority.

(2) ~~If Senate Bill No. 285 is passed and approved, the~~ The state auditor's office is appropriated $178,385 of general fund money in fiscal year 1994 and $163,817 of general fund money in fiscal year 1995."

Section 4. Section 11, Chapter 623, Laws of 1993, is amended to read:

"Section 11. **Personal services funding — 1997 biennium — *special session budget reductions — local government safeguards.*** (1) Except as provided in subsection (2), current and modified funding level budget requests for the 1997 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency and the commissioner of higher education must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity for each fiscal year must be shown for each control variable

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in agency budget requests for the 1997 biennium submitted to the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the rest of the Montana university system.

(3) It is the intent of the legislature that reductions in appropriations to state agencies that are imposed by the 1993 legislature in special session in [this act] and that are intended as reductions to state agency operations may not cause a reduction in funding or cause an increase in cost to local government entities."

Section 5. **Legislative intent.** It is the intent of the legislature that the agency and program appropriation tables that are prepared by the legislative fiscal analyst, that show first level expenditures and funding for the 1995 biennium for [section 1], and that accompany the free conference committee report be adopted as legislative intent.

Section 6. **Effective date.** [This act] is effective on passage and approval.

CHAPTER NO. 31

[HB 33]

AN ACT REVISING THE LAWS RELATING TO THE MONTANA MEDICAID PROGRAM; REVISING MEDICAID MANAGED CARE; PERMITTING A CAPITATED HEALTH CARE SYSTEM; CREATING ADVISORY GROUPS; REQUIRING SYSTEMS PROPOSALS TO BE SUBMITTED TO THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 53-6-104 AND 53-6-116, MCA; REPEALING SECTION 53-6-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE FOR THE ADVISORY GROUP.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-104, MCA, is amended to read:

"53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor. (1) The department of social and rehabilitation services shall provide for professional freedom of those licensed practitioners who provide medical assistance under this part and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care, services, or prescribed drugs.

(2) Nothing in this section may be construed to prohibit the department from imposing conditions on the payment of provider services and the receipt of medical assistance, as provided for under 53-6-111 and 53-6-113 through ~~53-6-115~~ *53-6-116*."

Section 2. Section 53-6-116, MCA, is amended to read:

"53-6-116. Medicaid managed care — *capitated health eare*. (1) The department of social and rehabilitation services, in its discretion, may develop managed-care *and capitated health care* systems for medicaid recipients.

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(2) *The department may contract with one or more persons for the management of comprehensive physical health services and the management of comprehensive mental health services for medicaid recipients. The department may contract for the provision of these services by means of a fixed monetary or capitated amount per recipient.*

(3) A managed-care system is a program organized to serve the medical needs of medicaid recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through appropriate health care professionals.

~~(3)~~*(4)* The provision of medicaid services through managed-care *and capitated health care* systems is not subject to the limitations provided in 53-6-101~~, 53-6-103,~~ and 53-6-104.

(5) The proposed systems, referred to in subsection (1), must be submitted to the legislative finance committee. The legislative finance committee shall review the proposed systems at its next regularly scheduled meeting and shall provide any comments concerning the proposed systems to the department of social and rehabilitations services."

Section 3. **Mental health advisory group.** The department of social and rehabilitation services shall develop the mental health managed care plan in consultation with an advisory group. The advisory group shall consist of representatives from mental health services clients and their family members, community mental health centers, private mental health services providers, the Montana legislature, the department of social and rehahilitation services, the department of corrections and human services, the state hospital, Montana hospitals, and other appropriate groups.

Section 4. **Physical provider advisory group.** The department of social and rehabilitation services shall develop the physical care managed care plan in consultation with an advisory group. The advisory group must consist of representatives from health services clients and their family members, private physical care providers, the Montana legislature, the department of social and rehabilitation services, the department of corrections and human services, Montana hospitals, and other appropriate groups.

Section 5. **Repealer.** Section 53-6-103, MCA, is repealed.

Section 6. **Effective date.** [This act] is effective January 1, 1994.

Section 7. **Termination.** [Sections 3 and 4] terminate June 30, 1995.

Approved January 3, 1994.

CHAPTER NO. 32

[HB 56]

AN ACT CLARIFYING THAT MANDATORY APPROVAL FOR ATTENDANCE OUTSIDE A CHILD'S SCHOOL DISTRICT OF RESIDENCE IS NOT REQUIRED IF CERTAIN GEOGRAPHIC CONDITIONS ARE MET AND IF THE DISTRICT OF RESIDENCE PROVIDES TRANSPORTATION AND IS

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WITHIN THE SAME COUNTY AS THE CHILD'S SCHOOL DISTRICT OF CHOICE; AMENDING SECTION 20-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-321, MCA, is amended to read:

"**20-5-321. Attendance with mandatory approval — tuition and transportation.** (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district *and:*

(i) the resident district does not provide transportation; or

(ii) the district of residence provides transportation and is not within the same county as the child's school district of choice;

(b) the child resides in a location where, due to road or geographic conditions, it is impractical to attend the school nearest the child's residence;

(c) the child is a member of a family ~~who must~~ *that is required to* send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided *that* the child resides more than 3 miles from an elementary school in the resident district or *that* the parent ~~must~~ *is required to* move to the elementary district where the high school is located to enroll another child in high school;

(d) the child has been adjudicated by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a youth in need of supervision or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the department of family services and, as a result of the placement, is required to attend school outside of the child's district of residence; or

(e) the child is required to attend school outside of the district of residence as the result of a placement by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

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(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

(4) Unless the child is a child with disabilities who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to attendance agreements signed after [the effective date of this act] for the school fiscal year beginning July 1, 1994.

Approved January 3, 1994.

CHAPTER NO. 33

[HB 60]

AN ACT ELIMINATING THE CLEAN COAL TECHNOLOGY DEMONSTRATION FUND; ELIMINATING THE CLEAN COAL TECHNOLOGY PROGRAM; AMENDING SECTION 17-5-703, MCA; REPEALING SECTIONS 15-24-2301, 15-24-2302, 90-4-901, 90-4-902, 90-4-903, 90-4-904, 90-4-905, AND 90-4-906, MCA; SECTION 11, CHAPTER 722, LAWS OF 1991; AND SECTIONS 1, 2, 3, 4, AND 5, CHAPTER 515, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-703, MCA, is amended to read:

"**17-5-703. Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution ~~shall be~~ *is* composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax ~~shall~~ *must* be deposited;

(b) a treasure state endowment fund;

~~(c) a clean coal technology demonstration fund;~~

~~(d)~~*(c)* a coal severance tax permanent fund;

~~(e)~~*(d)* a coal severance tax income fund; and

~~(f)~~*(e)* a coal severance tax school bond contingency loan fund.

(2) The state treasurer shall determine the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next two ensuing semiannual payment dates and retain that amount in the coal severance tax bond fund.

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

~~(4) Beginning July 1, 1991, and ending June 30, 1997, from any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of any amount that is required to be transferred by subsection (3), the department of revenue shall, upon request from the department of natural resources and conservation, transfer an amount up to $5 million per fiscal year to the clean coal technology demonstration fund.~~

~~(5)~~*(4)* Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall transfer to the treasure state endowment fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to ~~subsections~~ *subsection* (3) ~~and (4)~~.

~~(6)~~*(5)* (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall from time to time transfer to the coal severance tax permanent fund 50% of the principal transferred from the coal severance tax bond fund to the treasure state endowment fund in the preceding year.

(b) The state treasurer shall annually transfer to the treasure state endowment special revenue account the amount of interest earnings required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Interest earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund."

Section 2. **Repealer.** Sections 15-24-2301, 15-24-2302, 90-4-901, 90-4-902, 90-4-903, 90-4-904, 90-4-905, and 90-4-906, MCA; section 11, Chapter 722, Laws of 1991; and sections 1, 2, 3, 4, and 5, Chapter 515, Laws of 1993, are repealed.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved January 3, 1994.

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CHAPTER NO. 34

[HB 64]

AN ACT INCREASING FROM 2 MILLS TO 3 MILLS THE MAXIMUM AMOUNT THAT A BOARD OF TRUSTEES OF A UNIFIED K-12 SCHOOL DISTRICT MAY LEVY FOR ADULT EDUCATION; AMENDING SECTION 20-7-705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-705, MCA, is amended to read:

"**20-7-705. Adult education fund.** (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district that is not unified with an elementary district ~~or of~~ *may authorize a levy of not more than 2 mills on the district and* a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than ~~2~~ *3* mills on the district, for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by the levy. The trustees shall obtain the approval of the superintendent of public instruction before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for the approval.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of tbis title for a budgeted fund.

(5) When a tax levy for an adult education program that has been approved by the superintendent of public instruction is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the fourth Monday of August and a levy on the district must be made by the county commissioners in accordance with 20-9-142."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved January 3, 1994.

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CHAPTER NO. 35

[SB 1]

AN ACT ALLOWING SCHOOL DISTRICTS TO USE ANTICIPATED AMOUNTS RATHER THAN ACTUAL AMOUNTS TO DETERMINE REVENUE AVAILABLE FOR REDUCTION OF PROPERTY TAXES IN SUPPORT OF DISTRICT GENERAL FUND BUDGETS; AMENDING SECTIONS 20-9-104 AND 20-9-141, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-104, MCA, is amended to read:

"**20-9-104. General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not he used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353, except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, balance to the impact aid fund established in 20-9-514.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b)~~(iii)~~.

(5) For fiscal year 1994 and subsequent fiscal years, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than one or more of the following:

(a) the unused balance of any amount received:

(i) in settlement of tax payments protested in a prior school fiscal year;

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

(b) any amount received as a general bonus payment under 20-6-401.

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(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less."

Section 2. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) general fund balance reappropriated, as established under the provisions of 20-9-104; ~~and~~

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following ~~sources~~:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323;

(B) revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(C) net proceeds taxes for new production, as defined in 15-23-601;

~~(D) revenue from local government severance taxes as provided in 15-36-112;~~

~~(E) revenue from coal gross proceeds under 15-23-703;~~

~~(F)~~*(D)* interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

~~(G)~~*(E)* revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

~~(H)~~*(F)* any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid; *and*

(iii) (A) pursuant to subsection (4), anticipated revenue from local government severance taxes as provided in 15-36-112; and

(B) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.

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(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing tbe amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from local government severance taxes, as provided in 15-36-112, and from revenue from coal gross proceeds under 15-23-703."

Section 3. **Effective date — applicability.** [This act] is effective July 1, 1994, and applies to school district general fund budgets for the school fiscal year beginning July 1, 1994.

Approved January 3, 1994.

CHAPTER NO. 36

[SB 46]

AN ACT ELIMINATING THE VOLUNTARY CONSOLIDATION AND ANNEXATION INCENTIVE PLAN FOR SCHOOL DISTRICTS; ELIMINATING STATE FINANCIAL ASSISTANCE THROUGH GENERAL BONUS PAYMENTS AND TRANSPORTATION BONUS PAYMENTS TO SCHOOL DISTRICTS THAT CONSOLIDATE OR ANNEX; AMENDING SECTIONS 17-7-502, 20-6-703, AND 20-9-104, MCA; REPEALING SECTIONS 20-6-401, 20-6-402, 20-6-403, 20-6-404, 20-6-405, 20-6-406, 20-6-407, AND 20-6-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. **Repealer.** Sections 20-6-401, 20-6-402, 20-6-403, 20-6-404, 20-6-405, 20-6-406, 20-6-407, and 20-6-408, MCA, are repealed.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency witbout the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; ~~20-6-406;~~ 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-2-707; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the honds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"*

Section 3. Section 20-6-703, MCA, is amended to read:

"20-6-703. Transitions after formation of K-12 school district. (1) When an attachment order for a K-12 school district becomes effective on July 1 under the provisions of 20-6-701:

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(a) the board of county commissioners shall execute all necessary and appropriate deeds, bills of sale, or other instruments for the conveyance of title to all real and personal property of the elementary district to the high school district;

(b) the trustees of the elementary district shall entrust the minutes of the board of trustees, the elementary district documents, and other records to the high school district to which it is attached; and

(c) the county treasurer shall transfer all end-of-the-year warrants and fund balances of the attached elementary district to the similar funds established for the K-12 school district in the high school district.

(2) All taxes levied by and revenue due from a previous school fiscal year to an elementary district attached to a high school district must be payahle to the appropriate fund of the high school district.

(3) The previous year's general fund budget amounts for the elementary district and the high school district that form a K-12 school district must be combined to determine tbe budget limitation for the ensuing school fiscal year pursuant to 20-9-308.

~~(4) An elementary district and a high school district that form a K-12 school district under the provisions of 20-6-701 may not be considered an enlarged district for the purpose of bonus payments under 20-6-401 through 20-6-408.~~"

Section 4. Section 20-9-104, MCA, is amended to read:

"**20-9-104. General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal ye ır. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permittod by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353, except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, halance to the impact aid fund established in 20-9-514.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b)(iii).

(5) For fiscal year 1994 and subsequent fiscal years, the limitation of suhsection (1) does not apply when the amount in excess of the limitation is equal to or less than ~~ene or more of the following:~~

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~~(a)~~ the unused balance of any amount received:

~~(i)~~*(a)* in settlement of tax payments protested in a prior school fiscal year;

~~(ii)~~*(b)* in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

~~(iii)~~*(c)* in delinquent taxes from a prior school fiscal year~~; or~~

~~(b) any amount received as a general bonus payment under 20-6-401.~~

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less."

Section 5. **Saving clause.** [This act] does not affect the rights and duties that matured before [the effective date of this act] and does not affect the right to payment of any school district that qualified for bonus payments under the provisions of 20-6-401 through 20-6-408 before [the effective date of this act].

Section 6. **Effective date.** [This act] is effective July 1, 1994.

Approved January 3, 1994.

CHAPTER NO. 37

[HB 21]

AN ACT CLARIFYING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION TO ANNUALLY PREPARE A STATE INDIRECT COST RECOVERY PLAN FOR CERTAIN STATE AGENCIES; REQUIRING THAT STATE AGENCIES PAY THE INDIRECT COSTS IN A TIMELY MANNER; ELIMINATING THE REQUIREMENT THAT THE BOARD OF INVESTMENTS DEDUCT FROM INVESTMENT EARNINGS CERTAIN PROGRAM COSTS INCURRED BY AN AGENCY; AMENDING SECTIONS 17-3-111 AND 17-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-111, MCA, is amended to read:

"17-3-111. **Indirect cost rates — *allocation.*** *(1)* Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

(2) Indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, must be deposited in the general fund."

Section 2. Section 17-6-201, MCA, is amended to read:

"17-6-201. **Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

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(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, ~~provided~~ *except* that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporato capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Except as provided in this chapter, another agency may not invest state funds, unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

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(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.

~~(9) (a) The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection (9)(b), the cost to an agency of providing services to a program funded through an account in the state special revenue fund, as defined in 17-2-102, must be deducted by the board from the account's investment earnings according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.~~

~~(b) A deduction for program costs, as provided in subsection (9)(a), may not be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202.~~"

Section 3. **State indirect cost recovery plan.** (1) The department shall annually prepare a state indirect cost recovery plan. The state indirect cost recovery plan must provide that the general government program costs that are indirectly incurred by agencies and that are funded by the general fund be allocated among the agencies served by those programs.

(2) Agencies required to pay costs under the state indirect cost recovery plan shall make payments in four equal installments, due no later than October 1, January 1, March 1, and June 1 of each fiscal year, by depositing the payments into the general fund.

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Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 17, chapter 1, and the provisions of Title 17, chapter 1, apply to [section 3].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved January 5, 1994.

CHAPTER NO. 38

[HB 22]

AN ACT REDUCING THE BASIC ENTITLEMENT AND THE PER-ANB ENTITLEMENT FOR SCHOOL DISTRICT FUNDING BY 4.5 PERCENT; REQUIRING VOTER APPROVAL FOR THE BASE BUDGET PORTION OF A SCHOOL DISTRICT GENERAL FUND THAT EXCEEDS THE MANDATORY GROWTH LEVELS; REQUIRING VOTER APPROVAL FOR THE OVER-BASE BUDGET OF A SCHOOL DISTRICT IF THE BUDGET EXCEEDS THE PREVIOUS YEAR'S GENERAL FUND BUDGET OR THE PREVIOUS YEAR'S GENERAL FUND BUDGET PER-ANB; LIMITING THE OVER-BASE BUDGET OF A DISTRICT TO 104 PERCENT OF THE PREVIOUS YEAR'S GENERAL FUND BUDGET OR 104 PERCENT OF THE PREVIOUS YEAR'S GENERAL FUND BUDGET PER-ANB; REQUIRING THE TRUSTEES OF A SCHOOL DISTRICT TO DEDUCT 4.5 PERCENT FROM THE GENERAL FUND BUDGET FOR THE SCHOOL FISCAL YEAR ENDING JUNE 30, 1994, FOR THE PURPOSES OF BUDGETING FOR THE SCHOOL FISCAL YEAR ENDING JUNE 30, 1995, IF THE DEDUCTION WILL NOT CAUSE A SCHOOL DISTRICT BUDGET TO FALL BELOW THE BASE BUDGET; AMENDING SECTIONS 20-9-306 AND 20-9-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, it is the intent of the Legislature to acknowledge and to support the constitutional role of the boards of trustees to supervise and control the public school districts of the state. However, it is also the intent of the Legislature to request that each board of trustees of a school district carefully review the district's expenditures for school administration, extracurricular activities, extracurricular athletics, and special education. The Legislature further requests that, as a result of this investigation, the boards of trustees consider and pursue the possibilities of consolidating school districts.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-306, MCA, is amended to read:

"**20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district; and

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(b) guaranteed tax base aid for an eligible district for any amount up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$200,000~~ *$191,000* for each high school district; and

(b) ~~$18,000~~ *$17,190* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~$18,000~~ *$17,190* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$200,000~~ *$191,000* times the ratio of the ANB for grades 7 and 8 to the tetal ANB of kindergarten through grade 8.

(7) "Direct state aid" means 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$4,900~~ *$4,680* for the first ANB is decreased at the rate of 50

cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,500~~ *$3,343* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,500~~ *$3,343* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$4,900~~ *$4,680* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 2. Section 20-9-308, MCA, is amended to read:

"20-9-308. BASE budgets and maximum general fund budgets. (1) ~~For the school fiscal year beginning on July 1, 1993, the~~ *The* trustees of a district shall adopt a general fund budget that:

(a) except as provided in subsection (2), is at least equal to the BASE budget established for the district; or

(b) except as provided in *[section 3] and* subsection (4) *of this section*, does not exceed the maximum general fund budget established for the district.

(2) (a) If the BASE budget for a district for the school fiscal year ~~beginning on July 1, 1993,~~ is greater than the general fund budget of the district for the prior school fiscal year, the trustees of the district:

(i) shall increase the general fund budget by at least:

~~(i) may increase the general fund budget for the district by 4% of the previous year's general fund budget or by 4% of the previous year's general fund budget per ANB multiplied by the current year's ANB for budgeting purposes; but~~

~~(ii) may not adopt a general fund budget that reflects less than the following general fund budget growth amounts for the appropriate school fiscal year:~~

~~(A) 20% of the range between the district general fund budget for the school fiscal year ending June 30, 1993, and the BASE budget for the district for the school fiscal year beginning July 1, 1993;~~

~~(B)~~*(A)* 25% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for tbe district for the school fiscal year beginning July 1, 1994;

~~(C)~~*(B)* 33.3% of the range between the district general fund budget for the school fiscal year ending June 30, 1995, and tbe BASE budget for the district for the school fiscal year beginning July 1, 1995;

~~(D)~~*(C)* 50% of the range between the district general fund budget for the school fiscal year ending June 30, 1996, and tbe BASE budget for the district for the school fiscal year beginning July 1, 1996; or

~~(E)~~*(D)* the remainder of the range between the district general fund budget for the school fiscal year ending June 30, 1997, and the BASE budget for the district for the school fiscal year beginning July 1, 1997~~.~~*;*

(ii) may increase the general fund budget beyond the amount in subsection (2)(a)(i) but not by more than 4% of the previous year's general fund budget or by more than 4% of the previous year's general fund per-ANB multiplied by the current year's ANB for budgeting purposes pursuant to subsection (2)(b).

(b) The trustees shall submit a proposition on any amount exceeding the limitations in subsection (2)(a)(i) to the electors of the district, as provided in 20-9-353.

~~(b) (i) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (2)(a).~~

~~(ii) Except for the school fiscal year beginning July 1, 1993, whenever the trustees of a district adopt a general fund budget that exceeds one of the limitations in subsection (2)(a) but does not exceed the BASE budget for the district, the trustees shall submit a proposition on the amount that exceeds the limitation to the electors of the district, as provided in 20-9-353.~~

~~(c) Nothing in this section is intended to require a district to budget in excess of its BASE budget.~~

~~(3) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall:~~

~~(a) adopt a resolution stating the reasons and purposes for exceeding the BASE budget amount if the general fund budget adopted under this subsection (3) does not exceed the greater of:~~

~~(i) 104% of the previous year's general fund budget; or~~

~~(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; or~~

~~(b) except for the school fiscal year beginning July 1, 1993, submit a proposition on any amount of the over-BASE budget that exceeds one of the limitations in subsection (3)(a) to the electors of the district, as provided in 20-9-353.~~

~~(c) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (3)(a).~~

(3) (a) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353, for any budget amount that exceeds the previous year's general fund budget amount or the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes.

(b) A general fund budget adopted under this subsection (3) may not exceed the greater of:

(i) 104% of the previous year's general fund budget as adjusted by the provisions of [section 3]; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes as adjusted by the provisions of [section 3].

(4) (a) If the maximum general fund budget for a district for an ensuing school fiscal year is less than the general fund budget for the district for the current school fiscal year, *as adjusted by the provisions of [section 3],* the trustees of the district may not adopt a general fund budget for the ensuing school fiscal year that is greater than the district's general fund budget for the current school fiscal year.

(b) Except for the school fiscal ~~years~~ *year* beginning ~~July 1, 1993, and~~ July 1, 1994, the trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(5) Whenever the trustees of a district adopt a general fund budget that does not exceed the BASE budget for the district, the trustees shall finance this amount with the following sources of revenue:

(a) state equalization aid as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

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(6) The over-BASE budget amount of a district must be financed hy a levy on the taxable value of all property within the district or other revenue available to the district as provided in 20-9-141.

[(7) For the purpose of this section, the general fund budget or general fund per-ANB budget for the school fiscal year ending June 30, 1993, is the general fund budget funded by any stato, local, and federal revenue, excluding Public Law 81-874 receipts received in the school fiscal year ending June 30, 1993. Before excluding any Public Law 81-874 funding, a district may increase the district general fund budget for the school fiscal year ending June 30, 1993, by the allowable increases in subsections (2) and (3).]"

Section 3. **Budget reduction — exceptions.** (1) Except as provided in subsection (2), for calculating and adopting a general fund budget for the school fiscal year ending June 30, 1995, as provided in 20-9-306 and 20-9-308 for that school year, the trustees of a district shall deduct 4.5% from the general fund budget for the school fiscal year ending June 30, 1994.

(2) The deduction required under subsection (1):

(a) does not apply to a school district with a general fund budget that is below the BASE budget for the school fiscal year ending June 30, 1994; and

(b) may not cause a general fund budget of a school district to fall below the BASE budget for the school fiscal year ending June 30, 1994.

Section 4. **Effective date — applicability.** [This act] is effective on passage and approval and applies to budgets for the school year beginning July 1, 1994.

Approved January 4, 1994.

CHAPTER NO. 39

[HB 89]

AN ACT ALLOCATING TO THE STATE GENERAL FUND CERTAIN REVENUE PREVIOUSLY DEPOSITED IN THE TRAFFIC EDUCATION ACCOUNT; REDUCING STATE TRAFFIC EDUCATION REIMBURSEMENTS TO SCHOOL DISTRICTS; REVISING DUTIES OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION RELATING TO TRAFFIC EDUCATION; AMENDING SECTIONS 3-10-601, 20-7-504, 20-7-506, 20-7-507, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-601, MCA, is amended to read:

"3-10-601. **Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county ~~wherein he~~ *in which the justice of the peace* holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by

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the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer; and

(b) 50% to the county general fund.

(4) The state treasurer shall distribute money received under subsection (3) as follows:

(a) ~~27.88%~~ *44.81%* to the state general fund;

(b) 9.09% to the fish and game account in the state special revenue fund;

(c) 11.76% to the state highway account in the state special revenue fund;

(d) ~~33.86%~~ *16.93%* to the traffic education account in the state special revenue fund;

(e) 0.57% to the department of livestock account in the state special revenue fund;

(f) 15.9% to the crime victims compensation account in the state special revenue fund; and

(g) 0.94% to the department of family services special revenue account for the battered spouses and domestic violence grant program."

Section 2. Section 61-5-121, MCA, is amended to read:

"**61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial driver's licenses provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

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(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the general fund.

(d) The amount of *8.75%* ~~17.5%~~ of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of ~~53.75%~~ *62.5%* of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a)~~, the state traffic education account,~~ and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is te be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, ~~the state traffic education account,~~ and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

Section 3. Section 20-7-504, MCA, is amended to read:

"20-7-504. State traffic education account — proceeds earmarked for the account. (1) There is a traffic education account in the treasury of the state of Montana. ~~There must be paid into this account a portion of the fines and forfeitures collected in any court except a justice's court from persons apprehended or arrested by highway patrol officers or department of transportation peace officers for any violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:~~

~~(a) if a fine is imposed, 25% of the fine imposed;~~

~~(b) if multiple offenses are involved, 25% of the total sum of all fines imposed;~~

~~(c) if a fine is suspended, in whole or in part, 25% of the fine actually paid; and~~

~~(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 25% of the forfeited bail.~~

~~(2) A portion of all money from the collection of fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses must be contributed to the traffic education account as provided in 61-5-121.~~

~~(3)~~*(2) Money paid into the account pursuant to 3-10-601 must be distributed to approved traffic education courses as provided in 20-7-506.*

(3) Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 20-7-513 and 20-7-514 and must be available to support only approved motorcycle safety training courses, appropriate motorcycle safety instructor training, and other related motorcycle safety training activities."

Section 4. Section 20-7-506, MCA, is amended to read:

"20-7-506. **Annual allocation and distribution of traffic education account proceeds ~~—allocation for state administration.~~** ~~(1)~~ The superintendent of public instruction shall annually order the distribution of all moneys in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education moneys ~~shall~~ *must* be based on the distribution policy promulgated by the superintendent of public instruction, provided that the reimbursements to districts ~~shall~~ *must* be based upon the number of pupils who, in a given school fiscal year, complete an approved traffic education course, including both the classroom instruction and behind-the-wheel driving.

~~(2) Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include:~~

~~(a) development, printing, and distribution of essential materials;~~

~~(b) preparation of teachers of traffic education;~~

~~(c) state supervision of the program; and~~

~~(d) any and all other activities deemed necessary by the superintendent of public instruction.~~"

Section 5. Section 20-7-507, MCA, is amended to read:

"20-7-507. **District traffic education fund.** The trustees of any district maintaining a traffic education course shall establish a special nonbudgeted fund with the county treasurer for traffic education. ~~The state traffic education reimbursement and all~~ *All* nontax receipts for traffic education ~~shall~~ *must* be

deposited in the district's traffic education fund. The expenditure of the ~~moneys~~ *money* deposited in the district's traffic education fund ~~shall~~ *is* not ~~be~~ subject to the budgeting provisions of this title, and the ~~moneys~~ *money* may he expended for traffic education."

Section 6. **Effective date.** [This act] is effective July 1, 1994.

Approved January 4, 1994.

CHAPTER NO. 40

[SB 43]

AN ACT REVISING THE ALLOCATION OF THE DISTRIBUTOR'S GASOLINE LICENSE TAX; REDUCING THE ALLOCATION TO THE SNOWMOBILE ACCOUNT FROM 1/2 OF 1 PERCENT TO 23/64 OF 1 PERCENT; AMENDING SECTION 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-201, MCA, is amended to read:

"60-3-201. **Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section. Tbe portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. Subject to that provision:

(a) 9/10 of 1% of all money must be deposited in the state park account;

(b) ~~1/2~~ *23/64* of 1% of all money must be deposited in a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% of all money must be deposited in an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% of all money must be deposited in the aeronautics revenue fund of the department of transportation under the provisions of 67-1-301.

(e) The remainder of the money must be used:

(i) by the department of transportation on the highways in this state selected and designated by the commission;

(ii) for collection of tbe license taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

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(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety, and 10% of the amount deposited in the snowmobile account must be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than ~~1/2~~ *23/64* of 1% is used for propelling snowmobiles on public lands of this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must he used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, not less than 1/25 of 1% is used for propelling aircraft in this state."

Section 2. **Effective date.** [This act] is effective July 1, 1994.

Approved January 10, 1994.

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RESOLUTIONS

Passed by the

FIFTY-THIRD LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
November 29, 1993, through December 18, 1993

COMPILED BY MONTANA LEGISLATIVE COUNCIL

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SENATE JOINT RESOLUTIONS

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES TO EXAMINE INEFFICIENCIES IN THE PROVISION OF SERVICES TO THE ELDERLY BY STATE GOVERNMENT AGENCIES AND TO MAKE RECOMMENDATIONS TO THE 54TH LEGISLATURE CONCERNING POSSIBLE LEGISLATION TO ADDRESS AND ALLEVIATE SIMILAR FUTURE PROBLEMS.

WHEREAS, the Legislature has placed a high priority on the state support of and preservation of the family, including children and the elderly; and

WHEREAS, the Joint Oversight Committee on Children and Families has been charged with the duty to examine public programs and services for children and families for the purpose of identifying inefficiencies and unmet needs within those programs; and

WHEREAS, reported inefficiencies in the handling of adult protective services have generally called into question the humane treatment of Montana's elderly and the adequacy and appropriateness of government services provided to the elderly; and

WHEREAS, it is within the scope of duties assigned to the Joint Oversight Committee on Children and Families to examine these kinds of inefficiencies and make recommendations to future Legislatures.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Joint Oversight Committee on Children and Families examine any inefficiencies in the handling of adult protective services by agencies charged with the provision of those services.

BE IT FURTHER RESOLVED that if inefficiencies are found, the Committee report those findings to the 54th Legislature, with recommendations for legislation necessary to alleviate the problems and prevent future breakdown in the provision of government services to the elderly.

Passed December 18, 1993.

SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF DIRECTORS OF THE MONTANA STATE COMPENSATION INSURANCE FUND TO MEET WITH REPRESENTATIVES OF THE BUSINESS COMMUNITY, PRIOR TO IMPLEMENTING A SYSTEM OF ADVANCE PREMIUM PAYMENT ON JUNE 1, 1994, IN ORDER TO DEVELOP RECOMMENDATIONS TO CAUSE THE LEAST DISRUPTION TO AND ECONOMIC HARD-

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SHIP ON THOSE BUSINESSES ADVERSELY AFFECTED BY THE NEW PREMIUM SYSTEM.

WHEREAS, on June 1, 1994, the Montana state compensation insurance fund intends to implement a system of advance premium payment; and

WHEREAS, the system of advance premium payment will require businesses to pay past premiums by May 1, 1994, and August 2, 1994, and advance premiums beginning June 1, 1994, thereby creating a financial crisis for some businesses and an adverse effect on those businesses.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That in early January 1994, the Board of Directors of the Montana state compensation insurance fund coordinate a meeting or meetings with representatives of the business community for the purpose of developing and implementing recommendations to help those businesses adversely affected by the system of advance premium payment so as to cause the least disruption to and economic hardship on those businesses.

Passed December 17, 1993.

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STRONGLY URGING THE UNITED STATES CONGRESS TO REFRAIN FROM IMPOSING NEW STANDARDS AND RESTRICTIONS ON ABOVEGROUND STORAGE TANKS.

WHEREAS, there is proposed legislation in the United States Congress to place additional standards and restrictions, to be implemented by the states, on aboveground storage tanks; and

WHEREAS, the enactment of federal requirements that must be implemented by the states results in an additional burden for financially troubled states; and

WHEREAS, the State of Montana is already in the process of implementing complex requirements for regulation and removal of underground storage tanks; and

WHEREAS, the regulation and removal of underground storage tanks have been costly and frustrating to Montana citizens, necessitating extraordinary financial measures to meet the requirements for storage tanks; and

WHEREAS, additional federal requirements for aboveground storage tanks would impair the state's ability to address the environmental hazards of storage tanks in an economical and efficient manner; and

WHEREAS, the State of Montana already has a comprehensive uniform fire code that regulates the siting and construction of aboveground storage tanks.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Congress be strongly urged to refrain from imposing on aboveground storage tanks new standards and restrictions that must be implemented by the states.

(2) That copies of this resolution be sent by the Secretary of State to the President of the United States, the United States Congress, and the Montana Congressional Delegation.

Passed December 18, 1993.

SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING DEB GREENOUGH FOR WINNING THE 1993 WORLD BAREBACK BRONC RIDING CHAMPIONSHIP AND DAN MORTENSEN FOR WINNING THE 1993 WORLD SADDLE BRONC RIDING CHAMPIONSHIP.

WHEREAS, Montana has a long and illustrious cowboy heritage, the most recent embodiment of which are Deb Greenough and Dan Mortensen; and

WHEREAS, the National Finals Rodeo Championships were held in Las Vegas, Nevada, December 3 through December 12, 1993; and

WHEREAS, Deb Greenough from Red Lodge, Montana, won the 1993 Professional Rodeo Cowboys Association's World Bareback Bronc Riding Championship; and

WHEREAS, Dan Mortensen from Manhattan, Montana, won the 1993 Professional Rodeo Cowboys Association's World Saddle Bronc Riding Championship; and

WHEREAS, a Montanan has not won a world rodeo championship since Three Forks bareback star Larry Peahody won the big buckle for the 1984 World Bareback Bronc Riding Championship; and

WHEREAS, Montana has not had two world champions in the same season since Benny Reynolds of Melrose (all-around) and Ronnie Rossen of Broadus (bull riding) won titles in 1961; and

WHEREAS, Deb Greenough and Dan Mortensen are true native sons, born, raised, and schooled in Montana; and

WHEREAS, Dan Mortensen was raised in Lockwood and attended Senior High in Billings; and

WHEREAS, Deb Greenough is a native of Fromberg in Carbon County and is a member of one of Montana's most famous rodeo families, which includes other world champions and world-class riders, including Turk Greenough, Bill Greenough, Alice Greenough, and Marge Greenough; and

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WHEREAS, all Montanans are proud of Deb Greenough's and Dan Mortensen's determination and grit in advancing through the ranks of youth rodeos to National Intercollegiate Rodeo Association competition and on to national rankings in the Professional Rodeo Cowboys Association circuits; and

WHEREAS, Deb Greenough and Dan Mortensen have consistently moved up in the Professional Rodeo Cowboys Association's national rankings; and

WHEREAS, Deb Greenough and Dan Mortensen have continuously exhibited the professional and personal qualities that are an example and inspiration to all Montanans; and

WHEREAS, Montanans have been treated to many thrilling moments by Deb Greenough and Dan Mortensen; and

WHEREAS, in winning the 1993 World Bareback Bronc Riding Championship and the 1993 World Saddle Bronc Riding Championship at the Professional Rodeo Cowboys Association championship finals competition on December 12, 1993, Deb Greenough and Dan Mortensen have brought recognition and honor to themselves, to their families, and to Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature honor and congratulate Deb Greenough and Dan Mortensen on their world championships and urge them to continue their efforts as ambassadors of Montana.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the Secretary of State to Deb Greenough and Dan Mortensen.

Passed December 18, 1993.

HOUSE JOINT RESOLUTIONS

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF REVENUE TO INVESTIGATE AND CONDUCT A STUDY OF RESIDENCY COMPLIANCE FOR FISH AND GAME LICENSING PURPOSES AND STATE INCOME TAX PURPOSES; DIRECTING THE DEPARTMENTS TO IMPLEMENT CHANGES WHENEVER POSSIBLE TO REDUCE UNDERREPORTING OF INCOME AND TO REDUCE RESIDENCY FRAUD; AND REQUESTING THE DEPARTMENTS TO REPORT TO THE 54TH LEGISLATURE ON THE RESULTS OF THE STUDY AND ON THE NEED FOR ADDITIONAL LEGISLATION TO ADDRESS THE PROBLEMS OF UNDERREPORTING OF INCOME AND RESIDENCY FRAUD.

WHEREAS, nonresidents who claim resident status for purposes of purchasing Montana fish and game licenses perpetrate a fraud upon the people

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of Montana by failing to purchase the proper licenses and by failing to pay their share of income taxes if required to do so, resulting in an inequitable treatment of the hunting and fishing public and of Montana taxpayers; and

WHEREAS, residents who benefit from the income generated by illegally licensed hunters and who do not pay Montana taxes on that income, by failing to report land lease income, trespass fee income, outfitter income, game farm income, shooting preserve income, and trophy fees, also perpetrate a fraud upon the people of Montana, resulting in an inequitable tax burden on residents who do pay their fair share of taxes; and

WHEREAS, concentrated interdepartmental coordination of residency compliance efforts between the Department of Fish, Wildlife, and Parks and the Department of Revenue could address these inequities, thus drastically reducing the incentive for residency fraud by enhancing enforcement capabilities of both agencies and potentially generating significant revenue for the state from enforcement of both fish and game laws and income tax laws; and

WHEREAS, a study by the Departments could disclose the extent of the problems of underreporting of income and residency fraud, provide the means to refine and further implement the information-sharing network between the agencies, indicate ways that enforcement could be enhanced under present law, give the agencies the information that they need for requesting additional implementing legislation to address the problems of underreporting of income and residency fraud, and give an indication of potential revenue that could be generated through greater enforcement.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Fish, Wildlife, and Parks and the Department of Revenue be directed to investigate and conduct a study of underreporting of income and residency compliance for fish and game licensing purposes and state income tax purposes.

BE IT FURTHER RESOLVED, that the Departments analyze residency data and computer bases and, when possible, implement the present information-sharing network to enhance enforcement efforts under current law.

BE IT FURTHER RESOLVED, that the Departments report to the 54th Legislature on or before December 10, 1994, the results of the study with regard to the extent of the problems of underreporting of income and residency fraud, the need for any additional implementing legislation to address those problems, and an indication of potential revenue that could be generated through greater enforcement.

BE IT FURTHER RESOLVED, that the Departments use existing personnel and presently appropriated resources to cover the costs of conducting the study.

Passed December 15, 1993.

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HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO STUDY THE FEASIBILITY OF OPERATING A PROGRAM TO PREPARE RECIPIENTS OF PUBLIC ASSISTANCE FOR EMPLOYMENT IN STATE-FUNDED PROGRAMS THAT PROVIDE SERVICES TO PEOPLE WITH DISABILITIES AND TO REPORT ITS FINDINGS TO THE 54TH LEGISLATURE.

WHEREAS, a person with developmental disabilities should be given every opportunity to live in the least restrictive setting possible while receiving appropriate services from personnel who have the training and skills necessary to address each disabled individual's unique needs; and

WHEREAS, there may be individuals in the group of low-income people receiving public assistance benefits who would be capable of employment in programs that provide services to Montanans with developmental disabilities; and

WHEREAS, Michigan bas developed a small pilot program of training, support, and supervision that has assisted low-income families and families on public assistance in becoming foster families for a small number of children with developmental disabilities, and that program should be studied for its advantages and disadvantages; and

WHEREAS, there may be current programs within the Department of Social and Rehabilitation Services that would be able to accomplish similar objectives through enabling legislation or funding; and

WHEREAS, there may be cost savings to the state by assisting the transition of individuals from public assistance to employment and independence; and

WHEREAS, Montana's goal of appropriate care for persons with developmental disabilities and meaningful employment for individuals receiving public assistance may be addressed through a complementary program involving both populations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Social and Rehabilitation Services conduct a study of the Michigan Living in Family Environments (L.I.F.E.) Program in order to determine if a similar program in Montana would be feasible and in the best interest of people with developmental disabilities and individuals receiving public assistance and if a similar program would be cost-effective for the State of Montana.

BE IT FURTHER RESOLVED, that the study include alternatives to assist current programs in achieving the same goals as those of the L.I.F.E. program, tailored to use the resources available in Montana and to meet the needs of our citizens with developmental disabilities.

BE IT FURTHER RESOLVED, that the Department of Social and Rehabilitation Services study the public assistance recipient population and any

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other appropriate population that could be suitably trained and supported in meeting the needs of persons with developmental disabilities, while assisting the recipient of public assistance in achieving employment and a greater level of independence and functionality in society through training, support, financial compensation, and medical assistance.

BE IT FURTHER RESOLVED, that the written findings and recommendations; the identification of possible program options; the cost-effectiveness and potential savings, if any; and the draft legislation necessary to implement the recommendations be presented to the 54th Legislature on or before November 15, 1994.

Passed December 15, 1993.

SENATE RESOLUTIONS

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE OF HONORABLE C. BRUCE LOBLE AS CHIEF WATER JUDGE.

WHEREAS, the Chief Justice of the Montana Supreme Court has made the nomination, below designated, pursuant to an Order of the Court, dated June 22, 1993; and

WHEREAS, the appointment has been submitted to the Senate by the Governor, to wit:

C. Bruce Loble as Chief Water Judge for the State of Montana, for a 4-year term of office commencing July 1, 1993, and ending June 30, 1997.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the November 1993 Special Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Passed December 10, 1993.

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION

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AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE MICHAEL OLEN MCCARTER AS WORKERS' COMPENSATION JUDGE.

WHEREAS, the Governor of the State of Montana has made the nomination, hulow designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

Michael Olen McCarter as Workers' Compensation Judge for the State of Montana, for a 6-year term of office commencing September 7, 1993, and ending September 6, 1999.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the November 1993 Special Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Passed December 10, 1993.

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE FIRST SPECIAL SESSION OF THE FIFTY-THIRD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED NOVEMBER 29, 1993, TO THE SENATE PURSUANT TO SECTION 5-5-303, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have heen suhmitted to the Senate by the Governor:

(1) As a member of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Mr. Robert M. Hector, Billings, Montana, for a term ending January 1, 1995.

(2) As members of the Montana Arts Council, in accordance with section 2-15-1513, MCA:

Ms. Ann Cogswell, Great Falls, Montana, for a term ending February 1, 1998.

Ms. Diane M. Davies, Polson, Montana, for a term ending February 1, 1998.

Mr. George Horse Capture, Hays, Montana, for a term ending February 1, 1998.

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Mr. Richard Halmes, Great Falls, Montana, for a term ending February 1, 1998.

Ms. Sody Jones, Billings, Montana, for a term ending February 1, 1998.

(3) As members of the State Banking Board, in accordance with section 2-15-1803, MCA:

Mr. Loren Tucker, Virginia City, Montana, for a term ending July 1, 1996.

Mr. Robert T. Baxter, Thompson Falls, Montana, for a term ending July 1, 1996.

(4) As members of the Board of Barbers, in accordance with section 2-15-1856, MCA:

Ms. Adeline Fisher, Butte, Montana, appointed for a term ending July 1, 1996.

Mr. Max Demars, Big Timber, Montana, for a term ending July 1, 1995.

Mr. Rodney L. Grover, Helena, Montana, for a term ending July 1, 1996.

(5) As members of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1863, MCA:

Ms. Eileen Flynn, Townsend, Montana, for a term ending April 16, 1995.

Ms. JoAnn Schneider, Clancy, Montana, for a term ending April 16, 1995.

Dr. John Pullman, Butte, Montana, for a term ending April 16, 1997.

Ms. Loraine Kay Crull, Missoula, Montana, for a term ending April 16, 1997.

Ms. Sonja Bennett, Billings, Montana, for a term ending April 16, 1997.

(6) As members of the Board of Cosmetologists, in accordance with section 2-15-1857, MCA:

Ms. Geraldine Sorenson, Billings, Montana, for a term ending July 1, 1997.

Ms. Karen Underwood, Billings, Montana, for a term ending July 1, 1997.

Ms. Lorilie Holyk, Polson, Montana, for a term ending July 1, 1997.

Ms. Lynn Campbell, Deer Lodge, Montana, for a term ending July 1, 1997.

(7) As members of the Board of County Printing, in accordance with section 2-15-1811, MCA:

Mr. Curtis Starr, Malta, Montana, for a term ending April 1, 1995.

Ms. Fern Hart, Missoula, Montana, for a term ending April 1, 1995.

Ms. Nancy Clark, Ryegate, Montana, for a term ending April 1, 1995.

Mr. Roy Aafedt, Great Falls, Montana, for a term ending April 1, 1995.

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(8) As a member of the State Electrical Board, in accordance with section 2-15-1874, MCA:

Mr. Todd Stoddard, Dillon, Montana, for a term ending July 1, 1996.

(9) As a member of the Board of Funeral Service, in accordance with section 2-15-1853, MCA:

Mr. Douglas D. Lowry, Big Timber, Montana, for a term ending July 1, 1998.

(10) As members of the Board of Trustees of the State Historical Society, in accordance with section 2-15-1512, MCA:

Ms. Anne Hibbard, Helena, Montana, for a term ending July 1, 1996.

Mr. Thomas A. Foor, Missoula, Montana, for a term ending July 1, 1998.

Ms. Vicki A. McCarthy, Billings, Montana, for a term ending July 1, 1998.

Mr. William Holt, Lolo, Montana, for a term ending July 1, 1998.

(11) As a member of the Commission for Human Rights, in accordance with section 2-15-1706, MCA:

Ms. Evelyn Stevenson, Pablo, Montana, for a term ending January 2, 1997.

(12) As members of the Board of Landscape Architects, in accordance with section 2-15-1872, MCA:

Ms. Diana Penwell, Havre, Montana, for a term ending July 1, 1997.

Ms. Shelley Engler, Bozeman, Montana, for a term ending July 1, 1997.

(13) As a member of the State Library Commission, in accordance with section 22-1-101, MCA:

Ms. Myrna Lundy, Fort Benton, Montana, for a term ending May 22, 1996.

(14) As a member of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Mr. Duane Braaten, Kalispell, Montana, for a term ending March 1, 1999.

(15) As members of the Board of Medical Examiners, in accordance with section 2-15-1841, MCA:

Dr. Daniel Brooke, Miles City, Montana, for a term ending September 1, 1997.

Ms. Pamela Gilbert, Bozeman, Montana, for a term ending September 1, 1997.

Ms. Linda Melick, Lewistown, Montana, for a term ending September 1, 1997.

Mr. Randy L. Spear, Worden, Montana, for a term ending September 1, 1997.

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(16) As members of the State Compensation Insurance Fund Board, in accordance with section 2-15-1019, MCA:

Ms. Sandra Reiter, Billings, Montana, for a term ending April 28, 1997.

Mr. James Broulette, Stevensville, Montana, for a term ending April 28, 1997.

(17) As a member of the Board of Nursing, in accordance with section 2-15-1844, MCA:

Ms. Charlotte Messmore, Great Falls, Montana, for a term ending July 1, 1997.

(18) As a member of the Board of Occupational Therapy Practice, in accordance with section 2-15-1859, MCA:

Ms. Linda Botten, Bozeman, Montana, for a term ending December 31, 1996.

(19) As a member of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Mr. Denzil R. Young, Baker, Montana, for a term ending January 1, 1995.

(20) As a member of the Board of Optometry, in accordance with section 2-15-1846, MCA:

Dr. Cyntbia Kinna Johnson, Bozeman, Montana, for a term ending April 3, 1997.

(21) As a member of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Willis McKeon, Malta, Montana, for a term ending January 1, 1997.

(22) As a member of the Board of Pharmacy, in accordance with section 2-15-1843, MCA:

Ms. Ann Pasha, Highwood, Montana, for a term ending July 1, 1998.

(23) As a member of the Board of Physical Therapy Examiners, in accordance with section 2-15-1858, MCA:

Mr. Robert Bowman, Lewistown, Montana, for a term ending July 1, 1996.

(24) As a member of the Board of Plumbers, in accordance with section 2-15-1875, MCA:

Mr. Vernon E. Mahn, Lincoln, Montana, for a term ending May 4, 1997.

(25) As members of tbe Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1891, MCA:

Mr. David Ward, Billings, Montana, for a term ending August 1, 1994.

Mr. Jeff Patterson, Missoula, Montana, for a term ending August 1, 1994.

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(26) As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1873, MCA:

Mr. David M. Hummel, Jr., Billings, Montana, for a term ending April 23, 1997.

Mr. Dennis F. Carver, Kalispell, Montana, for a term ending April 23, 1997.

(27) As members of the Board of Psychologists, in accordance with section 2-15-1851, MCA:

Dr. James Murphy, Bozeman, Montana, for a term ending September 1, 1998.

Ms. JoAnn Witt, Carter, Montana, for a term ending September 1, 1998.

(28) As a member of the Board of Public Accountants, in accordance with section 2-15-1866, MCA:

Mr. James R. Smrcka, Glasgow, Montana, for a term ending July 1, 1998.

(29) As a member of the Board of Public Education, in accordance with section 2-15-1507, MCA:

Ms. Barbara Keim, Billings, Montana, for a term ending February 1, 2000.

(30) As members of the Public Employees' Retirement Board, in accordance with section 2-15-1009, MCA:

Mr. Fred Flanders, Helena, Montana, for a term ending April 1, 1998.

Ms. Carol Lambert, Hammond, Montana, for a term ending April 1, 1998.

(31) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1848, MCA:

Ms. Cynthia L. Smith, Billings, Montana, for a term ending July 1, 1996.

Ms. Debbie Sanford, Lewistown, Montana, for a term ending July 1, 1996.

Dr. Dennis S. Yutani, Glasgow, Montana, for a term ending July 1, 1996.

Ms. Judy Martz, Silver Bow, Montana, for a term ending July 1, 1996.

(32) As a member of the Board of Realty Regulation, in accordance with section 2-15-1867, MCA:

Mr. Bruno Friia, Missoula, Montana, for a term ending May 9, 1997.

(33) As members of the Board of Regents of Higher Education, in accordance with section 2-15-1505, MCA:

Mr. Jim Kaze, Havre, Montana, for a term ending February 1, 1999.

Ms. L. Colleen Conroy, Hardin, Montana, for a term ending February 1, 1994.

Mr. Patrick Davison, Billings, Montana, for a term ending February 1, 2000.

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Mr. Shane Coleman, Bozeman, Montana, for a term ending June 1, 1994.

(34) As a member of the Board of Sanitarians, in accordance with section 2-15-1861, MCA:

Ms. Pat Switzer, Richey, Montana, for a term ending July 1, 1996.

(35) As a member of tbe State Tax Appeal Board, in accordance with section 2-15-1015, MCA:

Ms. Patti Foster, Townsend, Montana, for a term ending March 1, 1995.

(36) As a member of the Teachers' Retirement Board, in accordance with section 2-15-1010, MCA:

Ms. Sharon Oftedal, Miles City, Montana, for a term ending July 1, 1997.

(37) As a member of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Ms. Bernadette A. Opp, Belgrade, Montana, for a term ending May 18, 1998.

(38) As a member of the Board of Veterinary Medicine, in accordance with section 2-15-1852, MCA:

Dr. Robert Myers, Bozeman, Montana, for a term ending July 31, 1998.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the First Special Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to tbe Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Passed December 11, 1993.

SENATE RESOLUTION NO.

A RESOLUTION OF THE SENATE OF THE FIRST SPECIAL SESSION OF THE FIFTY-THIRD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED NOVEMBER 29, 1993, TO THE SENATE PURSUANT TO SECTION 5-5-303, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment, below designated, that has been submitted to the Senate by the Governor:

As a member of the State Compensation Insurance Fund Board, in accordance with section 2-15-1019, MCA:

Mr. Richard Hill, Helena, Montana, for a term ending April 28, 1997.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the First Special Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Passed December 11, 1993.

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2-15-112	amended	Ch. 23	SB 32
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2-18-1102	amended	Ch. 23	SB 32
2-18-1103	amended	Ch. 23	SB 32
2-18-1104	repealed	Ch. 23	SB 32
2-18-1105	amended	Ch. 23	SB 32
2-18-1106	amended	Ch. 23	SB 32
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5-12-303	amended	Ch. 12	HB 7
5-13-311	enacted	Ch. 20	SB 28
5-13-312	enacted	Ch. 20	SB 28
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7-3-1309	amended	Ch. 27	HB 50
7-3-4252	amended	Ch. 27	HB 50
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7-4-2505	amended	Ch. 27	HB 50
7-4-3007	amended	Ch. 27	HB 50
7-6-2540	repealed	Ch. 27	HB 50
7-6-4409	amended	Ch. 27	HB 50
7-6-4410	amended	Ch. 27	HB 50
7-6-4412	amended	Ch. 27	HB 50
7-6-4413	amended	Ch. 27	HB 50
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7-13-2528	amended	Ch. 27	HB 50
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7-13-4507	amended	Ch. 27	HB 50
7-14-2524	amended	Ch. 9	SB 18
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7-14-2735	amended	Ch. 27	HB 50
7-14-2738	amended	Ch. 27	HB 50
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7-14-2743	amended	Ch. 27	HB 50
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7-14-2745	amended	Ch. 27	HB 50
7-14-2755	amended	Ch. 27	HB 50
7-16-2327	amended	Ch. 9	SB 18
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15-1-303	amended	Ch. 27	HB 50
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15-1-506	repealed	Ch. 27	HB 50
15-1-521	enacted	Ch. 27	HB 50
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15-6-207	amended	Ch. 27	HB 50
15-6-208	amended	Ch. 9	SB 18
15-7-102	amended	Ch. 27	HB 50
15-7-106	amended	Ch. 27	HB 50
15-7-107	amended	Ch. 27	HB 50
15-7-208	amended	Ch. 27	HB 50
15-7-209	amended	Ch. 27	HB 50
15-7-213	repealed	Ch. 27	HB 50
15-7-304	amended	Ch. 27	HB 50
15-7-308	amended	Ch. 27	HB 50
15-7-402	amended	Ch. 27	HB 50
15-7-403	amended	Ch. 27	HB 50
15-8-102	amended	Ch. 27	HB 50
15-8-103	repealed	Ch. 27	HB 50
15-8-104	amended	Ch. 27	HB 50
15-8-105	repealed	Ch. 27	HB 50
15-8-106	repealed	Ch. 27	HB 50
15-8-111	amended	Ch. 27	HB 50
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15-8-202	amended	Ch. 27	HB 50
15-8-205	amended	Ch. 27	HB 50
15-8-301	amended	Ch. 27	HB 50
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15-8-307	amended	Ch. 27	HB 50
15-8-402	amended	Ch. 27	HB 50
15-8-601	amended	Ch. 27	HB 50
15-8-701	amended	Ch. 27	HB 50
15-8-702	amended	Ch. 27	HB 50
15-8-704	amended	Ch. 27	HB 50
15-8-705	repealed	Ch. 27	HB 50
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15-8-710	amended	Ch. 27	HB 50
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15-9-102	repealed	Ch. 27	HB 50
15-9-103	amended	Ch. 27	HB 50
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15-10-203	amended	Ch. 27	HB 50
15-10-205	amended	Ch. 27	HB 50
15-10-206	amended	Ch. 27	HB 50
15-10-301	repealed	Ch. 27	HB 50
15-10-302	repealed	Ch. 27	HB 50
15-10-303	repealed	Ch. 27	HB 50
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15-10-305	amended	Ch. 27	HB 50
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15-16-111	repealed	Ch. 27	HB 50
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15-16-113	repealed	Ch. 27	HB 50
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15-16-611	amended	Ch. 27	HB 50
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15-17-317	amended	Ch. 27	HB 50
15-17-911	amended	Ch. 27	HB 50
15-18-412	amended	Ch. 27	HB 50
15-23-104	amended	Ch. 27	HB 50
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15-23-107	amended	Ch. 27	HB 50
15-23-115	amended	Ch. 27	HB 50
15-23-507	amended	Ch. 27	HB 50
15-23-601	amended	Ch. 9	SB 18
15-23-602	amended	Ch. 9	SB 18
15-23-603	amended	Ch. 9	SB 18
15-23-607	amended	Ch. 9	SB 18
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15-23-612	amended	Ch. 9	SB 18
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15-23-703	amended	Ch. 27	HB 50
15-23-704	amended	Ch. 27	HB 50
15-23-803	amended	Ch. 27	HB 50
15-23-804	amended	Ch. 27	HB 50
15-24-104	amended	Ch. 27	HB 50
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15-24-904	amended	Ch. 27	HB 50
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15-24-921	amended	Ch. 27	HB 50
15-24-1402	amended	Ch. 27	HB 50
15-24-1501	amended	Ch. 27	HB 50
15-24-1802	amended	Ch. 27	HB 50
15-24-1902	amended	Ch. 27	HB 50
15-24-2002	amended	Ch. 27	HB 50
15-24-2301	repealed	Ch. 33	HB 60
15-24-2302	amended	Ch. 27	HB 50
	repealed	Ch. 33	HB 60
15-30-226	repealed	Ch. 27	HB 50
15-36-101	amended	Ch. 9	SB 18
15-36-104	amended	Ch. 27	HB 50
15-37-203	amended	Ch. 27	HB 50
15-51-104	amended	Ch. 27	HB 50
15-59-104	amended	Ch. 27	HB 50
15-59-203	amended	Ch. 27	HB 50
15-70-101	amended	Ch. 10	HB 15
15-70-301	amended	Ch. 10	HB 15
15-70-302	amended	Ch. 10	HB 15
15-70-303	amended	Ch. 10	HB 15
15-70-304	amended	Ch. 10	HB 15
15-70-305	amended	Ch. 10	HB 15
15-70-306	amended	Ch. 10	HB 15
15-70-309	repealed	Ch. 10	HB 15
15-70-311	amended	Ch. 10	HB 15
15-70-315	repealed	Ch. 10	HB 15
15-70-321	amended	Ch. 10	HB 15
15-70-324	amended	Ch. 10	HB 15
15-70-330	amended	Ch. 10	HB 15
15-70-341	amended	Ch. 10	HB 15
15-70-343	amended	Ch. 10	HB 15
15-70-349	amended	Ch. 10	HB 15
15-70-356	amended	Ch. 10	HB 15
15-70-361	amended	Ch. 10	HB 15
15-70-364	amended	Ch. 10	HB 15
17-1-510	enacted	Ch. 37	HB 21
17-3-111	amended	Ch. 37	HB 21
17-5-703	amended	Ch. 8	SB 4
	amended	Ch. 33	HB 60
17-6-201	amended	Ch. 37	HB 21

Title-Ch.-Sec.	Action	Chapter	Bill #
17-7-102	amended	Ch. 12	HB 7
17-7-111	amended	Ch. 12	HB 7
	amended	Ch. 13	HB 30
17-7-122	amended	Ch. 12	HB 7
17-7-123	amended	Ch. 12	HB 7
	amended	Ch. 13	HB 30
17-7-304	amended	Ch. 23	SB 32
17-7-502	amended	Ch. 10	HB 15
	amended	Ch. 36	SB 46
17-8-306	amended	Ch. 5	SB 13
18-4-302	amended	Ch. 11	HB 43
19-3-908	amended	Ch. 27	HB 50
20-5-321	amended	Ch. 32	HB 56
20-6-401	repealed	Ch. 36	SB 46
20-6-402	repealed	Ch. 36	SB 46
20-6-403	repealed	Ch. 36	SB 46
20-6-404	repealed	Ch. 36	SB 46
20-6-405	repealed	Ch. 36	SB 46
20-6-406	repealed	Ch. 36	SB 46
20-6-407	repealed	Ch. 36	SB 46
20-6-408	repealed	Ch. 36	SB 46
20-6-703	amended	Ch. 36	SB 46
20-7-504	amended	Ch. 39	HB 89
20-7-506	amended	Ch. 39	HB 89
20-7-507	amended	Ch. 39	HB 89
20-7-705	amended	Ch. 34	HB 64
20-9-104	amended	Ch. 35	SB 1
	amended	Ch. 36	SB 46
20-9-122	amended	Ch. 27	HB 50
20-9-141	amended	Ch. 9	SB 18
	amended	Ch. 35	SB 1
20-9-306	amended	Ch. 38	HB 22
20-9-308	amended	Ch. 38	HB 22
20-9-331	amended	Ch. 9	SB 18
20-9-333	amended	Ch. 9	SB 18
20-10-144	amended	Ch. 9	SB 18
32-1-467	amended	Ch. 17	HB 68
33-2-708	amended	Ch. 6	SB 14
33-17-231	amended	Ch. 6	SB 14
33-17-236	amended	Ch. 6	SB 14
33-17-237	amended	Ch. 6	SB 14
41-3-1004	amended	Ch. 21	SB 29
41-3-1103	amended	Ch. 19	SB 23
50-61-112	amended	Ch. 27	HB 50
53-6-101	amended	Ch. 14	HB 34
53-6-103	repealed	Ch. 31	HB 33
53-6-104	amended	Ch. 31	HB 33
53-6-110 (5)	enacted	Ch. 14	HB 34
53-6-116	amended	Ch. 31	HB 33
53-6-131	amended	Ch. 14	HB 34
53-9-109	amended	Ch. 3	HB 14
60-3-201	amended	Ch. 40	SB 43
61-2-107	amended	Ch. 2	HB 6
61-3-207	amended	Ch. 27	HB 50
61-3-303	amended	Ch. 27	HB 50

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Title-Ch.-Sec.	Action	Chapter	Bill #
61-3-345	amended	Ch. 27	HB 50
61-3-503	amended	Ch. 27	HB 50
61-5-111	amended	Ch. 26	HB 66
61-5-121	amended	Ch. 39	HB 89
61-12-206	amended	Ch. 10	HB 15
61-12-402	amended	Ch. 27	HB 50
70-23-304	amended	Ch. 27	HB 50
70-23-305	amended	Ch. 27	HB 50
75-10-621	amended	Ch. 16	HB 40
76-2-102	amended	Ch. 27	HB 50
76-13-207	amended	Ch. 27	HB 50
76-15-518	amended	Ch. 27	HB 50
77-1-501	amended	Ch. 27	HB 50
77-1-503	amended	Ch. 27	HB 50
77-1-504	amended	Ch. 27	HB 50
77-2-313	amended	Ch. 27	HB 50
80-2-203	amended	Ch. 27	HB 50
80-2-204	amended	Ch. 27	HB 50
80-2-206	amended	Ch. 27	HB 50
80-2-207	amended	Ch. 27	HB 50
80-2-225	amended	Ch. 27	HB 50
81-2-302	amended	Ch. 27	HB 50
81-4-511	amended	Ch. 27	HB 50
81-4-513	amended	Ch. 27	HB 50
81-4-516	amended	Ch. 27	HB 50
81-7-303	amended	Ch. 27	HB 50
82-11-118	enacted	Ch. 9	SB 18
85-7-2136	amended	Ch. 27	HB 50
85-8-601	amended	Ch. 27	HB 50
85-9-603	amended	Ch. 27	HB 50
85-20-302	enacted	Ch. 7	HB 74
90-4-901	repealed	Ch. 33	HB 60
90-4-902	repealed	Ch. 33	HB 60
90-4-903	repealed	Ch. 33	HB 60
90-4-904	repealed	Ch. 33	HB 60
90-4-905	repealed	Ch. 33	HB 60
90-4-906	repealed	Ch. 33	HB 60

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TABLE

OF

SESSION LAWS AFFECTED

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SESSION LAWS AFFECTED

Laws Affected	Action	Chapter	Bill No.
Laws of 1991			
Ch. 722, sec. 11	repealed	Ch. 8, Sp. L. Nov. 1993	SB 4
Ch. 722, sec. 11	repealed	Ch. 33, Sp. L. Nov. 1993	HB 60
Laws of 1993			
Ch. 515, sec. 1—5	repealed	Ch. 33, Sp. L. Nov. 1993	HB 60
Ch. 550, sec. 1	amended	Ch. 30, Sp. L. Nov. 1993	HB 2
Ch. 623, sec. 11, 15	amended	Ch. 30, Sp. L. Nov. 1993	HB 2
Ch. 624, sec. 2	amended	Ch. 30, Sp. L. Nov. 1993	HB 2

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TABLES

OF

BILL NUMBER TO CHAPTER NUMBER

AND

CHAPTER NUMBER TO BILL NUMBER

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SENATE BILL NUMBER

TO

CHAPTER NUMBER

Bill No.	Chapter No.	Bill No.	Chapter No.
SB 1	Ch. 35	SB 27	Ch. 25
SB 4	Ch. 8	SB 28	Ch. 20
SB 5	Ch. 18	SB 29	Ch. 21
SB 7	Ch. 4	SB 31	Ch. 22
SB 13	Ch. 5	SB 32	Ch. 23
SB 14	Ch. 6	SB 43	Ch. 40
SB 18	Ch. 9	SB 46	Ch. 36
SB 23	Ch. 19	SB 51	Ch. 24

HOUSE BILL NUMBER

TO

CHAPTER NUMBER

Bill No.	Chapter No.	Bill No.	Chapter No.
HB 1	Ch. 1	HB 34	Ch. 14
HB 2	Ch. 30	HB 36	Ch. 15
HB 4	Ch. 28	HB 40	Ch. 16
HB 6	Ch. 2	HB 43	Ch. 11
HB 7	Ch. 12	HB 50	Ch. 27
HB 8	Ch. 29	HB 56	Ch. 32
HB 14	Ch. 3	HB 60	Ch. 33
HB 15	Ch. 10	HB 64	Ch. 34
HB 21	Ch. 37	HB 66	Ch. 26
HB 22	Ch. 38	HB 68	Ch. 17
HB 30	Ch. 13	HB 74	Ch. 7
HB 33	Ch. 31	HB 89	Ch. 39

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CHAPTER NUMBER

TO

BILL NUMBER

Chapter No.	Bill No.	Chapter No.	Bill No.
Ch. 1	HB 1	Ch. 21	SB 29
Ch. 2	HB 6	Ch. 22	SB 31
Ch. 3	HB 14	Ch. 23	SB 32
Ch. 4	SB 7	Ch. 24	SB 51
Ch. 5	SB 13	Ch. 25	SB 27
Ch. 6	SB 14	Ch. 26	HB 66
Ch. 7	HB 74	Ch. 27	HB 50
Ch. 8	SB 4	Ch. 28	HB 4
Ch. 9	SB 18	Ch. 29	HB 8
Ch. 10	HB 15	Ch. 30	HB 2
Ch. 11	HB 43	Ch. 31	HB 33
Ch. 12	HB 7	Ch. 32	HB 56
Ch. 13	HB 30	Ch. 33	HB 60
Ch. 14	HB 34	Ch. 34	HB 64
Ch. 15	HB 36	Ch. 35	SB 1
Ch. 16	HB 40	Ch. 36	SB 46
Ch. 17	HB 68	Ch. 37	HB 21
Ch. 18	SB 5	Ch. 38	HB 22
Ch. 19	SB 23	Ch. 39	HB 89
Ch. 20	SB 28	Ch. 40	SB 43

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TABLES

OF

EFFECTIVE DATES

Section 1-2-201, MCA, as amended by Ch. 466, Laws of 1981, provides that:

"Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein."

The following is a list of specially designated effective dates for the 53rd Legislature in special session.

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EFFECTIVE DATES

BY DATE

Effective Date	Chapter No.	Bill No.
12/02/93	Ch. 1	HB 1
12/16/93	Ch. 2	HB 6
12/16/93	Ch. 3	HB 14
12/16/93	Ch. 5	SB 13
12/17/93	Ch. 7	HB 74
12/17/93	Ch. 8	SB 4
12/17/93	Ch. 9	SB 18
12/20/93	Ch. 10	HB 15 (§§ 1, 18, 21, & 22)
12/23/93	Ch. 12	HB 7
12/23/93	Ch. 13	HB 30
12/23/93	Ch. 14	HB 34
12/23/93	Ch. 16	HB 40
12/23/93	Ch. 17	HB 68
12/23/93	Ch. 18	SB 5 (§§ 1(4) & 2)
12/23/93	Ch. 19	SB 23
12/23/93	Ch. 21	SB 29
12/23/93	Ch. 22	SB 31
12/23/93	Ch. 23	SB 32
12/23/93	Ch. 24	SB 51
12/27/93	Ch. 27	HB 50 (§§ 127, 158-164, & 168-173)
12/27/93	Ch. 28	HB 4
12/27/93	Ch. 29	HB 8
01/01/94	Ch. 4	SB 7
01/01/94	Ch. 10	HB 15 (§§ 2-17, 19, & 20)
01/01/94	Ch. 15	HB 36
01/01/94	Ch. 18	SB 5 (§ 1(1)-(3))
01/01/94	Ch. 27	HB 50 (§§ 1-126, 128-157, & 165-167)
01/01/94	Ch. 31	HB 33
01/03/94	Ch. 30	HB 2
01/03/94	Ch. 32	HB 56
01/03/94	Ch. 33	HB 60
01/03/94	Ch. 34	HB 64
01/04/94	Ch. 38	HB 22
01/05/94	Ch. 37	HB 21
07/01/94	Ch. 6	SB 14
07/01/94	Ch. 20	SB 28
07/01/94	Ch. 26	HB 66
07/01/94	Ch. 35	SB 1
07/01/94	Ch. 36	SB 46
07/01/94	Ch. 39	HB 89
07/01/94	Ch. 40	SB 43
10/01/94	Ch. 11	HB 43
?	Ch. 25	SB 27 (contingent upon voter approval)

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OF

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CODE

Ch.	Sec.	MCA
1	1	Operations appropriations
	2	Effective date
2	1	61-2-107
	2	Effective date
3	1	53-9-109
	2	Effective date
	3	Contingent termination
4	1	13-1-203
	2	Effective date
5	1	17-8-306
	2	Effective date
6	1	33-2-708
	2	33-17-231
	3	33-17-236
	4	33-17-237
	5	Effective date
7	1	85-20-302
	2	Codification instruction
	3	Effective date
8	1	17-5-703
	2	Fund transfer
	3	Repealer
	4	Effective date
9	1	15-6-208
	2	15-23-601
	3	15-23-602
	4	15-23-603
	5	15-23-607
	6	15-23-612
	7	15-23-613
	8	15-23-614
	9	15-36-101
	10	7-1-2111
	11	7-7-2101
	12	7-7-2203
	13	7-14-2524
	14	7-14-2525
	15	7-16-2327
	16	20-9-141
	17	20-9-331
	18	20-9-333
	19	20-10-144
	20	82-11-118
	21	Reports by board of oil and gas conservation to revenue oversight committee
	22	Codification instruction
	23	Severability
	24	Effective date — applicability
10	1	15-70-101
	2	15-70-301
	3	15-70-302
	4	15-70-303
	5	15-70-304
	6	15-70-305
	7	15-70-306
	8	15-70-311
	9	15-70-321
	10	15-70-324
	11	15-70-330
	12	15-70-341
	13	15-70-343
	14	15-70-349
	15	15-70-356
	16	15-70-361
	17	15-70-364
	18	17-7-502
	19	61-12-206
	20	Repealer
	21	Effective dates — retroactive applicability
	22	Retroactive applicability
11	1	18-4-302
12	1	5-12-303
	2	17-7-102
	3	Code commissioner instruction
	4	Effective date
13	1	17-7-111
	2	17-7-123
	3	Effective date
14	1	53-6-110(5)
	2	53-6-101
	3	53-6-131
	4	Effective date
15	1	15-2-301
	2	15-15-103
	3	15-15-104
	4	Applicability
	5	Effective date
16	1	2-15-2105
	2	75-10-621

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Ch.	Sec.	MCA
	3	Repealer
	4	Effective date
17	1	32-1-467
	2	Effective date
18	1	5-7-103
	2	Effective dates
19	1	41-3-1103
	2	Effective date
20	1	5-13-311
	2	5-13-312
	3	Severability
	4	Codification instruction
	5	Effective date
	6	Termination
21	1	41-3-1004
	2	Effective date
22	1	1-11-303
	2	5-11-201
	3	5-11-202
	4	5-11-203
	5	Effective date
23	1	2-18-1101
	2	2-18-1102
	3	2-18-1103
	4	2-18-1105
	5	2-18-1106
	6	2-18-1107
	7	2-15-112
	8	17-7-304
	9	Repealer
	10	Codification instruction
	11	Applicability
	12	Effective date
	13	Termination
24	1	2-18-1203
	2	Effective date
25	1	Art. VIII, sec. 3, Mont. Const.
	2	Submission to electorate
26	1	61-5-111
	2	Effective date
27	1	2-6-110
	2	15-1-521
	3	5-18-115
	4	7-3-1301
	5	7-3-1309
	6	7-3-4252
	7	7-4-2401
	8	7-4-2505
	9	7-6-4409
	10	7-6-4410
	11	7-6-4412
	12	7-6-4413
	13	7-8-2513
	14	7-12-4181
	15	7-12-4184
	16	7-13-233
	17	7-13-2304
	18	7-13-2306
	19	7-13-2527
	20	7-13-2528
	21	7-13-4309
	22	7-13-4507
	23	7-14-2735
	24	7-14-2738
	25	7-14-2739
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	27	7-14-2742
	28	7-14-2743
	29	7-14-2744
	30	7-14-2745
	31	7-14-2755
	32	15-1-101
	33	15-1-111
	34	15-1-201
	35	15-1-202
	36	15-1-205
	37	15-1-303
	38	15-6-207
	39	15-7-102
	40	15-7-106
	41	15-7-107
	42	15-7-208
	43	15-7-209
	44	15-7-304
	45	15-7-308
	46	15-7-402
	47	15-7-403
	48	15-8-102
	49	15-8-104
	50	15-8-111
	51	15-8-112
	52	15-8-113
	53	15-8-115
	54	15-8-201
	55	15-8-202
	56	15-8-205
	57	15-8-301
	58	15-8-303
	59	15-8-304
	60	15-8-307
	61	15-8-402
	62	15-8-601
	63	15-8-701
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	73	15-10-205

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	77	15-15-102
	78	15-15-103
	79	15-16-101
	80	15-16-104
	81	15-16-105
	82	15-16-115
	83	15-16-117
	84	15-16-203
	85	15-16-302
	86	15-16-305
	87	15-16-402
	88	15-16-504
	89	15-16-611
	90	15-17-124
	91	15-17-317
	92	15-17-911
	93	15-18-412
	94	15-23-104
	95	15-23-106
	96	15-23-107
	97	15-23-115
	98	15-23-507
	99	15-23-607
	100	15-23-702
	101	15-23-703
	102	15-23-704
	103	15-23-803
	104	15-23-804
	105	15-24-104
	106	15-24-302
	107	15-24-801
	108	15-24-901
	109	15-24-902
	110	15-24-903
	111	15-24-904
	112	15-24-905
	113	15-24-906
	114	15-24-920
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	118	15-24-1802
	119	15-24-1902
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	121	15-24-2302
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	126	15-59-203
	127	19-3-908
	128	20-9-122
	129	50-61-112
	130	61-3-207
	131	61-3-303
	132	61-3-345
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	134	61-12-402
	135	70-23-304
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	145	80-2-204
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	154	85-7-2136
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	157	15-16-119
	158	Assessors qualifying as employees
	159	Classification and salary for qualifying assessor
	160	Benefits for qualifying assessors
	161	Required employment — department excused from hiring practices
	162	Department contract for county assessor
	163	Consolidation of office of county assessor — special procedure — transfer of records
	164	State not obliged to reimburse county for assessor salary
	165	Advisory committee — study of taxation of motor vehicles and mobile homes
	166	Office hours
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	168	Appropriations
	169	Repealer
	170	Codification instructions
	171	Applicability
	172	Severability
	173	Effective dates

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28	1	Authorization of inmate labor for designated construction project — exemptions
	2	Severability
	3	Effective date
29	1	Authorization of Montana state prison staff for designated construction project — exception
	2	Effective date
	3	Termination
30	1	Sec. 15, Ch. 623, L. 1993
	2	Sec. 2, Ch. 624, L. 1993
	3	Sec. 1, Ch. 550, L. 1993
	4	Sec. 11, Ch. 623, L. 1993
	5	Legislative intent
	6	Effective date
31	1	53-6-104
	2	53-6-116
	3	Mental health advisory group
	4	Physical provider advisory group
	5	Repealer
	6	Effective date
	7	Termination
32	1	20-5-321
	2	Effective date — retroactive applicability
33	1	17-5-703
	2	Repealer
	3	Effective date
34	1	20-7-705
	2	Effective date
35	1	20-9-104
	2	20-9-141
	3	Effective date — applicability
36	1	Repealer
	2	17-7-502
	3	20-6-703
	4	20-9-104
	5	Saving clause
	6	Effective date
37	1	17-3-111
	2	17-6-201
	3	17-1-510
	4	Codification instruction
	5	Effective date
38	1	20-9-306
	2	20-9-308
	3	Budget reduction — exceptions
	4	Effective date — applicability
39	1	3-10-601
	2	61-5-121
	3	20-7-504
	4	20-7-506
	5	20-7-507
	6	Effective date
40	1	60-3-201
	2	Effective date